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

FORM 10-K

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

For the year ended October 2, 2020

or

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

For the transition period from to

Commission File Number 001-37860

VAREX IMAGING CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**81-3434516**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**
1678 S. Pioneer Road, Salt Lake City, Utah	**84104**
(Address of principal executive offices)	**(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

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes ☐ No ☒

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

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

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

Large Accelerated filer	☒	Accelerated filer	☐
Non-Accelerated filer	☐	Smaller reporting company	☐
		Emerging growth company	☐

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

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 3, 2020, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of shares of the registrant's common stock held by non-affiliates of the registrant (based upon the closing sale price of such shares on the NASDAQ Global Select Market on April 3, 2020) was approximately $597.5 million. Shares of the registrant's common stock held by the registrant's executive officers and directors and by each entity that owned 10% or more of the registrant's outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of November 3, 2020, there were 39.2 million shares of the registrant's common stock outstanding.

Documents Incorporated by Reference

Portions of registrant's proxy statement relating to registrant's 2021 annual meeting of stockholders have been incorporated by reference in Part III of this annual report on Form 10-K.

VAREX IMAGING CORPORATION

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Forward-Looking Statements

This Annual Report on Form 10-K (this "Annual Report"), including the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" ("MD&A") 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 financial performance that are based on the beliefs of, estimates made by, and information currently available to the management of Varex Imaging Corporation ("we," "our," "us," the "Company," "Varex," or "Varex Imaging"). 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 projected in these forward-looking statements. Important factors that could cause our actual results and financial condition to differ significantly from those projections or expectations include, among other things, the risks described in the Summary of Principal Risk Factors below and further described in the Risk Factors listed under Part I, Item 1A of this Annual Report, MD&A and other factors described from time to time in our other filings with the U.S. Securities and Exchange Commission (the "SEC"), or other reasons.

Statements concerning: the impact of the ongoing COVID-19 pandemic on the global economy or the Company; industry or market segment outlook; market acceptance of or transition to new products or technology such as advanced X-ray tube and digital flat panel detector products; growth drivers; future orders, revenues, backlog, earnings or other financial results; and any statements using the terms "believe," "expect," "anticipate," "can," "should," "would," "could," "estimate," "may," "intended," "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 Annual 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.

Summary of Principal Risk Factors

Investing in our common stock involves risks. See Item 1A. "Risk Factors" beginning on page 14 of this Annual Report for a discussion of the following principal risks and other risks that make an investment in Varex speculative or risky:

- Our operations, cash flow, and financial position, and the demand for our security, industrial and inspection products, have been adversely impacted, and in the future could continue to be adversely impacted by the coronavirus (COVID-19) pandemic and associated economic disruptions.
- We sell products and services to a limited number of OEM customers, many of which are also competitors, and a reduction in or loss of business of one or more of these customers may materially reduce our sales.
- We may not be able to accurately predict customer demand for our products, which is subject to matters beyond our control
- We compete in highly competitive markets, and we may lose business to our customers or other companies with greater resources or the ability to develop more effective technologies, or we could be forced to reduce our prices.
- Our success depends on the successful development, introduction, and commercialization of new generations of products and enhancements to or simplifications of existing product lines.
- Changes in import/export regulatory regimes and tariffs could continue to negatively impact our business.
- A disruption at our manufacturing facilities, as well as fluctuating manufacturing costs, could materially and adversely affect its business.
- The loss of a supplier or any inability to obtain supplies of important components could restrict our ability to manufacture products, cause product delivery delays, or significantly increase costs.
- Our international manufacturing operations subject us to volatility and other risks, including high security risks, which could result in harm to our employees and contractors or substantial costs.
- Warranty claims may materially and adversely affect our business.
- Product defects or misuse may result in material product liability or professional errors and omissions claims, litigation, investigation by regulatory authorities, or product recalls that could harm our future revenues and require us to pay material uninsured claims.
- Our competitive position would be harmed if we are not able to maintain our intellectual property rights and protecting our intellectual property can be costly.
- Disruption of critical information systems or material breaches in the security of our systems may materially and adversely affect our business and customer relations.
- Compliance with laws and regulations across the globe applicable to the marketing, manufacture, and distribution of our products may be costly, and failure to comply may result in significant penalties and other harm to our business.

- We identified material weaknesses in our internal control over financial reporting which, if not remediated appropriately or timely, could result in loss of investor confidence and adversely impact our stock price.
- Conversion of our Convertible Notes may dilute the ownership interest of Varex's stockholders or may otherwise depress the market price of Varex's common stock.
- We have significant debt obligations that could adversely affect our business, profitability and ability to meet our obligations.
- Our ABL Credit Facility and our indentures impose significant operating and financial restrictions that may limit current and future operating flexibility, and make it difficult to respond to economic or industry changes or to take certain actions, which could harm our long-term interest.
- Potential indemnification liabilities to Varian could materially and adversely affect our business, financial condition, results of operations, and cash flows.

PART I

Item 1. Business

Overview

Varex Imaging Corporation is a leading innovator, designer and manufacturer of X-ray tubes, digital detectors, linear accelerators and other image software processing solutions, which are mission critical components of a variety of X-ray based diagnostic imaging equipment. These products are used in medical imaging as well as in industrial and security imaging applications such as general X-ray, computed tomography ("CT"), C-arms, angiography, fluoroscopy, mammography, and dental. In addition, our components are also used in security and quality inspection systems, as well as for analysis and measurement applications in industrial manufacturing applications. Global original equipment manufacturers ("OEMs") incorporate our X-ray imaging components in their systems to detect, diagnose, protect and inspect. Varex has approximately 2,000 full-time employees, located at manufacturing and service center sites in North America, Europe, and Asia.

Founded as a Delaware corporation in July 2016, Varex was established as an independent publicly traded company in January 2017 as a result of its spin-off from Varian Medical Systems, Inc. ("Varian"). We expanded our business in May 2017, when we acquired certain assets of PerkinElmer, Inc. ("PKI") relating to digital detectors that serve as components for medical and industrial X-ray imaging systems. In April 2019, we acquired approximately 98% of Direct Conversion AB (publ), a manufacturer and marketer of linear array digital detectors utilizing direct conversion and photon counting technology.

Our products are sold worldwide in three geographic regions: the Americas, EMEA, and APAC. The Americas includes North America and South America. EMEA includes Europe, Russia, the Middle East, India and Africa. APAC includes Asia (other than India) and Australia. Revenues by region are based on the destination of products being 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 500 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 COVID-19

The COVID-19 pandemic and its impact on the global economy has disrupted our business, increased uncertainty in demand for certain medical and industrial products, and increased variability in our supply chain and manufacturing activities. The economic downturn triggered by COVID-19 has led to significantly lower demand from our customers and delays in their equipment installations. In conjunction with this reduced demand and uncertainty beyond the forecast horizon, we evaluated our product offering and decided to discontinue certain low margin, low demand products. As a result, during the third quarter of fiscal year 2020 we took an approximately $15.8 million pre-tax charge for the write-down of associated inventory and restructuring activity, impaired $2.8 million of intangible assets and wrote off a $2.7 million cost investment in a privately-held company.

The COVID-19 pandemic has had a significant effect on hospitals, clinics and outpatient imaging centers as they have encountered declines in surgeries and other non-emergency procedures. In some cases, healthcare facilities have been closed and non-emergency procedures have been deferred. As a result, many hospitals, clinics and outpatient imaging centers have reduced their

capital purchases of imaging equipment from OEM's which has led to lower demand for X-ray imaging components. In addition, reduced usage of certain X-ray equipment has resulted in less demand for replacement components that wear-out with use. Additionally, equipment installations were delayed, due to reduced access to healthcare institutions. Partially offsetting this has been an increased demand for CT and certain radiographic diagnostic imaging equipment used to screen for or assist in the treatment of respiratory diseases (such as COVID-19).

While healthcare systems and economies around the world have begun to reopen, customer demand for our products has not returned to pre-pandemic levels, and the adverse effect of COVID-19 on our results of operations has been significant. While we believe that the drivers for long-term demand in both our medical and industrial segments remain intact, we believe that in the near-term, reduced demand in our industrial segment and for certain higher end medical products will continue to depress our results of operations. While our manufacturing sites are currently up and running, COVID-19 and associated economic disruptions have had an adverse impact on our manufacturing capacity, supply chain and distribution systems, including as a result of impacts associated with preventive and precautionary measures that we, other businesses and governments are taking. Supply chain logistics have also become more challenging and while we have had success in localizing our supply chain through our "local-for-local" initiative, supply chain logistics could remain challenging.

The actions taken to combat COVID-19 have had, and we believe will continue to have, a negative impact on our operating results, cash flows and financial condition. We expect uncertainty related to the COVID-19 pandemic to continue well into calendar year 2021. While we have implemented safeguards and procedures and taken other measures to counter the impact of the COVID-19 pandemic, the full extent to which the COVID-19 pandemic has and will directly or indirectly impact us, including our business, financial condition, and results of operations, will depend on future developments that are highly uncertain and cannot be accurately predicted. We will continue to actively monitor the situation and may take further actions that alter our business operations as may be required by federal, state, or local authorities or that we determine are in the best interests of our employees, customers, suppliers, and stockholders.

Operating Segments and Products

Our Chief Executive Officer, who is our Chief Operating Decision Maker ("CODM"), evaluates our product groupings and measures our business performance in two reportable operating segments: Medical and Industrial. The segments align our products and service offerings with customer use in medical and industrial markets and are consistent with how the CODM 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.

Medical

In our Medical business segment, we design, manufacture, sell and service X-ray imaging components, including X-ray tubes, digital detectors, high voltage connectors, image-processing software and workstations, 3D reconstruction software, computer-aided diagnostic software, collimators, automatic exposure control devices, generators, heat exchangers, ionization chambers and buckys (a component of X-ray units that holds X-ray film cassettes). These components are used in a range of medical imaging applications including CT, mammography, oncology, cardiac, surgery, dental, and other diagnostic radiography uses.

Our X-ray imaging components are primarily sold to OEM customers. These OEM customers then design-in our products into 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 25 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 use us to supply 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 and directly to end-users for replacement purposes.

We are one of the largest global manufacturers of X-ray 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 150,000 X-ray tubes, 150,000 X-ray detectors, 300,000 connect and control components and 15,000 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. For example, CT X-ray tubes generally need to be replaced every 2 to 4 years. In China, the replacement cycle for CT X-ray tubes can be as frequent as

every 6 to 12 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, 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.

The COVID-19 pandemic has had a significant effect on hospitals, clinics and outpatient imaging centers as they have encountered declines in surgeries and other elective procedures. Subsequently, they have reduced their capital purchases of imaging equipment from OEM's which has led to lower demand for X-ray imaging components. Additionally, equipment installations were delayed, due to reduced access to healthcare institutions. Partially offsetting this has been increased demand for imaging equipment used to diagnose respiratory diseases, such as radiographic X-ray imaging systems and CT imaging systems. The Company expects uncertainty in demand to continue well into calendar year 2021.

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. We have entered into multi-year agreements for providing CT tubes to eight medical X-ray imaging OEMs 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 China, despite a COVID-19 related slowdown in the beginning of the year, demand for our products has returned, and full fiscal year 2020 results for China exceeded our pre-pandemic expectations.

In recent years our growth in China has been impacted by the trade war with the United States. Our business has been impacted in two principal ways: (1) imports of raw materials from China to the U.S. have become more expensive and (2) importing finished U.S. manufactured products into China has become more difficult and expensive. 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. With respect to imports into China, the additional tariffs imposed by the Chinese government have led to a decrease in sales of radiographic detectors manufactured outside of China. To help address these issues, and to be closer to our global customer base, we continue to expand manufacturing capabilities at our facilities in China, Germany and the Philippines and have implemented local sourcing strategies to lower our costs and 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.

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 and baggage screening at airports, and nondestructive testing and inspection applications used in a number of other markets. Our Industrial products include Linatron® X-ray linear accelerators, X-ray tubes, digital detectors and high voltage connectors. 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 as well as manufacturing economies of scale in the Medical side of our business, as we continue to find new applications for our technology. In addition, our Industrial business benefits from long-term service agreements for our Linatron® products.

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

Non-destructive testing and inspection markets utilize X-ray imaging to scan items for inspection of manufacturing defects and product integrity in a wide range of industries including the aerospace, automotive, electronics, oil and gas, food packaging, metal castings and 3D printing industries. 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 markets. We believe that the nondestructive testing market represents a significant growth opportunity for our business and we are actively pursuing new potential applications for our products.

The economic downturn triggered by the COVID-19 pandemic has reduced the demand for X-ray imaging equipment utilized in the non-destructive testing market as manufacturers have focused on cash preservation and have reduced spending for capital

equipment. Additionally, the unprecedented decrease in passenger air traffic has led to decrease in demand in the security market. We expect uncertainty in demand to continue well into the next calendar year.

Customers

Our customers are primarily large OEMs. Our top five customers, measured by revenue, are Canon Medical Systems Corporation ("Canon"), General Electric Company, Hologic, Inc., Elekta AB, and Varian Medical Systems, Inc., which collectively accounted for approximately 40% of total revenue in fiscal year 2020. Our largest customer, Canon, accounted for approximately 21%, 17% and 18% of our total revenue for fiscal years 2020, 2019, and 2018, respectively, while our ten largest customers as a group accounted for approximately 52%, 51% and 49% of our revenue for fiscal years 2020, 2019 and 2018, respectively.

Competition

The imaging components market is highly competitive. OEMs may choose to develop and manufacture X-ray imaging components in-house or they may choose to out-source to a supplier such as Varex or our competitors. Our success depends upon our ability to anticipate changes in our markets, the direction of technological innovation and the demand from our customers. To remain competitive, we must continually invest in research and development focused on innovation, improve product performance and quality, and continue to reduce the cost of our imaging components. Significant capital investment is required for imaging component manufacturers. We believe we have sufficient manufacturing scale to leverage our high volume to reduce overall costs by spreading fixed costs over more units.

Medical

We often compete with the in-house X-ray tube manufacturing operations of major diagnostic imaging systems companies, which are the primary OEM customers for our Medical products. To effectively compete with these in-house capabilities, we must have a competitive advantage in one or more significant areas, such as innovative technology and greater product performance, better product quality or lower product price. We sell a significant volume of our X-ray tubes to OEM customers that have in-house X-ray tube production capability. In addition, we compete with some OEM customers, such as Canon, Philips Healthcare and other companies who sell X-ray tubes to smaller OEMs and other manufacturers, such as Industria Applicazioni Elettroniche S.p.A, as well as emerging X-ray tube manufacturers in China. High capital costs and mastery of complex manufacturing processes that drive production yield and product life are significant characteristics of the X-ray tubes business.

The market for digital detectors is also highly competitive. We sell our digital detectors to a number of OEM customers that incorporate our detectors into their medical diagnostic, oncology, 3D dental and veterinary imaging systems. Our amorphous silicon based digital detector technology, our photon counting technology and our complementary metal-oxide-semiconductor technology competes with other detector technologies, such as amorphous selenium, charge-coupled devices and variations of amorphous silicon scintillators. We believe that our products provide a competitive advantage due to product quality and performance and lower total cost of ownership over the product lifecycle. In the digital flat panel detector market, we primarily compete against Trixell S.A.S., Canon, Vieworks Co., Ltd., Hamamatsu Corporation, iRay Technology (Shanghai) Limited and Jiangsu CareRay Medical Systems Co., Ltd.

Industrial

In the low-energy market of the Industrial segment, we compete with other OEM suppliers, such as General Electric, Canon, Nuctech Company Limited ("Nuctech") and Comet AG. While there are other manufacturers of low-energy X-ray tubes and digital detectors for specialized and niche industrial applications, our products are designed for a broad range of applications in inspection, analysis, and testing. In the high-energy market, we compete against technologies from Nuctech, Siemens AG, and Foton Ltd., whose X-ray sources are used in applications that include cargo and container scanning, border security, aerospace applications, castings and pressure vessel inspections.

Customer Services and Support

We generally warranty our products for 12 to 24 months. In certain cases, the warranty is specified by usage metrics such as number of scans. We provide technical advice and consultation to major OEM customers from our U.S. offices in Utah, California, Nevada, South Carolina, New York and Illinois; and internationally in the Philippines, China, the Netherlands, Germany, France, Sweden, Switzerland, the United Kingdom, Italy and Japan. Our application specialists and engineers make recommendations to meet

the customer's technical requirements within the customer's budgetary constraints. We often develop specifications for a unique product that will be designed and manufactured to meet a specific customer's requirements.

Manufacturing and Supplies

We manufacture our products at facilities in Salt Lake City, Utah; Las Vegas, Nevada; Liverpool, New York; Franklin Park, Illinois; Doetinchem and Heerlen, the Netherlands; Walluf and Bremen, Germany; Espoo, Finland; Calamba City, Philippines; and Wuxi, China. These facilities employ state-of-the-art manufacturing techniques and several have been recognized by the press, governments and trade organizations for their commitment to quality improvement. Each of these manufacturing facilities are certified by International Standards Organization ("ISO") under ISO 9001 (for industrial products) or ISO 13485 (for medical devices). In addition, we have regional service centers in North Charleston, South Carolina; and Willich, Germany. The combined medical and industrial manufacturing infrastructure enables us to leverage production scale to achieve productivity and low cost advantage as well as research and development synergies.

Manufacturing processes at our various facilities include machining, fabrication, subassembly, system assembly and final testing. We have invested in various automated and semi-automated equipment for the fabrication and machining of the parts and assemblies that we incorporate into our products. We may, from time to time, invest further in such equipment. Our quality assurance program includes various quality control measures from inspection of raw materials, purchased parts and assemblies through in-line inspection. In some cases, we outsource the manufacturing of sub-assemblies while still performing system design, final assembly and testing in-house. In such cases, we believe outsourcing enables us to reduce or maintain fixed costs and capital expenditures, while also providing the flexibility to increase production capacity. We purchase material and components from various suppliers that are either standard products or customized to our specifications. Some of the components included in our products may be sourced from a limited group of suppliers or from a single source supplier, such as the wave guides for linear accelerators; transistor arrays and cesium iodide coatings for digital detectors and specialized integrated circuits, X-ray tube targets, housings, bearings and various other components. We require certain raw materials, such as copper, lead, tungsten, iridium, rhenium, molybdenum zirconium, 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, and we expect that availability and pricing will continue to fluctuate in the future.

In the fourth quarter of 2019, we announced the closure of the remainder of our Santa Clara facility and that we would relocate production to other existing facilities. We ceased all operations at the Santa Clara facility as of October 2, 2020 and all activities related to the closure of the facility are expected to be complete by the end of December 2020.

Research and Development

Innovation and developing products, systems and services based on advanced technology is essential to our ability to compete effectively in the marketplace. We maintain a research and development and engineering staff responsible for product design and engineering.

Research and development are primarily conducted domestically at our facilities in Salt Lake City, Utah; San Jose, California; Las Vegas, Nevada; Liverpool, New York; and Franklin Park, Illinois and internationally at our facilities in the Netherlands, Sweden and Germany. Our research and development activities are primarily focused on developing and improving imaging component technology. Current X-ray source development areas include smaller footprint linear accelerators, improvements to tube life and tube stability, reductions of tube noise and tube designs that will enable OEMs to continue to reduce dose delivered, and improve image resolution, cost effectively. In addition, through our joint venture, VEC Imaging Verwaltungsgesellschaft GmbH ("VEC"), we are developing cold cathode nanotube technology. Research in digital detector imaging technology is aimed at developing new panel technologies (such as photon counting) with better dose utilization, improved image quality and materials discrimination, lower product costs and new image processing tools for advanced applications.

Industrial products share some of the same base technology competencies and platforms as medical products and our medical and industrial development teams are therefore co-located in Salt Lake City, San Jose, Doetinchem, Danderyd and Walluf. One of our competitive advantages is that some of the foundational technologies and software components developed for medical applications may also be applicable in industrial components, and vice versa. In addition to these product development synergies, we are also able to realize sourcing, production, service center, and logistics synergies across the different products and market sectors.

Product and Other Liabilities

Our business exposes us to potential product liability claims that are inherent in the manufacture, sale, installation, servicing and support of X-ray imaging devices, related software and other devices that contain hazardous material or deliver radiation. Because our products are involved in the intentional delivery of radiation to the human body and other situations where people may come in contact with radiation (for example, when our Industrial products are being used to scan cargo) as well as the detection, planning and treatment of medical problems, the possibility for significant injury or death exists if our products fail to work or are not used properly. We may face substantial liability to patients, our customers and others for damages resulting from the faulty, or allegedly faulty, design, manufacture, installation, servicing, support, testing or interoperability of our products and our customers' products, or their misuse or failure. We may also be subject to claims for property damages or economic loss related to or resulting from any errors or defects in our products, or the installation, servicing and 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. In addition, if a product we design or manufacture were defective (whether due to design, labeling or manufacturing defects, improper use of the product or other reasons), or found to be so by a regulatory authority, we may be required to correct or recall the product and notify other regulatory authorities. We maintain limited product liability, professional liability and omissions liability insurance coverage.

Government Regulation

U.S. Regulations

Laws governing marketing a medical device. In the United States, 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 federal governmental authorities, such as the U.S. Food and Drug Administration (the "FDA"), Nuclear Regulatory Commission ("NRC"), and state and local regulatory agencies, to ensure the devices are safe and effective and comply with laws governing products which emit, produce or control radiation. Similar international regulations apply overseas. These regulations, which include the U.S. Food, Drug and Cosmetic Act (the "FDC Act") and regulations promulgated by the FDA, govern, among other things, the design, development, testing, manufacturing, packaging, labeling, distribution, import/export, sale and marketing and disposal of medical devices, post market surveillance and reporting of serious injuries and death, repairs, replacements, recalls and other matters relating to medical devices, radiation emitting devices and devices utilizing radioactive by-product material. State regulations are extensive and vary from state to state. Our X-ray tube products, imaging workstations and flat panel detectors are considered medical devices. Under the FDC Act, each medical device manufacturer must comply with quality system regulations that are strictly enforced by the FDA.

Unless an exception applies, the FDA requires that the manufacturer of a new medical device or a new indication for use of, or other significant change in, existing currently marketed medical device obtain 510(k) pre-market notification clearance before it can market or sell those products in the United States. The 510(k) clearance process is applicable when the device introduced into commercial distribution is substantially equivalent to a legally marketed device. Obtaining the 510(k) clearance generally takes at least six months from the date an application is filed, but could take significantly longer, and generally requires submitting supporting testing data. After a product receives 510(k) clearance, any 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, may require a new 510(k) clearance. The FDA requires each manufacturer to make this determination in the first instance, but the FDA can review any such decision. If the FDA disagrees with the manufacturer's decision, it may retroactively require the manufacturer to submit a request for 510(k) pre-market notification clearance and may require the manufacturer to cease marketing and recall the product until 510(k) clearance is obtained. The FDA adopted guidance in September 2019 that we expect will increase the number and frequency of clearances for changes made to legally marketed devices. Most of our products are non-classified or Class I medical devices, which do not require 510(k) clearance.

Quality systems. Our manufacturing operations for medical devices, and those of our third-party manufacturers, are required to comply with the FDA's Quality System Regulation ("QSR"), which addresses a company's responsibility for product design, testing, and manufacturing quality assurance, and the maintenance of records and documentation. The QSR requires that each manufacturer establish a quality systems program by which the manufacturer monitors the manufacturing process and maintains records that show compliance with FDA regulations and the manufacturer's written specifications and procedures relating to the devices. QSR compliance is necessary to receive and maintain FDA clearance or approval to market new and existing products. The FDA makes announced and unannounced periodic and ongoing inspections of medical device manufacturers to determine compliance with the QSR. If in connection with these inspections the FDA believes the manufacturer has failed to comply with applicable regulations and/or procedures, it may issue observations that would necessitate prompt corrective action. If FDA inspection

observations are not addressed and/or corrective action is not taken in a timely manner and to the FDA's satisfaction, the FDA may issue a warning letter (which would similarly necessitate prompt corrective action) and/or proceed directly to other forms of enforcement action. Failure to respond timely to FDA inspection observations, a warning letter or other notice of noncompliance and to promptly come into compliance could result in the FDA bringing enforcement action against us, which could include the total shutdown of our production facilities, denial of importation rights to the United States for products manufactured in overseas locations and denial of export rights for U.S. products and criminal and civil fines.

The FDA and the Federal Trade Commission (the "FTC") regulate advertising and promotion of our products to ensure that the claims we make are consistent with our regulatory clearances, that we have adequate and reasonable scientific data to substantiate the claims and that our promotional labeling and advertising is neither false nor misleading. We may not promote or advertise our products for uses not within the scope of our intended use statement in our clearances or approvals or make unsupported safety and effectiveness claims.

It is also important that our products comply with electrical safety and environmental standards, such as those of Underwriters Laboratories ("UL"), the Canadian Standards Association ("CSA"), and the International Electrotechnical Commission ("IEC"). In addition, the manufacture and distribution of medical devices utilizing radioactive material requires a specific radioactive material license. For the United States, manufacture and distribution of these radioactive sources and devices also must be in accordance with a model-specific certificate issued by either the NRC or by an Agreement State. In essentially every country and state, installation and service of these products must be in accordance with a specific radioactive materials license issued by the applicable radiation control agency. Service of these products must be in accordance with a specific radioactive materials license. We are also subject to a variety of additional environmental laws regulating our manufacturing operations and the handling, storage, transport and disposal of hazardous substances, and which impose liability for the cleanup of any contamination from these substances.

Other applicable U.S. regulations. As a participant in the healthcare industry, we are also subject to extensive laws and regulations protecting the privacy and integrity of patient medical information that we receive, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), "fraud and abuse" laws and regulations, including physician self-referral prohibitions, and false claims laws. From time to time, these laws and regulations may be revised or interpreted in ways that could make it more difficult for our customers to conduct their businesses, such as recent proposed revisions to the laws prohibiting physician self-referrals, and such revisions could have an adverse effect on the demand for our products, and therefore our business and results of operations. We also must comply with numerous federal, state and local laws of more general applicability relating to such matters as environmental protection, safe working conditions, manufacturing practices, fire hazard control and other matters.

The laws and regulations and their enforcement are constantly undergoing change, and we cannot predict what effect, if any, changes to these laws and regulations may have on our business. For example, national and state laws regulate privacy and may regulate our use of data. Furthermore, HIPAA was amended by the HITECH Act to provide that business associates who have access to patient health information provided by hospitals and healthcare providers are now directly subject to HIPAA, including the associated enforcement scheme and inspection requirements.

Medicare and Medicaid Reimbursement

The federal and state governments of the United States establish guidelines and pay reimbursements to hospitals and free-standing clinics for diagnostic examinations and therapeutic procedures under Medicare at the federal level and Medicaid at the state level. Private insurers often establish payment levels and policies based on reimbursement rates and guidelines established by the government.

The federal government and Congress review and adjust rates annually, and from time to time consider various Medicare and other healthcare reform proposals that could significantly affect both private and public reimbursement for healthcare services in hospitals and free-standing clinics. In the past, we have seen demand for our customers' systems (in which our products are incorporated) negatively impacted by the uncertainties surrounding reimbursement rates in the United States. State government reimbursement for services is determined pursuant to each state's Medicaid plan, which is established by state law and regulations, subject to requirements of federal law and regulations.

Various healthcare reform proposals have also emerged at the state level, and we are unable to predict which, if any, of these proposals will be enacted. In addition, it is possible that changes in federal health care law and policy could result in additional proposals and/or changes to health care system legislation which could have a material adverse effect on our business. Uncertainty created by healthcare reform complicates our customers' decision-making process and, therefore, impacts our business, and may continue to do so.

The sale of medical devices, the referral of patients for diagnostic examinations and treatments utilizing such devices, and the submission of claims to third-party payors (including Medicare and Medicaid) seeking reimbursement for such services, are subject to various federal and state laws pertaining to healthcare "fraud and abuse." Anti-kickback laws make it illegal to solicit, induce, offer, receive or pay any remuneration in exchange for the referral of business, including the purchase of medical devices from a particular manufacturer or the referral of patients to a particular supplier of diagnostic services utilizing such devices. False claims laws prohibit anyone from knowingly and willfully presenting, or causing to be presented, claims for payment to third-party payors (including Medicare and Medicaid) that are false or fraudulent, for services not provided as claimed, or for medically unnecessary services. The Office of the Inspector General prosecutes violations of fraud and abuse laws and any violation may result in criminal and/or civil sanctions, including, in some instances, imprisonment and exclusion from participation in federal healthcare programs such as Medicare and Medicaid, which may negatively impact the demand for our products.

Foreign Regulations

Our operations, sales and service of our products outside the United States are subject to regulatory requirements that vary from country to country and may differ significantly from those in the United States. In general, our products are regulated outside the United States as medical devices by foreign governmental agencies similar to the FDA.

Marketing a medical device internationally. For us to market our products internationally, we must obtain clearances or approvals for products and product modifications. We are required to affix the CE mark to our products to sell them in member countries of the European Union ("EU"). The CE mark is an international symbol of adherence to certain essential principles of safety and effectiveness, which once affixed enables a product to be sold in member countries of the EEA. The CE mark is also recognized in many countries outside the EU, such as Switzerland and Norway and can assist in the clearance process. To receive permission to affix the CE mark to our medical devices products, we must obtain Quality System certification, *e.g*., ISO 13485, through an accredited Notified Body and must otherwise have a quality management system that complies with the EU Medical Device Directive to be superseded by the EU MDR-Medical Device Regulations in May 2020. The ISO promulgates standards for certification of quality assurance operations. We are certified as complying with the ISO 9001 for our security and inspection products and ISO 13485 for our medical devices. Several Asian countries, including Japan and China, have adopted regulatory schemes that are comparable, and in some cases more stringent, than the EU scheme. To import medical devices into Japan, the requirements of Japan's New Medical Device Regulation must be met and an approval to sell medical products in Japan, must be obtained. Similarly, a registration certification issued by the National Medical Products Administration and a China Compulsory Certification mark for certain products are required to sell medical devices in China. Obtaining such certifications on our products can be time-consuming and can cause us to delay marketing or sales of certain products in such countries. Similarly, prior to selling a device in Canada, manufacturers of Class II devices must obtain a medical device license in Canada. Additionally, many countries have laws and regulations relating to radiation and radiation safety that apply to our products. In most countries, radiological regulatory agencies require some form of licensing or registration by the facility prior to acquisition and operation of an X-ray generating device or a radiation source. The handling, transportation and recycling of radioactive metals and source materials are also highly regulated.

A number of countries, including the members of the EU, have implemented or are implementing regulations that would require manufacturers to dispose, or bear certain disposal costs, of products at the end of a product's useful life and restrict the use of some hazardous substances in certain products sold in those countries. While these regulations could impose a future cost on the Company, the compliance programs are in place to anticipate or establish best estimates of what the potential exposure of such costs could be should they arise.

Manufacturing and selling a device internationally. We are subject to laws and regulations outside the United States applicable to manufacturers of radiation-producing devices and products utilizing radioactive materials, and laws and regulations of general applicability relating to matters such as environmental protection, safe working conditions, manufacturing practices and other matters, in each case that are often comparable to, if not more stringent than, regulations in the United States. In addition, our sales of products in foreign countries are subject to regulation of matters such as product standards, packaging requirements, labeling requirements, import restrictions, environmental and product recycling requirements, tariff regulations, duties and tax requirements. In some countries, we rely on our foreign distributors and agents to assist us in complying with foreign regulatory requirements.

Other applicable international regulations. In addition to the U.S. laws regarding the privacy and integrity of patient medical information, we are subject to similar laws and regulations in foreign countries covering data privacy and other protection of health and employee information. Particularly within Europe, data protection legislation is comprehensive and complex and there has been a recent trend toward more stringent enforcement of requirements regarding protection and confidentiality of personal data, as well as enactment of stricter legislation. We are also subject to international "fraud and abuse" laws and regulations, as well as false claims

and misleading advertisement laws. We also must comply with numerous international laws of more general applicability relating to such matters as environmental protection, safe working conditions, manufacturing practices, fire hazard control and other matters.

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 of 2010 and the law "On the Fundamentals of Health Protection in the Russian Federation". In general, there is a worldwide trend to strengthen anti-corruption laws and their enforcement, and the healthcare industry and medical equipment manufacturers have been particular targets of these investigation and enforcement efforts. Any violation of these laws by us or our agents or distributors could create a substantial liability for us, subject our officers and directors to personal liability and also cause a loss of reputation in the market.

Transparency International's 2015 Corruption Perceptions Index measured the degree to which public sector corruption is perceived to exist in 168 countries/territories around the world, and found that two-thirds of the countries in the index, including many that we consider to be high-growth areas for our products, such as China and India, scored below 50, on a scale from 100 (very clean) to 0 (highly corrupt). We currently operate in many countries where the public sector is perceived as being more or highly corrupt and our strategic business plans include expanding our business in regions and countries that are rated as higher risk for corruption activity by Transparency International.

Increased business in higher-risk countries could subject us and our officers and directors to increased scrutiny and increased liability. In addition, 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 quite 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 could 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. Regulatory or government authorities where we operate may have enforcement powers that can subject us to sanctions and can impose changes or conditions in the way we conduct our business. For example, local authorities may disagree with how we classify our products, and we may be required to change our classifications, which could increase our operating costs or subject us to increased taxes or fines and penalties. In addition, an increasing number of jurisdictions also provide private rights of action for competitors or consumers to seek damages asserting claims of anti-competitive conduct. Increased government scrutiny of our actions or enforcement or private rights of action could materially and adversely affect our business or damage our reputation. In addition, we may conduct, or we may be required to conduct, internal investigations or face audits or investigations by one or more domestic or foreign government or regulatory 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 increased costs, fines or 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.

International sales of certain of our Linatron® X-ray accelerators are subject to U.S. export licenses that are issued at the discretion of the U.S. government. Orders and revenues for our security and inspection products have been and may continue to be unpredictable as governmental agencies may place large orders with us or with our customers over a short period of time and then may not place additional orders until complete deployment and installation of previously ordered products. We have seen domestic and international governments postpone purchasing decisions and delay installations of products for security and inspection systems. Furthermore, tender awards in this business may be subject to challenge by third parties, as we have previously encountered, which can make the conversion of orders to revenues unpredictable for some security and inspection products. The market for border protection systems has slowed significantly and end customers, particularly in oil-based economies and war zones in which we have a significant customer base, are delaying system deployments or tenders and have considered moving to alternative sources.

Intellectual Property

We place considerable importance on obtaining and maintaining patent, copyright and trade secret protection for significant new technologies, products and processes, because of the length of time and expense associated with bringing new products through the development process and to the marketplace.

We generally rely on a combination of patents, copyrights, trademarks, 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 rights in the developments, improvements and inventions that we have originated and which are incorporated in our products or that fall within our fields of interest. As of October 2, 2020, we own over 275 patents issued in the United States, over 400 patents issued throughout the rest of the world and had approximately another 125 patent applications pending with various patent agencies worldwide. The patents and patents issuing from the pending applications generally expire between 2020 and 2039. We intend to file additional patent applications as appropriate. We have trademarks, both registered and unregistered, that are maintained and enforced to provide customer recognition for our products in the marketplace. We also have agreements with third parties that provide for licensing of patented or proprietary technology, including royalty-bearing licenses and technology cross-licenses. These licenses generally can only be terminated for breach. See Item 1A. “Risk Factors - Risks Relating to our Intellectual Property and Information Systems.”

In conjunction with the January 2017 separation from Varian, we entered into an Intellectual Property Matters Agreement with Varian, pursuant to which, among other things, we each granted the other licenses to use certain intellectual property.

Environmental Matters

Our 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, we are obligated to indemnify Varian for 20% of the cleanup liabilities related to prior corporate restructuring activities while a division of Varian and fully indemnify Varian for other liabilities arising from the operations of the business transferred to it as part of those activities. Those include 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). In connection with the CERCLA sites, to date Varian has been required to pay only a small portion of the total cleanup costs and we anticipate that any reimbursement to Varian in the future will not be material. As of October 2, 2020, we had an existing environmental liability of approximately $0.9 million related to the CERCLA sites.

Working Capital

Our working capital needs and our credit practices are comparable to those of other companies manufacturing and selling similar products in similar markets. We endeavor to carry sufficient levels of inventory to meet the product delivery needs of our customers. We also provide payment terms to customers in the normal course of business. The product warranty obligations contained in our standard terms and conditions typically range from 12 to 24 months, depending on the product.

Human Capital Resources

Talent Management

To remain a leading innovator, designer and manufacturer of critical components of X-ray based diagnostic equipment, it is crucial that we continue to attract and retain exceptional talent. Our business results depend on our ability to successfully manage our human capital resources, including attracting, identifying, and retaining key talent. Factors that may affect our ability to attract and retain qualified employees include employee morale, our reputation, competition from other employers, and availability of qualified individuals.

As of October 2, 2020, we had approximately 2,000 full-time and part-time employees worldwide. None of our employees based in the United States are unionized or subject to collective bargaining agreements. Employees based in some foreign countries may, from time to time, be represented by works councils or unions or subject to collective bargaining agreements. We consider our relations with our employees to be good.

As part of our people management strategy, we monitor employee morale and our market reputation. To better understand how to measure the effectiveness of our people management strategy, and to establish a baseline understanding of employee loyalty and retention, we have recently solicited feedback from our employees in the form of an employee net promoter survey. The results of

this survey will be aggregated, and we expect to hold meetings with employees to share and discuss areas of improvement. We believe this will be an effective process to inform how future decisions are made to improve employee morale and engagement.

Total Rewards

We invest in our workforce by offering a competitive total rewards package that includes a combination of salaries and wages, health and wellness benefits, equity incentives, retirement benefits, and educational benefits. We strive to offer competitive total rewards package that is responsive to local needs. In the United States., where our largest employee base resides, our benefits for eligible employees have included:

- Affordable health insurance coverage available to full-time employees;
- Tuition reimbursement up to a specified dollar amount on an annual basis;
- Matching contributions to a tax-qualified defined contribution savings ("401K") plan, on a dollar-for-dollar basis up to six percent of the employee's base compensation;
- An employee assistance program; and
- Training and development programs designed to help employees improve workplace performance.

Approximately 94% of our eligible employees participate in our 401K plan, which positions us as a top performer among similarly situated companies. In addition, in an effort to further align the interests of our employees with our stockholders, we have an equity-based incentive plan that provides for the grant of nonqualified stock options and restricted stock units to directors, officers and other eligible employees. Additionally, to create performance incentives and to encourage share ownership by our employees, we have implemented an employee stock purchase plan, which enables eligible employees to purchase our common stock at a discount through payroll contributions.

Due to the impact of COVID-19 on our business, it was necessary to modify or freeze certain benefits historically provided to our employees, such as 401K plan matching contributions and tuition reimbursements. We plan on reinstating both the 401K matching contributions and tuition reimbursement program in January 2021. Earlier this year, we furloughed certain employees, and when it became clear that the effect of COVID-19 on our business would be more protracted than originally contemplated, we implemented a reduction in force. We provided employees impacted by the reduction in force with severance packages.

Safety and Wellness

The health and safety of our workforce is fundamental to the success of our business. We provide our employees upfront and ongoing safety training to ensure that safety policies and procedures are effectively communicated and implemented. Personal protective equipment is provided to those employees where needed for the employee to safely perform their job function. We have experienced personnel on site at each of our manufacturing locations that are tasked with environmental, health and personal safety education and compliance and, in Salt Lake City, we have an onsite nurse practitioner available to our employees for medical needs.

Because our business involves the manufacture of physical products, many of our employees are unable to work from home. In an effort to keep our employees safe and to maintain operations during the COVID-19 pandemic, we have implemented a number of new health-related measures, including social-distancing, restrictions on visitors to our facilities, limiting in-person meetings and other gatherings, and providing employees with additional time-off for COVID-19 related absences.

Information Available to Investors

The Securities and Exchange Commission ("SEC") maintains an internet site, www.sec.gov, that contains reports, proxy and information statements, and other information regarding the Company and other issuers that file electronically with the SEC. As soon as reasonably practicable after filing with or furnishing to the SEC, we also make the following reports and information available free of charge on the Investors page of our website www.vareximaging.com:

- our annual reports on Form 10-K;
- quarterly reports on Form 10-Q;
- current reports on Form 8-K (including any amendments to those reports); and
- proxy statements.

Additionally, our Code of Conduct, Corporate Governance Guidelines and the charters of the Audit Committee, Compensation and Management Development Committee, and Nominating and Corporate Governance Committee are also available

on the Investors page of our website. Investors and others should note that we announce material financial and operational information to our investors using our investor relations website (http://investors.vareximaging.com/), press releases, SEC filings and public conference calls and webcasts. Please note that information on, or that can be accessed through, our website is not deemed "filed" with the SEC and is not to be incorporated by reference into any of our filings under the Securities Act of 1933, as amended (the "Securities Act"), or the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Executive Officers of the Registrant

The biographical summaries of our executive officers are as follows:

Sunny S. Sanyal, 56, has served as President, Chief Executive Officer, and Director since January 2017. Prior to the separation of Varex from Varian, Sunny served as senior vice president and president of Varian's Imaging Components business for Varian since February 2014. Prior to joining Varian in 2014, Sunny was chief executive officer of T-System, a privately held company providing information technology solutions and services to hospitals and urgent care facilities. He also served as president of McKesson Provider Technologies, where he led the company to significant market expansion with its clinical software, medical imaging technology, and services solutions. Sunny has held executive positions at GE Healthcare, Accenture, and IDX Systems. He received a Master of Business Administration ("MBA") from Harvard Business School, a Master of Science in industrial engineering from Louisiana State University, and a Bachelor of Engineering in electrical engineering from the University of Bombay.

Shubham Maheshwari, 49, joined Varex as its Chief Financial Officer ("CFO") on July 27, 2020. Shubham (Sam) joins Varex from SiFive, Inc., a leading provider of hardware and software solutions for developing RISC-V based processors and semiconductor chips, where he served as CFO. Before SiFive, Sam served for six years as CFO, and later as CFO and COO, of Veeco Instruments Inc. (Nasdaq: VECO), a manufacturer of semiconductor process equipment. Previous notable positions include Senior Vice President, Finance for semiconductor company Spansion, Inc., where he helped lead the company through its restructuring and IPO in 2010, and more than 10 years in various senior positions, including Vice President of M&A and Corporate Controller, at KLA-Tencor Corp., a global semiconductor equipment company. Sam holds an MBA in Finance from Wharton, and a bachelor's degree in chemical engineering from the Indian Institute of Technology, Delhi.

Kimberley E. Honeysett, 49, has served as Senior Vice President, General Counsel, and Corporate Secretary since January 2017. Prior to the separation of Varex from Varian, Kim served as vice president and assistant general counsel and assistant corporate secretary for Varian, where she advised Varian's Board of Directors, executive management and corporate functions, including business development, investor relations, human resources, information technology and was responsible for corporate governance, general compliance matters, litigation and global subsidiary governance. Prior to joining Varian in 2005, Kim served as group director, legal affairs at Siebel Systems, Inc., an enterprise software company, and as an associate with the law firm Brobeck, Phleger & Harrison LLP. Kim holds a juris doctor degree from Cornell Law School and a bachelor's degree in communications from the University of California, Los Angeles.

Brian W. Giambattista, 61, has served as Senior Vice President, and General Manager - X-ray Detectors since May 2017 and joined Varex after the acquisition of the PerkinElmer Medical Imaging business. He has nearly 30 years of experience in the industry, having held various management and engineering roles at PerkinElmer and General Electric, and received his doctorate degree in physics from the University of Virginia.

Mark S. Jonaitis, 58, has served as Senior Vice President and General Manager - X-Ray Sources since 2017. Prior to the separation of Varex from Varian, Mark served in various management positions at Varian, including most recently vice president and general manager, X-ray Tube Products and global manufacturing. Mark joined Varian's predecessor, Varian Associates, in 1983, where he served in various product and engineering positions. Mark received his Bachelor of Science in physics from the University of Utah.

Item 1A. Risk Factors

The following risk factors and other information included in this Annual Report on Form 10-K should be carefully considered. Although the risk factors described below are the ones management deems material, additional risks and uncertainties not presently known to us or that we presently deem not material may also adversely affect our business operations. If any of the following risks or additional risks and uncertainties actually occur, our business, operating results, and financial condition could be adversely affected.

Risks Relating to Our Business

Our operations, cash flow, and financial position have been adversely affected, and in the future could continue to be adversely impacted, by the coronavirus ("COVID-19") pandemic and associated economic disruptions.

The pandemic caused by the spread of COVID-19 has created significant volatility, uncertainty and economic disruption.

Decreased demand for certain products. As an initial response to the pandemic, governments around the world imposed measures designed to reduce the transmission of COVID-19 and individuals responded to the fears of contracting COVID-19 by modifying their behavior. In particular, restrictions on the movement of people and goods were put into place, overall economic activity decreased, elective procedures and exams were delayed or cancelled, there was a significant reduction in physician office visits, and hospitals were postponing or cancelling capital purchases as well as limiting or eliminating services. Those factors, among others, caused customers to delay or cancel orders for certain Varex products. While healthcare systems and economies around the world have begun to reopen, customer demand has not returned to pre-pandemic levels, and the adverse effects of COVID-19 on our financial statements and results of operations are expected to be more persistent, and have been more severe, than previously assumed. Specifically, we now believe that reduced demand in our industrial segment and for certain higher end medical products will continue to depress our results of operations. In addition, new or continuing outbreaks of COVID-19 could lead to further decreases in demand for certain of our products. The actions taken to combat COVID-19 have had, and we believe will continue to have, a negative impact on our operating results, cash flows and financial condition. We believe that COVID-19's adverse impact on our operating results, cash flows and financial condition will be primarily driven by: the severity and duration of the COVID-19 pandemic; the COVID-19 pandemic's impact on the U.S. and international healthcare systems, the U.S. economy and worldwide economy; and the timing, scope and effectiveness of U.S. and international governmental responses to the COVID-19 pandemic and associated economic disruptions.

Disruption in manufacturing, distribution, supply chain and other operations. In addition to adversely affecting demand for our products, COVID-19 and associated economic disruptions have had and could continue to have an adverse impact on our manufacturing capacity, supply chains and distribution systems, including as a result of impacts associated with preventive and precautionary measures that we, other businesses and governments are taking. For example, at our manufacturing facility in the Philippines, many employees have had significant difficulty getting to work, which caused the facility to operate at a decreased capacity and caused us to shift some manufacturing to another location. A reduction or interruption in any of our manufacturing processes could have a material adverse effect on our business. Supply chain logistics have also become more challenging and could remain challenging and result in higher costs. Our ability to move unfinished goods and finished products around the world have been impacted by the decreased availability of global transportation networks. In addition, regulatory approvals for certain of our products may continue to be delayed due to COVID-19 related closures.

Varex sells its products and services to a limited number of OEM customers, many of which are also its competitors, and a reduction in or loss of business of one or more of these customers may materially reduce its sales.

Varex had one customer during fiscal year 2020 that accounted for 21% of its revenue. Varex's ten largest customers as a group accounted for approximately 52%, 51% and 49% of its revenue for fiscal years 2020, 2019 and 2018, respectively.

Varex sells its products to a limited number of OEM customers, many of which are also its competitors with in-house X-ray component manufacturing operations. Although Varex seeks to broaden its customer base, it will continue to depend on sales to a relatively small number of major customers. Because it often takes significant time to replace lost business, it is likely that Varex's operating results would be materially and adversely affected if one or more of its major OEM customers were to cancel, delay, or reduce orders in the future.

Furthermore, Varex generates significant accounts receivables from the sale of its products and the provision of services directly to its major customers. If one or more of these customers were to cancel a product order or service contract (whether in accordance with its terms or otherwise), become insolvent or otherwise be unable or fail to pay for Varex products and services, Varex's operating results and financial condition could be materially and adversely affected.

Varex may not be able to accurately predict the demand for its products by its customers.

End-user product demand, economic uncertainties, the COVID-19 pandemic, natural disasters, and other matters beyond Varex's control make it difficult for its customers to accurately forecast and plan future business activities; which makes it difficult for Varex to accurately predict the demand for its products. Because the manufacture of our products requires some lead-time, changes in customer purchasing forecasts have previously impacted Varex's business, resulting in excess inventory and slowdowns in sales.

Similar inventory adjustments and slowdowns in sales are likely to occur in the future. Changes to customer forecasts can occur on short notice. Varex's customers also face inherent competitive issues and new product introduction delays which can result in changes in forecasts. The market and regulatory risks faced by Varex's customers also ultimately impact Varex's ability to forecast future business. Varex's agreements for imaging components, such as its three-year pricing agreement with Canon Medical Systems, may contain purchasing estimates that are based on its customers' historical purchasing patterns 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 Varex may not be able to accurately forecast. Reductions in purchasing patterns have in the past and may in the future materially and adversely affect Varex's operating results. Decreased economic activity associated with the COVID-19 pandemic has had a significant negative impact on the demand for our industrial products and that impact is likely to continue.

Varex competes in highly competitive markets, and it may lose business to its customers or other companies with greater resources or the ability to develop more effective technologies, or it could be forced to reduce its prices.

Rapidly-evolving technology, intense competition and pricing pressure characterize the market in which Varex competes. Varex often competes with companies that have greater financial, marketing and other resources than Varex. Some of the major diagnostic imaging systems companies, which are the primary OEM customers for Varex's X-ray components, also manufacture X-ray components, including X-ray tubes, for use in their own imaging systems products. Varex must compete with these in-house manufacturing operations for business. If these customers manufacture a greater percentage of their components in-house or otherwise decrease purchases from external sources, which may occur for a number of reasons, including a strong U.S. Dollar, or a general economic slowdown, Varex could experience reductions in purchasing volume by, or loss of, one or more of these customers. Such a reduction or loss may have a material and adverse effect on its business. In addition, Varex competes 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 Varex faces intense competition from over a dozen smaller competitors. As a result of these competitive dynamics, to effectively retain the business of its customers and compete with its competitors Varex must have an advantage in one or more significant areas, such as lower product cost, better product quality and/or superior technology and/or performance. Varex has made price concessions to maintain existing customers and attract new customers, and may have to make additional price concessions in the future.

In its industrial segment, Varex competes with other OEM suppliers, primarily outside of the United States. The market for its X-ray tube and flat panel products used for nondestructive testing in industrial applications is small and highly fragmented. Some of Varex's competitors outside the United States may have resources and support from their governments that Varex does not, such as preferences for local manufacturers, and may not be subject to the same trade compliance regulations as Varex. Therefore, Varex's ability to compete in certain high-growth markets may be limited compared to its competitors.

Varex's competitors could develop technologies and products that are more effective than those Varex currently uses or produces or that could render its products obsolete or noncompetitive. In addition, the timing of Varex's competitors' introduction of products into the market could affect the market acceptance and sales of Varex's products. Some competitors offer specialized products that provide, or may be perceived by customers to provide, an advantage over Varex's products. Also, some of Varex's non-U.S. competitors may not be subject to the same standards, regulatory and/or other legal requirements to which Varex is 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 Varex's competitors could limit market acceptance of Varex's products and reduce its sales. Any of these competitive factors could negatively and materially affect Varex's pricing, sales, revenues, market share and gross margins and its ability to maintain or increase its operating margins.

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

Rapid change and technological innovation characterize the markets in which Varex operates, particularly with respect to flat panel technology. Varex's customers use its products in their medical diagnostic, security, and industrial imaging systems, and Varex must continually introduce new products at competitive costs while also improving existing products with higher quality, lower costs, and increased features. To be successful, Varex must anticipate its customers' needs and demands, as well as potential shifts in market preferences. Varex's failure to do so has in the past resulted, and may in the future result, in the loss of customers and an adverse

impact to its financial performance. With a relatively strong U.S. Dollar, Varex's ability to meet its customers' pricing expectations is particularly challenging and may result in erosion of product margin and market share.

Varex has in the past spent, and in the future may need to spend, more time and money than it expects to develop, market and introduce new products or enhancements, and, even if Varex succeeds, Varex may not be able to recover all or a meaningful part of its investment. Once introduced, new products may materially and adversely impact sales of Varex's existing products or make them less desirable or even obsolete, which could materially and adversely impact Varex's revenues and operating results. In addition, certain costs, including installation and warranty costs, associated with new products may be proportionately greater than the costs associated with other products and may therefore disproportionately, materially, and adversely affect Varex's gross and operating margins. If Varex is unable to lower these costs over time, Varex's operating results could be materially and adversely affected. Some of the electronic components and integrated circuits used in Varex's flat panel detectors are susceptible to discontinuance and obsolescence risks, which may force Varex to incorporate newer generations of these components, resulting in unplanned additional R&D expenses, delays in the launch of new products, supply disruption, or inventory write downs.

Varex's ability to successfully develop and introduce new products and product enhancements and simplifications, and the revenues and costs associated with these efforts, are affected by Varex's ability to, among other things:

- properly identify customer needs or long-term customer demands;
- prove the feasibility of new products;
- properly manage and control research and development costs;
- limit the time required from proof of feasibility to routine production;
- timely and efficiently comply with internal quality assurance systems and processes;
- limit the timing and cost of regulatory approvals;
- accurately predict and control costs associated with inventory overruns caused by the phase-in of new products and the phase-out of old products;
- price its products competitively and profitably, which can be particularly difficult with a strong U.S. Dollar;
- manufacture, deliver, and install its products in sufficient volumes on time and accurately predict and control costs associated with manufacturing installation, warranty, and maintenance of the products;
- appropriately manage its supply chain;
- manage customer acceptance and payment for products; and
- anticipate, respond to, and compete successfully with competitors.

Furthermore, as discussed in greater detail elsewhere in this "Risk Factors" section, Varex cannot be sure that it will be able to successfully develop, manufacture, or introduce new products or enhancements, the roll-out of which involves compliance with complex quality assurance processes, including the Quality System Regulation of the U.S. Food and Drug Administration ("FDA"). Failure to complete these processes timely and efficiently could result in delays that could affect Varex's ability to attract and retain customers or cause customers to delay or cancel orders, which would materially and adversely affect Varex's revenues and operating results.

More than half of Varex's revenues are generated from customers located outside the United States, and economic, political, and other risks associated with international sales and operations could materially and adversely affect Varex's sales or make them less predictable.

Varex conducts business globally. Revenues generated from customers located outside the United States accounted for approximately 66%, 65% and 65% of Varex's total revenues during fiscal years 2020, 2019, and 2018, respectively. As a result, Varex must provide significant service and support globally. Varex intends to continue to expand its presence in international markets and expects to expend significant resources in doing so. Varex cannot be sure that it will be able to meet its sales, service, and support objectives or obligations in these international markets or recover its investment in these international markets. Varex's future results could be harmed 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) relative to many currencies, which have and may in the future adversely affect Varex's financial results and cause some customers to delay purchasing decisions or move to in-sourcing supply or migrate to lower cost alternatives or ask for additional discounts;
- 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;

- changes in restrictions on trade between the United States and other countries or unstable regional political and economic conditions;
- changes in the political, regulatory, safety or economic conditions in a country or region
- the imposition by governments of additional taxes, tariffs, global economic sanctions programs, or other restrictions on foreign trade such as the tariffs recently put into place by both China and the United States;
- any inability to obtain required export or import licenses or approvals, including the inability to obtain required export licenses during a U.S. government shutdown;
- natural disasters and pandemics;
- failure to comply with export laws and requirements, which may result in civil or criminal penalties and restrictions on Varex's ability to export its products, particularly its industrial linear accelerator products;
- risks unique to the Chinese market, including import barriers and preferences for local manufacturers;
- failure to obtain proper business licenses or other documentation or to otherwise comply with local laws and requirements regarding marketing, sales, service, or any other business Varex conducts in a foreign jurisdiction, which may result in civil or criminal penalties and restrictions on its ability to conduct business in that jurisdiction; and
- difficulties in protecting Varex's intellectual property in foreign countries.

Although Varex's sales fluctuate from period to period, in recent years Varex's international operations have represented a larger share of its business. The more Varex depends on international sales, the more vulnerable Varex becomes to these factors.

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

Varex's effective tax rate is impacted by tax laws in both the United States and in foreign countries. Earnings from Varex's international subsidiaries are generally taxed at rates that differ from U.S. rates. A change in the percentage of Varex's total earnings from the international subsidiaries, a change in the mix of particular tax jurisdictions between the international subsidiaries, or a change in currency exchange rates could cause Varex's effective tax rate to increase. The Tax Cuts and Jobs Act of 2017 ("U.S. Tax Reform") was signed into law on December 22, 2017. Prior to the enactment of U.S. Tax Reform, Varex was not taxed in the United States on certain undistributed earnings of certain foreign subsidiaries. While U.S. Tax Reform imposed a current tax on cumulative undistributed earnings, these earnings could also become subject to incremental foreign withholding or U.S. state taxes should they be actually remitted to the United States, in which case Varex's financial results could be materially and adversely affected.

The changes included in U.S. Tax Reform are broad, complex, and subject to change and interpretation. Additional statutory changes or interpretive guidance issued by Federal or local authorities could have a material impact on income tax expense, the effective rate, or the value of deferred tax assets and liabilities. In addition, significant judgments and estimates are required to evaluate our tax position and the impact of the new tax law. If these judgments and estimates are incorrect, or if the underlying assumptions are modified by subsequent guidance or are different from what we expect, our tax liability could differ significantly from our current estimates. Changes in the valuation of Varex's deferred tax assets or liabilities, additional changes in tax laws or rates, changes in the interpretation of tax laws in other jurisdictions, or other changes beyond Varex's control could materially and adversely affect its financial position and results of operations.

Varex has 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 Varex's effective tax rate.

Varex may face additional risks from the acquisition or development of new lines of business.

From time to time, Varex may acquire or develop new lines of business. There are substantial risks and uncertainties associated with new lines of business, particularly in instances where the markets are not fully developed. Risks include developing knowledge of and experience in the new business, recruiting market professionals, increasing research and development expenditures, and developing and capitalizing on new relationships with experienced market participants. This may mean significant investment and involvement of Varex's senior management to acquire or develop, then integrate, the business into its operations. Timelines for integration of new businesses may not be achieved, and price and profitability targets may not prove feasible, as new products can carry lower gross margins than existing products. External factors, such as compliance with regulations, competitive alternatives, and shifting market preferences may also impact whether implementation of a new business will be successful. Failure to manage these risks could have a material and adverse effect on Varex's business, results of operations, and/or financial condition.

Varex may be unable to complete future acquisitions or realize expected benefits from acquisitions of or investments in new businesses, products, or technologies, which could harm Varex's business.

Varex's ability to identify and take advantage of attractive acquisitions or other business development opportunities is an important component in implementing its overall business strategy. Varex must grow its businesses in response to changing technologies, customer demands, and competitive pressures. In some circumstances, Varex may decide to grow its business through the acquisition of complementary businesses, products, or technologies, rather than through internal development; however, there is no guarantee that these acquisitions will be successful or that Varex will realize a return on its investment.

Identifying suitable acquisition candidates can be difficult, time consuming, and costly, and Varex may not be able to identify suitable candidates or successfully complete or finance identified acquisitions, including as a result of failing to obtain regulatory or competition clearances, which could impair Varex's growth and ability to compete. In addition, completing an acquisition can divert Varex's management and key personnel from its current business operations, which could harm its business and affect its financial results. Even if Varex completes an acquisition, Varex may not be able to successfully integrate newly-acquired organizations, products, technologies, or employees into its operations or may not fully realize some of the expected synergies.

Integrating an acquisition can also be expensive and time consuming and may strain Varex's resources. It may cost Varex more to commercialize new products than originally anticipated or cause Varex to increase its expenses related to research and development, either of which could materially and adversely impact its results of operations. In many instances, integrating a new business will also involve implementing or improving internal controls appropriate for a public company into a business that lacks them. It is also possible that an acquisition could increase Varex's risk of litigation, as a third party may be more likely to assert a legal claim following an acquisition because of perceived deeper pockets or a perceived greater value of a claim. In addition, Varex may be unable to retain the employees of acquired companies or the acquired company's customers, suppliers, distributors, or other partners for a variety of reasons, including the fact that these entities may be Varex's competitors or may have close relationships with its competitors.

Further, Varex may find that it needs to restructure or divest acquired businesses or assets of those businesses. Even if it does so, an acquisition may not produce the full efficiencies, growth, or benefits that were expected. If Varex decides to sell assets or a business, it may be difficult to identify buyers or alternative exit strategies on acceptable terms, in a timely manner, or at all, which could delay the accomplishment of its strategic objectives. Varex may be required to dispose of a business at a lower price or on less advantageous terms, or to recognize greater losses than it had anticipated.

If Varex acquires a business, it allocates the total purchase price to the acquired business' tangible assets and liabilities, identifiable intangible assets, and liabilities based on their fair values as of the date of the acquisition and records the excess of the purchase price over those values as goodwill. If it fails to achieve the anticipated growth from an acquisition, or if it decides to sell assets or a business, it may be required to recognize an impairment loss on the write down of its assets and goodwill, which could materially and adversely affect its financial results. In addition, acquisitions can result in potentially dilutive issuances of equity securities or the incurrence of debt, contingent liabilities or expenses, or other charges, any of which could harm Varex's business and affect its financial results.

Additionally, Varex participates in joint ventures and has investments in privately-held companies (for example, its 40% ownership in dpiX LLC, its major supplier of its amorphous silicon-based thin film transistor arrays (flat panels used in its digital detectors) that are subject to risk of loss of investment capital. These investments are inherently risky, in some instances because the markets for the technologies or products these companies have under development may never materialize. If these companies do not succeed, Varex could lose some or all of its investment in these companies.

Warranty claims may materially and adversely affect Varex's business.

Varex could experience an increase in warranty claims as a result of issues with product quality or product failures as a direct result of Varex's design, manufacturing, or issues in its supply chain. Such an occurrence may damage Varex's market reputation, cause sales to decline, or require repairs or voluntary remedial measures to enhance customer satisfaction, which could materially and adversely impact Varex's financial results. Increased warranty claims on any given product could cause Varex to halt production on that product and significantly impair Varex's liquidity and profitability, and cause reputational harm to Varex. Because some categories of products tend to experience higher numbers of warranty claims than others, a shift in the types of products that Varex's customers purchase could lead to an increase in warranty claims. If actual levels of warranty claims are greater than the level of claims Varex estimates, cost of sales could increase, and Varex's financial condition could be materially and adversely affected. In addition, product quality issues could result in significant follow-on effects for Varex, including, among other things, reputational harm to

Varex and its customers, loss of customers, and liability as a result of product quality issues. These outcomes would materially and adversely affect Varex's business and financial condition.

Product defects or misuse may result in material product liability or professional errors and omissions claims, litigation, investigation by regulatory authorities, or product recalls that could harm Varex's future revenues and require it to pay material uninsured claims.

Varex's business exposes it to potential product 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 Varex's products, through incorporation in 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 (for example, when Varex's security and inspection products are being used to scan cargo or in the diagnosis of medical problems), the possibility for significant personal injury or loss of life exists. Although Varex's products are incorporated into OEMs' systems, and thus only perform pursuant to the design and operating systems of OEMs, Varex may also be subject to claims for property damage, personal injury, or economic loss related to or resulting from any errors or defects in its products or the installation, servicing, or support of its products. Any accident or mistreatment could subject Varex to legal costs, litigation, adverse publicity, and damage to its reputation, whether or not its products or services were a factor.

If Varex's X-ray inspection systems fail to detect the presence of bombs, explosives, weapons, contraband, or other threats to personal safety, Varex could be subject to product and other liability claims or negative publicity, which could result in increased costs, reduced sales, and a decline in the market price of Varex's common stock. There are many factors beyond Varex's control that could result in the failure of its products to detect the presence of bombs, explosives, weapons, contraband, or other threats to personal safety, including operator error and misuse of or malfunction of Varex equipment. The failure of Varex's systems to detect the presence of these dangerous materials may lead to personal injury, loss of life, and extensive property damage and may result in potential claims against Varex.

Product liability actions are subject to uncertainty and may be expensive, time consuming, and disruptive to Varex's operations. For these and other reasons, Varex may choose to settle product liability claims against it regardless of their actual merit. A product liability action determined against Varex could result in adverse publicity or significant damages, including the possibility of punitive damages, and Varex's combined financial position, results of operations, or cash flows could be materially and adversely affected.

If a product Varex designs or manufactures were defective (whether due to design, labeling or manufacturing defects, improper use of the product, or other reasons), Varex may be required to correct or recall the product and notify regulatory authorities. The adverse publicity resulting from a correction or recall could damage Varex's reputation and cause customers to review and potentially terminate their relationships with Varex. A product correction or recall could consume management time and have an adverse financial impact on its business, including incurring substantial costs, losing revenues, and accruing losses.

Varex maintains limited product liability insurance coverage. Varex's product liability insurance policies are expensive and have high deductible amounts and self-insured retentions. Varex's 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 Varex's insurance coverage, Varex could have to pay substantial damages, which could have a material and adverse effect on its financial position and/or results of operations.

Varex's business may suffer if it is not able to hire and retain qualified personnel.

Varex's future success depends, to a great degree, on its ability to retain, attract, expand, integrate, and train its management team and other key personnel, such as qualified engineering, service, sales, marketing, and other staff. Varex competes for key personnel with other medical equipment and software manufacturers and technology companies, as well as universities and research institutions. Because this competition is intense, particularly in Utah, where unemployment rates are relatively low, compensation-related costs could increase significantly if the supply of qualified personnel decreases or demand increases. If Varex is unable to hire and train qualified personnel, Varex may not be able to maintain or expand its business. Additionally, if Varex is unable to retain key personnel, Varex may not be able to replace them readily or on terms that are reasonable, which also could hurt its business.

Risks Relating to the Manufacture of our Products

A disruption at Varex's manufacturing facilities, as well as fluctuating manufacturing costs, could materially and adversely affect its business.

The majority of Varex's products are manufactured at its facility in Salt Lake City, Utah. Varex's manufacturing operations are subject to potential power failures, the breakdown, failure, or substandard performance of equipment, the improper installation or operation of equipment, pandemics, and natural or other disasters. Loss or damage to its manufacturing facility due to any of these factors or otherwise could materially and adversely affect Varex's ability to manufacture sufficient quantities of its products or otherwise deliver products to meet customer demand or contractual requirements, which may result in a loss of revenue and other adverse business consequences. Because of the time required to obtain regulatory approval and licensing of a manufacturing facility, Varex may not be available on a timely basis to replace any lost manufacturing capacity. The occurrence of these or any other operational issues at Varex's manufacturing facilities could have a material and adverse effect on Varex's business, financial condition, and results of operations.

Some of Varex's products are manufactured in Wuxi, China; Walluf, Germany; Heerlen and Doetinchem, the Netherlands; and Calamba City, Philippines, which are subject to similar risks but may also face additional regulatory and political risks, which could impact Varex's ability to manufacture and ship products in a timely manner or at all. Varex also manufactures security products in Las Vegas, Nevada, and these operations are also subject to potential power failures, the breakdown, failure, or substandard performance of equipment, the improper installation or operation of equipment, earthquakes, and other disasters, all of which could materially and adversely affect Varex's ability to deliver products to meet customer demand. In addition, Varex's costs associated with manufacturing its products can vary significantly from quarter to quarter, and fluctuations thereof may adversely affect its business, operating results, and/or financial condition.

Varex's results have been and may continue to be affected by continuing worldwide economic instability, including changes in foreign currency exchange rates and fluctuations in the price of crude oil and other commodities.

The global economy has been impacted by a number of economic and political factors. In many markets, these conditions have shrunk capital equipment budgets, slowed decision-making and made it difficult for Varex's customers and vendors to accurately forecast and plan future business activities. This, in turn, has caused Varex's customers to be more cautious with, and sometimes freeze, delay, or dramatically reduce purchases and capital project expenditures. Some countries have adopted and may in the future adopt austerity or stimulus programs that could negatively affect Varex's results from period to period. In addition, actions taken by the current U.S. administration may also create global economic uncertainty, which may cause our customers to reduce their spending, which, in turn, could adversely affect our business, financial condition, operating results, and cash flows. An uncertain economic environment may also disrupt supply or affect our service business, as customers' constrained budgets may result in pricing pressure, extended warranty provisions, and even cancellation of service contracts. In addition, concerns over continued economic instability could make it more difficult for Varex to collect outstanding receivables. A weak or deteriorating healthcare market would inevitably materially and adversely affect Varex's business, financial conditions, and results of operations.

Because Varex's products are generally priced in U.S. Dollars, the strengthening of the U.S. Dollar in the last several years has caused, and could continue to cause, some customers to ask for discounts, delay purchasing decisions, or consider moving to in-sourcing such components or migrating to lower cost alternatives. Further, because Varex's business is global and some payments may be made in local currency, fluctuations in foreign currency exchange rates can impact its results by affecting product demand, revenues and expenses, and/or the profitability in U.S. Dollars of products and services that Varex provides in foreign markets.

Changes in monetary or other policies here and abroad, including as a result of economic and/or political instability or in reaction thereto, would also likely affect foreign currency exchange rates. Furthermore, if one or more European countries were to replace the Euro with another currency, Varex's sales in these countries, or in Europe generally, would likely be materially and adversely affected until stable exchange rates are established.

Additionally, fluctuations in commodities prices could materially and adversely affect Varex's performance. Rising commodities prices will increase Varex's costs and those of Varex's medical OEM customers, which could in turn result in reduced demand for Varex's products. Further, Varex's security product revenues from oil-producing countries, in which Varex has a significant customer base, have in the past suffered as a result of volatility in oil prices and remain sensitive to fluctuations in the future.

The loss of a supplier or any inability to obtain supplies of important components could restrict Varex's ability to manufacture products, cause delays in its ability to deliver products, or significantly increase its costs.

Varex obtains from a limited group of suppliers or from sole-source suppliers some of the components included in its products, such as wave guides for industrial linear accelerators, 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. For example, Varex's major supplier of its amorphous silicon-based thin film transistor arrays (flat panels) used in its digital image detectors is dpiX LLC. Although Varex holds a 40% ownership interest in dpiX, Varex does not have majority voting rights and does not have the power to direct the activities of dpiX. In addition, Varian is Varex's sole source supplier for a key component in linear accelerators used in Varex's security and inspection products subsystems, which are specially made for Varex. If current suppliers cease producing these components, there can be no assurance that the components will be available from other suppliers on reasonable terms or at all.

If Varex loses any of these limited- or sole-source suppliers, if their operations are substantially interrupted, or if any of them fail to meet performance or quality specifications or delivery deadlines, Varex may be required to obtain and qualify one or more replacement suppliers. Such an event (1) may then also require Varex to redesign or modify its products to incorporate new parts and/or further require Varex to obtain clearance, qualification, or certification of these products, including by the FDA, or obtain other applicable regulatory approvals in other countries, or (2) could significantly increase costs for the affected products and cause material delays in delivery of those and other related products. In addition, manufacturing capacity limitations of any of Varex's suppliers or other inability of these suppliers to meet increasing demand or delivery deadlines could limit growth opportunities for the affected product lines and damage customer relationships. Shortage of, and greater demand for, components and subassemblies could also increase manufacturing costs if the supply/demand imbalance increases the price of the components and subassemblies. Any of these events could materially and adversely affect Varex's business and financial results.

A shortage or change in source of, or increase in price of, raw materials could restrict Varex's ability to manufacture products, cause delays, or significantly increase its cost of goods.

Varex relies on the supplies of certain raw materials such as tungsten, lead, iridium, and copper for security and inspection products and copper, lead, tungsten, rhenium, molybdenum zirconium, and various high grades of steel alloy for X-ray tubes. Worldwide demand, availability, and pricing of these raw materials have been volatile, and Varex expects that availability and pricing will continue to fluctuate in the future. If supplies are restricted or become unavailable or if prices increase, this could constrain Varex's manufacturing of affected products, reduce its profit margins, or otherwise materially and adversely affect its business.

Varex is required to disclose (1) the presence in a company's products of certain metals known as "conflict minerals," which are metals mined from the Democratic Republic of the Congo and adjoining countries, and (2) procedures regarding a manufacturer's efforts to identify the sourcing of those minerals from this region. Varex's complex supply chain may inhibit Varex's ability to sufficiently verify the origins of the relevant minerals used in its products through the due diligence procedures that it implements, which may harm Varex's reputation. In addition, Varex may encounter challenges in satisfying customers who require that all of the components of Varex products are certified as conflict-free, which could place Varex at a competitive disadvantage if it is unable to do so. Moreover, complying with these rules requires investigative efforts, which has and will continue to cause Varex to incur associated costs and could materially and adversely affect the sourcing, supply, and pricing of materials used in Varex's products or result in process or manufacturing modifications, all of which could materially and adversely affect its results of operations.

If Varex is not able to match its manufacturing capacity with demand for its products, its financial results may suffer.

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

Delivery schedules for Varex's security, industrial, and inspection products tend to be unpredictable.

Varex designs, manufactures, sells, and services Linatron® X-ray accelerators, image-processing software, and image detection products for security and inspection, such as cargo screening at ports and borders and nondestructive examination for a variety of applications, as well as industrial applications. Varex generally sells security and inspection products to OEMs who

incorporate its products into their inspection systems, which are then sold to customs and other government agencies, as well as to commercial organizations in the casting, power, aerospace, chemical, petro-chemical, and automotive industries. Varex believes growth in its security and inspection products will be driven by security cargo screening and border protection needs, as well as by the needs of customs agencies to verify shipments for assessing duties and taxes. This business is heavily influenced by domestic and international government policies on border and port security, political change, and government budgets. In addition, Varex believes growth in this product line may be driven in part by industrial customers engaged in 3-D printing, which, as a developing market, may be difficult to predict. Orders for Varex's security and inspection products have been and may continue to be unpredictable, as governmental agencies may place large orders with Varex or its OEM customers in a short time period and then may not place any orders for a long time period thereafter. Because it is difficult to predict Varex's OEM customer delivery, the actual timing of sales and revenue recognition varies significantly. The market for border protection systems has slowed significantly, and end customers, particularly in oil-based economies and war zones in which Varex has a significant customer base, are delaying system deployments or tenders and considering moving to alternative sources, resulting in a decline in the demand for security and inspection products.

The demand for Varex's security and inspection products is heavily influenced by U.S. 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. Varex has seen customers freeze or dramatically reduce purchases and capital project expenditures, delay projects, or act cautiously as governments around the world wrestle with spending priorities. 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, Varex expects that these effects will also continue. Bid awards in this business may be subject to challenge by third parties, as Varex has previously encountered with a large government project. These factors make this business more unpredictable and could cause volatility in Varex's revenues and earnings.

Varex's international manufacturing operations subject it to volatility and other risks, including high security risks, which could result in harm to its employees and contractors or substantial costs.

Varex conducts certain manufacturing operations internationally to reduce costs and streamline its manufacturing operations. There are administrative, legal, and governmental risks to operating internationally that could increase operating expenses or hamper the development of these operations. The risks from operating internationally that could increase Varex's operating expenses and materially and adversely affect its operating results, financial condition, and ability to deliver its products and grow its business include, among others:

- difficulties in staffing and managing employee relations and foreign operations, particularly in attracting and retaining personnel qualified to design, sell, test, and support its products;
- fluctuations in currency exchange rates;
- difficulties in coordinating its operations globally and in maintaining uniform standards, controls, procedures, and policies across its operations;
- difficulties in enforcing contracts and protecting intellectual property;
- diversion of management attention;
- imposition of burdensome governmental regulations, including changing laws and regulations with respect to collection and maintenance of personally identifiable data;
- regional and country-specific political and economic instability, as discussed in greater detail below; and
- inadequacy of the local infrastructure to support its operations.

Varex's international locations expose it to higher security risks compared to its United States locations, which could result in both harm to its employees and contractors or substantial costs. Some of its 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 Varex has employees or operations, Varex may incur substantial costs to maintain the safety of its personnel. Despite these precautions, the safety of its personnel in these locations may continue to be at risk, and Varex may in the future suffer the loss of employees and contractors, which could harm its business reputation and operating results.

Varex's operations are vulnerable to interruption or loss due to natural or other disasters, power loss, strikes, and other events beyond its control.

Varex conducts some of its 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. Varex's insurance coverage for such disasters may not be adequate or continue to be available at commercially-reasonable terms, or at all. A

major disaster (such as a major fire, hurricane, earthquake, flood, tsunami, volcanic eruption or terrorist attack) affecting Varex's facilities, or those of its suppliers, could significantly disrupt its operations and delay or prevent product manufacture and shipment during the time required to repair, rebuild, or replace its or its suppliers' damaged manufacturing facilities. These delays could be lengthy and costly. If any of Varex's customers' facilities are adversely affected by a disaster, shipments of its products could be delayed. Additionally, customers may delay purchases of Varex's products until its operations return to normal. For example, following the earthquake and tsunami disasters in Japan in 2011, the operations of Canon Medical Systems, our largest customer, were impacted, and, as a consequence, orders to and product shipment from our business were delayed for several months. Even if Varex's suppliers or customers are able to quickly respond to a disaster, the ongoing effects of the disaster could create some uncertainty in the operations of its business. In addition, Varex's facilities may be subject to a shortage of available electrical power and other energy supplies. Any shortages may increase its costs for power and energy supplies or could result in blackouts, which could disrupt the operations of its affected facilities and harm its business. Further, Varex's products are typically shipped from a limited number of ports, and any disaster, strike, or other event blocking shipment from these ports could delay or prevent shipments and harm its business. In addition, concerns about terrorism, the effects of a terrorist attack, political turmoil, or an outbreak of epidemic diseases could have a negative effect on Varex's business operations, those of its suppliers and customers, and the ability to travel, resulting in adverse consequences on its revenues and financial performance.

Risks Relating to our Intellectual Property and Information Systems

Varex's competitive position would be harmed if it is not able to maintain its intellectual property rights and protecting Varex's intellectual property can be costly.

Varex files applications as appropriate for patents covering new products and manufacturing processes. Varex cannot be sure, however, that patents will be issued from any of Varex's pending or future patent applications. Varex also cannot be sure that its current patents, the claims allowed under its current patents, or patents for technologies licensed to Varex will be sufficiently broad to protect its technology position against competitors. Issued patents owned by, or licensed to, Varex may be challenged, invalidated, or circumvented, or the rights granted under the patents may not provide Varex with competitive advantages. Asserting Varex's patent rights against others in litigation or other legal proceedings is costly and diverts managerial resources. For example, during fiscal year 2019, Varex initiated litigation asserting claims of patent infringement against a third party. Varex intends to prosecute its claims vigorously, and Varex has experienced, and will continue to experience, increased legal expenses related to this litigation that could adversely affect its financial results. An adverse finding in this or similar patent infringement litigation could adversely impact Varex's competitive position. In addition, Varex may not be able to detect patent infringement by others or may lose its competitive position in the market before Varex is able to do so.

Varex also relies 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 its proprietary, and other confidential rights. These protections may prove to be inadequate, since agreements may still be breached, and Varex may not have adequate remedies for a breach. Varex's trade secrets may become known to or be independently developed by others, including as a result of misappropriation by unauthorized access to Varex's technology systems. If Varex's proprietary or confidential information is misappropriated, its business and financial results could be materially and adversely impacted. Varex has trademarks, both registered and unregistered, that are maintained and enforced to provide customer recognition for its products in the marketplace, but unauthorized parties may still use them. Varex also licenses certain patented or proprietary technologies from others. In some cases, products with substantial revenues may depend on these license rights. If Varex were to lose the rights to license these technologies, or its costs to license these technologies were to materially increase, its business would suffer. As Varex expands its manufacturing capabilities outside of the United States, more of Varex's intellectual property may be held in jurisdictions that do not have robust intellectual property protections, which may make it harder for Varex to adequately protect its Intellectual Property.

Third parties may claim that Varex is infringing upon their intellectual property, and Varex could suffer significant litigation or licensing expenses or be prevented from selling its products.

There is a substantial amount of litigation over patent and other intellectual property rights in the industries in which Varex competes. Varex's 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 Varex's activities for conflicts with their patent rights. Determining whether a product infringes on a party's intellectual property rights involves complex legal and factual issues, and the outcome of this type of litigation is often uncertain. Parties may claim that Varex is infringing upon their intellectual property rights. Varex may not be aware of intellectual property rights of others that relate to its products, services, or technologies. From time to time, Varex has received notices from parties asserting infringement, and Varex has been subject to

lawsuits alleging infringement of patent or other intellectual property rights. Any dispute regarding patents or other intellectual property could be costly and time consuming and could divert Varex's management and key personnel from its business operations. Varex may not prevail in a dispute. Varex does not maintain insurance for intellectual property infringement, so costs of defense, whether or not Varex is successful in defending an infringement claim, will be borne by Varex and could be significant. If Varex is unsuccessful in defending or appealing an infringement claim, Varex may be subject to significant damages, and its combined financial position, results of operations, or cash flows could be materially and adversely affected. Varex may also be subject to injunctions against development and sale of its products, the effect of which could be to materially reduce its revenues. Furthermore, a third party claiming infringement may not be willing to license its rights to Varex, and even if a third-party rights holder is willing to do so, the amounts Varex might be required to pay under the associated royalty or license agreement could be significant. Varex could decide to alter its business strategy or voluntarily cease the allegedly infringing actions rather than face litigation or pay a royalty, which could materially and adversely impact its business and results of operations.

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

Information technology (including technology from third party providers) helps Varex operate efficiently, interface with and support its customers, maintain financial accuracy and efficiency, and produce its financial statements. In the ordinary course of its business, Varex collects, processes and stores sensitive data, including intellectual property, proprietary business information and that of customers, suppliers and business partners, third parties accessing its website, patient data and personally identifiable information of customers and employees, in Varex's data centers, and on its networks, as well as third party off-site infrastructure. Despite security measures, there is an increasing threat of information security attacks, including from computer viruses or other malicious codes, unauthorized access attempts, and cyber-attacks that pose risks to companies, including Varex. 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, Varex 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 disrupt our operations. If Varex does not allocate and effectively manage the resources necessary to build and sustain the proper technology infrastructure, Varex could be subject to, among other things, transaction errors, processing inefficiencies, the loss of customers, business disruptions, or the loss of or damage to intellectual property through a security breach or misappropriation of intellectual property. Such security breaches could expose Varex to a risk of loss of information, litigation, and possible liability to employees, customers, and/or regulatory authorities. If Varex's data management systems do not effectively collect, secure, store, process, and report relevant data for the operation of its business, whether due to equipment malfunction or constraints, software deficiencies, or human error, Varex's ability to effectively plan, forecast, and execute its business plan and comply with applicable laws and regulations will be impaired, perhaps materially. Any such impairment could materially and adversely affect Varex's financial condition, results of operations, cash flows, and the timeliness with which Varex reports its operating results internally and externally.

Varex uses certain cloud-based software. A security breach, whether of Varex's products, of Varex's customers' network security and systems, or of third-party hosting services could disrupt access to Varex's customers' stored information and could lead to the loss of, damage to or public disclosure of Varex's 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 Varex's solutions, an unwillingness of its customers to use its solutions, harm to its reputation and brand, and time-consuming and expensive litigation, any of which could have a material and adverse effect on Varex's financial results.

Risks Relating to Our Legal and Regulatory Environment

Changes in import/export regulatory regimes and tariffs could continue to negatively impact our business.

Tariffs and changes in international trade agreements or trade-related laws and regulations may have an indirect adverse impact on 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, 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 recent years, the United States has imposed tariffs on items imported from China that are incorporated into our products. Tariffs on items imported by us from China and other countries have increased our costs and has increased prices and lowered gross margins on some of our products. These tariffs have had a direct adverse impact on our business and results of operations, and future tariffs could have a more significant impact on our business. China has imposed retaliatory tariffs that impact a number of Varex

products including U.S. origin X-ray tubes, heat exchange units, and certain flat panel detectors. The tariffs levied by China 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 products from us. We expect that tariffs will continue to have a negative effect on our business and results of operations, including the possibility of continued price concessions or loss of business. 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 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.

Compliance with foreign laws and regulations applicable to the marketing, manufacture, and distribution of Varex's products may be costly, and failure to comply may result in significant penalties and other harm to Varex's business.

Regulatory requirements affecting Varex's operations and sales outside the United States vary from country to country, often differing significantly from those in the United States. In general, outside the United States, some of Varex's products are regulated as medical devices by foreign governmental agencies similar to the FDA.

For Varex to market its products internationally, Varex must obtain clearances or approvals for products and product modifications. These processes (including, for example, in the EU, the European Economic Area ("EEA"), Switzerland, Brazil, Australia, China, Japan and Canada) can be time consuming, expensive and uncertain, which can delay Varex's ability to market products in those countries. 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 Varex from doing business in a country or subject Varex to a variety of enforcement actions and civil or criminal penalties, which would materially and materially and adversely affect its business. In addition, compliance with changing regulatory schemes may add additional complexity, cost and delays in marketing or selling Varex's products.

Within the EU/EEA, Varex must obtain, and in turn affix, a CE mark certification, which is a European marking of conformity that indicates that a product meets the essential requirements of the Medical Device Directive. Compliance with the Medical Device Directive is done through a self-certification process that is then verified by an independent certification body called a "Notified Body," which is an organization empowered by the legislature to conduct this verification. Once the CE mark is affixed, the Notified Body will regularly audit Varex to ensure that it remains in compliance with the applicable European laws and Medical Device Directive. By affixing the CE mark to its product, Varex is certifying that its products comply with the laws and regulations required by the EU/EEA countries, thereby allowing the free movement of its products within these countries and others that accept CE mark standards. If Varex cannot support its performance claims and demonstrate compliance with the applicable European laws and the Medical Device Directive, Varex would lose its right to affix the CE mark to its products, which would prevent Varex from selling its products within the EU/EEA/Switzerland territory and in other countries that recognize the CE mark. In April 2017, the European Commission adopted two new regulations on medical devices. These new regulations impose stricter requirements for placing medical devices in the EU market, as well as for Notified Bodies. These new regulations have resulted in the limited availability of recognized Notified Bodies, which could delay our ability to obtaining CE marks. Varex may be subject to risks associated with additional testing, modification, certification, or amendment of its existing market authorizations, or Varex may be required to modify products already installed at its customers' facilities to comply with the official interpretations of these revised regulations.

Varex is also 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, if not more stringent than, the 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, Varex is required to timely file various reports with international regulatory authorities similar to the reports it is required to timely file with U.S. 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 Varex's market authorizations or CE mark, and sales of its products may suffer.

Further, as Varex enters new businesses or pursues new business opportunities internationally, or as regulatory schemes change, Varex may become subject to additional laws, rules, and regulations. Becoming familiar with and implementing the infrastructure necessary to comply with these laws, rules, and regulations is costly. Additionally, in some countries, Varex relies or may rely in the future on foreign distributors and agents to assist in complying with foreign regulatory requirements, and Varex cannot

be sure that they will always do so. The failure of Varex or its 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 Varex's products in or to import its products into certain countries, which could materially and adversely affect Varex's business.

Compliance with U.S. laws and regulations applicable to the marketing, manufacture, and distribution of Varex's products may be costly, and failure or delays in obtaining regulatory clearances or approvals or failure to comply with applicable laws and regulations could prevent Varex from distributing its products, require Varex to recall its products, or result in significant penalties or other harm to Varex's business.

Some of Varex's products and those of OEMs that incorporate Varex's products are subject to extensive and rigorous government regulation in the United States. Compliance with these laws and regulations is expensive and time-consuming, and failure to comply with these laws and regulations could materially and adversely affect Varex's business.

Generally, Varex's manufacturing operations for medical devices, and those of its third-party manufacturers, are required to comply with the Quality System Regulations ("QSR") of the FDA, as well as other federal and state regulations for medical devices and radiation-emitting products. The FDA makes announced and unannounced periodic and on-going inspections of medical device manufacturers to determine compliance with QSR and, in connection with these inspections, issues reports known as Form FDA 483 reports when the FDA believes the manufacturer has failed to comply with applicable regulations and/or procedures. If observations from the FDA issued on Form FDA 483 reports are not addressed and/or corrective action is not taken in a timely manner and to the FDA's satisfaction, the FDA may issue a warning letter and/or proceed directly to other forms of enforcement action. Similarly, if a warning letter were issued, prompt corrective action to come into compliance would be required. Failure to respond in a timely manner to Form FDA 483 observations, a warning letter, or any other notice of noncompliance and to promptly come into compliance could result in the FDA bringing an enforcement action, which could include the total shutdown of Varex's 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 Varex may take, which may include product recalls, correction and removal of products from customer sites, and/or changes to its product manufacturing and quality systems, could materially and adversely impact Varex's 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 Varex could face increased pressure from its competitors, who could use the warning letter against Varex in competitive sales situations, either of which could materially and adversely affect Varex's reputation, business, and stock price.

In addition, Varex is required to timely file various reports with the FDA, including reports required by the medical device reporting regulations ("MDRs"), that require Varex report to regulatory authorities if its 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 Varex initiates a correction or removal of a device to reduce a risk to health posed by the device, Varex 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 Varex's customers regarding the quality and safety of Varex's devices. If these MDRs or correction and removal reports are not filed on a timely basis, regulators may impose sanctions, sales of Varex's products may suffer, and Varex may be subject to product liability or regulatory enforcement actions, all of which could harm its business.

Government regulation may also cause significant delays or even prevent the marketing and full commercialization of future products or services that Varex may develop and/or may impose costly requirements on Varex's business. Further, as Varex enters new businesses or pursues new business opportunities, Varex will become subject to additional laws, rules, and regulations, including FDA and foreign rules and regulations. Becoming familiar with and implementing the infrastructure necessary to comply with these laws, rules, and regulations is costly and time consuming. In addition, failure to comply with these laws, rules and regulations could delay the introduction of new products and could materially and adversely affect Varex's business.

If Varex or any of its suppliers, distributors, agents, or customers fail to comply with FDA, Federal Trade Commission, or other applicable U.S. regulatory requirements or are perceived to have failed to comply with regulations, Varex may face:

- adverse publicity affecting both Varex and its 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 Varex products or those of its customers;
- delays in purchasing decisions by customers or cancellation of existing orders;
- the inability to sell Varex products; and
- difficulty in obtaining product liability or operating insurance at a reasonable cost, or at all.

Varex is 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 Varex may incur as the consequence of regulatory violations. Consequently, Varex does not have insurance that would cover this type of liability.

Varex sells 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 Varex may be unable to receive registration approval or renewal of existing registrations if it fails to meet regulatory approval requirements or if the approval process becomes commercially infeasible or impractical.

Varex markets and distributes certain X-ray tubes through distributors and third-party/multi-vendor service organizations that are used as equivalent replacements for specific OEM tubes. Varex is 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. For example, to sell X-ray tubes for replacement applications in China, product registrations must be approved by the new National Medical Products Administration ("NMPA"). Varex must comply with the requirements of the NMPA, and Varex may not be able to receive registration approval or renewal of existing registrations if it fails to meet regulatory approval requirements or if the process of gaining approval becomes commercially infeasible or impractical. 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 in which Varex products are sold require products to undergo re-registration if the product is altered in any significant way, and it may be determined that the separation of Varex from Varian, including Varex's new name, will require these products to be re-registered as Varex products, even if they are physically unchanged.

These registration processes can be costly and time consuming, and customers may decide to purchase products from Varex's competitors that do not have to be involved in a re-registration process. In addition, Varex's inability to receive or renew product registrations may prevent Varex from marketing and/or distributing those particular products for replacement applications in the specific country.

Existing and future healthcare reforms, including the Affordable Care Act and changes to reimbursement rates, may indirectly have a material adverse effect on Varex's business and results of operations.

Sales of Varex's products to OEMs in the medical sector indirectly depend on whether adequate reimbursement is available for its 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 Varex's customers' products, and therefore indirectly Varex's products, may be limited.

Healthcare reform proposals and medical cost containment measures in the United States and in many foreign countries could limit the use of both Varex's and its customers' products, reduce reimbursement available for such use, further tax the sale or use of Varex's products, and further increase the administrative and financial burden of compliance. These reforms and measures, including the uncertainty in the medical community regarding their nature and effect, could have a material and adverse effect on Varex's and its customers' purchasing decisions regarding its products and treatments and could harm Varex's business, results of operations, financial condition, and prospects. Varex cannot predict the specific healthcare programs and regulations that will be ultimately implemented by local, regional, and national governments globally. However, any changes that lower reimbursements for Varex's or its 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 Varex or others in the healthcare sector could materially and adversely affect Varex's business and results of operations.

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

Anti-corruption laws and regulations. Varex is subject to the U.S. Foreign Corrupt Practices Act and anti-corruption laws, as well as similar laws in foreign countries, such as the U.K. Bribery Act and the Law On the Fundamentals of Health Protection in the Russian Federation. In general, there is a worldwide trend to strengthen anti-corruption laws and their enforcement, and the healthcare industry and medical equipment manufacturers have been particular targets of these investigation and enforcement efforts. Any violation of these laws by Varex or its agents or distributors could create substantial liability for Varex, subject its officers and directors to personal liability, and cause a loss of reputation in the market. Varex operates in many countries, including India and China, where the public sector is perceived as being corrupt. Varex's strategic business plans include expanding its 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. 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 Varex or its agents or distributors to comply with these laws, rules, and regulations could delay its expansion into high-growth markets and could materially and adversely affect its business. Varex will likely do more business, directly and potentially indirectly, in countries where the public sector is perceived to be corrupt. Increased business in higher-risk countries could subject Varex and its officers and directors to increased scrutiny and increased liability from its business operations.

Competition and trade compliance laws. Varex is subject to various competition and trade compliance laws in the jurisdictions where it operates. Regulatory authorities in those jurisdictions may have the power to subject Varex to sanctions and impose changes or conditions in the way Varex conducts its 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 Varex's actions or enforcement or private rights of action could materially and adversely affect its business or damage its reputation. Varex 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 its management and key personnel from its business operations. An adverse outcome under any such investigation or audit could subject Varex to fines and/or or criminal or other penalties, which could materially and adversely affect Varex's business and financial results. Furthermore, competition laws may prohibit or increase the cost of future acquisitions that Varex may desire to undertake.

Laws and ethical rules governing interactions with healthcare providers. Varex does not generally sell its products directly to healthcare providers, but may occasionally sell its products to healthcare providers through distributors. 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 Varex's sales, marketing, and other promotional activities by limiting the kinds of financial arrangements Varex may have with hospitals, physicians, or other potential purchasers of its products. They particularly impact how Varex structures its 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 Varex does 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 Varex's practices could cause adverse publicity and be costly to defend and thus could harm its 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 Varex to implement the necessary and costly infrastructure to track and report certain payments to healthcare providers. Failure to comply with these new tracking and reporting laws could subject Varex to significant civil monetary penalties.

Varex is subject to similar laws in foreign countries where it conducts 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 activity by companies. Varex could face civil, criminal, and administrative sanctions if any member state determines that Varex has breached its obligations under such state's national laws. Industry associations also closely monitor the activities of member companies. If these organizations or authorities name Varex as having breached its obligations under their regulations, rules, or standards, its reputation would suffer, and its business and financial condition could be materially and adversely affected.

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

As a manufacturer and seller of medical devices and devices emitting radiation or utilizing radioactive by-product material, Varex and some of its 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, and marketing and disposal of Varex's products. Varex is 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.

Varex's 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. Varex's manufacture, distribution, installation, service, and removal of industrial devices utilizing radioactive material or emitting radiation also requires Varex to obtain a number of licenses and certifications for these devices and materials. Service of these products must also be in accordance with a 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 Varex's products may impose significant costs and requirements. Disposal sites for the lawful disposal of materials generated by the manufacture, use, or decommissioning of Varex's products may no longer accept these substances in the future or may accept them on unfavorable terms.

If Varex is unable to obtain required FDA clearances or approvals for a product or is unduly delayed in doing so, or the uses of that product were limited, Varex's business could suffer.

Typically, Varex's OEM customers are responsible for obtaining 510(k) pre-market notification clearance on their systems that integrate Varex products. A substantial majority of Varex's products are "Class I" devices that do not require 510(k) clearance, but Varex does produce software that is classified as a Class II device subject to 510(k) clearance. Unless an exception applies, Varex 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 it can market or sell those products in the United States. 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 also require a new 510(k) clearance. Although manufacturers make the initial determination whether a change to a cleared device requires a new 510(k) clearance, Varex cannot ensure that the FDA will agree with its decisions not to seek additional approvals or clearances for particular modifications to its products or that Varex will be successful in obtaining new 510(k) clearances for modifications. Obtaining clearances or approvals is time consuming, expensive, and uncertain. Varex may not be able to obtain the necessary clearances or approvals or may be unduly delayed in doing so, which could harm its business. Furthermore, even if Varex is 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 Varex is unable to obtain required FDA clearance or approval for a product or is unduly delayed in doing so, or the uses of that product were limited, Varex's business could suffer.

Unfavorable results of legal proceedings could materially and adversely affect Varex's financial results.

From time to time, Varex is 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 its business or otherwise. Legal proceedings are often lengthy, taking place over a period of years with interim motions or judgments subject to multiple levels of review (such as appeals or rehearings) before the outcome is final. Litigation and other legal proceedings, claims, government inspections, audits and investigations are subject to significant uncertainty and may be expensive, time consuming, and

disruptive to Varex's operations. For these and other reasons, Varex may choose to settle legal proceedings and claims, regardless of their actual merit.

If a legal proceeding were ultimately resolved against Varex, it could result in significant compensatory damages, and, in certain circumstances, punitive damages, disgorgement of revenue or profits, remedial corporate measures, or injunctive relief imposed on Varex. If Varex's existing insurance does not cover the amount or types of damages awarded, or if other resolution or actions taken as a result of such legal proceeding were to restrain its ability to market one or more of its material products or services, its combined financial position, results of operations, or cash flows could be materially and adversely affected. In addition, legal proceedings, and any adverse resolution thereof, can result in adverse publicity and damage to Varex's reputation, which could materially and adversely impact its business.

New accounting pronouncements or changes in interpretation or application of generally accepted accounting principles may materially and adversely affect Varex's operating results.

Varex prepares its financial statements in accordance with GAAP. These principles are subject to interpretation by the FASB, American Institute of Certified Public Accountants, the SEC, and various other regulatory and/or accounting bodies. New accounting pronouncements, or a change in interpretations of, or its application of, existing principles can have a significant effect on Varex's reported results and may even affect its reporting of transactions completed before a change is announced. In addition, when Varex is required to adopt new accounting standards, Varex's methods of accounting for certain items may change, which could cause its results of operations to fluctuate from period to period, make it more difficult to compare its financial results to prior periods, and could cause Varex to delay required filings under the Exchange Act.

As its operations evolve over time, Varex may introduce new products and/or new technologies that require Varex to apply different accounting principles, including ones regarding revenue recognition, than Varex has applied in past periods. The application of different types of accounting principles and related potential changes may make it more difficult to compare its financial results from quarter to quarter, and the trading price of Varex common stock could suffer or become more volatile as a result.

Environmental laws impose compliance costs on Varex's business and may also result in liability.

Varex is subject to environmental laws around the world. These laws regulate many aspects of its operations, including its handling, storage, transport, and disposal of hazardous substances, such as the chemicals and materials that Varex uses in the course of its manufacturing operations. They can also impose cleanup liabilities, including with respect to discontinued operations. As a consequence, Varex can incur significant environmental costs and liabilities, some recurring and others not recurring. Although it follows procedures intended to comply with existing environmental laws, Varex, like other businesses, may mishandle or inadequately manage hazardous substances used in its manufacturing operations and can never completely eliminate the risk of contamination or injury from certain materials that it uses in its business and, therefore, it cannot completely eliminate the prospect of resulting claims and damage payments. Varex 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 Varex does not expect to maintain insurance coverage for costs or claims that might result from any future contamination.

Future changes in environmental laws could also increase its 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, 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 its products sold there. These directives, along with another that requires substance information to be provided upon request, could increase Varex's operating costs in order to maintain its 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 its business.

Fulfilling obligations incidental to being a public company place significant demands on Varex's management, administrative, and operational resources, including accounting and information technology resources.

As a public company, Varex is subject to the reporting requirements of the Securities Exchange Act of 1934 (the "Exchange Act"), and is required to prepare its financial statements according to the rules and regulations required by the SEC. The Exchange Act requires that Varex file annual, quarterly, and current reports. Varex's failure to prepare and disclose this information in a timely manner or to otherwise comply with applicable law could subject it to penalties under federal securities laws, cause it to be out of compliance with applicable stock exchange listing requirements, and expose it to lawsuits and restrict its ability to access financing. For example, as a result of the delayed filing of our 2019 Annual Report on Form 10-K, we received a notification letter from Nasdaq

advising us that we were not in compliance with Nasdaq listing requirements. While we promptly regained compliance with the Nasdaq listing requirements, if we had failed to regain compliance in a timely manner, it would have negatively impacted Varex.

Varex must, among other things, establish and maintain effective internal controls and procedures for financial reporting and disclosure purposes. Internal control over financial reporting is complex and may be revised over time to adapt to changes in Varex's business or changes in applicable accounting rules. As described in the following risk factor, Varex has identified material weaknesses in its internal control over financial reporting. Varex cannot assure that its internal control over financial reporting will be effective in the future or that additional material weaknesses will not be discovered with respect to a prior period for which it had previously believed that internal controls were effective.

Matters impacting Varex's internal controls may cause Varex to be unable to report its financial information on a timely basis or may cause Varex to restate previously-issued financial information, thereby subjecting Varex to adverse regulatory consequences, including sanctions or investigations by the SEC or in respect of violations of applicable stock exchange listing rules. There could also be a negative reaction in the financial markets due to a loss of investor confidence in Varex and the reliability of its financial statements, which could affect Varex's stock price.

Varex identified material weaknesses in its internal control over financial reporting which, if not remediated appropriately or timely, could result in loss of investor confidence and adversely impact our stock price.

As further described in Item 9A in our Annual Report on Form 10-K, for the fiscal year ended October 2, 2020, management determined that Varex's internal control over financial reporting and its disclosure controls and procedures were not effective and that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. Management has identified material weaknesses within our risk assessment process and control environment, which in turn, contributed to additional material weaknesses related to (1) inventory and cost of sales, and (2) financial reporting. Until remediated, these material weaknesses could result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected on a timely basis. There can be no assurance that the remedial measures being implemented by Varex's management will be successful. In addition, because of the COVID-19 pandemic, a larger number of Varex's employees are working remotely, which may make it harder to remediate existing material weaknesses and might make it harder to maintain proper internal controls over financial reporting. If Varex is unable to remediate the material weaknesses, or is otherwise unable to maintain effective internal control over financial reporting or disclosure controls and procedures, Varex's ability to record, process and report financial information accurately, and to prepare financial statements within required time periods, could be adversely affected, which could subject Varex to litigation or investigations requiring management resources and payment of legal and other expenses, including civil penalties, negatively affect investor confidence in our financial statements and adversely impact our stock price.

Risks Relating to Our Indebtedness

Varex has significant debt obligations that could adversely affect its business, profitability and ability to meet its obligations.

As of October 2, 2020, Varex's total combined indebtedness was approximately $511.3 million. The borrowings under Varex's unsecured convertible senior notes due 2025 (the "Convertible Notes") bear interest at a fixed rate of 4.00% and borrowings under Varex's senior secured notes due 2027 (the "Senior Secured Notes") bear interest at a fixed rate of 7.875%.

Varex's debt could potentially have important consequences to Varex and its investors, including:

- limiting Varex's flexibility in planning for, or reacting to, changes in its business and the industry; and
- limiting Varex's ability to borrow additional funds as needed or increasing the costs of any such borrowing.
- make it more difficult for us to satisfy our obligations, including our debt obligations;
- increase our vulnerability 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;
- require us 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;
- place us at a disadvantage compared to competitors that may have proportionately less debt; and
- limit our ability to obtain additional debt or equity financing due to applicable financial and restrictive covenants in our debt agreements.

If Varex's cash requirements in the future are greater than expected, its cash flow from operations may not be sufficient to repay all of the outstanding debt as it becomes due, and Varex may not be able to borrow money, sell assets, or otherwise raise funds on acceptable terms, or at all, to refinance Varex's debt. For example, holders of the Convertible Notes will have the right to require Varex to repurchase all or a portion of the Convertible Notes on the occurrence of a fundamental change at a repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date. Further, if a make-whole fundamental change as defined in the Indenture governing the Convertible Notes occurs prior to the maturity date of the Convertible Notes, Varex will in some cases be required to increase the conversion rate for a holder that elects to convert its Convertible Notes in connection with such make-whole fundamental change. On the conversion of the Convertible Notes, unless Varex elects to deliver solely shares of common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), Varex will be required to make cash payments for the Convertible Notes being converted. However, Varex may not have enough available cash or be able to obtain financing at the time Varex is required to make such repurchases of the Convertible Notes surrendered or pay cash with respect to the Convertible Notes being converted.

Despite our substantial indebtedness, we may still be able to incur significantly more debt. This could intensify the risks described above.

We and our subsidiaries may be able to incur substantial indebtedness in the future. As of October 2, 2020, we had approximately $100 million of additional available borrowing capacity (subject to borrowing base availability) under the new revolving credit agreement that we entered into on September 30, 2020 (the "Asset-Based Loan", or "ABL Facility"). In addition to any amounts that might be available to us for borrowing under the ABL Facility, subject to certain conditions, we will have the right to request an increase of aggregate commitments under the ABL Facility by an aggregate amount of up to $75 million by obtaining additional commitments either from one or more of the lenders under the ABL Facility or other lending institutions.

Although the ABL Facility and the indenture governing our Senior Secured Notes contain restrictions on our and our subsidiaries' ability to incur additional indebtedness, these restrictions are subject to a number of important qualifications and exceptions, and the indebtedness incurred in compliance with these restrictions could be substantial. Furthermore, the covenants in the indenture governing our Convertible Notes do not restrict the incurrence of indebtedness by the company or any of its subsidiaries, and the covenants that may be contained in any future debt instruments could allow us to incur a significant amount of additional indebtedness.

The more leveraged we become, the more we, and in turn holders of our notes, will be exposed to certain risks described above under "— Varex has significant debt obligations that could adversely affect its business, profitability and ability to meet its obligations."

The ABL 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.

Our ABL Facility and the indenture governing our Senior Secured Notes impose significant operating and financial restrictions on us.

These restrictions limit our ability, among other things, 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; 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 ABL 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 and may result in the acceleration of any other debt that is subject to an applicable cross-acceleration or cross-default provision. In addition, an event of default under the ABL Facility would permit the lenders under the ABL Facility to terminate all commitments to extend further credit under the ABL Facility. Furthermore, if we were unable to repay the amounts due and payable under the ABL Facility, those lenders could proceed against the collateral securing such indebtedness. In the event our lenders or holders of the notes offered hereby accelerate the repayment of our borrowings, we and our subsidiaries may not have sufficient assets to repay that indebtedness.

Our ability to continue to have the necessary liquidity to operate our business may be adversely impacted by a number of factors, including uncertain conditions in the credit and financial markets, which could limit the availability and increase the cost of financing. 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 fixed charge coverage ratio contained in our ABL 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 convertible 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 ABL Facility, interest rate fluctuations and the adverse impact of the COVID-19 outbreak on the U.S. and world-wide economies and on our business. Interest rates in the U.S. generally increased in fiscal 2018 and 2019, but decreased in fiscal 2020. 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 ABL Facility contains a minimum Fixed Charge Coverage Ratio of 1.00 to 1.00 that is tested when excess availability under the ABL is less than the greater of (i) 10.0% of the Line Cap (the lesser of (a) the aggregate commitments under the ABL Facility and (b) the aggregate borrowing base) and (ii) $7.5 million. If we have to borrow in excess of 10.0% of the Line Cap and $7.5 million, and we do not increase our earnings, we also would be at risk of not being in compliance with the ABL Facility's fixed charge coverage ratio. Compliance with the fixed charge coverage ratio is dependent on the results of our operations, which are subject to a number of factors including current economic conditions. Adverse developments in the economy, including as a result of the COVID-19 outbreak, 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 the fixed charge coverage ratio. In addition, the ABL Facility contains other affirmative and negative covenants that restrict Varex's operating and financing activities. These provisions may limit our ability to, among other things, incur future indebtedness, contingent obligations or liens, guarantee indebtedness, make certain investments and capital expenditures, sell stock or assets, pay dividends and consummate certain mergers or acquisitions. Failure to comply with the fixed charge coverage ratio and other covenants, including the requirement to timely deliver financial statements within applicable grace periods, could result in an event of default. Upon an event of default, if the ABL Facility is not amended or the event of default is not waived, the lender could declare all amounts then outstanding, together with accrued interest, to be immediately due and payable. If this happens, Varex may not be able to make those payments or borrow sufficient funds from alternative sources to make those payments. Even if Varex were to obtain additional financing, that financing may be on unfavorable terms.

We may not be able to generate sufficient cash to service all of our indebtedness, and may be forced to take other actions to satisfy our obligations under our indebtedness, which may not be successful.

If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay investments and capital expenditures, or to sell assets, seek additional capital or restructure or refinance our indebtedness, including the notes. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. If our operating results and available cash are insufficient to meet our debt service obligations, we could face substantial liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. We may not be able to consummate those dispositions or to obtain the proceeds that we could realize from them, and these proceeds may not be adequate to meet any debt service obligations then due. 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 will 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 credit rating and ability to access well-functioning capital markets are important to our ability to secure future debt financing on acceptable terms. Our credit ratings may not reflect all risks associated with an investment in our secured notes.

Our access to the debt markets and the terms of such access depend on multiple factors including the condition of the debt capital markets, our operating performance and our credit ratings. These ratings are based on a number of factors including an assessment of our financial strength and financial policies. Our borrowing costs will be dependent to some extent on the rating assigned to our debt. However, there can be no assurance that any particular rating assigned to us will remain in effect for any given period of time or that a rating will not be changed or withdrawn by a rating agency if, in that rating agency's judgment, future circumstances relating to the basis of the rating so warrant. Incurrence of additional debt by us could adversely affect our credit rating. Any disruptions or turmoil in the capital markets or any downgrade of our credit rating could adversely affect our cost of funds, liquidity, competitive position and access to capital markets, which could materially and adversely affect our business operations, financial condition and results of operations. In addition, downgrading the credit rating of our debt securities or placing us on a watch list for possible future downgrading would likely have an adverse effect on the market price of our securities.

Varex entered into certain hedging positions that may affect the value of the Convertible Notes and the volatility and value of Varex's common stock.

In connection with the issuance of the Convertible Notes, Varex 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 Varex's common stock or purchasing or selling Varex's 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 Varex on any fundamental change repurchase date or otherwise). This activity could cause or avoid an increase or a decrease in the market price of Varex common stock or the Convertible Notes. In addition, if any such hedging positions fail to become effective, the counterparties to these hedging positions or their respective affiliates may unwind their hedge positions, which could adversely affect the value of Varex common stock.

Risks Relating to Our Common Stock

The trading price of Varex's common stock may decline or fluctuate significantly and fluctuations in Varex's operating results, including quarterly revenues, and margins, may cause its stock price to be volatile, which could cause losses for its stockholders.

In the past year, Varex's stock price has ranged from a low of $10.37 to a high of $33.00. Varex cannot guarantee that an active trading market will be sustained for its common stock. Nor can Varex predict the prices at which shares of its common stock may trade. Varex has experienced and expects in the future to experience fluctuations in its operating results, including revenues and margins, from period to period. These fluctuations may cause Varex's stock price to be volatile, which could cause losses for its stockholders.

Varex's quarterly and annual operating results, including its revenues and margins, may be affected by a number of other factors, including:

- the introduction and timing of announcement of new products or product enhancements by Varex and its competitors;
- change in its or its competitors' pricing or discount levels;
- changes in foreign currency exchange rates and other economic uncertainty;
- changes in import/export regulatory regimes including the imposition of tariffs on our products or those of our customers;
- changes in the relative portion of its revenues represented by its various products, including the relative mix between higher margin and lower-margin products;
- the ability to identify and remediate significant deficiencies and material weaknesses in internal controls;
- changes in the relative portion of its revenues represented by its international region as a whole and by regions within the overall region, as well as by individual countries (notably, those in emerging markets);
- fluctuation in its effective tax rate, which may or may not be known to Varex in advance;

- the availability of economic stimulus packages or other government funding, or reductions thereof;
- disruptions in the supply or changes in the costs of raw materials, labor, product components or transportation services;
- changes to its organizational structure, which may result in restructuring or other charges;
- disruptions in its operations, including its ability to manufacture products, caused by events such as earthquakes, fires, floods, terrorist attacks or the outbreak of epidemic diseases;
- the unfavorable outcome of any litigation or administrative proceeding or inquiry, including governmental audits, as well as ongoing costs associated with legal proceedings and governmental audits; and
- accounting changes and adoption of new accounting pronouncements.

Because many of Varex's operating expenses are based on anticipated capacity levels, and a high percentage of these expenses are fixed for the short term, a small variation in the timing of revenue recognition can cause significant variations in operating results from quarter to quarter. If Varex's gross margins fall below the expectation of securities analysts and investors, the trading price of Varex common stock may decline.

Conversion of the Convertible Notes may dilute the ownership interest of Varex's stockholders or may otherwise depress the market price of Varex's common stock.

The conversion of the Convertible Notes may dilute the ownership interests of Varex's stockholders. On conversion of the Convertible Notes, Varex has the option to pay or deliver, as the case may be, cash, shares of common stock, or a combination of cash and shares of common stock. If Varex elects to settle our conversion obligation in shares of common stock or a combination of cash and shares of common stock, any sales of Varex common stock issuable on such conversion could adversely affect prevailing market prices of Varex's 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 Varex's common stock, any of which could depress the market price of Varex's 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 Varex elects to satisfy our conversion obligation by settling all or a portion of its conversion obligation in cash, it could adversely affect Varex's liquidity. In addition, even if holders do not elect to convert their Convertible Notes, Varex 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 Varex net working capital and may seriously harm Varex's business.

Certain provisions in Varex's Amended and Restated Certificate of Incorporation, its Amended and Restated Bylaws, its Indenture, and of Delaware law, may prevent or delay an acquisition of Varex, which could decrease the trading price of Varex's common stock.

Varex's Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws contain, and Delaware law contains, provisions that are intended to deter coercive takeover practices and inadequate takeover bids by making such practices or bids unacceptably expensive to the bidder and to encourage prospective acquirers to negotiate with Varex's board of directors rather than to attempt a hostile takeover. These provisions include, among others:

- the inability of Varex's stockholders to call a special meeting;
- the inability of Varex's stockholders to act without a meeting of stockholders;
- rules regarding how stockholders may present proposals or nominate directors for election at stockholder meetings;
- the right of Varex's board of directors to issue preferred stock without stockholder approval;
- the division of Varex's board of directors into three classes of directors, with each class serving a staggered three-year term, and this classified board provision could have the effect of making the replacement of incumbent directors more time-consuming and difficult, until the 2022 annual meeting of stockholders, after which directors will be elected annually;
- a provision that stockholders may only remove directors with cause while the board is classified;
- the ability of Varex's directors, and not stockholders, to fill vacancies on Varex's board of directors; and,
- the requirement that the affirmative vote of stockholders holding at least 66 2/3% of Varex's voting stock is required to amend certain provisions in Varex's Amended and Restated Certificate of Incorporation (relating to the term and removal of its directors, the filling of its board vacancies, the calling of special meetings of stockholders, stockholder action by written

consent, the elimination of liability of directors to the extent permitted by Delaware law and indemnification of directors and officers), although this requirement will expire on the completion of the 2021 annual meeting of stockholders, after which Varex's Amended and Restated Certificate of Incorporation may be amended by the affirmative vote of the holders of at least a majority of the outstanding voting stock.

In addition, because Varex did not elect to be exempt from Section 203 of the Delaware General Corporation Law (the "DGCL"), this provision could also delay or prevent a change of control that stockholders may favor. Section 203 provides that, subject to limited exceptions, persons that acquire, or who are affiliated with a person that acquires, more than 15% of the outstanding voting stock of a Delaware corporation (an "interested stockholder") shall not engage in any business combination with that corporation, including by merger, consolidation, or acquisitions of additional shares, for a three-year period following the date on which the person became an interested stockholder, unless: (1) prior to such time, the board of directors of such corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder; (2) upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of such corporation at the time the transaction commenced; or (3) on or subsequent to such time the business combination is approved by the board of directors of such corporation and authorized at a meeting of stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock of such corporation not owned by the interested stockholder.

These provisions are not intended to make Varex immune from takeovers. However, these provisions will apply even if the offer may be considered beneficial by some stockholders and could delay or prevent an acquisition that Varex's board of directors determines is not in the best interests of Varex and Varex's stockholders. These provisions may also prevent or discourage attempts to remove and replace incumbent directors.

Furthermore, certain provisions in Varex's Indenture governing the Convertible Notes may make it more difficult or expensive for a third party to acquire Varex. For example, the Indenture requires Varex, at the holders' election, to repurchase the Convertible Notes for cash on the occurrence of a fundamental change and, in certain circumstances, to increase the conversion rate for a holder that converts its Convertible Notes in connection with a make-whole fundamental change. A takeover of Varex may trigger the requirement that we repurchase the Convertible Notes or increase the conversion rate, which could make it costlier for a third party to acquire Varex. Varex's Indenture also prohibits Varex from engaging in a merger or acquisition unless, among other things, the surviving entity assumes the obligations under the Convertible Notes and Varex's Indenture. These and other provisions in Varex's Indenture could deter or prevent a third party from acquiring Varex even when the acquisition may be favorable to holders of the Convertible Notes or Varex's stockholders.

Liabilities related to Varex's operations when it was part of Varian, or liabilities associated with its spin-off from Varian, could materially and adversely affect Varex's business, financial condition, results of operations, and cash flows.

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

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our business is primarily located in Salt Lake City, Utah, where we own approximately 37 acres of land and approximately 494,000 square feet of space used for manufacturing, administrative functions and research and development, for both our Medical and Industrial segments. We also own or lease 34 other facilities throughout North America, Europe and Asia (located in 8 states and 17 foreign countries) that comprise over 2 million square feet of manufacturing facilities, warehouses, sales and service, research and development and office space, which are used for our Medical and/or Industrial segments, depending on the location.

In addition to our location in Salt Lake City, Utah, our other primary owned facilities are located in Las Vegas, Nevada and Franklin Park, Illinois. Our Las Vegas, Nevada, facility has approximately 5 acres of land and 94,000 square feet of space used for manufacturing, administrative functions and research and development, for our Industrial segments. Our Franklin Park, Illinois, facility has approximately 3 acres of land and approximately 61,000 square feet of space used for manufacturing, administrative functions and research and development, for both our Medical and Industrial segments. Subsequent to the end of fiscal year 2020, construction on our owned facility in Doetinchem, the Netherlands, which is approximately 4 acres and approximately 107,000 square feet, was completed.

Primary leased facilities include approximately 144,000 square feet in Laguna, Philippines, approximately 46,000 square feet in Wuxi, China, approximately 34,000 square feet in Bremen, Germany, approximately 34,000 of square feet in Walluf, Germany and approximately 26,000 square feet in San Jose, California, all of which are used for manufacturing and administrative functions for our Medical and Industrial segments.

Item 3. Legal Proceedings

We are subject to various claims, complaints and legal actions in the normal course of business from time to time. We do not believe we have any currently pending litigation for which the outcome could have a material adverse effect on our operations or financial position. See Item 1A. "Risk Factors - Unfavorable results of legal proceedings could materially and adversely affect Varex's financial results."

Item 4. Mine Safety Disclosures

Not applicable.

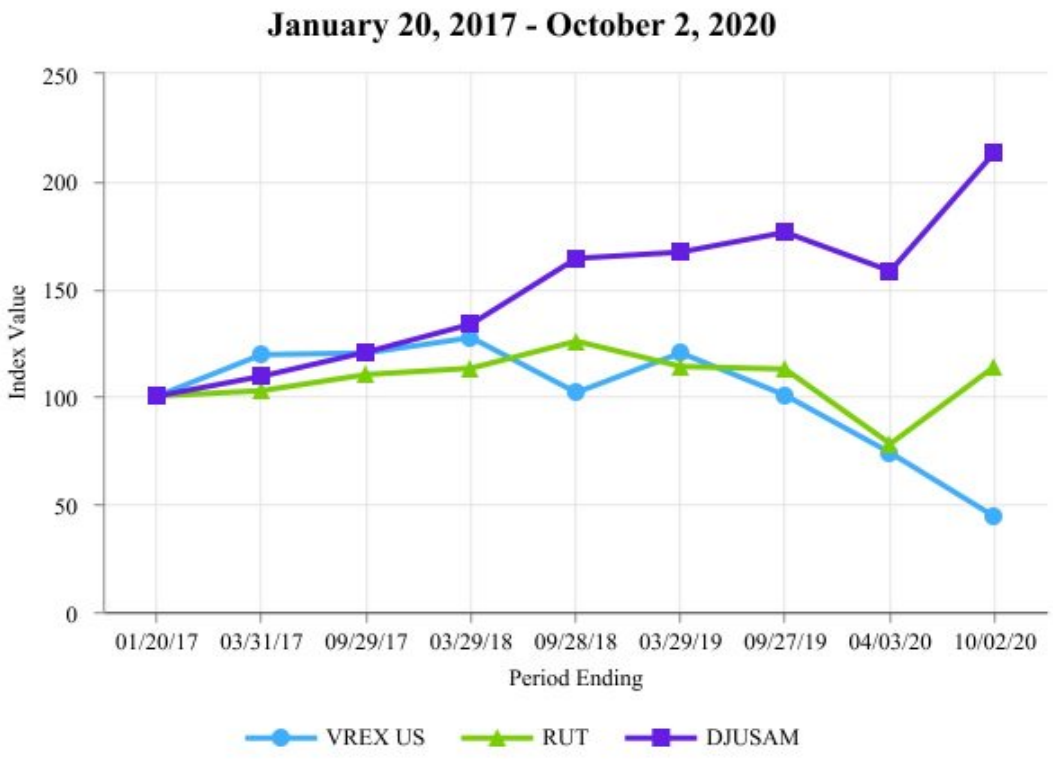
PART II

Item 5. Market for the Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Varex's common stock is traded on the NASDAQ Global Select Market (the "NASDAQ") under the symbol "VREX."

Since our inception, we have not paid any cash dividends and have no current plan to pay cash dividends on Varex common stock. As of November 3, 2020, there were 1,576 holders of record of Varex common stock.

This graph shows the total return on VREX common stock since listing on NASDAQ on January 20, 2017, with comparative total returns for the Russell 2000 Index ("RUT") and the Dow Jones Medical Equipment Index ("DJUSAM"). The graph below assumes that $100.00 was invested on January 20, 2017 in our common stock and the companies listed in the RUT and the DJUSAM, as well as a reinvestment of dividends paid on such investments throughout the period.



Item 6. Selected Financial Data

In January 2017, we separated from Varian. Prior to the date of separation, the financial statements were prepared on a stand-alone basis and derived from Varian's consolidated financial statements as we operated as part of Varian.

The following data, in so far as it relates to each of the fiscal years from 2016 through 2020, has been derived from annual consolidated financial statements, including the consolidated balance sheets at October 2, 2020 and September 27, 2019 and the related consolidated statements of (loss) earnings, of comprehensive (loss) earnings, and of cash flows for the fiscal years 2020, 2019 and 2018 and notes thereto appearing elsewhere herein. In addition, the following financial data should be read in conjunction with our consolidated financial statements and the accompanying notes and the MD&A included elsewhere herein.

Summary of Operations:	**Fiscal Years**				
(In millions, except per share amounts)	**2020**	**2019**	**2018**	**2017[1]**	**2016**
Revenues	$ 738.3	$ 780.6	$ 773.4	$ 698.1	$ 620.1
Gross profit	$ 190.2	$ 256.7	$ 253.9	$ 253.5	$ 248.4
(Loss) earnings before taxes	(72.6)	21.5	25.7	74.8	105.0
Taxes on (loss) earnings	(15.2)	5.7	(2.6)	22.8	36.0
Net (loss) earnings	(57.4)	15.8	28.3	52.0	69.0
Less: Net earnings attributable to noncontrolling interests	0.5	0.3	0.8	0.4	0.5
Net (loss) earnings attributable to Varex	$ (57.9)	$ 15.5	$ 27.5	$ 51.6	$ 68.5
(Loss) earnings per share attributable to Varex					
(Loss) earnings per share - basic	$ (1.49)	$ 0.41	$ 0.73	$ 1.37	$ 1.83
(Loss) earnings per share - diluted	$ (1.49)	$ 0.40	$ 0.72	$ 1.36	$ 1.82
Financial Position at Fiscal Year End:					
Working capital	$ 361.4	$ 263.3	$ 306.1	$ 343.5	$ 282.1
Total assets	1,139.5	1,038.9	987.9	1,040.1	622.4
Total debt (excluding current maturities, net of deferred costs)	452.8	364.4	364.8	463.9	—

(1) The summary of operations for fiscal year 2017 includes operating results from the Acquired Detector Business for the period from May 1, 2017 through September 29, 2017.

Selected Quarterly Financial Data (Unaudited)

The following table sets forth selected financial data from our unaudited quarterly consolidated statements of (loss) earnings for the eight quarters ended fiscal year 2020. The information for each quarter has been derived from unaudited consolidated financial statements and in the opinion of management, include all adjustments, consisting only of normal recurring adjustments, necessary for a fair statement of the results for the unaudited interim periods and includes certain reclassifications and rounding differences. The quarterly data should be read together with our consolidated financial statements and related notes appearing elsewhere in this annual report.

	Fiscal Year 2020				
(In millions, except per share amounts, unaudited)	**First Quarter**	**Second Quarter**	**Third Quarter**	**Fourth Quarter**	**Total Year**
Total revenues	$ 200.1	$ 197.0	$ 171.2	$ 170.0	$ 738.3
Gross profit	$ 61.1	$ 57.6	$ 26.3	$ 45.2	$ 190.2
Net (loss)	$ (1.2)	$ (1.8)	$ (28.2)	$ (26.2)	$ (57.4)
Net (loss) attributable to Varex	$ (1.3)	$ (1.9)	$ (28.3)	$ (26.4)	$ (57.9)
(Loss) per share - basic	$ (0.03)	$ (0.05)	$ (0.73)	$ (0.68)	$ (1.49)
(Loss) per share - diluted	$ (0.03)	$ (0.05)	$ (0.73)	$ (0.68)	$ (1.49)

	Fiscal Year 2019				
(In millions, except per share amounts, unaudited)	**First Quarter**	**Second Quarter**	**Third Quarter**	**Fourth Quarter**	**Total Year**
Total revenues	$ 185.7	$ 195.8	$ 196.7	$ 202.4	$ 780.6
Gross profit	$ 60.0	$ 64.4	$ 60.7	$ 71.6	$ 256.7
Net earnings (loss)	$ 3.0	$ 5.9	$ (1.3)	$ 8.2	$ 15.8
Net earnings (loss) attributable to Varex	$ 3.0	$ 5.8	$ (1.4)	$ 8.1	$ 15.5
Earnings (loss) per share - basic	$ 0.08	$ 0.15	$ (0.04)	$ 0.21	$ 0.41
Earnings (loss) per share - diluted	$ 0.08	$ 0.15	$ (0.04)	$ 0.21	$ 0.40

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Basis of Presentation

We became an independent publicly-traded company in January 2017 following our separation from Varian and subsequent distribution of shares of our common stock to Varian stockholders.

The following discussion and analysis contains forward-looking statements relating to future events or our future financial or operating performance that involve risks and uncertainties, as set forth above under "Forward-Looking Statements." Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors described in this Annual Report on Form 10-K.

Our Business

Varex Imaging Corporation is a leading innovator, designer and manufacturer of X-ray tubes, digital detectors, linear accelerators and other image software processing solutions, which are mission critical components of a variety of X-ray based diagnostic imaging equipment. These products are used in medical imaging as well as in industrial and security imaging applications such as general X-ray, computed tomography ("CT"), C-arms, angiography, fluoroscopy, mammography, and dental. In addition, our components are also used in security and quality inspection systems, as well as for analysis and measurement applications in industrial manufacturing applications. Global original equipment manufacturers ("OEMs") incorporate our X-ray imaging components in their systems to detect, diagnose, protect and inspect. As of October 2, 2020, we had approximately 2,000 full-time equivalent employees, located at 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, Russia, the Middle East, India and Africa. APAC includes Asia 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 demands of our customers. We continue to invest in research and development and employ approximately 500 individuals in product development. Combining this focus on innovation and product performance with strong 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 COVID-19

The unprecedented nature of the COVID-19 pandemic and its impact on the global economy has created a disruption to our business that includes increased uncertainty in demand for certain products for medical and industrial applications, as well as increased variability in our supply chain and manufacturing productivity. The economic downturn triggered by COVID-19 has led to significantly lower demand from our customers and delays in equipment installations. In conjunction with this reduced forecast and uncertainty beyond the forecast horizon, we evaluated our product offering and decided to discontinue certain low margin, low demand products. As a result, during the third quarter of fiscal year 2020 we took an approximately $15.8 million pre-tax non-cash charge for the write-down of associated inventory and restructuring activity, impaired $2.8 million of intangible assets and wrote off a $2.7 million cost investment in a privately-held company.

The COVID-19 pandemic has had a significant effect on hospitals, clinics and outpatient imaging centers as they have encountered declines in surgeries and other non-emergency procedures. In some cases, certain healthcare facilities have been closed and non-emergency procedures have been deferred. As a result, many hospitals, clinics and outpatient imaging centers have reduced their capital purchases of imaging equipment from OEMs which has led to lower demand for X-ray imaging components. In addition, reduced usage of certain X-ray equipment has resulted in less demand for replacement components that wear-out with use. Additionally, equipment installations were delayed, due to reduced access to healthcare institutions. Partially offsetting this has been increased demand for CT and certain radiographic diagnostic imaging equipment used to screen for or assist in the treatment of respiratory diseases (such as COVID-19).

While healthcare systems and economies around the world have begun to reopen, customer demand has not returned to pre-pandemic levels, and the adverse effects of COVID-19 on our financial statements and results of operations have been significant. While we believe that the fundamentals driving long-term demand in both our medical and industrial segments remain intact, we believe that in the near-term, reduced demand in our industrial segment and for certain higher end medical products will continue to

depress our results of operations. While our manufacturing sites are currently up and running, COVID-19 and associated economic disruptions have had an adverse impact on our manufacturing capacity, supply chains and distribution systems, including as a result of impacts associated with preventive and precautionary measures that we, other businesses and governments are taking. Supply chain logistics have also become more challenging and while we have had success in localizing our supply chain through our “local-for-local” initiative, supply chain logistics could remain challenging.

The actions taken to combat COVID-19 have had, and we believe will continue to have, a negative impact on our operating results, cash flows and financial condition. We expect uncertainty related to the COVID-19 pandemic to continue into the beginning of calendar year 2021. While we have implemented safeguards and procedures and taken other measures to counter the impact of the COVID-19 pandemic, the full extent to which the COVID-19 pandemic has and will directly or indirectly impact us, including our business, financial condition, and results of operations, will depend on future developments that are highly uncertain and cannot be accurately predicted. We will continue to actively monitor the situation and may take further actions that alter our business operations as may be required by federal, state, or local authorities or that we determine are in the best interests of our employees, customers, suppliers, and stockholders.

Subsequent Measurement of Goodwill

Goodwill is not amortized but is tested annually, or more often if impairment indicators are present, for impairment at a reporting unit level, based on a comparison of the fair value of the reporting unit with its carrying amount. Goodwill is tested for impairment via a one-step process by comparing the fair value of goodwill with its carrying amount. We recognize an impairment for the amount by which the carrying amount exceeds the fair value. We generally use both an income approach utilizing the discounted cash flow method ("DCF") and a market approach utilizing the public company market multiple method, when testing for impairment.

In the third quarter of 2020, changes in facts and circumstances and general market declines from COVID-19 resulted in reduced operating results. We considered these circumstances and the potential long-term impact on cash flows associated with our reporting units and determined that an indicator of possible impairment existed within our Medical and Industrial reporting units. Accordingly, we performed a quantitative impairment analysis to determine the fair values of those reporting units. We used both an income approach utilizing the discounted cash flow method ("DCF") and a market approach utilizing the public company market multiple method. We developed multiple forecasted future cash flow scenarios for the reporting units with varied recovery timing and sales impact assumptions. Based on the output of the analysis, we determined that the fair values of both the Medical and Industrial reporting units exceeded their carrying amounts. Accordingly, no impairment charges were required as of July 3, 2020. However, an impairment charge was required for the Company's in-process R&D.

Fair value determinations require considerable judgment and are sensitive to changes in underlying assumptions, estimates, and market factors. Estimating the fair value of individual reporting units requires us to make assumptions and estimates regarding our future plans, as well as industry, economic, and regulatory conditions. These assumptions and estimates include estimated future annual net cash flows, income tax rates, discount rates, revenue growth rates, forecasted gross margins, market multiples, terminal value and other market factors. This fair value measurement was based on significant inputs not observable in the market and thus represents a Level 3 fair value measurement. If current expectations of future revenue growth rates and forecasted gross margins, both in size and timing, are not met, if market factors outside of our control, such as discount rates, change, if market multiples decline, or if management’s expectations or plans otherwise change, including as a result of the development of our global five-year operating plan, then one or more of our reporting units might become impaired in the future. The Company will continue to monitor the financial performance of and assumptions for its reporting units. A future impairment charge for goodwill could have a material effect on the Company's consolidated financial position and results of operations.

Refer to Note 12. *Goodwill and Intangible Assets,* in the accompanying notes to the consolidated financial statements for more information regarding goodwill.

Operating Segments and Products

Our Chief Executive Officer, who is our Chief Operating Decision Maker ("CODM"), evaluates our product groupings and measures our business performance in two reportable operating segments: Medical and Industrial. The segments align our products and service offerings with customer use in medical and industrial markets and are consistent with how the CODM 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.

Medical

In our Medical segment, we design, develop, manufacture, sell and service X-ray imaging components, including X-ray tubes, digital detectors, high voltage connectors, image-processing software and workstations, 3D reconstruction software, computer-aided diagnostic software, collimators, automatic exposure control devices, generators, heat exchangers, ionization chambers and buckys. These components are used in a range of medical imaging applications, including CT, mammography, oncology, cardiac, surgery, dental, and for other diagnostic radiography uses.

Our X-ray imaging components are sold primarily to OEM customers. These OEM customers then design-in our products into 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 customers for over 25 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 customer's equipment, our customers will typically continue to use us to supply any replacement components and for service and support for that equipment. Some of our products are also included in product registrations for our customer's equipment that require regulatory approval to change. In addition to sales directly to OEM customers, we also sell our products to independent service companies and distributors and directly to end-users for replacement purposes.

We are one of the largest global manufacturers of X-ray components and each year we produce over 27,000 X-ray tubes and 20,000 X-ray detectors. We estimate that our worldwide installed base of products is over 150,000 X-ray tubes, 150,000 X-ray detectors, 300,000 connect and control components and 15,000 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. For example, CT X-ray tubes generally need to be replaced every 2 to 4 years. In China, the replacement cycle for CT X-ray tubes can be as frequent as every 6 to 12 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, but can require 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 with room to grow and includes consistent maintenance revenue on 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 imaging systems, has grown significantly. We are developing CT X-ray tubes and related subsystems for Chinese OEMs as they introduce new systems in China. We presently have multi-year pricing agreements for CT tubes with 8 medical X-ray imaging OEMs 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 China, despite a COVID-19 related slowdown in the beginning of the year, demand for our products has returned, and full year fiscal 2020 results for China exceeded our pre-pandemic expectations.

In recent years our growth in China has been impacted by the trade war with the United States. Our business has been impacted in two principal ways: (1) imports of raw materials from China have become more expensive and (2) importing finished U.S. manufactured products into China has also become more difficult and more expensive. 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. With respect to imports into China, the additional tariffs imposed by the Chinese government have led to a decrease in sales of radiographic detectors manufactured outside of China. To help address these issues, as well as to be closer to our global customer base, we continue to expand manufacturing capabilities at our facilities in China, Germany and the Philippines and also implemented local sourcing strategies to lower our costs and 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.

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 and also baggage screening at airports, and nondestructive testing and inspection applications used in a number of other vertical markets. Our Industrial products include Linatron® X-ray linear accelerators, X-ray tubes, digital detectors and high voltage connectors. 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 as well as 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 airport security for carry-on baggage, checked baggage and palletized cargo, as well as cargo security for the screening of trucks, trains and cargo containers at ports and borders. The end customers for border protection systems are typically government agencies, many of which are in oil-based economies and war zones where there has been significant year over year 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 the aerospace, automotive, electronics, oil and gas, food packaging, metal castings and 3D printing industries. 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.

The economic downturn triggered by the COVID-19 pandemic has reduced the demand for X-ray imaging equipment utilized in the non-destructive testing market as manufacturers have focused on cash preservation and have reduced spending for capital equipment. Additionally, the unprecedented decrease in passenger air traffic has led to decrease in demand in the security market. The Company expects uncertainty in demand to continue for at least the remainder of the current calendar year.

Fiscal Year

Our fiscal year is the 52- or 53-week period ending on the Friday nearest September 30. Fiscal year 2020 was the 53-week period that ended October 2, 2020, fiscal year 2019 was the 52-week period that ended September 27, 2019, and fiscal year 2018 was the 52-week period ended September 28, 2018. Set forth below is a discussion of our results of operations for fiscal years 2020, 2019 and 2018.

Comparison of Results of Operations for Fiscal Year 2020 and 2019

Our annual report on Form 10-K for the fiscal year ended September 27, 2019, filed December 20, 2019, includes a discussion and analysis of our year-over-year changes, financial condition, and results of operations for the fiscal years ended September 27, 2019 and September 28, 2018 in Item 7 of Part II therein.

Revenues, net

(In millions)	2020	% Change	2019	% Change	2018
Medical	$ 584.5	(2)%	$ 596.8	(1)%	$ 602.0
Industrial	153.8	(16)%	183.8	7%	171.4
Total revenues, net	$ 738.3	(5)%	$ 780.6	1%	$ 773.4
Medical as a percentage of total revenues	*79 %*		*76 %*		*78 %*
Industrial as a percentage of total revenues	*21 %*		*24 %*		*22 %*

Medical revenues decreased $12.3 million primarily due to decreased sales of X-ray tubes and digital detectors for oncology, dental, mammography and fluoroscopic applications, offset by increase in sales of OEM X-ray tubes for CT applications and full year impact of revenues related to the acquisition of Direct Conversion in April of 2019.

Industrial revenues decreased $30.0 million due to decreased sales of X-ray tubes for airport security, digital detectors for inspection applications and were partially offset by the full year impact of revenues related to the acquisition of Direct Conversion in April of 2019.

Revenues by Region

(In millions)	2020	% Change	2019	% Change	2018
Americas	$ 255.0	(10) %	$ 282.6	2 %	$ 275.8
EMEA	231.5	(14) %	269.0	6 %	254.5
APAC	251.8	10 %	229.0	(6) %	243.1
Total revenues, net	$ 738.3	(5) %	$ 780.6	1 %	$ 773.4
Americas as a percentage of total revenues	*35 %*		*36 %*		*36 %*
EMEA as a percentage of total revenues	*31 %*		*34 %*		*33 %*
APAC as a percentage of total revenues	*34 %*		*29 %*		*31 %*

The Americas revenues decreased $27.6 million primarily due to decreased sales of X-ray tubes, lower sales of digital detectors and computer-aided detection software as a result of the COVID-19 pandemic. EMEA revenues were also impacted by COVID-19, and decreased $37.5 million primarily due to decreased sales of digital detectors, lower sales of high voltage cables, and lower sales of X-ray tubes partially offset by the full year impact of revenues from the acquisition of Direct Conversion in April of 2019. APAC revenues increased $22.8 million primarily due to increased sales of OEM X-ray tubes in China and the full year impact of revenues from the acquisition of Direct Conversion.

Gross Profit

(In millions)	2020	% Change	2019	% Change	2018
Medical	$ 136.4	(28) %	$ 188.9	(1) %	$ 190.5
Industrial	53.8	(21) %	67.8	7 %	63.4
Total gross profit	$ 190.2	(26) %	$ 256.7	1 %	$ 253.9
Medical gross margin	*23 %*		*32 %*		*32 %*
Industrial gross margin	*35 %*		*37 %*		*37 %*
Total gross margin	*26 %*		*33 %*		*33 %*

Gross margin decreased for fiscal year 2020 compared to 2019. The gross profit for fiscal year 2020 included $22.2 million of restructuring and product discontinuation charges and purchase price accounting adjustments. The gross profit for fiscal year 2019 included $9.4 million of restructuring charges and purchase price accounting adjustments. The medical segment gross margin in 2020 decreased primarily due to restructuring and product discontinuation charges, higher manufacturing costs, and unfavorable product mix. The industrial segment gross margin in 2020 decreased primarily due to lower sales volume and higher manufacturing costs.

Operating Expenses

(In millions)	2020	% Change	2019	% Change	2018
Research and development	$ 78.9	1 %	$ 78.1	(6) %	$ 83.0
As a percentage of total revenues	*10.7 %*		*10.0 %*		*10.7 %*
Selling, general and administrative	$ 142.2	11 %	$ 128.1	4 %	$ 123.4
As a percentage of total revenues	*19.3 %*		*16.4 %*		*16.0 %*
Impairment of intangible assets	$ 2.8	(42) %	$ 4.8	60 %	$ 3.0
As a percentage of total revenues	*0.4 %*		*0.6 %*		*0.4 %*
Operating expenses	$ 223.9	6 %	$ 211.0	1 %	$ 209.4
As a percentage of total revenues	*30.3 %*		*27.0 %*		*27.1 %*

Research and Development

Research and development costs for fiscal year 2020 increased to 10.7% of revenues due to higher prototype material costs. We are committed to investing in research and development efforts to support long-term growth objectives by bringing new and innovative products to market for our customers.

Selling, General and Administrative

Selling, general and administrative expenses as a percentage of total revenues increased to 19.3% for fiscal year 2020 from 16.4% for fiscal year 2019 due to higher audit and consulting fees associated with the remediation of internal control deficiencies and increased legal fees for patent litigation. These were partially offset by reductions in personnel and travel related expenses.

Impairment of intangible assets

Impairment of intangible assets decreased for fiscal year 2020 to $2.8 million as compared to $4.8 million for fiscal year 2019. In connection with the July 2019 announcement of the Santa Clara facility shut down we discontinued further efforts on certain in-process research and development intangible assets. As a result, we recorded a corresponding impairment charge of $4.8 million in fiscal year 2019. See Note 6. *Restructuring,* included in the accompanying notes to our consolidated financial statements for further information.

Interest and Other Expense, Net

The following table summarizes our interest and other expense, net:

(In millions)	2020	% Change	2019	% Change	2018
Interest income	$ 0.1	— %	$ 0.1	(50)%	$ 0.2
Interest expense	(31.4)	49 %	(21.1)	(3)%	(21.7)
Other income (expense), net	(7.6)	138 %	(3.2)	(219)%	2.7
Interest and other expenses, net	$ (38.9)	61 %	$ (24.2)	29 %	$ (18.8)

Interest and other expense, net increased in fiscal year 2020 compared to fiscal year 2019, primarily due to increased interest expense related the issuance of the Convertible Notes in June 2020, early extinguishment of debt and interest rate hedges in September 2020, and increased losses related to equity method investments compared to the prior fiscal year.

Taxes on Earnings

	Fiscal Years	
	2020	2019
Effective tax rate	20.9 %	26.5 %

We had an income tax benefit of $15.2 million and an income tax expense of $5.7 million, for effective rates of 20.9% and 26.5%, for fiscal years 2020 and 2019, respectively.

During fiscal year 2020, our effective tax rate varied from the U.S. federal statutory rate of 21% primarily because of the favorable impact of U.S. net operating losses to be carried back to tax years with greater U.S. federal statutory rates. These favorable tax items are mostly offset by the unfavorable impact of additional losses in certain foreign jurisdictions, limitations on interest expense, and R&D credits for which no benefit is recognized.

During fiscal year 2019, our effective tax rate varied from the U.S. federal statutory rate of 21% primarily because of the favorable impact of changes to the U.S. corporate tax structure resulting from U.S. Tax Reform, and U.S. research and development tax credits. These favorable U.S. tax items were offset by losses in certain foreign jurisdictions for which no benefit is recognized as well as earnings in certain other foreign jurisdictions that are taxed at higher rates.

During fiscal year 2020, U.S. Tax Reform provisions, including GILTI (global intangible low-taxed income), BEAT (base-erosion anti-abuse tax), FDII (foreign-derived intangible income), limitations on interest expense deductions, and other components, if applicable, have been included in the calculation of the fiscal year 2020 tax provision. The determination of the tax effects of U.S. Tax Reform may change following future legislation or further interpretation of U.S. Tax Reform from U.S. Federal and state tax authorities. These provisions became effective for us during fiscal year 2019. The guidance for accounting for U.S. Tax Reform

required taxpayers to make an election regarding the accounting for GILTI. This policy election is to either: (1) treat GILTI as a period cost if and when incurred, or (2) recognize deferred taxes for basis differences that are expected to reverse as GILTI in future years. We made the accounting policy election to account for GILTI under the period cost method.

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 continue to generate cash from operating activities and believe that our operating cash flow, cash on our balance sheet and availability under our new ABL Facility 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 and long-term basis, and are sufficient to meet our anticipated operating cash need for at least the next 12 months. The maximum availability under our ABL Facility was $100.0 million as of October 2, 2020, however, the borrowing base under the ABL Facility fluctuates from month-to-month depending on the amount of eligible accounts receivable and inventory. See Item 1A. “Risk Factors” for a further discussion. At October 2, 2020 we had $452.8 million in long-term debt and $2.5 million of current maturities of long-term debt, net of deferred issuance costs of $56.0 million. See Note 10. *Borrowings,* in the accompanying notes to our consolidated financial statements for more information regarding our indebtedness.

Cash and Cash Equivalents

The following table summarizes our cash and cash equivalents:

(In millions)	October 2, 2020	September 27, 2019	$ Change	% Change
Cash and cash equivalents	$ 100.6	$ 29.9	$ 70.7	236.5 %

Borrowings

The following table summarizes the changes in our debt outstanding:

(In millions)	October 2, 2020	September 27, 2019	$ Change	% Change
Current portion of Term Facility	$ —	$ 29.4	$ (29.4)	(100.0)%
Current portion of Other debt	2.5	1.3	1.2	92.3 %
Revolving Credit Facility	—	59.0	(59.0)	(100.0)%
Asset-Based Loan	—	—	—	N/A
Term Facility	—	308.6	(308.6)	(100.0)%
Convertible Senior Unsecured Notes	200.0	—	200.0	N/A
Senior Secured Notes	300.0	—	300.0	N/A
Other debt	8.8	2.5	6.3	252.0 %
Total debt outstanding, gross	511.3	400.8	110.5	27.6 %
Debt issuance costs - Credit Agreement	—	(5.7)	5.7	(100.0)%
Unamortized discount and issuance costs - Convertible Notes	(50.4)	—	(50.4)	N/A
Debt issuance costs - Senior Secured Notes	(5.6)	—	(5.6)	N/A
Total debt outstanding, net	$ 455.3	$ 395.1	$ 60.2	15.2 %

Cash Flows

(In millions)	Fiscal Years 2020	2019	2018
Net cash flow provided by (used in):			
Operating activities	$ 13.2	$ 71.9	$ 85.3
Investing activities	(26.9)	(93.2)	(25.2)
Financing activities	83.6	(0.1)	(90.4)
Effects of exchange rate changes on cash and cash equivalents	0.9	(0.7)	(0.5)
Net increase (decrease) in cash and cash equivalents	$ 70.8	$ (22.1)	$ (30.8)

Net Cash Provided by Operating Activities. Cash from operating activities consists primarily of net earnings adjusted for certain non-cash items, including share-based compensation, depreciation, amortization and impairment of intangible assets, inventory write-downs, deferred income taxes, amortization of deferred loan costs, income and loss from equity investments and the effect of changes in operating assets and liabilities.

For fiscal year 2020, compared to fiscal year 2019, net cash provided by operating activities were as follows:

- Net losses were $(57.4) million compared to net earnings of $15.8 million,
- Non-cash adjustments to net earnings were $84.5 million compared to $51.4 million,
- Operating assets and liabilities activity:
  - Accounts receivable decreased by $17.7 million compared to a decrease of $14.8 million,
  - Inventories increased by $42.7 million compared to an increase of $11.1 million,
  - Prepaid expenses and other assets increased $9.3 million compared to a decrease of $4.3 million,
  - Accounts payable increased by $14.3 million compared to a decrease of $9.0 million,
  - Accrued liabilities and other long-term operating liabilities increased by $8.1 million compared to an increase of $10.9 million, and
  - Deferred revenues decreased by $2.0 million compared to a decrease of $5.2 million.

Net cash used in investing activities. Cash used in investing activities was $26.9 million and $93.2 million for the fiscal years 2020 and 2019, respectively. Net cash used in investing activities for fiscal year 2020 related primarily to the building of our facility in the Netherlands as well as capital expenditures in our sources and detectors businesses. Net cash used in investing activities for fiscal year 2019 related primarily to the acquisition of 98.2% of the outstanding shares of common stock of Direct Conversion for $69.5 million in cash, net of cash acquired, and capital expenditures for property plant and equipment of $19.8 million.

Net Cash Provided by (Used in) Financing Activities. Financing activities for the fiscal year 2020 consisted of the issuance of $200.0 million in aggregate principal amount of 4.00% unsecured convertible senior notes due 2025 (“Convertible Notes”). The net proceeds from the issuance of the Convertible Notes, after deducting transaction fees, were approximately $193.1 million. In connection with offering the Convertible Notes, we separately entered into privately negotiated convertible note hedge transactions. We used $11.2 million of the net proceeds from the issuance of the Convertible Notes to pay the cost of the convertible note hedge transactions.

Additionally, during fiscal year 2020 we issued $300.0 million aggregate principal amount of 7.875% Senior Secured Notes due 2027 (the "Senior Secured Notes"). The net proceeds from the Senior Secured Notes after initial purchasers’ discount, commissions and estimated fees and expenses of $5.6 million, were approximately $294.4 million. We used $267.5 million of the proceeds from the offering to terminate and repay our previously existing credit agreement.

Financing activities for the fiscal year 2019 primarily consisted of borrowings under our credit agreements of $85.4 million, repayments of borrowings of $87.0 million, and net proceeds from equity plans of $2.5 million.

Days Sales Outstanding

Trade accounts receivable days sales outstanding (“DSO”) was 66 days and 63 days at October 2, 2020 and September 27, 2019, respectively. Our accounts receivable and DSO are impacted by a number of factors, primarily including the timing of product shipments, collections performance, payment terms, the mix of revenues from different regions and the effects of economic instability.

Contractual Obligations

The following table summarizes, as of October 2, 2020, the total amount of future payments due in various future periods:

	Payments Due by Period				
(In millions)	**Total**	**Fiscal Year 2021**	**Fiscal Years 2022-2023**	**Fiscal Years 2024-2025**	**Beyond**
Operating lease obligations	$ 34.1	$ 7.1	$ 10.8	$ 6.8	$ 9.4
Principal payments on borrowings	511.3	2.5	5.0	202.9	300.9
dpiX fixed cost commitment	3.2	3.2	—	—	—
Dividends to MeVis noncontrolling interest	3.8	0.5	1.1	1.1	1.1
Supplier equipment acquisition	10.4	6.3	4.1	—	—
Total	$ 562.8	$ 19.6	$ 21.0	$ 210.8	$ 311.4

We lease office space under non-cancelable operating leases. The leases expire at various dates through 2026, excluding extensions at our option, and contain provisions for rental adjustments, including in certain cases, adjustments based on increases in the Consumer Price Index. The leases generally contain renewal provisions for varying periods of time.

For further discussion regarding our borrowings, see Note 10. *Borrowings,* included in the accompanying notes to our consolidated financial statements.

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. For the remainder of calendar year 2020, we estimate that we have fixed cost commitments of $3.2 million related to this amended agreement. The fixed cost commitment for future periods will be determined and approved by the dpiX board of directors at the beginning of each calendar year. The amended agreement will continue unless the ownership structure of dpiX changes (as defined in the amended agreement).

In October 2015, pursuant to a Domination and Profit and Loss Transfer Agreement (the "MeVis Agreement"), we committed to grant the noncontrolling shareholders of MeVis: (1) an annual recurring net compensation of €0.95 per MeVis share; and, (2) a put right for their MeVis shares at €19.77 per MeVis share. The annual net payment will continue for the life of the MeVis Agreement, which we anticipate will continue for as long as we remain as the controlling shareholder of MeVis. The put right for the MeVis shares expired in September 2020. As of October 2, 2020, noncontrolling shareholders together held approximately 0.5 million shares of MeVis, representing 26.3% of the outstanding shares.

Contingencies

From time to time, we are a party to or otherwise involved in legal proceedings, claims and government inspections or investigations, customs and duty audits and other matters both inside and outside the United States, arising in the ordinary course of our business or otherwise. Such matters are subject to many uncertainties and outcomes are not predictable with assurance.

See Part 1, Item 3 of this Annual Report for additional information regarding legal proceedings and Note 13. *Commitments and Contingencies,* in the notes to our consolidated financial statements for further information regarding certain of our contractual obligations and contingencies, which discussion is incorporated herein by reference.

Off-Balance Sheet Arrangements

In conjunction with the sale of our products in the ordinary course of business, and consistent with industry practice, we provide standard indemnification of business partners and customers for losses suffered or incurred for property damages, death and injury and for patent, copyright or any other intellectual property infringement claims by any third parties with respect to our products. The terms of these indemnification arrangements are generally perpetual. Except for losses related to property damages, the maximum potential amount of future payments we could be required to make under these arrangements is unlimited. As of October 2, 2020, we have not incurred any material costs to defend lawsuits or settle claims related to these indemnification arrangements. As a result, we believe the estimated fair value of these arrangements is minimal.

We also have indemnification obligations to our directors and officers and certain of our employees that serve as officers or directors of our foreign subsidiaries that may require us to indemnify our directors and officers and those certain employees against liabilities that may arise by reason of their status or service as directors or officers, and to advance their expenses incurred as a result of any legal proceeding against them as to which they could be indemnified.

Critical Accounting Policies and Estimates

The preparation of our 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. For a discussion of how these estimates and other factors may affect our business, see Item 1A. “Risk Factors.”

We periodically review our accounting policies, estimates and assumptions and make adjustments when facts and circumstances dictate. Such accounting policies 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. For a discussion of how these estimates and other factors may affect our business, see Item 1A. “Risk Factors.”

Inventories

Inventories are valued at the lower of cost or net realizable value. Costs include materials, labor and manufacturing overhead and is computed using standard cost (which approximates actual cost) on a first-in-first-out basis. We evaluate the carrying value of our inventories taking into consideration such factors as historical and anticipated future sales compared to quantities on hand and the prices we expect to obtain for products in our various markets. We adjust excess and obsolete inventories to net realizable value and write-downs of excess and obsolete inventories are recorded as a component of cost of revenues.

Goodwill and Intangible Assets

Goodwill is initially recorded when the purchase price paid for a business acquisition exceeds the estimated fair value of the net identified tangible and intangible assets acquired. Our future operating performance will be impacted by the future amortization of these acquired intangible assets and potential impairment charges related to these intangibles or to goodwill if indicators of impairment exist. The allocation of the purchase price from business acquisitions to goodwill and intangible assets could have a material impact on our future operating results. In addition, the allocation of the purchase price of the acquired businesses to goodwill and intangible assets requires us to make significant estimates and assumptions, including estimates of future cash flows expected to be generated by the acquired assets and the appropriate discount rate for those cash flows. Should conditions differ from management’s estimates at the time of the acquisition, material write-downs of intangible assets and/or goodwill may be required, which would adversely affect our operating results.

We evaluate goodwill for impairment at least annually or whenever an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. The evaluation includes consideration of qualitative factors including industry and market considerations, overall financial performance, and other relevant events and factors affecting the reporting unit. If we determine that a quantitative analysis is necessary, we perform a quantitative analysis which consists of a comparison of the fair value of a reporting unit against its carrying amount, including the goodwill allocated to each reporting unit. We determine the fair value of our reporting units based on a combination of income and market approaches. The income approach is based on the present value of estimated future cash flows of the reporting units and the market approach is based on a market multiple calculated for each reporting unit based on market data of other companies engaged in similar business. If the carrying amount of the reporting unit is in excess of its fair value, the difference between the fair value and carrying amount is recorded as an impairment loss. The impairment test for intangible assets with indefinite useful lives, if any, consists of a comparison of fair value to carrying value, with any excess of carrying value over fair value being recorded as an impairment loss.

In fiscal years 2020, 2019 and 2018, we performed the annual goodwill impairment test for our two reporting units and found no impairment. We performed the annual goodwill analysis as of the first day of the fourth quarter of each fiscal year (using balances as of the end of the third quarter of that fiscal year). For both reporting units, based upon the annual goodwill analysis that we performed as of the first day of the fourth quarter of the respective fiscal years, either a quantitative analysis of the impairment test was not completed based on evaluation of qualitative factors or, if quantitative analysis was completed, the fair value was substantially in excess of carrying value. However, significant changes in our projections about our operating results or other factors could cause us to make interim assessments of impairments in any quarter that could result in some or all of the goodwill being impaired.

In the third quarter of 2020, changes in facts and circumstances and general market declines from COVID-19 resulted in reduced operating results. We considered these circumstances and the potential long-term impact on cash flows associated with our reporting units and determined that an indicator of possible impairment existed within our Medical and Industrial reporting units. Accordingly, we performed a quantitative impairment analysis to determine the fair values of those reporting units. We used both an income approach utilizing the discounted cash flow method ("DCF") and a market approach utilizing the public company market multiple method. We developed multiple forecasted future cash flow scenarios for the reporting units with varied recovery timing and sales impact assumptions. Based on the output of the analysis, we determined that the fair values of both the Medical and Industrial reporting units substantially exceeded their carrying amounts. Accordingly, no impairment charges were required as of July 3, 2020.

Fair value determinations require considerable judgment and are sensitive to changes in underlying assumptions, estimates, and market factors. Estimating the fair value of individual reporting units requires us to make assumptions and estimates regarding our future plans, as well as industry, economic, and regulatory conditions. These assumptions and estimates include estimated future annual net cash flows, income tax rates, discount rates, revenue growth rates, forecasted gross margins, market multiples, terminal value and other market factors. This fair value measurement was based on significant inputs not observable in the market and thus represents a Level 3 fair value measurement. If current expectations of future revenue growth rates and forecasted gross margins, both in size and timing, are not met, if market factors outside of our control, such as discount rates, change, if market multiples decline, or if management’s expectations or plans otherwise change, including as a result of the development of our global five-year operating plan, then one or more of our reporting units might become impaired in the future. The Company will continue to monitor the financial performance of and assumptions for its reporting units. A future impairment charge for goodwill could have a material effect on the Company's consolidated financial position and results of operations.

We will continue to make assessments of impairment on an annual basis or more frequently if indicators of potential impairment arise.

Taxes on Earnings

Current income tax expense or benefit is the amount of income taxes expected to be payable or receivable for the current year. Deferred income tax liabilities or assets are established for the expected future tax consequences resulting from the differences in financial reporting and tax bases of assets and liabilities. A valuation allowance is provided if it is more likely than not that some or all of the deferred tax assets will not be realized. In addition, we provide reserves for uncertain tax positions when such tax positions do not meet the recognition thresholds or measurement standards prescribed by the authoritative guidance for accounting for income taxes. Amounts for uncertain tax positions are adjusted in periods when new information becomes available or when positions are effectively settled. Interest and penalties related to uncertain tax positions are recognized as a component of income tax expense.

On December 22, 2017, the U.S. Government enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act of 2017 (“U.S. Tax Reform”). U.S. Tax Reform significantly revised the U.S. corporate income tax structure including a lower corporate statutory rate and changes to the way foreign earnings are taxed. U.S. GAAP requires that the impact of tax legislation be recognized in the period in which the law is enacted. In accordance with these rules, we are including the impact of certain provisions of U.S. Tax Reform to the extent they are effective during the current reporting period.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted in response to the COVID-19 pandemic. The CARES Act, among other things, permits NOL carryovers and carrybacks to offset 100% of taxable income for taxable years beginning before 2021. In addition, the CARES Act allows NOLs incurred in 2018, 2019, and 2020 to be carried back to each of the five preceding taxable years to generate a refund of previously paid income taxes. On July 2, 2020, the US Treasury Department issued a regulation providing an election to waive NOL carryback to a former consolidated group. We have evaluated the impact of the CARES Act and concluded the NOL carryback provision of the CARES Act will result in a material cash tax benefit. The CARES Act retroactively clarified treatment of qualified improvement property as 15-year property instead of 39-year property as defined under U.S. Tax Reform. Certain qualified improvement property is also eligible for bonus depreciation.

Recent Accounting Standards or Updates Not Yet Effective

See Note 1. *Summary of Significant Accounting Policies,* of the notes to the consolidated financial statements for a description of recent accounting standards, including the expected dates of adoption and the estimated effects on our 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 total backlog at October 2, 2020 was $207.6 million, a decrease of 21.7% from the backlog of $265.2 million at September 27, 2019.

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 7A. Quantitative and Qualitative Disclosures about Market Risks

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, consider moving to in-sourcing 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 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, and net investments in foreign subsidiaries. We generally hedge portions of forecasted foreign currency, typically for one month. In addition, we hold a cross-currency swap 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. However, we may choose not to hedge certain foreign exchange exposures for a variety of reasons including, but not limited to, accounting considerations or the prohibitive economic cost of hedging particular exposures.

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 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 and requiring certain industrial customers to provide a down payment.

Interest Rate Risk

Borrowings under our ABL Facility bear interest at floating interest rates. At October 2, 2020, we had no borrowings subject to floating interest rates. See Note 10. *Borrowings,* of the notes to our consolidated financial statements for further information.

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 fiscal year ended October 2, 2020, we did not have any commodity derivative instruments in place to manage our exposure to price changes.

Item 8. Financial Statements and Supplementary Data.

The Consolidated Financial Statements and Schedules listed in the Index to Financial Statements, Schedules and Exhibits on page F-1 are filed as part of this Annual Report and incorporated in this Item 8 by reference.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of 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, are designed to ensure 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 Securities and Exchange Commission and to ensure that such information required to be disclosed is accumulated and communicated to management, including our principal executive and financial officers, as appropriate to allow timely decisions regarding required disclosure.

The Chief Executive Officer (CEO) and the Chief Financial Officer (CFO), with assistance from other members of management, have evaluated the effectiveness of our disclosure controls and procedures as of October 2, 2020 and, based on their evaluation, the CEO and CFO have concluded that the disclosure controls and procedures were not effective as of such date due to the material weaknesses in internal control over financial reporting described in "Management's Annual Report on Internal Control Over Financial Reporting" below.

Management's Annual Report on Internal Control Over Financial Reporting

Management, under the supervision of our CEO and CFO, is responsible for establishing and maintaining adequate internal control over our financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our internal control over financial reporting is a process designed 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 and includes those policies and procedures that:

(1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect our transactions and the dispositions of our assets;
(2) provide reasonable assurance that our transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles and that our receipts and expenditures are being made only in accordance with appropriate authorizations; and
(3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

Our management, including the CEO and CFO, believes that any disclosure controls and procedures or internal control over financial reporting, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of internal controls are met. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Under the supervision and with the participation of our management, we assessed the effectiveness of our internal control over financial reporting as of October 2, 2020, using the criteria described in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). As a result of that evaluation, our management concluded that the Company's internal control over financial reporting was not effective as of October 2, 2020, the end of the period covered by this Form 10-K, because of the material weaknesses in our internal control over financial reporting.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

We have identified the following control deficiencies that constituted material weaknesses in our internal control over financial reporting as of October 2, 2020:

- ***Control Environment:*** We did not maintain an effective control environment as we had an insufficient complement of resources with the requisite knowledge and experience to create the proper environment for effective internal control over financial reporting such that corrective activities to our internal control over financial reporting are appropriately applied, prioritized, and implemented in a timely manner.

- ***Risk Assessment*****:** We did not design and maintain an effective risk assessment process to identify and assess the risks in our business processes. Specifically, we did not adequately identify new and evolving risks of material misstatement and design and implement controls to address those risks as a result of changes to our business operating environment.

These material weaknesses contributed to the following material weaknesses:

- ***Inventory and cost of revenues:*** We did not design and maintain effective controls related to accounting for inventory and cost of revenues, including maintaining effective business process controls to prevent or detect misstatements in the existence, accuracy, and presentation and disclosure of inventory. Specifically we did not maintain effective controls related to the verification of inventory at third party vendor locations and the presentation and disclosure of inventory classification.

- ***Financial Reporting:*** We did not design and maintain effective controls over our financial reporting close process to prevent or detect material misstatements in our financial statements. Specifically, we did not design and maintain effective controls related to the completeness, accuracy and elimination of intercompany balances and ensuring appropriate segregation of duties as it relates to the preparation and review of journal entries.

The deficiencies relating to inventory and financial reporting resulted in immaterial audit adjustments and out of period adjustments to the Company's consolidated financial statements for the fiscal year ended and as of October 2, 2020. Additionally, these control deficiencies could result in misstatements impacting the aforementioned accounts or disclosures that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected.

The effectiveness of the Company’s internal control over financial reporting as of October 2,2020 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which is included in “Item 8. Financial Statements and Supplementary Data.”

Remediation of Previously Reported Material Weaknesses in Fiscal Year 2019 Form 10-K

We previously identified and disclosed in our Annual Report on Form 10-K for the year ended September 27, 2019, the following material weaknesses in our internal control over financial reporting, of which certain aspects have been remediated:

- We did not design and maintain effective controls related to accounting for revenue, deferred revenue and related accounts receivable, including maintaining business process controls to prevent or detect misstatements in the processing of customer transactions. Specifically, we did not design and maintain effective controls related to the review of the completeness and accuracy of customer order entry, quantity and pricing. Additionally, we did not design and maintain effective controls for the effect of the adoption of and continuous accounting for Revenue from Contracts with Customers (“ASC 606”) to prevent and detect misstatements.

- We did not design and maintain effective controls related to accounting for inventory and cost of revenues, including maintaining effective business process controls to prevent or detect misstatements in the accuracy and valuation of inventory. Specifically, we did not maintain effective controls related to inventory count procedures and the valuation of inventory at lower of cost and net realizable value.

- We did not design and maintain effective controls over our financial reporting close process to prevent or detect material misstatements in our financial statements. Specifically, we did not maintain an effective business performance monitoring review control at our international entities, design and maintain controls to identify post-close events which occur before the

financial statements are available to be issued and design and maintain effective control over the review of the statement of cash flows.

During the first three quarters of fiscal 2020, we substantially completed our plans to remediate certain of these material weaknesses by performing the following:

- Implementing or enhancing controls in the revenue business process over (i) standard contract reviews, (ii) customer invoice reviews, (iii) review of monthly sales order changes and (iv) an addition of a control that reviews and approves the summary of service billings for the period, and (v) improved our controls for the continuing accounting of ASC 606.

- Implementing or enhancing controls in the inventory business process over (i) inventory count procedures, (ii) review of inventory adjustments and approvals, (iii) review over variance analysis, and (iv) review of the valuation of inventory at lower of cost and net realizable value.

- Implementing or enhancing controls in the financial reporting close process over (i) international business performance reviews to include improved documentation of items for follow-up and resolution, (ii) identification of post-close events which occur before the financial statements are available to be issued and (iii) the review of the statement of cash flows.

During the quarter ended October 2, 2020, we completed the testing and evaluation of the operating effectiveness of the newly designed and implemented and enhanced controls and concluded these material weaknesses have been remediated as of October 2, 2020.

Ongoing Remediation Efforts and Status of Remaining Material Weaknesses

We continue to devote substantial effort to remediating the identified material weaknesses. We are continuing to enhance our overall control environment through the following:

- ***Control Environment:*** During fiscal year 2020, management invested significantly in the quality of our accounting talent including management, technical, process improvement and financial system roles. Additionally, we implemented programs to: improve our talent acquisition and retention platforms; enhance technical, transactional and control knowledge of our accounting teams; and create a culture of accountability and control. These programs have significantly improved the stability of our global accounting organization. While significant progress has been made in response to the material weakness, additional time is needed to demonstrate sustainability as it relates to our internal control over financial reporting and improvements made to our complement of resources.

- ***Risk Assessment:*** We continue to enhance our comprehensive risk assessment process to identify, design, implement, and re-evaluate our control activities, including monitoring controls related to the design and operating effectiveness of certain control activities pertaining to our business process environment.

- ***Inventory and cost of revenues:*** We continue to enhance controls related to the verification of inventory at third party vendor locations as well as our controls over presentation and disclosure of inventory classification.

- ***Financial Reporting***: We continue to enhance controls related to the monitoring of journal entry posting rights and responsibilities. To the extent certain conflicts remain, we will implement controls to review the remaining conflicts and permissions and document the appropriate control that effectively mitigates the risk associated with the conflicts and/or permissions. We also continue to enhance the design of controls over the completeness, accuracy and elimination of intercompany balances.

Changes in Internal Control Over Financial Reporting

There have been no changes in internal control over financial reporting during the quarter ended October 2, 2020 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Directors and Executive Officers

The information required by this item with respect to our executive officers is set forth in Part I of this Annual Report on Form 10-K and information relating to the availability of our code of conduct for executive officers and directors is set out below. The other information required by this item is incorporated by reference from our definitive proxy statement for the 2021 Annual Meeting of Stockholders under the captions "Proposal One — Election of Directors." and "Stock Ownership-Section 16(a) Beneficial Ownership Reporting Compliance." Our definitive proxy statement for the 2021 Annual Meeting of Stockholders will be filed with the SEC no later than 120 days after October 2, 2020.

Code of Conduct

We have adopted a Code of Conduct that applies to all of our executive officers and directors. The Code of Conduct is available on our website at http://www.varexim aging.com.

We intend to satisfy the disclosure requirements under Item 5.05(c) of Form 8-K regarding an amendment to, or waiver from, a provision of the Code of Conduct that applies to our principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions by posting such information on our website, specified above.

Item 11. Executive Compensation.

The information required by this item is incorporated by reference from our definitive proxy statement for the 2021 Annual Meeting of Stockholders under the caption "Executive Compensation."

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Equity Compensation Plan Information

The following table provides information as of October 2, 2020 with respect to the shares of our common stock that may be issued under our existing equity compensation plans.

Plan Category (amounts in thousands except per share data)	Number of securities to be issued upon exercise of outstanding options, warrants and rights [2] (a)	Weighted average exercise price of outstanding options, warrants, and rights [1] (b)	Number of securities remaining available for future issuance under equity compensation plans [3] (excluding securities reflected in columns (a) and (b))
Equity compensation plans approved by security holders	3,677	$ 29.23	5,328
Equity compensation plans not approved by security holders	—	—	—
Total	3,677	$ 29.23	5,328

(1) The weighted average exercise price does not take into account the shares issuable upon vesting of outstanding RSUs and DSUs, which have no exercise price.
(2) Consists of stock options, RSUs, and DSUs granted under the Varex Imaging Corporation 2017 Omnibus Stock Plan and the 2020 Stock Plan. Excludes purchase rights under the ESPP.
(3) Includes 4,786 thousand shares available for future issuance under the 2020 Stock Plan. Also includes 542 thousand shares available for future issuance under the ESPP, including shares subject to purchase during the current purchase period, which commenced on November 2, 2020 (the exact number of which will not be known until the purchase date on April 30, 2021). Subject to the number of shares remaining in the share reserve, the maximum number of shares purchasable by any participant on any one purchase date for any purchase period, including the current purchase period may not exceed 2,000 shares.

The information required by this item with respect to the security ownership of certain beneficial owners and the security ownership of directors and executive officers is incorporated by reference from our definitive proxy statement for the 2021 Annual Meeting of Stockholders under the caption "Stock Ownership—Beneficial Ownership of Certain Stockholders, Directors and Executive Officers."

Item 13. Certain Relationships and Related Transactions and Director Independence.

The information required by this item with respect to certain relationships and related transactions is incorporated by reference from our definitive proxy statement for the 2021 Annual Meeting of Stockholders under the caption "Certain Relationships and Related Transactions." The information required by this item with respect to director and committee member independence is incorporated by reference from our definitive proxy statement for the 2021 Annual Meeting of Stockholders under the caption "Proposal One-Election of Directors."

Item 14. Principal Accountant Fees and Services.

The information required by this item is incorporated by reference from our definitive proxy statement for the 2021 Annual Meeting of Stockholders under the caption "Proposal Four-Ratification of the Appointment of Our Independent Registered Public Accounting Firm."

PART IV

Item 15. Exhibits, Consolidated Financial Statements and Financial Statement Schedules.

Documents filed as part of this annual report include:

1. *Consolidated Financial Statements.* We have filed the consolidated financial statements listed in the index to Consolidated Financial Statements, Schedules and Exhibits on page F-1 as part of this annual report on Form-10K.

2. *Financial Statement Schedules and Other.* All financial statement schedules have been omitted because they are not applicable, or not material or the required information is shown in the consolidated financial statements or the notes thereto.

3. *Exhibits.* The exhibits listed below are filed as part of this annual report on Form 10-K.

Exhibit Number	Description
2.1*	Separation and Distribution Agreement, dated as of January 27, 2017, by and between Varian and (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed January 30, 2017).
2.2*	Master Purchase and Sale Agreement, dated as of December 21, 2016, by and between Varian Medical Systems, Inc. and PerkinElmer, Inc. (incorporated by reference to Exhibit 2.2 to the Company's Amendment No. 3 to the Registration Statement on Form 10 filed December 30, 2016).
2.3*	Amendment No.1 to Master Purchase and Sale Agreement, entered into as of January 17, 2017, by and between PerkinElmer, Inc. and Varian Medical Systems, Inc. (incorporated by reference to Exhibit 2.2 to the Company's Quarterly Report on Form 10-Q filed May 12, 2017).
2.4*	Amendment No.2 to Master Purchase and Sale Agreement, entered into as of April 28, 2017, by and between PerkinElmer, Inc. and Varex Imaging Corporation (incorporated by reference to Exhibit 2.4 to the Company's Quarterly Report on Form 10-Q filed May 12, 2017).
2.5*	Assignment and Assumption Agreement, dated January 27, 2017, by and between Varian Medical Systems, Inc. and Varex Imaging Corporation (incorporated by reference to Exhibit 2.3 to the Company's Quarterly Report on Form 10-Q filed May 12, 2017).
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 Company, as amended January 27, 2017 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed January 30, 2017).
4.1	Information required by Item 202(a) through (d) and (f) of Regulation S-K for each class of Company securities that is registered under Section 12 of the Exchange Act.
4.2*	Indenture, dated June 9, 2020, by and among Varex Imaging Corporation and Wells Fargo Bank, National Association, as Trustee, including form of 4.00% Convertible Senior Notes due 2025 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed June 9, 2020).
4.3	Indenture, dated as of September 30, 2020, by and among Varex Imaging Corporation, the Guarantors party thereto and Wells Fargo Bank, National Association, as trustee and collateral agent, including the form of 7.875% Senior Secured Notes due 2027 as Exhibit A.
10.1*	Transition Services Agreement, dated as of January 27, 2017, by and between Varian and Company (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed January 30, 2017).
10.2*	Tax Matters Agreement, dated as of January 27, 2017 by and between Varian and Company (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed January 30, 2017).
10.3*	Employee Matters Agreement, dated as of January 27, 2017, by and between Varian and Company (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed January 30, 2017).

10.4*	Intellectual Property Matters Agreement, dated as of January 27, 2017, by and between Varian and Company (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed January 30, 2017).
10.5*	Trademark License Agreement, dated as of January 27, 2017, by and between Varian and Company (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed January 30, 2017).
10.6*†	Varex Imaging Corporation 2017 Omnibus Stock Plan (incorporated by reference to Exhibit 99.1 to the Company's Form S-8, filed January 27, 2017).
10.7*†	Form of Nonqualified Stock Option Agreement under the 2017 Omnibus Stock Plan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed February 16, 2017).
10.8*†	Form of Restricted Stock Unit Award Agreement under the 2017 Omnibus Stock Plan (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed February 16, 2017).
10.9*†	Varex Imaging Corporation 2017 Employee Stock Purchase Plan (incorporated herein by reference to Exhibit 99.2 to the Company's Form S-8, filed January 27, 2017).
10.10*†	Varex Imaging Corporation Management Incentive Plan (incorporated by reference to Exhibit 10.9 to the Company's Current Report on Form 8-K filed January 30, 2017).
10.11*†	Form of Change in Control Agreement (incorporated by reference to Exhibit 10.10 to the Company's Current Report on Form 8-K filed January 30, 2017).
10.12*†	Form of Indemnification Agreement (incorporated by reference to Exhibit 10.11 to the Company's Current Report on Form 8-K filed January 30, 2017).
10.13*†	Varex Imaging Corporation 2016 Deferred Compensation Plan (incorporated by reference to Exhibit 10.6 to Amendment No. 2 to Form 10 filed by the Company on December 8, 2016).
10.14*†	Varex Imaging Corporation Frozen Deferred Compensation Plan (incorporated by reference to Exhibit 10.7 to Amendment No. 2 to Form 10 filed by the Company on December 8, 2016).
10.15*†	Form of Grant Agreement for Deferred Stock Units under the 2017 Omnibus Stock Plan (incorporated by reference to Exhibit 10.17 to the Company's Annual Report on Form 10-K filed December 13, 2017.
10.16*†	Form of Grant Agreement for Deferred Stock Units under the 2017 Omnibus Stock Plan (incorporated by reference to Exhibit 10.18 to the Company's Annual Report on Form 10-K filed December 20, 2019).
10.17*†	Varex Imaging Corporation 2020 Omnibus Stock Plan, including the Form of Nonqualified Stock Option Agreement, the Form of Restricted Stock Unit Agreement and the Form of Grant Agreement – Deferred Stock Units (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 14, 2020).
10.18	Credit Agreement dated as of September 30, 2020, by and among Varex Imaging Corporation, Varex Imaging West, LLC, Varex Imaging Deutschland AG, the Guarantors party thereto and Bank of America N.A., as administrative and collateral agent, and the lenders party thereto.
10.19*	Form of Base Convertible Bond Hedge Confirmation, dated June 4, 2020, between Varex Imaging Corporation and each of the counterparties thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed June 9, 2020).
10.20*	Form of Base Warrant Confirmation, dated June 4, 2020, between Varex Imaging Corporation and each of the counterparties thereto (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed June 9, 2020).
10.21*	Form of Additional Convertible Bond Hedge Confirmation, dated June 5, 2020, between Varex Imaging Corporation and each of the counterparties thereto (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed June 9, 2020).
10.22*	Form of Additional Warrant Confirmation, dated June 5, 2020, between Varex Imaging Corporation and each of the Counterparties (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed June 9, 2020).

10.23*	Share Purchase Agreement dated March 21, 2019 between Varex Imaging Corporation, Varex Imaging Investments, B.V. and certain shareholders of Direct Conversions AB (publ) (incorporated by reference to Exhibit 10.1 to Company's Quarterly Report on Form 10-Q filed on May 8, 2019).
10.24*†	Transition Agreement dated February 11, 2020 between Clarence Verhoef and Varex Imaging Corporation (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on May 13, 2020).
10.25†	Offer Letter dated June 8, 2020 by Varex Imaging Corporation to Shubham Maheshwari.
21.1	List of Subsidiaries as of November 3, 2020
23.1	Consent of Independent Registered Public Accounting Firm
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	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
*	Incorporated herein by reference
†	Management contract or compensatory agreement.
++	Portions of this exhibit have been omitted pursuant to a confidential treatment request filed pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

Item 16. Form 10-K Summary

None

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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: November 30, 2020

By: /s/ Shubham Maheshwari

Shubham Maheshwari

Chief Financial Officer

(Duly Authorized Officer and Principal Financial Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Capacity	Date
/s/ SUNNY S. SANYAL Sunny S. Sanyal	President and Chief Executive Officer and Director *(Principal Executive Officer)*	November 30, 2020
/s/ SHUBHAM MAHESHWARI Shubham Maheshwari	Chief Financial Officer *(Principal Financial Officer)*	November 30, 2020
/s/ KEVIN B. YANKTON Kevin B. Yankton	Corporate Controller and Chief Accounting Officer *(Principal Accounting Officer)*	November 30, 2020
/s/ RUEDIGER NAUMANN-ETIENNE Ruediger Naumann-Etienne	Chairman of the Board	November 30, 2020
/s/ JOCELYN D. CHERTOFF Jocelyn D. Chertoff	Director	November 30, 2020
/s/ TIMOTHY E. GUERTIN Timothy E. Guertin	Director	November 30, 2020
/s/ JAY K. KUNKEL Jay K. Kunkel	Director	November 30, 2020
/s/ WALTER M ROSEBROUGH, JR. Walter M Rosebrough, Jr.	Director	November 30, 2020
/s/ CHRISTINE A. TSINGOS Christine A. Tsingos	Director	November 30, 2020

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of Varex Imaging Corporation

Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Varex Imaging Corporation and its subsidiaries (the "Company") as of October 2, 2020 and September 27, 2019, and the related consolidated statements of (loss) earnings, of comprehensive (loss) earnings, of stockholders' equity, and of cash flows for each of the three years in the period ended October 2, 2020, including the related notes (collectively referred to as the "consolidated financial statements"). We also have audited the Company's internal control over financial reporting as of October 2, 2020, based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of October 2, 2020 and September 27, 2019, and the results of its operations and its cash flows for each of the three years in the period ended October 2, 2020 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company did not maintain, in all material respects, effective internal control over financial reporting as of October 2, 2020, based on criteria established in Internal Control - Integrated Framework (2013) issued by the COSO because material weaknesses in internal control over financial reporting existed as of that date related to (i) ineffective control environment as the Company had an insufficient complement of resources with the requisite knowledge and experience to create the proper environment for effective internal control over financial reporting such that corrective activities to the Company's internal control over financial reporting are appropriately applied, prioritized, and implemented in a timely manner, (ii) ineffective risk assessment process to identify and assess the risks in the Company's business processes, (iii) ineffective controls related to the accounting for inventory and cost of revenues, including controls related to the existence, accuracy, and presentation and disclosure of inventory, and (iv) ineffective controls over the Company's financial reporting close process to prevent or detect misstatements in the financial statements, including controls related to the elimination of intercompany balances and to ensure appropriate segregation of duties over the preparation and review of journal entries.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. The material weaknesses referred to above are described in Management's Annual Report on Internal Control Over Financial Reporting appearing under Item 9A. We considered these material weaknesses in determining the nature, timing, and extent of audit tests applied in our audit of the October 2, 2020 consolidated financial statements, and our opinion regarding the effectiveness of the Company's internal control over financial reporting does not affect our opinion on those consolidated financial statements.

Changes in Accounting Principles

As discussed in Notes 1, 2 and 3 to the consolidated financial statements, the Company changed the manner in which it accounts for leases as of September 28, 2019 and the manner in which it accounts for revenues as of September 29, 2018.

Basis for Opinions

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in management's report referred to above. Our responsibility is to express opinions on the Company's consolidated financial statements and on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.
Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements.

Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that (i) relate to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Consolidated Financial Statements - Impact of Resources and Controls Related to Risk Assessment and Financial Reporting

The completeness and accuracy of the consolidated financial statements, including the financial condition, results of operations and cash flows, is dependent on, in part, (i) maintaining sufficient resources to create the proper environment for effective internal control over financial reporting, (ii) designing and maintaining monitoring controls related to the identification and assessment of risk in the business process environment, and (iii) designing and maintaining financial reporting controls, including controls related to the elimination of intercompany balances and segregation of duties over the preparation and review of journal entries.

The principal considerations for our determination that performing procedures relating to the consolidated financial statements - impact of resources and controls related to risk assessment and financial reporting is a critical matter are the high degree of auditor judgment, subjectivity and effort in performing procedures and evaluating audit evidence related to businesses processes which affect substantially all financial statement account balances and disclosures. As described above in the "Opinions on the Financial Statements and Internal Control over Financial Reporting" section, material weaknesses were identified as of October 2, 2020 related to (i) ineffective control environment, (ii) ineffective risk assessment component of internal control, and (iii) the financial reporting close process.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included, among others, evaluating and determining the nature and extent of audit procedures performed and evidence obtained that are responsive to the material weaknesses identified. These procedures also included testing the completeness and accuracy and the elimination of intercompany balances, testing manual journal entries, and evaluating whether segregation of duties was maintained over the recording of entries.

Inventories

As described in Note 1 to the consolidated financial statements, the Company's consolidated inventory balance was $271.9 million as of October 2, 2020. Management values inventories at the lower of cost or net realizable value. Costs include materials, labor and manufacturing overhead and is computed on a first-in-first-out basis. Management evaluates the carrying value of its inventories

taking into consideration such factors as historical and anticipated future sales compared to quantities on hand and the prices management expects to obtain for products in its various markets. Management adjusts excess and obsolete inventories to net realizable value and write-downs of excess and obsolete inventories are recorded as a component of cost of revenues.

The principal considerations for our determination that performing procedures relating to inventories is a critical audit matter are the high degree of auditor judgment, subjectivity and effort in performing procedures and in evaluating audit evidence related to the existence and valuation of inventory. As described above in the "Opinions on the Financial Statements and Internal Control over Financial Reporting" section, material weaknesses were identified as of October 2, 2020 related to the Company's control environment, the risk assessment component of internal control, and the accounting for inventory, including maintaining effective controls related to the verification of inventory at third party vendor locations and presentation and disclosure of inventory classification.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included, among others, performing procedures to test the existence of inventory, including inventory maintained at third party vendor locations, evaluating and testing management's process for determining the valuation of inventory, and testing the classification of inventory.

Goodwill Impairment Assessment

As described in Notes 1 and 12 to the consolidated financial statements, the Company's consolidated goodwill balance was $293.1 million as of October 2, 2020. Management evaluates goodwill for impairment at least annually at the beginning of the fourth quarter of each fiscal year or whenever an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. Management determines the fair value of its reporting units based on a combination of income and market approaches. The income approach is based on the present value of estimated future cash flows of the reporting units, and the market approach is based on a market multiple calculated for each reporting unit based on market data of other companies engaged in similar business. These assumptions and estimates include estimated future annual net cash flows, income tax rates, discount rates, revenue growth rates, forecasted gross margins, market multiples, terminal value and other market factors. In the third quarter of 2020, changes in facts and circumstances and general market declines from COVID-19 resulted in reduced expectations of future operating results. Management considered these circumstances and the potential long-term impact on cash flows associated with its reporting units and determined that an indicator of possible impairment existed within its Medical and Industrial reporting units. Accordingly, management performed a quantitative impairment analysis to determine the fair values of those reporting units. Based on the output of the analysis, management determined that the fair values of both the Medical and Industrial reporting units exceeded their carrying amounts.

The principal considerations for our determination that performing procedures relating to the goodwill impairment assessment is a critical audit matter are the significant judgment by management when determining the fair value measurement of the reporting units; this in turn led to a high degree of auditor judgment, subjectivity and effort in performing procedures and evaluating management's significant assumptions related to the discount rates, revenue growth rates, forecasted gross margins, and market multiples. In addition, the audit effort involved the use of professionals with specialized skill and knowledge.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to management's quantitative goodwill impairment assessment, including controls over the determination of the fair value of the Company's reporting units. These procedures also included, among others, testing management's process for determining the fair value estimate of the reporting units; evaluating the appropriateness of the income and market approaches; testing the completeness, accuracy, and relevance of underlying data used in the estimates; and evaluating the significant assumptions used by management, including the discount rates, revenue growth rates, forecasted gross margins, and market multiples. Evaluating management's assumptions related to revenue growth rates and forecasted gross margins involved evaluating whether the assumptions used by management were reasonable considering (i) the current and past performance of the reporting unit, (ii) the consistency with external market and industry data, and (iii) whether the assumptions were consistent with evidence obtained in other areas of the audit. Professionals with specialized skill and knowledge were used to assist in the evaluation of the income and market approaches and the discount rates and market multiples assumptions.

/s/ PricewaterhouseCoopers LLP
Salt Lake City, Utah
November 30, 2020

We have served as the Company's auditor since 2016.

VAREX IMAGING CORPORATION
CONSOLIDATED STATEMENTS OF (LOSS) EARNINGS

	Fiscal Years		
(In millions, except per share amounts)	**2020**	**2019**	**2018**
Revenues, net	$ 738.3	$ 780.6	$ 773.4
Cost of revenues	548.1	523.9	519.5
Gross profit	190.2	256.7	253.9
Operating expenses:			
Research and development	78.9	78.1	83.0
Selling, general and administrative	142.2	128.1	123.4
Impairment of intangible assets	2.8	4.8	3.0
Total operating expenses	223.9	211.0	209.4
Operating (loss) earnings	(33.7)	45.7	44.5
Interest income	0.1	0.1	0.2
Interest expense	(31.4)	(21.1)	(21.7)
Other (expense) income, net	(7.6)	(3.2)	2.7
Interest and other expense, net	(38.9)	(24.2)	(18.8)
(Loss) earnings before taxes	(72.6)	21.5	25.7
Taxes (benefit) on earnings	(15.2)	5.7	(2.6)
Net (loss) earnings	(57.4)	15.8	28.3
Less: Net earnings attributable to noncontrolling interests	0.5	0.3	0.8
Net (loss) earnings attributable to Varex	$ (57.9)	$ 15.5	$ 27.5
(Loss) earnings per common share attributable to Varex			
Basic	$ (1.49)	$ 0.41	$ 0.73
Diluted	$ (1.49)	$ 0.40	$ 0.72
Weighted average common shares outstanding			
Basic	38.8	38.2	37.9
Diluted	38.8	38.6	38.4

See accompanying notes to the consolidated financial statements.

VAREX IMAGING CORPORATION
CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) EARNINGS

(In millions)	Fiscal Years 2020	2019	2018
Net (loss) earnings	$ (57.4)	$ 15.8	$ 28.3
Other comprehensive (loss) earnings, net of tax:			
Unrealized gain (loss) on interest rate swap contracts	0.4	(6.2)	5.2
Unrealized gain (loss) on defined benefit obligations	0.6	(1.3)	(0.2)
Foreign currency translation adjustments	1.5	—	—
	2.5	(7.5)	5.0
Comprehensive (loss) earnings	(54.9)	8.3	33.3
Less: Comprehensive earnings attributable to noncontrolling interests	0.5	0.3	0.8
Comprehensive (loss) earnings attributable to Varex	$ (55.4)	$ 8.0	$ 32.5

See accompanying notes to the consolidated financial statements.

VAREX IMAGING CORPORATION
CONSOLIDATED BALANCE SHEETS

(In millions, except share amounts)	October 2, 2020	September 27, 2019
Assets		
Current assets:		
Cash and cash equivalents	$ 100.6	$ 29.9
Accounts receivable, net of allowance for doubtful accounts of $0.3 million and $1.0 million at October 2, 2020 and September 27, 2019, respectively	123.8	141.0
Inventories	271.9	248.2
Prepaid expenses and other current assets	25.7	19.3
Total current assets	522.0	438.4
Property, plant and equipment, net	145.2	142.3
Goodwill	293.1	290.8
Intangible assets, net	67.5	86.3
Investments in privately-held companies	51.3	53.6
Deferred tax assets	0.5	—
Operating lease assets	27.7	—
Other assets	32.2	27.5
Total assets	$ 1,139.5	$ 1,038.9
Liabilities, redeemable noncontrolling interests and stockholders' equity		
Current liabilities:		
Accounts payable	$ 72.9	$ 58.2
Accrued liabilities and other current liabilities	70.5	75.7
Current operating lease liabilities	6.1	—
Current maturities of long-term debt	2.5	30.7
Deferred revenues	8.6	10.5
Total current liabilities	160.6	175.1
Long-term debt, net	452.8	364.4
Deferred tax liabilities	2.3	8.2
Operating lease liabilities	23.1	—
Other long-term liabilities	34.9	32.5
Total liabilities	673.7	580.2
Commitments and contingencies (Note 13)		
Redeemable noncontrolling interests	—	10.5
Stockholders' Equity:		
Preferred stock, $0.01 par value: 20,000,000 shares authorized, none issued	—	—
Common stock, $0.01 par value: 150,000,000 shares authorized		
Shares issued and outstanding: 39,059,094 and 38,371,305 at October 2, 2020 and September 27, 2019, respectively	0.4	0.4
Additional paid-in capital	434.4	371.8
Accumulated other comprehensive loss	0.8	(1.7)
Retained earnings	16.1	74.4
Total Varex stockholders' equity	451.7	444.9
Noncontrolling interests	14.1	3.3
Total stockholders' equity	465.8	448.2
Total liabilities, redeemable noncontrolling interests and stockholders' equity	$ 1,139.5	$ 1,038.9

See accompanying notes to the consolidated financial statements.

VAREX IMAGING CORPORATION
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(In millions)	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Total Varex Equity	Noncontrolling Interests	Total Stockholders' Equity
September 29, 2017	37.6	0.4	342.7	0.8	35.1	379.0	—	379.0
Net earnings	—	—	—	—	27.5	27.5	0.3	27.8
Exercise of stock options	0.2	—	3.8	—	—	3.8	—	3.8
Common stock issued upon vesting of restricted shares	0.2	—	—	—	—	—	—	—
Shares withheld on vesting of restricted stock	(0.1)	—	(2.2)	—	—	(2.2)	—	(2.2)
Common stock issued under employee stock purchase plan	0.1		3.3	—	—	3.3	—	3.3
Share-based compensation	—	—	10.0	—	—	10.0	—	10.0
Unrealized gain on interest rate swap contracts, net of tax	—	—	—	5.2	—	5.2	—	5.2
Unrealized loss on defined benefit obligations, net of tax	—	—	—	(0.2)	—	(0.2)	—	(0.2)
Capital contribution by noncontrolling interest	—	—	—	—	—	—	1.8	1.8
Other	—	—	—	—	(0.2)	(0.2)	—	(0.2)
September 28, 2018	38.0	$ 0.4	$ 357.6	$ 5.8	$ 62.4	$ 426.2	$ 2.1	$ 428.3
Effect of adoption of ASC 606	—	—	—	—	(3.5)	(3.5)	—	(3.5)
Net earnings	—	—	—	—	15.5	15.5	(0.2)	15.3
Exercise of stock options	—	—	0.8	—	—	0.8	—	0.8
Common stock issued upon vesting of restricted shares	0.2	—	—	—	—	—	—	—
Shares withheld on vesting of restricted stock	—	—	(2.1)	—	—	(2.1)	—	(2.1)
Common stock issued under employee stock purchase plan	0.2	—	3.8	—	—	3.8	—	3.8
Share-based compensation	—	—	11.7	—	—	11.7	—	11.7
Unrealized loss on interest rate swap contracts, net of tax	—	—	—	(6.2)	—	(6.2)	—	(6.2)
Unrealized loss on defined benefit obligations, net of tax	—	—	—	(1.3)	—	(1.3)	—	(1.3)
Noncontrolling interest acquired/consolidated	—	—	—	—	—	—	1.4	1.4
September 27, 2019	38.4	$ 0.4	$ 371.8	$ (1.7)	$ 74.4	$ 444.9	$ 3.3	$ 448.2
Cumulative effect of accounting change	—	—	—	—	(0.3)	(0.3)	—	(0.3)
Net loss	—	—	—	—	(57.9)	(57.9)	—	(57.9)
Exercise of stock options	0.1	—	1.5	—	—	1.5	—	1.5
Common stock issued upon vesting of restricted shares	0.2	—	—	—	—	—	—	—
Shares withheld on vesting of restricted stock	(0.1)	—	(1.8)	—	—	(1.8)	—	(1.8)
Common stock issued under employee stock purchase plan	0.2	—	3.6	—	—	3.6	—	3.6
Share-based compensation	—	—	13.4	—	—	13.4	—	13.4
Unrealized gain on interest rate swap contracts, net of tax	—	—	—	0.4	—	0.4	—	0.4
Unrealized gain on defined benefit obligations, net of tax	—	—	—	0.6	—	0.6	—	0.6
Conversion feature of Convertible Notes, net of issuance costs	—	—	49.7	—	—	49.7	—	49.7
Purchase of hedges	—	—	(61.0)	—	—	(61.0)	—	(61.0)
Issuance of warrants	—	—	49.8	—	—	49.8	—	49.8
Currency translation adjustments	—	—	—	1.5	—	1.5	—	1.5
Shares issued to settle deferred consideration	0.3	—	7.4	—	—	7.4	—	7.4
Reclassification from mezzanine equity to equity for noncontrolling interest in MeVis Medical Solutions, AG	—	—	—	—	—	—	11.3	11.3
Other	—	—	—	—	(0.1)	(0.1)	(0.5)	(0.6)
October 2, 2020	39.1	$ 0.4	$ 434.4	$ 0.8	$ 16.1	$ 451.7	$ 14.1	$ 465.8

See accompanying notes to the consolidated financial statements.

VAREX IMAGING CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS

(In millions)	Fiscal Years 2020	2019	2018
Cash flows from operating activities:			
Net (loss) earnings	$ (57.4)	$ 15.8	$ 28.3
Adjustments to reconcile net (loss) earnings to net cash provided by operating activities:			
Share-based compensation expense	13.4	11.7	10.0
Depreciation	22.3	23.5	26.0
Amortization of intangible assets	17.2	15.7	16.2
Impairment of intangible assets	2.8	4.8	3.0
Other assets impairment charges	2.7	—	1.3
Inventory write-down	18.1	3.1	3.1
Deferred taxes	(3.1)	(12.9)	(7.7)
Amortization of deferred loan costs	5.1	2.4	2.3
Loss (gain) from equity method investments, net of dividends received	1.3	2.3	(3.9)
Other, net	4.7	0.8	0.7
Changes in assets and liabilities, net of effects of acquisitions:			
Accounts receivable	17.7	14.8	9.0
Inventories	(42.7)	(11.1)	(2.4)
Prepaid expenses and other assets	(9.3)	4.3	2.0
Accounts payable	14.3	(9.0)	5.2
Accrued operating liabilities and other long-term operating liabilities	8.1	10.9	(10.2)
Deferred revenues	(2.0)	(5.2)	2.4
Net cash provided by operating activities	13.2	71.9	85.3
Cash flows from investing activities:			
Purchases of property, plant and equipment	(23.5)	(19.8)	(20.4)
Acquisitions of businesses, net of cash acquired	(1.6)	(69.5)	(4.8)
Investments in privately-held companies	(1.8)	(3.9)	—
Net cash used in investing activities	(26.9)	(93.2)	(25.2)
Cash flows from financing activities:			
Proceeds from issuance of debt	593.8	85.4	10.0
Repayments of borrowings	(483.9)	(87.0)	(106.0)
Payment of debt issuance costs	(16.7)	(0.5)	(0.4)
Proceeds from issuance of warrant	49.8	—	—
Purchases of hedges	(61.0)	—	—
Proceeds from shares issued under employee stock purchase plan	3.6	3.8	3.3
Proceeds from exercise of stock options	1.5	0.8	3.8
Taxes related to net share settlement of equity awards	(1.8)	(2.1)	(2.3)
Contributions from noncontrolling partner	—	—	1.8
Other financing activities	(1.7)	(0.5)	(0.6)
Net cash provided by (used in) financing activities	83.6	(0.1)	(90.4)
Effects of exchange rate changes on cash and cash equivalents and restricted cash	0.9	(0.7)	(0.5)
Net increase (decrease) in cash and cash equivalents and restricted cash	70.8	(22.1)	(30.8)
Cash and cash equivalents and restricted cash at beginning of period	31.3	53.4	84.2
Cash and cash equivalents and restricted cash at end of period	$ 102.1	$ 31.3	$ 53.4
Supplemental cash flow information:			
Cash paid for interest	$ 16.7	$ 19.9	$ 19.3
Cash paid for income tax, net of refunds	4.2	8.2	13.8
Supplemental non-cash activities:			
Purchases of property, plant and equipment financed through accounts payable	$ 1.6	$ 1.8	$ 2.0

See accompanying notes to the consolidated financial statements.

VAREX IMAGING CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Description of Business

Varex Imaging Corporation (the "Company," "Varex" or "Varex Imaging") designs, manufactures, sells and services a broad range of Medical products, which include X-ray tubes, digital detectors and accessories, high voltage connectors, image processing software and workstations, computer-aided diagnostic software, collimators, automatic exposure control devices, generators, ionization chambers and buckys, for use in a range of applications, including radiographic or fluoroscopic imaging, mammography, computed tomography, oncology and computer-aided detection. The Company sells its products to imaging system original equipment manufacturer ("OEM") customers for incorporation into new medical diagnostic, radiation therapy, dental, and veterinary, to independent service companies, distributors and directly to end-users for replacement purposes.

The Company also designs, manufacturers, sells and services industrial products, which include Linatron® X-ray accelerators, 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 systems. 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 and Principle of Consolidation

The accompanying consolidated financial statements have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") and prepared in accordance with accounting principles generally accepted in the United States ("GAAP").

Segment Reporting

The Company has two reportable operating segments; (i) Medical and (ii) Industrial, which aligns with how its Chief Executive Officer ("CEO"), who is the Company's Chief Operating Decision Maker ("CODM"), reviews the Company's performance. See Note 17. *Segment Information,* included in this report, for further information on the Company's segments.

Fiscal Year

The fiscal years of the Company as reported are the 52 or 53-week period ending on the Friday nearest September 30. Fiscal year 2020 was the 53-week period that ended October 2, 2020, fiscal year 2019 was the 52-week period that ended September 27, 2019, and fiscal year 2018 was the 52-week period ended September 28, 2018.

Variable Interest Entities

For entities in which the Company has variable interests, the Company focuses on identifying which entity has the power to direct the activities that most significantly impact the variable interest entity's economic performance and which enterprise has the obligation to absorb losses or the right to receive benefits from the variable interest entity. If the Company is the primary beneficiary of a variable interest entity, the assets, liabilities and results of operations of the variable interest entity will be included in the Company's consolidated financial statements. As of October 2, 2020, the Company had two variable interest entities neither of which were consolidated.

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 consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. Such estimates include the valuation of inventories, goodwill and intangible assets, warranties, contract liabilities, long-lived asset valuations, impairment on investments, financial instruments, and taxes on earnings. Actual results could differ from these estimates.

Impact of COVID-19

The coronavirus ("COVID-19") pandemic and the mitigation efforts by governments to attempt to control its spread created uncertainties and disruptions in the economic and financial markets. The extent to which COVID-19 will continue to impact the Company's business and financial results will depend on numerous evolving factors including, but not limited to: the magnitude and duration of COVID-19, the extent to which it will impact worldwide macroeconomic conditions including interest rates, unemployment rates, the speed of the anticipated recovery, and governmental and business reactions to the pandemic. During the 2020 fiscal year, as a result of the economic downturn resulting from COVID-19, the Company experienced reduced demand in the Company's industrial segment and for certain higher end medical products that negatively impacted revenues and gross margin. The Company assessed certain accounting matters that generally require consideration of forecasted financial information in context with the information reasonably available to the Company and the currently estimated future impacts of COVID-19 as of October 2, 2020 and through the date of filing this report. The accounting matters assessed included, but were not limited to, the Company's carrying value of goodwill, intangibles, long-lived assets, equity method investments, inventory and related reserves, and allowance for doubtful accounts. The Company's future assessment of the magnitude and duration of COVID-19, as well as other factors, could result in material negative impacts to the Company's consolidated financial statements in future reporting periods. These future developments are highly uncertain and the outcomes cannot be estimated with certainty. Actual results may differ from those estimates, and such differences may be material to the financial statements.

As described in Note 1 to the Company's consolidated financial statements for the year ended September 27, 2019, as reissued on September 22, 2020 in our Current Report on Form 8-K, the Company concluded that there was substantial doubt about its ability to continue as a going concern. This assessment was based on the Company's financial projections, which included the anticipated adverse effects of the COVID-19 pandemic on the Company's financial condition and results of operations, and which indicated that it was probable that the Company would be in violation of certain leverage ratio covenants contained in its previously existing credit agreement.

As described more fully in Note 10. *Borrowings*, on September 30, 2020, the Company issued $300.0 million aggregate principal amount of 7.875% Senior Secured Notes due in 2027, the proceeds from which were used to repay the principal amounts outstanding under the Company's previously existing credit agreement (which was then terminated), and entered into a new revolving credit agreement consisting of a $100.0 million asset-based loan revolving credit facility. The Senior Secured Notes do not contain any financial covenants and the asset-based loan revolving credit facility's financial covenant is limited to when excess availability falls below a specified threshold. Management has concluded that the replacement of the Company's previously existing credit agreement with the Senior Secured Notes, combined with our current and anticipated future cash flows, has alleviated the substantial doubt about the Company's ability to continue as a going concern and the Company has sufficient liquidity to satisfy our obligations over the twelve-month period from the issuance date of these consolidated financial statements.

Cash and Cash Equivalents

The Company considers 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 consolidated balance sheet. Cash and cash equivalents and restricted cash as reported within the consolidated statements of cash flows consisted of the following:

	Twelve Months Ended October 2, 2020		Twelve Months Ended September 27, 2019	
(In millions)	**Beginning of Period**	**End of Period**	**Beginning of Period**	**End of Period**
Cash and cash equivalents	$ 29.9	$ 100.6	$ 51.9	$ 29.9
Restricted cash	1.4	1.5	1.5	1.4
Cash and cash equivalents and restricted cash as reported per statement of cash flows	$ 31.3	$ 102.1	$ 53.4	$ 31.3

Fair Value

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. There is a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs. The three levels of inputs used to measure fair value are as follows:

Level 1—Quoted prices in active markets for identical assets or liabilities.
Level 2—Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or, other inputs that are observable or can be corroborated by observable market data.
Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

Derivative instruments and hedging activities

The Company records all derivatives on the consolidated balance sheets at fair value as of the reporting date. For derivative instruments that are designated and qualify as cash flow hedges, the gain or loss on the derivative is reported as a component of other comprehensive income or loss and reclassified from accumulated other comprehensive loss into earnings when the hedged transaction affects earnings. For derivatives that are designated and qualify as net investment hedges, the gain or loss on the derivative is reported as a component of other comprehensive income or loss until the hedged item is sold. The portion of the change in fair value of the Company's net investment hedges (or cross currency swaps) related to the cross-currency basis spread is an excluded component in the assessment of the effectiveness of these net investment hedges (or cross currency swaps). These changes in fair value are recognized as an adjustment to interest expense. 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, a quantitative assessment of hedge effectiveness is performed.

Concentration of Risk

Financial instruments that potentially expose the Company to concentrations of credit risk consist principally of cash, cash equivalents and trade accounts receivable. Cash held with financial institutions may exceed the Federal Deposit Insurance Corporation insurance limits or similar limits in foreign jurisdictions. The Company has not experienced 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 doubtful accounts 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. The Company has neither experienced nor expects any significant disruptions to its operations due to supplier concentration.

Credit is extended to customers based on an evaluation of the customer’s financial condition, and collateral is not required. During the periods presented, one of the Company's Medical segment customers accounted for a significant portion of revenues, which is as follows:

	Fiscal Year		
	2020	**2019**	**2018**
Canon Medical Systems Corporation	20.5 %	17.3 %	18.1 %

Canon Medical Systems Corporation accounted for 12.0% and 10.1% of the Company’s accounts receivable as of October 2, 2020 and September 27, 2019, respectively.

Inventories

Inventories are valued at the lower of cost or net realizable value. Costs include materials, labor and manufacturing overhead and is computed on a first-in-first-out basis. The Company evaluates the carrying value of its inventories taking into consideration such factors as historical and anticipated future sales compared to quantities on hand and the prices the Company expects to obtain for products in its various markets. The Company adjusts excess and obsolete inventories to net realizable value and write-downs of excess and obsolete inventories are recorded as a component of cost of revenues.

The following table summarizes the Company's inventories, net:

(In millions)	October 2, 2020	September 27, 2019
Raw materials and parts	$ 184.6	$ 160.1
Work-in-process	23.9	27.9
Finished goods	63.4	60.2
Total inventories	$ 271.9	$ 248.2

As a result of the economic downturn resulting from COVID-19, during the three months ended July 3, 2020, the Company discontinued certain products and wrote-down approximately $15.8 million of inventory associated with discontinued products and restructuring activity.

Property, Plant and Equipment, net

Property, plant and equipment are stated at cost, net of accumulated depreciation. Major improvements are capitalized, while repairs and maintenance are expensed as incurred. Depreciation is computed using the straight-line method over the estimated useful lives of the assets or remaining lease term. Land is not subject to depreciation, but land improvements are depreciated over fifteen years. Land leasehold rights and leasehold improvements are depreciated over the lesser of their estimated useful lives or remaining lease terms. Buildings are depreciated over twenty years. Machinery and equipment are depreciated over a range from three to seven years. Assets subject to lease are depreciated over the lesser of their estimated useful lives or remaining lease terms. Estimated useful lives are periodically reviewed and, when appropriate, changes are made prospectively. When certain events or changes in operating conditions occur, asset lives may be adjusted, and an impairment assessment may be performed on the recoverability of the carrying amounts. When assets are retired or otherwise disposed of, the assets and related accumulated depreciation are removed from the accounts.

The following table summarizes the Company's property, plant and equipment, net:

(In millions)	October 2, 2020	September 27, 2019
Land	$ 8.3	$ 8.3
Buildings and leasehold improvements	137.2	134.4
Machinery and equipment	175.5	170.7
Construction in progress	35.4	28.5
	$ 356.4	$ 341.9
Accumulated depreciation and amortization	(211.2)	(199.6)
Property, plant, and equipment, net	$ 145.2	$ 142.3

The Company recorded depreciation expense of $22.3 million, $23.5 million and $26.0 million, in fiscal years 2020, 2019 and 2018, respectively. During fiscal years 2020, 2019 and 2018 the Company recorded accelerated depreciation of $2.9 million, $4.5 million and $4.2 million, respectively, which primarily related to the machinery and equipment used at the Santa Clara, CA facility. See Note 6. *Restructur*ing, included in this report, for further information.

Investments

The Company accounts for its equity investments in privately-held companies under the equity method of accounting if the Company has the ability to exercise significant influence in these investments. Distributions received from an equity method investment are classified using the cumulative earnings approach. Under the cumulative earnings approach, distributions up to the amount of cumulative equity in earnings recognized will be treated as returns on investment as operating cash flows and those in excess of that amount will be treated as returns of investment as investing cash flows. The Company monitors these equity investments for impairment and makes appropriate reductions in carrying values if the Company determines that impairment charges are required based primarily on the financial condition and near-term prospects of these companies. During the three months ended July 3, 2020, the Company wrote off a $2.7 million cost investment in a privately-held company, the related expense is included as part of other expenses, net in the Company's consolidated financial statements.

Goodwill and Intangible Assets

Goodwill is recorded when the purchase price of an acquisition exceeds the fair value of the net identified tangible and intangible assets acquired. Purchased intangible assets are carried at cost, net of accumulated amortization, and are included in intangible assets in the Company's consolidated balance sheets. Intangible assets with finite lives are amortized over their estimated useful lives of primarily two to seven years using the straight-line method.

Impairment of Long-lived Assets, Intangible Assets and Goodwill

The Company reviews long-lived assets and identifiable intangible assets with finite lives for impairment whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable. The Company assesses these assets for impairment based on their estimated undiscounted future cash flows. If the carrying value of the assets exceeds the estimated future undiscounted cash flows, the Company recognizes an impairment loss based on the excess of the carrying amount over the fair value of the assets.

The Company evaluates goodwill and indefinite lived intangible assets for impairment at least annually at the beginning of the fourth quarter of each fiscal year or whenever an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. The evaluation includes consideration of qualitative factors including industry and market considerations, overall financial performance, and other relevant events and factors affecting the reporting unit. If the Company determine that a quantitative analysis is necessary, the Company performs a step one analysis, which consists of a comparison of the fair value of a reporting unit against its carrying amount, including the goodwill allocated to each reporting unit. The Company determines the fair value of its reporting units based on a combination of income and market approaches. The income approach is based on the present value of estimated future cash flows of the reporting units, and the market approach is based on a market multiple calculated for each reporting unit based on market data of other companies engaged in similar business. If the carrying amount of the reporting unit is in excess of its fair value, the difference between the fair value and carrying amount is recorded as an impairment loss. The impairment test for intangible assets with indefinite useful lives, if any, consists of a comparison of fair value to carrying value, with any excess of carrying value over fair value being recorded as an impairment loss. In fiscal years 2020, 2019 and 2018, the Company performed the annual goodwill impairment test for our two reporting units and found no impairment.

In the third quarter of 2020, changes in facts and circumstances and general market declines due to COVID-19 resulted in reduced expectations of future operating results. The Company considered these circumstances and the potential long-term impact on cash flows associated with its reporting units and indefinite-lived intangible assets and determined that an indicator of possible impairment existed within its Medical and Industrial reporting units and indefinite-lived intangible assets. Accordingly, the Company performed a quantitative impairment analysis to determine the fair values of those reporting units and indefinite-lived intangible assets. Based on the output of the analysis, the Company determined that the fair values of both the Medical and Industrial reporting units substantially exceeded their carrying amounts. Accordingly, no impairment charges were required as of July 3, 2020 related to Goodwill. However, an impairment charge of $2.8 million was required for the Company's in-process R&D. See Note 12. *Goodwill and Intangible Assets* for more information.

During the fiscal years ended October 2, 2020, September 27, 2019 and September 28, 2018, the Company recognized $2.8 million, $4.8 million, and $3.0 million of impairments of intangible assets, respectively. No goodwill impairment charges were recognized for any of the periods presented.

Loss Contingencies

From time to time, the Company is involved in legal proceedings, claims and government inspections or investigations, customs and duties audits, 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. See Note 13. *Commitments and Contingencies,* for further information regarding certain of our contractual obligations and contingencies.

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 as to 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:

	Fiscal Years	
(In millions)	**2020**	**2019**
Accrued product warranty, at beginning of period	$ 8.1	$ 7.3
Charged to cost of revenues	15.1	12.9
Actual product warranty expenditures	(15.1)	(12.1)
Accrued product warranty, at end of period	$ 8.1	$ 8.1

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 ("IBR"). 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 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 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

Effective September 29, 2018, the Company adopted the requirements of Accounting Standards Update ("ASU") 2014-09 and related amendments, Revenue from Contracts with Customers ("ASC 606"), which superseded all prior revenue recognition methods and industry-specific guidance. 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 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 accelerators together with its imaging processing software and image detection products to OEM customers that incorporate them into their inspection systems. 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

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. ASC 606-10-55-23 requires that for sales with a right of return, revenue is reduced for expected returns, 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 contract liability and contract 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 is sold separately.

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.

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 time as the services are rendered to the customer based on the extent of progress towards completion of the performance obligation. The Company recognizes service revenue 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 17. *Segment Information,* included in this report, for the disaggregation of the Company's revenue based on reportable operating segments and disaggregated by geographic region.

Contract Balances

Contract assets are included within the prepaid expenses and other current assets, and other assets balances in the consolidated balance sheets. Contract liabilities, which also includes refund obligations, are included within the accrued liabilities and other current liabilities, deferred revenues, and other long-term liabilities balances in the 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.

Deferred Revenues

Deferred revenue primarily represents (i) the amount received applicable to non-software products for which parts and services under the warranty contracts have not been delivered, and (ii) the amount received for service contracts for which the services have not been rendered.

Allowance for Doubtful Accounts

The Company evaluates the creditworthiness of customers prior to authorizing shipment for all major sale transactions. On a quarterly basis, the Company evaluates aged items in the accounts receivable aging report and provides an allowance in an amount deemed adequate for doubtful accounts. If the evaluation of customers' financial conditions does not reflect a future ability to collect outstanding receivables, additional provisions may be needed. The Company had an allowance for doubtful accounts of $0.3 million and $1.0 million as of October 2, 2020 and September 27, 2019, respectively.

Share-Based Compensation Expense

The Company has an equity-based incentive plan that provides for the grant of nonqualified stock options and restricted stock units to directors, officers and other employees. The Company also permits employees to purchase shares under the Varex employee stock purchase plan.

The Company values stock options granted and the option component of the shares of common stock purchased under the equity-based incentive plans and stock purchased under the employee stock purchase plan using the Black-Scholes option-pricing model. Share-based compensation expense for restricted stock units is measured using the fair value of the Company's stock on the date of grant and is amortized over the award's respective service period. The Black-Scholes option-pricing model requires the input of certain assumptions, and changes in the assumptions can materially affect the fair value estimates of share-based payment awards.

The Company measures and recognizes expense for all share-based payment awards based on their fair values. Share-based compensation expense recognized in the consolidated statements of (loss) earnings includes compensation expense for the share-based payment awards based on the grant date fair value estimated in accordance with the guidance on share-based compensation. The Company records forfeitures as they occur. The Company attributes the value of share-based compensation to expense using the straight-line method. The Company considers only the direct tax impacts of share-based compensation awards when calculating the amount of tax windfalls or shortfalls. For additional information, see Note 15. *Employee Stock Plans*, included in this report.

Shipping and Handling Costs

Shipping and handling costs are included as a component of cost of revenues.

Software Development Costs

Costs for the development of new software products and substantial enhancements to existing software products are expensed as incurred until technological feasibility has been established, at which time any additional costs would be capitalized. No costs associated with the development of software have been capitalized, as the Company believes its current software development process is essentially completed concurrent with the establishment of technological feasibility.

Research and Development

Research and development costs are expensed as incurred. These costs primarily include employees' compensation, consulting fees and material costs.

Taxes on Earnings

Current income tax expense or benefit is the amount of income taxes expected to be payable or receivable for the current year. Deferred income tax liabilities or assets are established for the expected future tax consequences resulting from the differences in financial reporting and tax bases of assets and liabilities. A valuation allowance is provided if it is more likely than not that some or all of the deferred tax assets will not be realized. In addition, we provide reserves for uncertain tax positions when such tax positions do not meet the recognition thresholds or measurement standards prescribed by the authoritative guidance for accounting for income taxes. Amounts for uncertain tax positions are adjusted in periods when new information becomes available or when positions are effectively settled. Interest and penalties related to uncertain tax positions are recognized as a component of income tax expense.

On December 22, 2017, the U.S. Government enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act of 2017 ("U.S. Tax Reform"). U.S. Tax Reform significantly revised the U.S. corporate income tax structure including a lower corporate statutory rate and changes to the way foreign earnings are taxed. U.S. GAAP requires that the impact of tax legislation be recognized in the period in which the law is enacted. In accordance with these rules, we are including the impact of certain provisions of U.S. Tax Reform to the extent they are effective during the current reporting period.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted in response to the COVID-19 pandemic. The CARES Act, among other things, permits NOL carryovers and carrybacks to offset 100% of taxable income for taxable years beginning before 2021. In addition, the CARES Act allows NOLs incurred in 2018, 2019, and 2020 to be carried back to each of the five preceding taxable years to generate a refund of previously paid income taxes. On July 2, 2020, the US Treasury Department issued a regulation providing an election to waive NOL carryback to a former consolidated group. The Company has evaluated the impact of the CARES Act and concludes the NOL carryback provision of the CARES Act will result in a material cash tax benefit. The CARES Act retroactively clarified treatment of qualified improvement property as 15-year property instead of 39-year property as defined under U.S. Tax Reform. Certain qualified improvement property is also eligible for bonus depreciation.

Foreign Currency Translation

The Company uses the U.S. Dollar predominately as the functional currency of its foreign operations. Gains and losses from remeasurement of foreign currency balances into U.S. Dollars are included in the consolidated statements of (loss) earnings. For the foreign subsidiaries where the local currency is the functional currency, translation adjustments of foreign currency financial statements into U.S. dollars are recorded to a separate component of accumulated other comprehensive loss.

Recently Adopted Accounting Pronouncements

In February 2016, the FASB issued Accounting Standards Update ASU No. 2016-02, Leases, referred to as ASC 842. The purpose of ASC 842 is to increase the transparency and comparability among organizations by recognizing lease assets and liabilities on the balance sheet, including those previously classified as operating leases under U.S. GAAP, and disclosing key information about leasing arrangements. ASC 842, as amended, is effective for public entities for annual periods beginning after December 15, 2018, including interim periods within those annual periods and was effective for the Company beginning in fiscal year 2020. The Company adopted the standard using the transition method provided by ASU No. 2018-11, Leases ("Topic 842"): Targeted Improvements. Under this method, the Company applied the new leasing rules on September 28, 2019, rather than at the earliest comparative period presented in the financial statements. Prior periods were presented in accordance with the previously existing lease guidance under ASC Topic 840.

Upon transition, the Company applied the package of practical expedients permitted under ASC 842 transition guidance to its entire lease portfolio at September 28, 2019. As a result, the Company was not required to reassess (i) whether any expired or existing contracts are or contain leases, (ii) the classification of any expired or existing leases, and (iii) initial direct costs for any existing leases. Also, the Company applied the hindsight practical expedient. Furthermore, as a lessee the Company elected to combine lease and non-lease components for the majority of its leases, which means that the Company accounted for each separate lease component and the non-lease components associated with that lease component as a single lease component. The only asset class that did not combine lease and non-lease components were vehicle leases.

The most significant impact of the standards for the Company relate to the recognition of the right-of-use assets and lease liabilities for the operating leases in the balance sheet. Upon adoption of the new lease standard, the Company recognized operating lease right-of-use assets and finance lease right-of-use assets of $26.8 million and $0.6 million, respectively, and corresponding operating lease liabilities and finance lease liabilities of $27.5 million and $0.6 million, respectively. This includes the recording of the Company's existing capital leases as finance leases at transition. The cumulative impact of adoption was a $0.3 million decrease to retained earnings. Refer to Note 3. *Leases,* for a detailed description of the impact of adopting this standard and its impact on the consolidated financial statements and related disclosures.

In February 2018, the FASB issued ASU 2018-02, Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income, which provides the option to reclassify certain income tax effects related to the Tax Cuts and Jobs Act passed in December of 2017 between accumulated other comprehensive income and retained earnings and also requires additional disclosures. The amendments in this ASU were effective for all entities for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. Effective September 28, 2019, the Company adopted ASU 2018-02 and it did not have a material effect on the Company's financial statements and related disclosures.

In January 2017, the FASB issued ASU 2017-04, Intangibles - Goodwill and Other, Simplifying the Test for Goodwill Impairment, which simplified the testing required for the impairment of goodwill by removing Step 2 from the goodwill impairment test. Step 2 of the goodwill impairment test measures a goodwill impairment loss by comparing the implied fair value of a reporting unit's goodwill with the carrying amount of that goodwill. ASU 2017-04 allows an entity to measure the impairment based off Step 1 of the impairment test, which calculates the impairment as the difference between the carrying amount of the reporting unit and its fair value. Adoption of this ASU was required for the Company in the first quarter of fiscal year 2021. The Company elected to early adopt this standard effective April 4, 2020. This adoption was made on a prospective basis, as required by the standard.

Recent Accounting Standards Updates Not Yet Effective

In August 2020, the FASB issued ASU 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity, to address issues identified as a result of the complexity associated with applying GAAP for certain financial instruments with characteristics of liabilities and equity. In addressing the complexity, this ASU is focused on amending the guidance for convertible instruments and the derivatives scope exception for contracts in an entity's own equity. The Company is evaluating the impact of adopting this guidance to its consolidated financial statements.

In March 2020, the FASB issued ASU 2020-04, Facilitation of the Effects of Reference Rate Reform on Financial Reporting, to provide optional guidance for a limited period of time to ease the potential burden in accounting for (or recognizing the effects of) reference rate reform on financial reporting. The Company is currently evaluating the impact from the replacement of the London Interbank Offered Rate (LIBOR) and whether the Company will elect the adoption of the optional guidance.

In December 2019, the FASB issued ASU 2019-12, Simplifying the Accounting for Income Taxes, which simplifies the accounting for income taxes by removing certain exceptions to the current guidance, and improving the consistent application of and simplification of other areas of the guidance. The standard is effective for the Company beginning in the first quarter of fiscal year 2022. Early adoption is permitted. The Company is evaluating the impact of adopting this guidance to its consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, Measurement of Credit Losses on Financial Instruments. This ASU replaces the incurred loss impairment methodology with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. In addition, the ASU requires new disclosures. This standard will be effective for the Company's interim and annual periods beginning with the first quarter of fiscal 2021 and must be applied on a modified retrospective basis. This standard will not materially impact the Company's consolidated financial statements.

2. REVENUE RECOGNITION

The Company adopted ASC 606 on September 29, 2018, using the modified retrospective method for all contracts not completed as of the date of adoption. The reported results for fiscal year 2020 and 2019 reflect the application of ASC 606 guidance while the reported results for fiscal year 2018 were prepared under the guidance of ASC 605, Revenue Recognition.

The following tables summarize the changes in the contract assets and refund liabilities for the twelve months ended October 2, 2020 and September 27, 2019:

(In millions)	Contract Assets
Balance at September 28, 2018	$ 24.4
Costs recovered from product returns during the period	(6.4)
Contract asset from shipments of products, subject to return during the period	5.7
Balance at September 27, 2019	$ 23.7
Costs recovered from product returns during the period	(5.6)
Contract asset from shipments of products, subject to return during the period	6.5
Balance at October 2, 2020	$ 24.6

(In millions)	Refund Liabilities
Balance at September 28, 2018	$ 27.1
Release of refund liability included in beginning of year refund liability	(7.0)
Additions to refund liabilities	6.3
Balance at September 27, 2019	$ 26.4
Release of refund liability included in beginning of year refund liability	(6.2)
Additions to refund liabilities	7.2
Balance at October 2, 2020	$ 27.4

During fiscal year 2020, the Company recognized revenue of $8.4 million related to deferred revenue which existed at September 27, 2019. During fiscal year 2019, the Company recognized revenue of $10.5 million related to deferred revenue which existed at September 28, 2018.

Remaining Performance Obligations

Remaining performance obligations represent the transaction price of firm orders for which revenue has not yet been recognized, which are primarily related to contracts where control will be transferred to customers over the next 12 months. See Note 1. *Summary of Significant Accounting Policies,* for details on the nature of the remaining performance obligations within these contracts and how they will be resolved.

3. LEASES

On September 28, 2019, the Company adopted ASC 842, which amends the guidance for the accounting and reporting of leases. The determination of whether an arrangement is, or contains, a lease is performed at the inception of the arrangement. The Company has operating and finance leases for office space, warehouse and manufacturing space, vehicles and certain equipment. The Company's lease agreements do not contain any material residual value guarantees, variable lease costs, bargain purchase options or restrictive covenants. The Company does not have any lease transactions with related parties. Leases with an initial term of 12 months or less are generally not recorded on the balance sheet and expense for these leases is recognized on a straight-line basis over the lease term. The Company's leases have remaining lease terms of one year to approximately seven years, some of which may include options to extend the leases for up to six years and some include options to terminate early. These options have been included in the determination of the lease liability when it is reasonably certain that the option will be exercised.

Right-of-use assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease contract. Operating lease liabilities and their corresponding right-of-use assets are recorded based on the present value of fixed lease payments over the expected lease term. The interest rate implicit in lease contracts is typically not readily determinable. As such, the Company's incremental borrowing rate is based on a credit-adjusted risk-free rate, which best approximates a secured rate over a similar term of lease.

The following table presents supplemental balance sheet information related to the Company's operating and finance leases:

(In millions)	Balance Sheet Location	October 2, 2020 Operating Leases	October 2, 2020 Finance Leases
Assets			
Operating lease right-of-use assets	*Operating lease assets*	$ 27.7	$ —
Finance lease right-of-use assets	*Property, plant and equipment, net*	$ —	$ 0.5
Liabilities			
Operating lease liabilities (current)	*Current operating lease liabilities*	$ 6.1	$ —
Finance lease liabilities (current)	*Accrued liabilities and other current liabilities*	$ —	$ 0.2
Operating lease liabilities (non-current)	*Operating lease liabilities*	$ 23.1	$ —
Finance lease liabilities (non-current)	*Other long-term liabilities*	$ —	$ 0.4

The following table presents the weighted average remaining lease term and discount rate information related to the Company's operating and finance leases:

	October 2, 2020 Operating Leases	October 2, 2020 Finance Leases
Weighted average remaining lease term (in years)	6.6	3.3
Weighted average discount rate	4.5 %	4.1 %

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

(In millions)	Fiscal Year 2020
Total operating lease costs (a)	$ 8.4
Total finance lease costs	$ 0.3
Operating cash flows from operating leases	$ 8.0
Financing cash flows from finance leases	0.3
Total cash paid for amounts included in the measurement of lease liabilities	$ 8.3
Noncash operating right-of-use assets obtained in exchange for new lease liabilities (b)	$ 10.6
Noncash finance right-of-use assets obtained in exchange for new lease liabilities (b)	0.2
Total right-of-use assets obtained in exchange for new lease liabilities (b)	$ 10.8

(a) Includes variable and short-term lease expense, which were immaterial for fiscal year 2020.
(b) Excludes the impact of adopting the new leases standard in the first quarter of 2020.

For fiscal year 2019 and 2018 the Company's lease expense was $5.1 million and $5.3 million, respectively.

As of October 2, 2020, maturities of operating lease and finance lease liabilities for each of the following five years and a total thereafter were as follows:

(In millions) Fiscal years:	Operating Leases	Finance Leases
2021	$ 7.1	$ 0.2
2022	6.6	0.2
2023	4.2	0.2
2024	3.5	—
2025	3.3	—
Thereafter	9.4	—
Total future lease payments	$ 34.1	$ 0.6
Less: imputed interest	(4.9)	—
Present value of lease liabilities	$ 29.2	$ 0.6

As of October 2, 2020, the Company had not entered into any material leases that have not yet commenced.

At September 27, 2019, the Company was committed to minimum rentals under non-cancelable operating leases (including rent escalation clauses) for fiscal years 2020 through 2024 and thereafter, as follows: $7.5 million, $5.4 million, $4.7 million, $1.8 million, $0.9 million, and $0.2 million, respectively.

4. BUSINESS COMBINATIONS

Acquisition of Direct Conversion AB

In April 2019, Varex completed the acquisition of 98.2% of the outstanding shares of common stock of Direct Conversion AB (publ) (“Direct Conversion”) for $69.5 million in cash, net of cash acquired, the assumption of Direct Conversion's debt of $4.5 million and deferred consideration equal to $9.9 million or 0.3 million shares of the Company’s common stock. The acquisition of Direct Conversion expanded our detector product portfolio to include photon counting technology. This technology will allow Varex to expand its range of imaging applications and offer new solutions to both Medical and Industrial customers. To settle the deferred consideration, in April 2020, the Company issued the 0.3 million shares of its common stock valued at $7.4 million to certain shareholders of Direct Conversion.

The following table summarizes the purchase price allocation for Direct Conversion:

(In millions)	Fair Value
Allocation of the purchase consideration:	
Accounts receivable	$ 2.4
Inventories	5.7
Prepaid expenses and other current assets	0.7
Property, plant, and equipment	0.9
Goodwill	47.2
Intangible assets	32.9
Total assets acquired	**89.8**
Accounts payable	(1.0)
Accrued liabilities	(1.5)
Current maturities of long-term debt	(1.0)
Deferred revenues	(0.9)
Long-term debt	(3.5)
Other long-term liabilities	(1.1)
Total liabilities assumed	**(9.0)**
Noncontrolling interest	**(1.4)**
Net assets acquired, less noncontrolling interest	**$ 79.4**
Net cash paid	$ 69.5
Deferred consideration	9.9
Total consideration	**$ 79.4**

The Company recorded the assets acquired and liabilities assumed at their fair values. Intangibles were valued primarily using a discounted cash flow, which included estimated revenue growth and discount rate. The fair value assigned to goodwill is primarily attributable to expected synergies. The goodwill related to the Direct Conversion acquisition is not tax deductible.

The following amounts represent the determination of the fair value and estimated weighted average useful lives of identifiable intangible assets for the Direct Conversion, which are amortized using the straight-line method:

(In millions)	Fair Value	Estimated Weighted Average Useful Life (In Years)
Backlog	$ 0.2	1
Trade names	2.5	5
Developed technology	18.4	10
In-process research and development	2.8	indefinite
Customer relationships	9.0	10
Total intangible assets acquired	$ 32.9	

During the third quarter of 2020, the in-process research and development assets from the Direct Conversion acquisition were determined to be impaired. Refer to Note 12. *Goodwill and Intangible Assets,* for more information.

The following amounts represent revenues by reporting segment from Direct Conversion from the acquisition date of April 29, 2019, through September 27, 2019:

(In millions)	**Direct Conversion Revenue**
Medical	$ 4.5
Industrial	1.8
Total Direct Conversion revenues	$ 6.3

The acquisition of Direct Conversion did not have a significant impact on the Company's consolidated results of operations on a pro forma basis for the current or prior years.

5. RELATED-PARTY TRANSACTIONS

Investment in Privately-Held Companies

The Company has a 40% ownership interest in dpiX Holding LLC (“dpiX Holding”), a four-member consortium that has a 100% ownership interest in dpiX LLC (“dpiX”), a supplier of amorphous silicon based thin film transistor arrays for digital flat panel image detectors. In accordance with the dpiX Holding Agreement, net profits or losses are allocated to the members, in accordance with their ownership interests.

The equity 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 eliminated until realized by the Company. In fiscal years 2020, 2019 and 2018, the Company recorded (loss) and income on the equity investment in dpiX Holding of $(0.8) million, $(1.1) million and $3.4 million, respectively. Income and loss on the equity investment in dpiX Holding is included in other (expense) income, net in the consolidated statements of (loss) earnings. The carrying value of the equity investment in dpiX Holding, which was included in investments in privately-held companies on the consolidated balance sheets, was $47.3 million and $48.1 million at October 2, 2020 and September 27, 2019, respectively.

In fiscal years 2020, 2019 and 2018, the Company purchased glass transistor arrays from dpiX totaling $20.4 million, $23.5 million and $19.3 million, respectively. These purchases of glass transistor arrays are included as a component of inventories on the consolidated balance sheets or cost of revenues in the consolidated statements of (loss) earnings for these fiscal years.

As of October 2, 2020 and September 27, 2019, the Company had accounts payable to dpiX totaling $4.6 million and $3.6 million, respectively.

In October 2013, the Company entered into an amended agreement with dpiX and other parties that, among other things, provides the Company with the right to 50% of dpiX’s total manufacturing capacity produced after January 1, 2014. In addition, the amended agreement requires the Company 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 2020, the fixed cost commitment was determined and approved by the dpiX board of directors to be $12.7 million for calendar year 2020. As of October 2, 2020, the Company estimated it has fixed cost commitments of $3.2 million related to this amended agreement through the remainder of calendar year 2020. The amended agreement will continue unless the ownership structure of dpiX changes (as defined in the amended agreement).

The Company has determined that dpiX is a variable interest entity because 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 direct the activities of dpiX and therefore is not the primary beneficiary of dpiX. The Company’s exposure to loss as a result of its involvement with dpiX is limited to the carrying value of the Company’s investment of $47.3 million and fixed cost commitments.

In November 2018, the Company and CETTEEN GmbH (“CETTEEN”), formed a German joint venture entity, VEC Imaging Verwaltungsgesellschaft GmbH (“VEC”), 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. As of October 2, 2020, the Company has made contributions totaling

$4.0 million, and has committed to contribute an additional $1.2 million, as milestones are achieved, and to provide certain full-time employees to support prototyping and manufacturing activities in exchange for a 50% interest in VEC. CETTEEN made contributions of certain assets including intellectual property in exchange for a 50% interest in VEC. The Company's investment in VEC was $2.5 million and $2.0 million as of October 2, 2020 and September 27, 2019, respectively.

6. RESTRUCTURING

In July 2018, the Company committed to relocate the production of amorphous silicon glass for digital detectors, from its Santa Clara facility, to the jointly owned dpiX fabrication facility in Colorado. In July 2019, the Company committed to close its Santa Clara facility and to relocate the remaining production to its other existing facilities. The Company ceased all operations at the Santa Clara facility as of October 2, 2020 and all activities related to the closure of the facility are expected to be complete by the end of December 2020. In connection with the relocation of the glass production and site closure, the Company recorded $9.1 million and $18.9 million of restructuring charges during fiscal year 2020 and 2019, respectively.

On July 29, 2020, the Company commenced the implementation of a reduction in workforce to reduce the Company’s operating costs and address the impact of the COVID-19 pandemic. This action is expected to result in the reduction of the Company’s workforce by approximately 94 employees, of which nearly all are located within the United States. This reduction is in addition to the previously disclosed reduction in workforce associated with the closure of the Company’s Santa Clara facility. The Company expects to complete the reduction in workforce by December 31, 2020. In connection with this reduction in workforce and other restructuring activities, excluding those related to the Santa Clara facility, the Company has recorded $4.4 million of expense during fiscal year 2020.

Cash outflows associated with these restructuring charges are limited to employee termination expenses, facility closure and equipment sales and disposals. Below is a detail of restructuring charges incurred during the 2020 and 2019 fiscal years, which predominately relate to the Company's Medical segment:

(In millions)	Location of Restructuring Charges in Consolidated Statements of (Loss) Earnings	October 2, 2020	September 27, 2019
Inventory write downs	Cost of revenues	$ 1.3	$ 3.1
Intangible assets impairment	Impairment of intangible assets	—	4.8
Accelerated depreciation	Cost of revenues	2.9	4.5
Severance costs	Selling, general and administrative	5.7	6.2
Facility closure costs	Selling, general and administrative	3.6	0.3
Total restructuring charges		$ 13.5	$ 18.9

7. OTHER FINANCIAL INFORMATION

The following table summarizes the Company's accrued liabilities and other current liabilities:

(In millions)	October 2, 2020	September 27, 2019
Accrued compensation and benefits	$ 33.0	$ 32.1
Product warranty	8.1	8.1
Income taxes payable	5.6	10.7
Right of return liability	7.4	6.9
Deferred consideration	—	8.9
Other	16.4	9.0
Total accrued liabilities and other current liabilities	$ 70.5	$ 75.7

The following table summarizes the Company's other long-term liabilities:

(In millions)	October 2, 2020	September 27, 2019
Long-term income tax payable	$ 3.9	$ 3.9
Environment liabilities	0.8	0.9
Defined benefit obligation liability	6.5	5.5
Long-term right of return liability	19.9	19.5
Long-term other	3.8	2.7
Total other long-term liabilities	$ 34.9	$ 32.5

The following table summarizes the Company's other (expense) income, net:

	Fiscal Years		
(In millions)	2020	2019	2018
Income (loss) from equity method investments	$ (2.1)	$ (2.3)	$ 3.9
Change in fair value of deferred consideration	0.9	1.0	—
Impairment of investment	(2.7)	0.0	—
Realized (loss) on foreign currencies	(3.7)	(1.9)	(1.2)
Total other income (expense), net	$ (7.6)	$ (3.2)	$ 2.7

8. (LOSS) EARNINGS PER SHARE

Basic (loss) earnings per common share is computed by dividing the net (loss) earnings for the period by the weighted average number of shares of common stock outstanding during the reporting period. Diluted earnings per common share reflects the effects of potentially dilutive securities, which is computed by dividing net (loss) earnings by the sum of the weighted average number of common shares outstanding and dilutive common shares, which consists of stock options and unvested restricted stock.

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

	Fiscal Year		
(In millions, except per share amounts)	**2020**	**2019**	**2018**
Net (loss) earnings attributable to Varex	$ (57.9)	$ 15.5	$ 27.5
Weighted average shares outstanding - basic	38.8	38.2	37.9
Dilutive effect of potential common shares	—	0.4	0.5
Weighted average shares outstanding - diluted	38.8	38.6	38.4
(Loss) earnings per share attributable to Varex - basic	$ (1.49)	$ 0.41	$ 0.73
(Loss) earnings per share attributable to Varex - diluted	$ (1.49)	$ 0.40	$ 0.72
Anti-dilutive employee shared based awards, excluded	3.5	1.9	1.2

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 (loss) earnings per share attributable to Varex when their effect is dilutive. Because the Company incurred a net loss for fiscal year 2020, none of the potentially dilutive common shares were included in the diluted share calculations for those periods as they would have been anti-dilutive.

9. 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 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. The changes in fair value for all trades that are not designated for hedge accounting are recognized in current period earnings. The Company does not offset fair value amounts recognized for derivative instruments in its 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 which meet certain minimum credit ratings to help mitigate counterparty credit risk.

Derivatives Designated as Hedging Instruments - Cash Flow Hedges

The Company previously used interest rate swap contracts as cash flow hedges to manage its exposure to fluctuations in LIBOR interest rates. Interest rate swap contracts hedging variable rate debt effectively fixed the LIBOR component of its interest rate for a specific period of time. These hedges were entered into in connection with the Company's prior Credit Agreement, as defined in Note 10. *Borrowings*, as the interest rates under the Credit Agreement were at variable rates. In September 2020, the Company repaid the debt under the Credit Agreement and terminated all of the interest rate swap contracts. The loss on the interest rate contracts that was deferred in other comprehensive income (OCI) was immediately recognized in earnings from transactions that are remote.

The following table summarizes the amount of pre-tax (loss) earnings recognized from derivative instruments for the periods indicated and the line items in the accompanying financial statements where the results are recorded for cash flow hedges:

	Amount of Gain or (Loss) Recognized in OCI on Derivatives Fiscal Year Ended			Location of Gain or (Loss) Reclassified from Accumulated OCI into Income	Amount of Gain or (Loss) Reclassified from Accumulated OCI into Income Fiscal Year Ended		
(In millions)	2020	2019	2018		2020	2019	2018
Interest Rate Swap Contracts	$ (3.4)	$ (6.3)	$ 6.9	Interest expense	$ (1.5)	$ 1.9	$ 0.1

These derivative instruments are subject to master netting agreements giving effect to rights of offset with each counterparty. None of the balances were eligible for netting. The following table summarizes the gross fair values of derivative instruments as of the periods indicated and the line items in the accompanying consolidated balance sheets where the instruments are recorded.

		Derivative Liabilities	
(In millions)		October 2, 2020	September 27, 2019
Derivatives designated as cash flow hedges	**Balance sheet location**		
Interest rate swap contracts	Other non-current liabilities	$ —	$ (0.5)

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 majority-owned international operations. All changes in fair value of the derivatives designated as net investment hedges are reported in accumulated other comprehensive (loss) income along with the foreign currency translation adjustments on those investments. In September 2020, the Company terminated one of the net investment swaps and the loss on the swap was recorded in accumulated other comprehensive (loss) income where it will remain until substantial liquidation of the international operations.

As of October 2, 2020, the Company had the following outstanding derivatives designated as net investment hedging instruments:

(In millions, except for number of instruments)	Number of Instruments	Notional Value
Cross Currency Swap Contracts	3	$ 66.6

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

	Amount of Gain or (Loss) Recognized in OCI on Derivatives Fiscal Year Ended			Location of Gain or (Loss) Recognized in Income on Derivative (Amount Excluded from Effectiveness Testing)	Amount of Gain or (Loss) Recognized in Income on Derivative (Amount Excluded from Effectiveness Testing)		
(In millions)	2020	2019	2018		2020	2019	2018
Cross Currency Swap Contracts	$ (1.3)	$ (0.2)	$ —	Interest expense	$ 1.5	$ 0.2	$ —

These derivative instruments are subject to master netting agreements giving effect to rights of offset with each counterparty. None of the balances were eligible for netting. The following table summarizes the gross fair values of derivative instruments as of the periods indicated and the line items in the accompanying consolidated balance sheets where the instruments are recorded:

		Derivative Assets			Derivative Liabilities	
(In millions)		October 2, 2020	September 27, 2019		October 2, 2020	September 27, 2019
Derivatives designated as net investment hedges	**Balance sheet location**			**Balance sheet location**		
Cross currency swap contracts	Other current assets	$ 1.3	$ —	Other current liabilities	$ —	$ (0.2)
Cross currency swap contracts	Other non-current assets	—	—	Other non-current liabilities	(2.1)	—
		$ 1.3	$ —		$ (2.1)	$ (0.2)

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, third-party accounts receivable, accounts payable, and intercompany receivables and payables. These forward contracts expire within 30 days. 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) and offsets the change in fair value of the foreign currency denominated assets and liabilities, which are also recorded in other income (expense). The effect of derivative instruments not designated as hedges for fiscal year 2020 was a loss of $0.2 million. The Company does 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 entered into under its balance sheet hedge program as of October 2, 2020:

	Notional Value of Derivatives not Designated as Hedging Instruments:	
(in millions)	**Buy contracts**	**Sell contracts**
Swiss franc	$ —	$ 1.1
Chinese renminbi	3.4	—
Euro	—	29.3
	$ 3.4	$ 30.4

10. BORROWINGS

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

(In millions, except for percentages)	October 2, 2020 Amount	October 2, 2020 Weighted-Avg Effective Interest Rate	September 27, 2019 Amount	September 27, 2019 Weighted-Avg Effective Interest Rate	$ Change
Current maturities of long-term debt					
Term Facility	$ —		$ 29.4	5.6%	$ (29.4)
Other debt	2.5		1.3		1.2
Total current maturities of long-term debt	**$ 2.5**		**$ 30.7**		**$ (28.2)**
Non-current maturities of long-term debt:					
Revolving Credit Facility	$ —		$ 59.0	5.6%	$ (59.0)
Asset-Based Loan	—		—		—
Term Facility	—		308.6	5.6%	(308.6)
Convertible Senior Unsecured Notes	200.0	10.9%	—		200.0
Senior Secured Notes	300.0	8.2%	—		300.0
Other debt	8.8		2.5		6.3
Total non-current maturities of long-term debt:	**$ 508.8**		**$ 370.1**		**$ 138.7**
Unamortized issuance costs and debt discounts					
Debt issuance costs - Credit Agreement	$ —		$ (5.7)		$ 5.7
Unamortized discount and issuance costs - Convertible Notes	(50.4)		—		(50.4)
Debt issuance costs - Senior Secured Notes	(5.6)		—		(5.6)
Total	**$ (56.0)**		**$ (5.7)**		**$ (50.3)**
Total debt outstanding, net	**$ 455.3**		**$ 395.1**		**$ 60.2**

Future principal payments of long-term debt outstanding as of October 2, 2020 are as follows:

(In millions)	
Fiscal years:	
2021	$ 2.5
2022	2.6
2023	2.4
2024	1.5
2025	201.4
Thereafter	300.9
Total debt outstanding	511.3
Less: current maturities of long-term debt	(2.5)
Non-current portion of long -term debt	$ 508.8

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 15 and December 15 of each year, beginning on December 15, 2020, and will mature on June 15, 2025, unless earlier converted or repurchased by us.

The Convertible Notes will be convertible into cash, shares of Varex common stock or a combination thereof, at the Company's election, at an initial conversion rate of 48.05 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 "Indenture"). 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 conversion rate of the Convertible Notes may be adjusted in certain circumstances, including in connection with a conversion of the Convertible Notes made following certain fundamental changes and under other circumstances set forth in the Indenture. It is the Company's current intent and policy to settle any conversions of notes through a combination of cash and shares.

Prior to the close of business on the business day immediately preceding December 15, 2024, the Convertible Notes at the option of the holder can be convertible only under the following circumstances:

- during any calendar quarter commencing after the calendar quarter ending on September 30, 2020, if the last reported sale price per share of Varex common stock exceeds 130% of the conversion price for each of at least 20 trading days during the 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter;
- during the five consecutive business days immediately after any five consecutive trading day period (such five consecutive trading day period, the “measurement period”) in which the trading price per $1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price per share of Varex common stock on such trading day and the conversion rate on such trading day;
- upon the occurrence of certain corporate events or distributions on Varex common stock, as described in the Indenture; or
- if the Company calls any notes for redemption (under the conditions specified below).

The Convertible Notes will be redeemable, in whole or in part, at the Company’s option at any time, and from time to time, on or after June 1, 2023 and on or before the 60th scheduled trading day immediately before the maturity date, at a cash redemption price equal to the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest, if any, but only if the last reported sale price per share of the Company’s common stock exceeds 130% of the conversion price on (i) each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice; and (ii) the trading day immediately before the date the Company sends such notice. In addition, calling any Convertible Note for redemption will constitute a make-whole fundamental change with respect to that Convertible Note, in which case the conversion rate applicable to the conversion of that Convertible Note will be increased in certain circumstances if it is converted after it is called for redemption. No sinking fund is provided for the Convertible Notes.

Total interest expense related to the Convertible Notes for the twelve months ended October 2, 2020 was $5.0 million and was comprised of $2.5 million related to the contractual interest coupon and $2.5 million related to the amortization of the discount and issuance costs on the liability component.

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 is 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 October 2, 2020, was 9.6 million.

The Company used $11.2 million of the net proceeds from the issuance of the Convertible Notes and $49.8 million from the Warrant Transactions to pay the cost of the Hedge Transactions, which totaled $61.0 million.

The Hedge Transactions and the Warrant Transactions are separate transactions, in each case, and are not part of the terms of the Convertible Notes and will not affect any holder’s rights under the Convertible Notes. Holders of the Convertible Notes will not have any rights with respect to the Call Spread Transactions.

Accounting Treatment of the Convertible Notes and Related Hedge Transactions and Warrant Transactions

As the Call Spread Transactions meet certain accounting criteria, the Call Spread Transactions were classified as equity and are not accounted for as derivatives. The proceeds from the offering of the Convertible Notes were separated into liability and equity components. On the date of issuance, the liability and equity components of the Convertible Notes were calculated to be approximately $152.3 million and $47.7 million, respectively. The initial $152.3 million liability component was determined based on the fair value of similar debt instruments excluding the conversion feature assuming a hypothetical interest rate of 10.45%. The initial $47.7 million equity component represents the difference between the fair value of the initial $152.3 million in debt and the $200.0 million of gross proceeds. The equity component is included in additional paid-in capital in the consolidated balance sheets and will not be subsequently remeasured as long as it continues to meet the conditions for equity classification. The related initial debt discount of $47.7 million is being amortized over the life of the Convertible Notes as non-cash interest expense using the effective interest method at an interest rate of 10.9%.

In connection with the above-noted transactions, the Company incurred approximately $6.9 million of offering-related costs. These offering fees were allocated to the liability and equity components in proportion to the allocation of proceeds and accounted for as debt and equity issuance costs, respectively. The Company allocated $5.3 million of debt issuance costs to the liability component, which were capitalized as deferred financing costs within long-term debt. These costs are being amortized as interest expense over the term of the debt using the effective interest method. The remaining $1.6 million of transaction costs allocated to the equity component were recorded as a reduction of the equity component.

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, among Varex, certain of its direct or indirect wholly-owned subsidiaries as guarantors, and Wells Fargo Bank, National Association as trustee and collateral agent. Interest payments are paid semiannually on April 15 and October 15 of each year, beginning on April 15, 2021.

The net proceeds from the Senior Secured Notes after initial purchasers’ discount, commissions and estimated fees and expenses of $5.6 million, were approximately $294.4 million. The Company used $267.5 million of the proceeds from the offering to repay the Term Facility (defined below), including accrued interest.

As of October 2, 2020, the book value of the Senior Secured Notes was presented net of unamortized debt issuance costs of $5.6 million. Debt issuance costs are amortized to interest expense over the agreement term using the effective interest method. The effective interest rate was 8.2% as of October 2, 2020.

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 ABL Facility (defined below), in which the Senior Secured Notes will 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.

At any time prior to October 15, 2023, the Company has the ability to redeem the Senior Secured Notes under the following optional redemptions:

- up to 30% of the aggregate principal amount of the notes issued under the indenture with the proceeds of certain equity offerings at a redemption price equal to 107.875% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the redemption date.
- some or all of the notes at a price equal to 100% of the principal amount of the notes, plus a “make-whole premium,” together with accrued and unpaid interest, if any, to, but excluding, the redemption date.
- up to 10% of the aggregate principal amount of the notes per year at a redemption price equal to 103% of the aggregate principal amount of notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding the redemption date.

At any time on or after October 15, 2023, Varex may redeem all or part of the notes at the redemption prices indicated in the indenture, plus accrued and unpaid interest, if any, to, but excluding, the redemption date. In addition, if the Company experiences certain changes of control or receive proceeds from certain asset sales, holders of the notes will have the right to require the Company to repurchase the notes under the terms set forth within the indenture.

Interest expense related to the Senior Secured Notes for the twelve months ended October 2, 2020 was $0.2 million.

Asset-Based Loan

Concurrent with the termination of the Credit Agreement (defined below) and closing of the Senior Secured Notes on September 30, 2020, the Company entered into a new revolving credit agreement consisting of a $100.0 million asset-based loan revolving credit facility (the “Asset-Based Loan”, or "ABL Facility"). Borrowings under the Asset-Based Loan will be expected to bear interest at floating rates based on LIBOR, or comparable rate, or a base rate, and an applicable margin based on Average Daily Excess Availability (as defined in the Asset-Based Loan Agreement). In addition, the Company is required to pay a quarterly commitment fee of 0.375% to 0.5%, based on the aggregate unused commitments under the Asset-Based Loan. The ABL Facility matures on the earlier of September 30, 2025 or 91 days prior to the maturity of the Convertible Notes, at which time all outstanding amounts under the ABL Facility will be due and payable. As of October 2, 2020, the total undrawn amount under the ABL Facility was $100.0 million, however, the borrowing base under the ABL fluctuates from month-to-month depending on the amount of eligible accounts receivable and inventory.

Debt issuance costs, including unamortized deferred costs for continuing lenders under the previously existing revolving credit facility, of $3.1 million were capitalized and are being amortized over the term of the new agreement. The amortization associated with these costs is recorded within Interest expense in the consolidated statement of operations. The debt issuance costs are included net of amortization within other assets in the accompanying consolidated balance sheets.

The ABL Facility includes various restrictive covenants that limit our ability to engage in certain transactions, including the incurrence of debt, payment of dividends and other restrictive payments, existence of restrictions affecting subsidiaries, sales of stock and assets, certain affiliate transactions, modifications of debt documents and organizational documents, changes to line of business and fiscal year, incurrence of liens, making fundamental changes, prepayments of junior indebtedness, and certain other transactions.

The ABL Facility contains a minimum Fixed Charge Coverage Ratio of 1.00 to 1.00 that is tested when excess availability under the ABL is less than the greater of (i) 10.0% of the Line Cap (the lesser of (a) the aggregate commitments under the ABL Facility and (b) the aggregate borrowing base) and (ii) $7.5 million.

The ABL Facility will have a first lien security interest on accounts receivable, cash, and inventory as well as certain real estate and holds second lien security interest on all other assets.

Credit Agreement

On May 1, 2017 Varex entered into a secured revolving credit facility (the “Revolving Credit Facility”) in an aggregate principal amount of up to $200.0 million with a term of five years, and a secured term facility (the “Term Facility” and together with the Revolving Credit Facility, the “Credit Agreement”) in an aggregate principal amount of $400.0 million, which was subsequently amended.

On September 30, 2020, the Company terminated its previously existing Credit Agreement, consisting of both the Term Facility and Revolving Credit Facility. The Company repaid the outstanding Term Facility balance of $265.5 million and accrued

interest of $2.0 million with proceeds received from the issuance of the Senior Secured Notes (defined above) and wrote off approximately $3.8 million of previously recorded debt issuance costs, which resulted in a $3.8 million loss on extinguishment of debt, recorded as interest expense within the consolidated statements of operations and comprehensive (loss) earnings.

11. FAIR VALUE

Assets/Liabilities Measured at Fair Value on a Recurring Basis

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.

(In millions)	Fair Value Measurements at October 2, 2020			
	Quoted Prices in Active Markets for Identical Assets and Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Cash equivalents - money market funds	$ —	$ 72.9	$ —	$ 72.9
Derivative assets	—	1.1	—	1.1
Total assets measured at fair value	$ —	$ 74.0	$ —	$ 74.0
Liabilities:				
Derivative liabilities	$ —	$ 2.1	$ —	$ 2.1
Total liabilities measured at fair value	$ —	$ 2.1	$ —	$ 2.1

The fair values of certain of the Company's financial instruments, including bank deposits included in cash and cash equivalents, accounts receivable and accounts payable, also approximate their fair values due to their short maturities. As of October 2, 2020, the fair value of the Company's Convertible Notes and Senior Secured Notes, as defined in Note 10. *Borrowings,* was $178.5 million and $312.8 million, respectively. As of September 27, 2019, the total outstanding borrowings of $395.1 million, net of deferred loan costs, approximated its fair value as it was carried at a market observable interest rate that resets periodically and was categorized as Level 2 in the fair value hierarchy. 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. There were no financial assets or liabilities measured on a recurring basis using significant unobservable inputs (Level 3) and there were no transfers in or out of Level 1, 2 or 3 during fiscal year 2020.

At September 27, 2019, the Company determined the following levels of inputs for the following assets or liabilities:

(In millions)	Fair Value Measurements at September 27, 2019			
	Quoted Prices in Active Markets for Identical Assets and Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Cash equivalents - Money market funds	$ —	$ 8.8	$ —	$ 8.8
Total assets measured at fair value	$ —	$ 8.8	$ —	$ 8.8
Liabilities:				
Derivative liabilities	$ —	$ 0.7	$ —	$ 0.7
Deferred consideration	8.9	—	—	8.9
Total liabilities measured at fair value	$ 8.9	$ 0.7	$ —	$ 9.6

12. GOODWILL AND INTANGIBLE ASSETS

In the third quarter of 2020, changes in facts and circumstances and general market declines from COVID-19 resulted in reduced expectations of future operating results. The Company considered these circumstances and the potential long-term impact on cash flows associated with its reporting units and indefinite-lived intangible assets and determined that an indicator of possible impairment existed within its Medical and Industrial reporting units and indefinite-lived intangible assets. Accordingly, the Company performed a quantitative impairment analysis to determine the fair values of those reporting units and indefinite-lived intangible assets. The Company used both an income approach utilizing the discounted cash flow method ("DCF") and a market approach utilizing the public company market multiple method. The Company developed multiple forecasted future cash flow scenarios for the reporting units and indefinite-lived intangible assets with varied recovery timing and sales impact assumptions. Based on the output of the analysis, the Company determined that the fair values of both the Medical and Industrial reporting units exceeded their carrying amounts. The Company's Industrial reporting unit's fair value exceeded its carrying value by more than 20% and the Company's Medical reporting unit's fair value exceeded its carrying value by more than 30%. Accordingly, no impairment charges were required as of July 3, 2020. However, an impairment charge was required for the Company's in-process R&D as discussed below.

Fair value determinations require considerable judgment and are sensitive to changes in underlying assumptions, estimates, and market factors. Estimating the fair value of individual reporting units requires us to make assumptions and estimates regarding the Company's future plans, as well as industry, economic, and regulatory conditions. These assumptions and estimates include estimated future annual net cash flows, income tax rates, discount rates, revenue growth rates, forecasted gross margins, market multiples, terminal value and other market factors. This fair value measurement was based on significant inputs not observable in the market and thus represents a Level 3 fair value measurement. If current expectations of future revenue growth rates and forecasted gross margins, both in size and timing, are not met, if market factors outside of the Company's control, such as discount rates, change, if market multiples decline, or if management's expectations or plans otherwise change, including as a result of the development of the Company's global five-year operating plan, then one or more of the Company's reporting units might become impaired in the future. The Company will continue to monitor the financial performance of and assumptions for its reporting units. A future impairment charge for goodwill could have a material effect on the Company's consolidated financial position and results of operations.

The following table reflects goodwill by reportable operating segment:

(In millions)	Medical	Industrial	Total
Balance at September 27, 2019	$ 173.0	$ 117.8	$ 290.8
Foreign currency translation adjustments	1.4	0.9	2.3
Balance at October 2, 2020	$ 174.4	$ 118.7	$ 293.1

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 consolidated balance sheets:

	October 2, 2020			September 27, 2019		
(In millions)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Acquired existing technology	$ 74.9	$ (37.5)	$ 37.4	$ 74.1	$ (28.4)	$ 45.7
Patents, licenses and other	12.8	(9.7)	3.1	12.7	(8.4)	4.3
Customer contracts and supplier relationship	51.2	(24.2)	27.0	50.7	(17.2)	33.5
Total intangible assets with finite lives	138.9	(71.4)	67.5	137.5	(54.0)	83.5
In-process R&D with indefinite lives	—	—	—	2.8	—	2.8
Total intangible assets	$ 138.9	$ (71.4)	$ 67.5	$ 140.3	$ (54.0)	$ 86.3

Amortization expense for intangible assets was $17.2 million, $15.7 million and $16.2 million in fiscal years 2020, 2019 and 2018, respectively. The Company recognized intangible asset impairment charges of $2.8 million, $4.8 million, and $3.0 million in fiscal years 2020, 2019, and 2018, respectively, which are included in the consolidated statements of (loss) earnings under impairment of intangible assets. These impairment charges related primarily to the Company's Medical reporting segment. The fair value of the asset impaired during the third quarter of 2020 was determined using an estimated weighted average cost of capital of 25.0% (consistent with the rate used at the acquisition date), which reflects the risks inherent in future cash flow projections and represents a rate of return that a market participant would expect for this asset. The Company believes its assumptions are consistent with the plans and estimates that a market participant would use to manage the business. The estimated fair value of the in-process R&D intangible

asset as of July 3, 2020 was zero. This fair value measurement was based on significant inputs not observable in the market and thus represents a Level 3 fair value measurement.

In addition, as a result of the impact of COVID-19 as discussed above, the Company determined certain impairment triggers had occurred related to the Company's finite-lived tangible and intangible assets. Accordingly, the Company analyzed undiscounted cash flows at the asset group level for certain finite-lived tangible and intangible assets as of July 3, 2020. Based on that undiscounted cash flow analysis, the Company determined that estimated undiscounted future cash flows exceeded their net carrying values, and, therefore, as of July 3, 2020, the Company's finite-lived tangible and intangible assets were not impaired.

As of October 2, 2020, the estimated future amortization expense of intangible assets with finite lives is as follows:

(In millions)	
Fiscal years:	
2021	$ 16.5
2022	15.0
2023	13.9
2024	9.3
2025	3.2
Thereafter	9.6
Total	$ 67.5

13. COMMITMENTS AND CONTINGENCIES

Lease Commitments

See Note 3. *Leases,* included in this report, for additional information about Varex's lease commitments.

Purchase Agreement With Supplier

During the third quarter of fiscal year 2020, Varex entered into a purchase agreement with a supplier to acquire certain equipment and intellectual property from the supplier that is utilized to manufacture X-ray cables utilized in Varex's products. As of October 2, 2020, there has been no transfer of control of the underlying equipment. This acquisition is expected to be completed during the 2021 fiscal year and the total consideration to be paid by Varex for the acquired assets is expected to be ¥1,084.7 million or approximately $10.3 million.

Other Commitments

See Note 5. *Related Party Transactions,* included in this report, for additional information about the Company's commitments to dpiX.

See Note 14. *Redeemable Noncontrolling Interests & Noncontrolling Interests,* included in this report, for additional information about the Company's commitment to the noncontrolling shareholders of MeVis.

The Company has an environmental liability of approximately $2.0 million as of October 2, 2020.

Contingencies

From time to time, the Company is a party to or otherwise involved in legal proceedings, claims and government inspections or investigations, customs and duty audits, 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. The Company did not have any material contingent liabilities as of October 2, 2020 and September 27, 2019. Legal expenses are expensed as incurred.

14. REDEEMABLE NONCONTROLLING INTERESTS & NONCONTROLLING INTERESTS

In April 2019, a subsidiary of Varex completed the acquisition of 98.2% of the outstanding shares of common stock of Direct Conversion. As the Company has majority voting rights it has consolidated Direct Conversion's operations in its consolidated financial statements and recorded the noncontrolling interest. The noncontrolling interest related to Direct Conversion is included in noncontrolling interest in the equity section of the Company's consolidated balance sheet. Earnings representing the noncontrolling interest's portion of Direct Conversion's income from operations is included in the Company's consolidated statements of (loss) earnings.

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 the Company's consolidated financial statements and recorded the noncontrolling interests. The noncontrolling interest related to the partner's 25% interest in the joint venture is included in noncontrolling interest in the equity section of the Company's consolidated balance sheet. Earnings representing the noncontrolling partner's share of income from operations is included in the Company's consolidated statements of (loss) earnings.

In April 2015, the Company completed the acquisition of 73.5% of the then outstanding shares of MeVis Medical Solutions AG ("MeVis"), a public 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. In October 2015, the DPLTA became effective upon its registration at the local court of Bremen, Germany. Under the DPLTA, MeVis subordinates its management to the Company and undertakes to transfer all of its annual profits and losses to the Company. In return, the DPLTA grants the noncontrolling shareholders of MeVis: (1) an annual recurring net compensation of €0.95 per MeVis share starting from January 1, 2015 and (2) a put right for their MeVis shares at €19.77 per MeVis share. During fiscal year 2018, an immaterial number of MeVis' shares were purchased under the put right. During the fourth quarter of fiscal year 2020, the put right granted to the noncontrolling shareholders of MeVis under the DPLTA expired unexercised, which resulted in the redeemable noncontrolling interests being reclassified to permanent equity as noncontrolling interest in the consolidated balance sheet. As of October 2, 2020, noncontrolling shareholders together held approximately 0.5 million shares of MeVis, representing 26.3% of the outstanding shares.

Changes in redeemable noncontrolling interests and noncontrolling interests were as follows:

	Fiscal Years			
	2020		2019	
(In millions)	Redeemable Noncontrolling Interests	Noncontrolling Interests	Redeemable Noncontrolling Interests	Noncontrolling Interest
Balance at beginning of period	$ 10.5	$ 3.3	$ 11.1	$ 2.1
Net earnings attributable to noncontrolling interests	0.5	—	0.5	(0.2)
Contributions from noncontrolling interests	—	—	—	1.4
Reclassification of redeemable NCI in MeVis to noncontrolling interests in permanent equity	(11.3)	11.3	—	—
Dividend distributions	(0.5)	—	(0.5)	—
Other	0.8	(0.5)	(0.6)	—
Balance at end of period	$ —	$ 14.1	$ 10.5	$ 3.3

15. EMPLOYEE STOCK PLANS

Employee Stock Plans

The Company's employees participate in Varex Imaging Corporation 2020 Omnibus Stock Plan (the "2020 Stock Plan"), 2017 Omnibus Stock Plan (the "2017 Stock Plan"), and Varex Imaging Corporation 2017 Employee Stock Purchase Plan (the "2017 ESPP") which allows the grants of stock options, restricted stock units and performance shares among other types of awards.

In January 2017, Varex stockholders approved the 2017 ESPP, which provides eligible employees with an opportunity to purchase shares of Varex common stock at 85% of the lower of its fair market value at the start and end of a six-month purchase period. The 2017 ESPP provides for the purchase of up to one million shares of Varex common stock.

Share-Based Compensation Expense

Share-based compensation expense recognized in the consolidated statements of (loss) earnings 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 for the option component of the employee stock purchase plan shares:

	Fiscal Year		
(In millions)	**2020**	**2019**	**2018**
Cost of revenues	$ 1.1	$ 1.2	$ 1.3
Research and development	2.5	2.2	1.8
Selling, general and administrative	9.8	8.3	6.9
Total share-based compensation expense	$ 13.4	$ 11.7	$ 10.0

The unrecognized share-based compensation cost as of October 2, 2020 was $24.4 million, and is expected to be recognized in the next 3 to 4 fiscal years. As of October 2, 2020, there were approximately 4.8 million and 0.5 million shares of common stock available for future issuances under the 2020 Stock Plan and the 2017 ESPP, respectively.

The Company utilized the Black-Scholes valuation model for estimating the fair value of stock options granted and the option component of ESPP grants. The Company calculated the fair value of option grants and option component of ESPP grants on the respective dates of grant using the following weighted average assumptions:

	Employee Stock Option Plan			Employee Stock Purchase Plans		
	Fiscal Year			Fiscal Year		
	2020	**2019**	**2018**	**2020**	**2019**	**2018**
Expected term (in years)	6.1	4.6	4.8	0.5	0.5	0.5
Risk-free interest rate	1.1 %	2.5 %	2.6 %	0.9 %	2.5 %	2.0 %
Expected volatility	36.9 %	33.9 %	31.8 %	50.0 %	43.9 %	34.1 %
Expected dividend	— %	— %	— %	— %	— %	— %
Weighted average fair value at grant date	$7.53	$10.19	$11.57	$7.94	$7.81	$8.92

Option valuation methods, including Black-Scholes, require the input of subjective assumptions, which are discussed below.

Risk-Free Interest Rate

The interest rates used are based on the implied yield currently available on U.S. Treasury zero-coupon issues with an equivalent remaining term equal to the expected life of the award.

Expected Term

Options granted generally vest over a period of 36 to 48 months and expire 7 to 10 years from date of grant. Employee stock purchase plan offering periods are 6 months and provides eligible employees with an opportunity to purchase shares of Varex common stock at 85% of the lower of its fair market value at the start and end of a six-month purchase period. The Company has elected to use the simplified method in calculating the expected term of its options due to a lack of sufficient historical information.

Expected Dividend Yield

The dividend rate used is zero as the Company has never paid any cash dividends on its common stock and does not anticipate doing so in the foreseeable future. The Company is also restricted from paying dividends on common stock under its debt facilities.

Expected Volatility

Authoritative accounting guidance on stock-based compensation indicates that companies should consider volatility over a period generally commensurate with the expected or contractual term of the stock option. Adequate Company-specific data does not exist for this time period as the Company began trading in January 2017. The volatility variable used is a blended approach by using

the Company's historic data for the years it has been publicly traded and a benchmark of other comparable companies' volatility rates for the prior years.

Stock Option Activity

The following table summarizes the 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)	Options	Price range	Weighted Average Exercise Price	Weighted Average Remaining Term (in years)	Aggregate Intrinsic Value (1)
Outstanding at September 27, 2019	2,269	$22.63 - $37.60	$ 30.60	4.1	$ 1,220.3
Granted	591	$13.61 - $28.12	23.39		
Canceled, expired or forfeited	(61)	$22.63 - $37.10	30.17		
Exercised	(64)	$22.84 - $23.24	22.93		
Outstanding at October 2, 2020	2,735	$13.61 - $37.60	$ 29.23	4.5	$ —
Exercisable at October 2, 2020	1,794	$25.17 - $37.60	$ 30.48	2.9	$ —

(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 $12.37 as of October 2, 2020, the last trading date of the Company's respective fiscal years, and which represents the amount that would have been received by the option holders had all option holders exercised their options and sold the shares received upon exercise as of that date.

The grant-date fair value of options granted during fiscal years 2020, 2019 and 2018 was $4.4 million, $3.0 million and $3.1 million, respectively. The total intrinsic value of the options exercised during the years ended October 2, 2020, September 27, 2019 and September 28, 2018 was $0.4 million, $0.2 million and $1.7 million, respectively

Restricted Stock Units, Restricted Stock Awards and Deferred Stock Units

The following table summarizes the activity for restricted stock units, restricted stock awards and deferred stock units under Varex's employee incentive plans for the Company's employees:

(In thousands, except per share amounts)	Number of Shares	Weighted Average Grant-Date Fair Value
Balance at September 27, 2019	678	$ 33.18
Granted	587	20.30
Vested	(224)	32.77
Canceled, expired or forfeited	(86)	31.27
Balance at October 2, 2020	955	$ 25.54

The total grant-date fair value of shares granted was $11.9 million, $9.0 million and $10.1 million for fiscal years 2020, 2019 and 2018, respectively. Shares outstanding at October 2, 2020, September 27, 2019 and September 28, 2018 had an estimated market value of $11.8 million, $19.2 million and $18.4 million, respectively.

16. TAXES ON EARNINGS

Income tax expense or benefit is based on reported income or loss before income taxes. Deferred income taxes reflect the effect of temporary differences between asset and liability amounts that are recognized for financial reporting purposes and the amounts that are recognized for income tax purposes. These deferred taxes are measured by applying currently enacted tax laws. Valuation allowances are recognized to reduce deferred tax assets to the amount that is more likely than not to be realized.

Taxes on earnings were as follows:

(In millions)	Fiscal Years 2020	2019	2018
Current (benefit) provision:			
Federal	$ (16.3)	$ 9.2	$ (2.1)
State and local	(1.4)	1.3	(0.3)
Foreign	5.7	6.8	7.5
Total current	$ (12.0)	$ 17.3	$ 5.1
Deferred (benefit) provision:			
Federal	$ (1.7)	$ (10.0)	$ (7.0)
State and local	0.6	(1.6)	0.7
Foreign	(2.1)	—	(1.4)
Total deferred	(3.2)	(11.6)	(7.7)
Taxes on (loss) earnings	$ (15.2)	$ 5.7	$ (2.6)

(Loss) earnings before taxes are generated from the following geographic areas:

(In millions)	Fiscal Years 2020	2019	2018
United States	$ (74.1)	$ 5.9	$ 3.7
Foreign	1.5	15.6	22.0
(Loss) earnings before taxes	$ (72.6)	$ 21.5	$ 25.7

The effective tax rate differs from the U.S. federal statutory tax rate as a result of the following:

	Fiscal Years 2020	2019	2018
Federal statutory income tax rate	21.0 %	21.0 %	24.5 %
State and local taxes, net of federal tax benefit	1.0	(0.9)	1.1
Revaluation of deferred tax liabilities for US statutory change	—	—	(41.8)
Mandatory repatriation tax on foreign earnings	—	1.9	13.0
Domestic production activities deduction	—	—	(0.8)
Research and development credit	3.7	(10.2)	(11.1)
Prior year deferred tax adjustments	0.4	4.7	1.9
Foreign rate difference	(0.4)	6.0	0.8
Change in valuation allowance	(11.0)	11.2	(1.9)
US tax reform - international provisions	—	(4.7)	—
US NOL carryback	5.6	—	—
Other	0.6	(2.5)	4.2
Effective tax rate	20.9 %	26.5 %	(10.1)%

During fiscal year 2020, the Company's effective tax rate varied from the U.S. federal statutory rate of 21% primarily because of the favorable impact of U.S. net operating losses to be carried back to tax years with greater U.S. federal statutory rates. These favorable tax items were mostly offset by the unfavorable impact of additional losses in certain foreign jurisdictions, limitations on interest expense, and R&D credits for which no benefit is recognized.

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 (U.S. Tax Reform) was enacted in the U.S. which significantly revised the U.S. corporate income tax structure. Among the revisions impacting our effective tax rate are a lower U.S. corporate statutory rate going from 35% to 21% effective January 1, 2018 and changes to the way foreign earnings are taxed. As a September

fiscal year filer, the lower corporate income tax rate is phased in from a U.S. statutory federal rate of 24.5% in fiscal year ending September 28, 2018 to a rate of 21% for the fiscal year ending September 27, 2019.

During fiscal year 2019, the Company's effective tax rate varied from the U.S. federal statutory rate of 21% primarily because of the favorable impact of changes to the U.S. corporate tax structure resulting from U.S. Tax Reform, and U.S. research and development tax credits. These favorable U.S. tax items were offset by losses in certain foreign jurisdictions for which no benefit is recognized and earnings in other foreign jurisdictions that are taxed at higher rates.

During fiscal year 2018, the Company's effective tax rate varied from the U.S. federal statutory rate primarily because of the favorable impact of changes to the U.S. corporate tax structure resulting from U.S. Tax Reform. During fiscal years 2018 and 2017, the effective tax rate also differs from the U.S. federal statutory rate due to increases resulting from U.S. state income tax expense, losses in certain foreign jurisdictions for which no benefit is recognized, earnings in other foreign jurisdictions that are taxed at higher rates, and limitations on the deductibility of officers' compensation. These are offset by decreases due to U.S. research and development credits, tax windfalls for share-based compensation, and the release of a valuation allowance against loss carryforwards in certain foreign jurisdictions.

During fiscal year 2019, additional U.S. Tax Reform provisions, including GILTI (global intangible low-taxed income), BEAT (base-erosion anti-abuse tax), FDII (foreign-derived intangible income), limitations on interest expense deductions (if certain conditions apply), and other components became effective for the Company and, if applicable, have been included in the calculation of the fiscal year 2019 tax provision. The determination of the tax effects of U.S. Tax Reform may change following future legislation or further interpretation of U.S. Tax Reform from U.S. Federal and state tax authorities. The guidance for accounting for U.S. Tax Reform requires taxpayers to make an election regarding the accounting for GILTI. This policy election is to either: (1) treat GILTI as a period cost if and when incurred, or (2) recognize deferred taxes for basis differences that are expected to reverse as GILTI in future years. During the first quarter of fiscal year 2019, the Company has made the accounting policy election to account for GILTI under the period cost method.

Significant components of deferred tax assets and liabilities are as follows:

(In millions)	October 2, 2020	September 27, 2019
Deferred Tax Assets:		
Inventory adjustments	$ 4.4	$ 5.6
Share-based compensation	4.2	3.1
Product warranty	1.7	1.6
Deferred compensation	1.3	1.1
Net operating loss carryforwards	27.0	24.3
Accrued vacation	1.0	1.0
Credit carryforwards	5.9	1.9
Deferred financing fees	3.3	—
Interest expense limitation	4.7	—
Lease liabilities	7.2	—
Other	6.0	7.5
	$ 66.7	$ 46.1
Valuation allowance	(28.7)	(18.8)
Total deferred tax assets	$ 38.0	$ 27.3
Deferred Tax Liabilities:		
Acquired intangibles	$ (16.6)	$ (19.3)
Property, plant and equipment	(12.4)	(10.6)
Investments in privately held companies	(2.8)	(3.3)
Right of use assets	(6.7)	—
Other	(1.3)	(2.3)
Total deferred tax liabilities	(39.8)	(35.5)
Net deferred tax liabilities	$ (1.8)	$ (8.2)
Reported As:		
Deferred tax assets	$ 38.0	$ 27.3
Deferred tax liabilities	**(39.8)**	**(35.5)**
Net deferred tax liabilities	$ (1.8)	$ (8.2)

As a result of the changes to the U.S. taxation of foreign earnings included in U.S. Tax Reform, the Company reevaluated its previous indefinite reinvestment assertion with respect to these earnings during fiscal year 2018, which resulted in the Company revoking its assertion for current and future earnings for all countries, while maintaining the assertion that historic earnings are indefinitely reinvested outside the U.S. The Company modified its prior assertion in fiscal year 2019 with respect to the acquisition of Direct Conversion. The modification was to assert that all earnings for Direct Conversion, located primarily in Sweden and Finland, are indefinitely reinvested in those countries. For the year ended October 2, 2020, the Company maintains these assertions. 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 U.S. 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 U.S. State income taxes and foreign withholding taxes that would apply if the foreign earnings were actually repatriated in the form of a dividend.

As of October 2, 2020, the Company had foreign net operating loss carryforwards ("NOL") of approximately $27.0 million with $4.3 million expiring between 2021 and 2030 and $22.7 million carried forward indefinitely. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted in response to the COVID-19 pandemic. The CARES Act, among other things, permits NOL carryovers and carrybacks to offset 100% of taxable income for taxable years beginning before 2021. In addition, the CARES Act allows NOLs incurred in 2018, 2019, and 2020 to be carried back to each of the five preceding taxable years to generate a refund of previously paid income taxes. On July 2, 2020, the US Treasury Department issued a regulation providing an election to waive NOL carryback to a former consolidated group. The Company has evaluated the impact of the CARES Act and concludes the NOL carryback provision of the CARES Act will result in a material cash tax benefit.

The valuation allowance relates primarily to net operating losses in certain foreign jurisdictions where, based on the weight of available evidence, it is more likely than not that the tax benefit of the net operating losses will not be realized. The valuation allowance increased by $9.9 million during fiscal year 2020 and increased by $14.8 million during fiscal year 2019. The increase during the current year was primarily related to net operating losses in certain foreign jurisdictions, limitations on interest expense, and U.S. Federal and State research and development tax credits.

Changes in the Company's valuation allowance for deferred tax assets were as follows:

	Fiscal Years		
(In millions)	**2020**	**2019**	**2018**
Valuation allowance balance–beginning of fiscal year	$ 18.8	$ 4.0	$ 4.3
Increases resulting from business combinations	—	12.0	—
Other increases	10.2	2.8	2.2
Other decreases	(0.3)	—	(2.5)
Valuation allowance balance—end of fiscal year	$ 28.7	$ 18.8	$ 4.0

During fiscal year 2020, the Company paid U.S and foreign taxes of approximately $4.2 million. In fiscal year 2019, the Company paid U.S. and foreign taxes of approximately $8.2 million.

The Company accounts for uncertainty in income taxes following a two-step approach for recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining whether the weight of available evidence indicates that it is more likely than not that, based on the technical merits, the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement.

Changes in the Company’s unrecognized tax benefits were as follows:

	Fiscal Years	
(In millions)	**2020**	**2019**
Unrecognized tax benefits balance–beginning of fiscal year	$ 0.6	$ 0.6
Additions (subtractions) based on tax positions related to a prior year	0.2	(0.2)
Additions based on tax positions related to the current year	—	0.2
Unrecognized tax benefits balance—end of fiscal year	$ 0.8	$ 0.6

As of October 2, 2020 and September 27, 2019, the total amount of gross unrecognized tax benefits was $0.8 million and $0.6 million, respectively, all of which would affect the effective tax rate if recognized.

The Company includes interest and penalties related to income taxes within taxes (benefit) on earnings on the consolidated statements of (loss) earnings. For the year ended October 2, 2020, $0.1 million interest and penalties have been included for this period. For the year ended September 27, 2019, $0.1 million interest and penalties have been included for this period.

The Company files U.S. federal and state income tax returns and non-U.S. income tax returns in various jurisdictions. All of these returns are subject to examination by their respective taxing jurisdictions from the date of filing through each applicable statute of limitation period. The Company’s significant operations up to the date of separation have historically been included in Varian’s U.S. federal and state income tax returns and non-U.S. jurisdiction tax returns. Material liabilities arising related to the pre-spin operations would be the responsibility of Varian. Other periods for entities acquired are still open and subject to examination. Generally, periods prior to 2010 are no longer subject to examination.

17. SEGMENT INFORMATION

The Company has two reportable operating segments Medical and Industrial. 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 Chief Executive Officer, who is also its CODM, 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, high voltage connectors, image-processing software and workstations, 3D reconstruction software, computer-aided diagnostic software, collimators, automatic exposure control devices, generators, heat exchangers, ionization chambers and buckys (a component of X-ray units that holds X-ray film cassettes). 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 and baggage screening at airports, and nondestructive testing and inspection applications used in a number of other markets. The Company's Industrial products include Linatron® X-ray linear accelerators, X-ray tubes, digital detectors and high voltage connectors. 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:

	Fiscal Year		
(In millions)	**2020**	**2019**	**2018**
Revenues			
Medical	$ 584.5	$ 596.8	$ 602.0
Industrial	153.8	183.8	171.4
Total revenues	738.3	780.6	773.4
Gross profit			
Medical	136.4	188.9	190.5
Industrial	53.8	67.8	63.4
Total gross profit	190.2	256.7	253.9
Total operating expenses	223.9	211.0	209.4
Interest and other expense, net	(38.9)	(24.2)	(18.8)
(Loss) earnings before taxes	(72.6)	21.5	25.7
Taxes (benefit) on earnings	(15.2)	5.7	(2.6)
Net (loss) earnings	(57.4)	15.8	28.3
Less: Net earnings attributable to noncontrolling interests	0.5	0.3	0.8
Net (loss) earnings attributable to Varex	$ (57.9)	$ 15.5	$ 27.5

The following table summarizes the Company's total assets by its reportable segments:

(In millions)	October 2, 2020	September 27, 2019
Identifiable assets:		
Medical	$ 900.2	$ 794.3
Industrial	239.3	244.6
Total reportable segments	$ 1,139.5	$ 1,038.9

Geographic Information

	Revenues			Property, plant and equipment, net	
	Fiscal Years			Fiscal Years	
(In millions)	2020	2019	2018	2020	2019
United States	$ 249.8	$ 275.3	$ 268.8	$ 115.9	$ 122.6
Latin America	5.2	7.3	7.0	—	—
EMEA	231.5	269.0	254.5	21.5	11.4
APAC	251.8	229.0	243.1	7.8	8.3
Total company	$ 738.3	$ 780.6	$ 773.4	$ 145.2	$ 142.3

The Company operates various manufacturing and marketing operations outside the United States. Latin America includes Brazil and Mexico. EMEA includes Europe, Russia, the Middle East, India and Africa. APAC includes Asia and Australia. Revenues by region are based on the known final destination of products sold.

18. EMPLOYEE BENEFIT PLANS

Varex's 401(k) plan is intended to be qualified under Section 401(a) of the Code with the 401(k) plan's related trust intended to be tax exempt under Section 501(a) of the Code and intended for all full-time employees in the United States. This plan allows employees to contribute a portion of their pretax salary up to the maximum dollar limitation prescribed by the Internal Revenue Service. The Company made matching contributions to the plan totaling $4.4 million, $6.7 million and $6.5 million in fiscal years 2020, 2019 and 2018, respectively.

The Company also maintains defined benefit plans for employees located outside the US. The net pension liability is included in other long-term liabilities on the Company's consolidated balance sheets and totaled $6.5 million and $5.5 million as of October 2, 2020 and September 27, 2019, respectively. The Company's net periodic benefit costs for the Company's defined benefit plans were not material for fiscal years 2020, 2019 and 2018.

19. OTHER COMPREHENSIVE (LOSS) INCOME

The following tables present the changes in the accumulated balances for each component of other comprehensive income (loss):

(In millions)	Unrealized Gain (Loss) on Derivative Financial Instruments	Unrealized Gain (Loss) on Defined Benefit Obligations	Currency Translation Adjustment	Accumulated Other Comprehensive (Loss) Income
Balance at September 28, 2018	$ 5.8	$ —	$ —	$ 5.8
Other comprehensive loss before reclassifications	(8.3)	(1.9)	—	(10.2)
Income tax benefit	2.1	0.6	—	2.7
Foreign currency translation adjustment	—	—	—	—
Balance at September 27, 2019	$ (0.4)	$ (1.3)	$ —	$ (1.7)
Other comprehensive (loss) income before reclassifications	(3.4)	0.9	(1.3)	(3.8)
Amount reclassified out of other comprehensive income	1.5	—	—	1.5
Amount reclassified out of other comprehensive earnings - transaction remote	2.4	—	—	2.4
Income tax impact	(0.1)	(0.3)	0.3	(0.1)
Foreign currency translation adjustment	—	—	2.5	2.5
Balance at October 2, 2020	$ —	$ (0.7)	$ 1.5	$ 0.8

Exhibit 4.1

DESCRIPTION OF VAREX'S CAPITAL STOCK

The following is a summary of the material terms of Varex's capital stock contained in Varex's amended and restated certificate of incorporation and bylaws and the in the Delaware General Corporation Law ("DGCL"). The summaries and descriptions below do not purport to be complete statements of the relevant provisions of the certificate of incorporation, bylaws or the DGCL.

General

Varex's authorized capital stock consists of 150 million shares of common stock, par value $0.01 per share, and 20 million shares of preferred stock, par value $0.01 per share, all of which shares of preferred stock are undesignated. Varex's board of directors may establish the rights and preferences of the preferred stock from time to time.

Common Stock

Each holder of Varex common stock is entitled to one vote for each share on all matters to be voted upon by the common stockholders, and there are no cumulative voting rights. Subject to any preferential rights of any outstanding preferred stock, holders of Varex common stock are entitled to receive ratably the dividends, if any, declared from time to time by Varex's board of directors out of funds legally available for that purpose. If there is a liquidation, dissolution or winding up of Varex, holders of its common stock would be entitled to ratable distribution of its assets remaining after the payment in full of liabilities and any preferential rights of any then-outstanding preferred stock.

Holders of Varex common stock have no preemptive or conversion rights or other subscription rights, and there are no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of Varex common stock are fully paid and non-assessable. The rights, preferences and privileges of the holders of Varex common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that Varex may designate and issue in the future.

Preferred Stock

Varex's board of directors is authorized, subject to limitations prescribed by the DGCL and by Varex's amended and restated certificate of incorporation, to issue up to 20 million shares of preferred stock in one or more series without further action by the holders of its common stock. Varex's board of directors have the discretion, subject to limitations prescribed by the DGCL and by Varex's amended and restated certificate of incorporation, to determine the rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock.

Anti-Takeover Effects of Various Provisions of Delaware Law and Varex's Certificate of Incorporation and Bylaws

Provisions of the DGCL and Varex's amended and restated certificate of incorporation and bylaws could make it more difficult to acquire Varex by means of a tender offer, a proxy contest or otherwise, or to remove incumbent officers and directors. These provisions, summarized below, are expected to discourage certain types of coercive takeover practices and takeover bids that Varex's board of directors may consider inadequate and to encourage persons seeking to acquire control of Varex to first negotiate with Varex's board of directors. Varex believes that the benefits of increased protection of its ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure it outweigh the disadvantages of discouraging takeover or acquisition proposals because, among other things, negotiation of these proposals could result in an improvement of their terms.

Delaware Anti-Takeover Statute. Varex is subject to Section 203 of the DGCL, an anti-takeover statute. In general, Section 203 of the DGCL prohibits a publicly held Delaware corporation from engaging in a "business

combination" with an "interested stockholder" for a period of three years following the time the person became an interested stockholder, unless (i) prior to such time, the board of directors of such corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder; (ii) upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of such corporation at the time the transaction commenced (excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) the voting stock owned by directors who are also officers or held in employee benefit plans in which the employees do not have a confidential right to tender or vote stock held by the plan); or (iii) on or subsequent to such time the business combination is approved by the board of directors of such corporation and authorized at a meeting of stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock of such corporation not owned by the interested stockholder. Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns (or within three years prior to the determination of interested stockholder status did own) 15% or more of a corporation's voting stock. The existence of this provision would be expected to have an anti-takeover effect with respect to transactions not approved in advance by Varex's board of directors, including discouraging attempts that might result in a premium over the market price for the shares of common stock held by Varex's stockholders.

Classified Board. Varex's amended and restated certificate of incorporation and bylaws provide that its board of directors was initially divided into three classes, two of which are comprised of two directors and one of which is comprised of three directors. In connection with the spin-off of Varex from Varian, directors of each class were initially elected for staggered three-year terms. In accordance with Varex's certificate of incorporation, (i) commencing with the class of directors standing for election at the Company's 2020 annual meeting, directors will stand for election for a two-year term; (ii) commencing with the class of directors standing for election at the Company's 2021 annual meeting, directors will stand for election for a one-year term; and (iii) commencing with the Company's 2022 annual meeting, and at each annual meeting thereafter, all directors will stand for election for a one-year term. Until the board is declassified, it would take at least two elections of directors for any individual or group to gain control of Varex's board of directors. Accordingly, these provisions could discourage a third party from initiating a proxy contest, making a tender offer or otherwise attempting to gain control of Varex.

At any meeting of stockholders for the election of directors at which a quorum is present, the election will be determined by a majority of the votes cast by the stockholders entitled to vote in the election, with directors not receiving a majority of the votes cast required to tender their resignations for consideration by the board, except that in the case of a contested election, the election will be determined by a plurality of the votes cast by the stockholders entitled to vote in the election.

Removal of Directors. For so long as the Varex board of directors is classified, Varex's amended and restated certificate of incorporation provides that its stockholders may remove its directors only for cause, by an affirmative vote of holders of at least a majority of Varex's voting stock then-outstanding. Following the 2022 annual meeting, Varex's stockholders may remove its directors with or without cause by an affirmative vote of at least a majority of Varex's voting stock then-outstanding.

Amendments to Certificate of Incorporation. Varex's amended and restated certificate of incorporation provide that the affirmative vote of the holders of at least 66 2/3% of its voting stock then-outstanding is required to amend certain provisions relating to the term and removal of its directors, the filling of its board vacancies, the calling of special meetings of stockholders, stockholder action by written consent, the elimination of liability of directors to the extent permitted by Delaware law and indemnification of directors and officers. The provisions of the amended and restated certificate of incorporation relating to the 66 2/3% voting threshold will be of no force and effect effective as of the completion of the 2021 annual meeting of stockholders and the amended and restated certificate of incorporation may thereafter be amended by the affirmative vote of the holders of at least a majority of the outstanding voting stock then-outstanding.

Amendments to Bylaws. Varex's amended and restated bylaws provide that they may be amended by Varex's board of directors or by the affirmative vote of holders of a majority of Varex's voting stock then-outstanding.

Size of Board and Vacancies. Varex's amended and restated bylaws provide that the number of directors on its board of directors will be fixed exclusively by its board of directors, except that the minimum number of

directors will be three. Any vacancies created in its board of directors resulting from any increase in the authorized number of directors or the death, resignation, retirement, disqualification, removal from office or other cause will be filled by a majority of the board of directors then in office, even if less than a quorum is present, or by a sole remaining director. Any director appointed to fill a vacancy on Varex's board of directors will be appointed for a term expiring at the next election of the class for which such director has been appointed, and until his or her successor has been elected and qualified.

Special Stockholder Meetings. Varex's amended and restated certificate of incorporation provides that only the board of directors, pursuant to a resolution adopted by the majority of the whole board, or the chairman of the board of directors may call special meetings of Varex stockholders. The majority of the board of directors must concur with the calling of the meeting by the chairman. Stockholders may not call special stockholder meetings.

Stockholder Action by Written Consent. Varex's amended and restated certificate of incorporation expressly eliminates the right of its stockholders to act by written consent effective as of the distribution. Stockholder action must take place at the annual or a special meeting of Varex stockholders.

Requirements for Advance Notification of Stockholder Nominations and Proposals. Varex's certificate of incorporation mandates that stockholder nominations for the election of directors will be given in accordance with the bylaws. The amended and restated bylaws will establish advance notice procedures with respect to stockholder proposals and nomination of candidates for election as directors as well as minimum qualification requirements for stockholders making the proposals or nominations. Additionally, the bylaws require that candidates for election as director disclose their qualifications and make certain representations.

No Cumulative Voting. The DGCL provides that stockholders are denied the right to cumulate votes in the election of directors unless the company's certificate of incorporation provides otherwise. Varex's amended and restated certificate of incorporation do not provide for cumulative voting.

Undesignated Preferred Stock. The authority of Varex's board of directors to issue preferred stock could potentially be used to discourage attempts by third parties to obtain control of Varex's company through a merger, tender offer, proxy contest or otherwise by making such attempts more difficult or more costly. Varex's board of directors may be able to issue preferred stock with voting rights or conversion rights that, if exercised, could adversely affect the voting power of the holders of common stock.

Limitations on Liability, Indemnification of Officers and Directors and Insurance

The DGCL authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breaches of directors' fiduciary duties as directors, and Varex's amended and restated certificate of incorporation includes such an exculpation provision. Varex's amended and restated certificate of incorporation and bylaws include provisions that indemnify, to the fullest extent allowable under the DGCL, the personal liability of directors or officers for monetary damages for actions taken as a director or officer of Varex, or for serving at Varex's request as a director or officer or another position at another corporation or enterprise, as the case may be. Varex's amended and restated certificate of incorporation and bylaws also provide that Varex must indemnify and advance reasonable expenses to its directors and officers, subject to its receipt of an undertaking from the indemnified party as may be required under the DGCL. Varex's amended and restated certificate of incorporation will expressly authorize Varex to carry directors' and officers' insurance to protect Varex, its directors, officers and certain employees for some liabilities.

The limitation of liability and indemnification provisions in Varex's amended and restated certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against Varex's directors and officers, even though such an action, if successful, might otherwise benefit Varex and its stockholders. However, these provisions do not limit or eliminate Varex's rights, or those of any stockholder, to seek non-monetary relief such as injunction or rescission in the event of a breach of a director's duty of care. The provisions do not alter the liability of directors under the federal securities laws.

Exclusive Forum

Varex's amended and restated certificate of incorporation provide that unless the board of directors otherwise determines, the state courts located within the State of Delaware or, if no state court located in the State

of Delaware has jurisdiction, the federal court for the District of Delaware, will be the sole and exclusive forum for any derivative action or proceeding brought on behalf of Varex, any action asserting a claim of breach of a fiduciary duty owed by any director or officer of Varex to Varex or Varex's stockholders, any action asserting a claim against Varex or any director or officer of Varex arising pursuant to any provision of the DGCL or Varex's amended and restated certificate of incorporation or bylaws, or any action asserting a claim against Varex or any director or officer of Varex governed by the internal affairs doctrine.

Authorized but Unissued Shares

Varex's authorized but unissued shares of common stock and preferred stock may be issued without stockholder approval. Varex may use additional shares for a variety of purposes, including future public offerings to raise additional capital, to fund acquisitions and as employee compensation. The existence of authorized but unissued shares of common stock and preferred stock could render more difficult or discourage an attempt to obtain control of Varex by means of a proxy contest, tender offer, merger or otherwise.

Exhibit 4.3

Execution Version

SENIOR SECURED NOTES INDENTURE

Dated as of September 30, 2020

Among

VAREX IMAGING CORPORATION

THE GUARANTORS LISTED ON THE SIGNATURE PAGES HERETO

and

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Trustee and Collateral Agent

7.875% SENIOR SECURED NOTES DUE 2027

TABLE OF CONTENTS

INDENTURE, dated as of September 30, 2020, among Varex Imaging Corporation, a Delaware corporation (the "*Company*"), the Guarantors listed on the signature pages hereto and Wells Fargo Bank, National Association, as Trustee and Notes Collateral Agent.

W I T N E S E T H

WHEREAS, the Company has duly authorized the creation of and issuance of $300,000,000 aggregate principal amount of 7.875% Senior Secured Notes due 2027 (the "*Initial Notes*")*;* and

WHEREAS, the Company and the Guarantors have duly authorized the execution and delivery of this Indenture;

NOW, THEREFORE, the Company, the Guarantors and the Trustee and Collateral Agent agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders.

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 Definitions.

"*ABL Collateral Agent*" means the administrative agent and/or collateral agent under any ABL Credit Agreement.

"*ABL Credit Agreement*" means that certain credit agreement, dated the Issue Date, among the Company, the Guarantors, the ABL Collateral Agent and the other parties thereto (which may be implemented as a new agreement or an amendment or amendment and restatement of the Company's existing credit agreement), and including any related notes, guarantees, collateral documents, instruments and agreements executed in connection therewith, and, in each case, as amended, restated, supplemented, waived, renewed or otherwise modified or replaced from time to time, and/or any other or additional credit facility or facilities or notes or other Indebtedness designated by the Company as an ABL Credit Agreement, or part thereof, from time-to-time.

"*ABL Loan Documents*" means collectively, the ABL Credit Agreement, the Intercreditor Agreement and the documents governing other ABL Secured Obligations and the security documents related to the foregoing.

"*ABL Priority Collateral*" means all Collateral not constituting Cash Flow Priority Collateral including, without limitation, the following (and including any assets that, but for Section 552 of the Bankruptcy Code, would be ABL Priority Collateral):

(1) (a) all accounts receivable, and (b) all other rights to payment arising (with respect to this clause (b)) in a credit-card, debit-card, prepaid-card or other payment-card transaction (other than accounts receivable arising under agreements for sale of Cash Flow

Priority Collateral described in clauses (1) through (4) of the definition of such term to the extent constituting identifiable proceeds of such Cash Flow Priority Collateral);

(2) all payment intangibles, including all intercompany loans, corporate and other tax refunds (other than any payment intangibles constituting identifiable proceeds of, or in the case of tax refunds, directly related to taxes paid on, Cash Flow Priority Collateral described in clauses (1) through (4) of the definition of such term);

(3) all inventory;

(4) [Reserved];

(5) all real property interests (including fixtures) over which a Lien has been granted pursuant to the terms of the ABL Loan Documents;

(6) all cash, deposit accounts, securities accounts and commodity accounts (including the cash management accounts, the blocked accounts, the lockbox accounts and the government lockbox accounts) and all cash, cash equivalents and other assets contained in, or credit to, and all securities entitlements arising from, any such deposit accounts, securities accounts or commodity accounts (in each case, other than (x) any identifiable proceeds of Cash Flow Priority Collateral described in clauses (1) through (4) and (8) of the definition of such term and (y) any Asset Sales Proceeds Account);

(7) all rights to business interruption insurance and (b) all rights to credit insurance which credit insurance relates to any accounts receivable included in clause (1) above (in each case, regardless of whether the ABL Collateral Agent is the loss payee with respect thereto);

(8) solely to the extent evidencing, governing, securing or otherwise relating to any of the items constituting ABL Priority Collateral under clauses (1) through (7) above, (i) all general intangibles (excluding any intellectual property and capital stock of subsidiaries of the parent borrower, but including contract rights and all rights as consignor or consignee, whether arising by contract, statute or otherwise), (ii) instruments (including promissory notes), (iii) documents (including each warehouse receipt or bill of lading covering any Inventory), (iv) licenses from any Governmental Authority to sell any inventory, (v) chattel paper and (vi) commercial tort claims to the extent not directly arising from the Cash Flow Priority Collateral;

(9) all collateral and guarantees given by any other person with respect to any of the foregoing, and all other Supporting Obligations (including letter-of-credit rights) with respect to any of the foregoing;

(10) all books and records to the extent relating to any of the foregoing; and

(11) all products and proceeds of the foregoing. Notwithstanding the foregoing, the term "ABL Priority Collateral" shall not include any assets referred to in clauses (1) through (4) of the definition of the term "Cash Flow Priority Collateral" (as hereinafter defined);

provided that the ABL Priority Collateral shall not include the Cash Flow Priority Collateral and any Excluded Assets.

"*ABL Secured Obligations*" means Obligations in respect of the ABL Loan Documents.

"*ABL Secured Parties*" means the ABL Collateral Agent and the lenders under the ABL Credit Agreement.

"*Acquired Debt*" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Restricted Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"*Additional Assets*" means any property or assets (other than Indebtedness and Capital Stock) to be used by the Company or a Restricted Subsidiary in a Permitted Business.

"*Additional Cash Flow Obligations*" means any Indebtedness secured by a Permitted Lien having pari passu lien priority relative to the Indebtedness Incurred or issued under the Notes with respect to the Collateral; *provided* that an authorized representative of the holders of Indebtedness shall have executed a joinder to the Intercreditor Agreement and the Security Documents.

"*Additional Cash Flow Secured Parties*" means any Indebtedness having pari passu lien priority relative to the Indebtedness Incurred or issued under the Notes with respect to the Collateral; *provided* that an authorized representative of holders of such Indebtedness shall have executed a joinder to the Intercreditor Agreement and the Security Documents.

"*Additional Notes*" means additional Notes (other than the Initial Notes) issued from time to time under this Indenture in accordance with Sections 2.01 and 4.09 of this Indenture (whether or not such Notes have the same CUSIP number or ISIN).

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"*Agent*" means any Registrar, co-registrar, Paying Agent or additional paying agent.

"*Applicable Premium*" means, with respect to any Note on any Make-Whole Redemption Date, the greater of (i) 1.0% of the then outstanding principal amount of such Note and (ii) the excess of (A) the present value at such Make-Whole Redemption Date of (1) the redemption price of such Note at October 15, 2023 (such redemption price being set forth in the table appearing in Section 3.07(b) of this Indenture), exclusive of accrued interest, *plus* (2) all scheduled interest payments due on such Note from the Make-Whole Redemption Date through October 15, 2023, computed using a discount rate equal to the Treasury Rate at such Make-Whole Redemption Date, *plus* 50 basis points over (B) the then outstanding principal amount of such Note.

"*Asset Sale*" means:

(1) the sale, lease (other than operating leases), conveyance or other disposition of any assets or rights outside of the ordinary course of business; *provided* that the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole will be governed by Sections 4.15 and 5.01 of this Indenture and not by Section 4.10 of this Indenture; and

(2) the issuance of Equity Interests in any of the Company's Restricted Subsidiaries or the sale of Equity Interests in any of its Restricted Subsidiaries whether effected pursuant to a Division or otherwise (other than directors' qualifying Equity Interests or Equity Interests required by applicable law to be held by a Person other than the Company or a Restricted Subsidiary).

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any single transaction or series of related transactions that involves assets having a Fair Market Value of less than $15.0 million;

(2) a transfer of assets between or among the Company and its Restricted Subsidiaries;

(3) an issuance of Equity Interests by a Restricted Subsidiary of the Company to the Company or to a Restricted Subsidiary of the Company;

(4) the sale or lease of products, services or accounts receivable (including at a discount) in the ordinary course of business and any sale or other disposition of damaged, worn-out, negligible, surplus or obsolete assets in the ordinary course of business (including the abandonment of any intellectual property);

(5) the sale or other disposition of Cash Equivalents;

(6) a Restricted Payment that does not violate Section 4.07 of this Indenture or is a Permitted Investment;

(7) a sale and leaseback transaction with respect to any assets within 180 days of the acquisition of such assets;

(8) any exchange of like-kind property of the type described in Section 1031 of the Internal Revenue Code of 1986, as amended, for use in a Permitted Business; *provided* that to the extent the property exchanged by the Company or any Restricted Subsidiary constituted Collateral, then all property acquired by the Company or such Restricted Subsidiary in such exchange shall be pledged as Collateral (and with the same priority) as that of the exchanged property as required and provided under the Security Documents;

(9) the sale or disposition of any assets or property received as a result of a foreclosure by the Company or any of its Restricted Subsidiaries on any secured Investment or any other transfer of title with respect to any secured Investment in default;

(10) the licensing of intellectual property in the ordinary course of business or in accordance with industry practice;

(11) the sale, lease, conveyance, disposition or other transfer of the Equity Interests of, or any Investment in, any Unrestricted Subsidiary;

(12) surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind;

(13) leases or subleases to third persons in the ordinary course of business that do not interfere in any material respect with the business of the Company or any of its Restricted Subsidiaries;

(14) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of the Company or any Restricted Subsidiary;

(15) dispositions in connection with Permitted Liens;

(16) the sale of Equity Interests in joint ventures to the extent required by or made pursuant to, customary buy/sell arrangements entered into in the ordinary course of business between the joint venture parties and set forth in joint venture agreements; and

(17) the settlement or early termination of any Permitted Bond Hedge Transaction and the settlement or early termination of any related Permitted Warrant Transaction.

"*Attributable Indebtedness*" means, on any date, in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"*Bank Products*" means any one or more of the following types of services or facilities: (a) any treasury or other cash management services, including (i) deposit account, (ii) automated clearing house ("ACH") origination and other funds transfer, (iii) depository (including cash vault and check deposit), (iv) zero balance accounts and sweep, and other ACH transactions, (v) return items processing, (vi) controlled disbursement, (vii) positive pay, (viii) lockbox, (ix) account reconciliation and information reporting, (x) payables outsourcing, (xi) payroll processing, and (xii) daylight overdraft facilities, (b) card services, including (i) credit card

(including purchasing card and commercial card), (ii) prepaid card, including payroll, stored value and gift cards, (iii) merchant services processing, and (iv) debit card services and (c) (i) letters of credit, guarantees or other credit support provided in respect of trade payables of the Company or any Restricted Subsidiary, in each case issued for the benefit of any bank, financial institution or other person that has acquired such trade payables pursuant to "supply chain" or other similar financing for vendors and suppliers of Company or any Restricted Subsidiary (so long as (x) other than in the case of obligations under Bank Products, such arrangement is unsecured (except as otherwise permitted herein), (y) the terms of such trade payables shall not have been extended in connection with such financing and (z) such Indebtedness represents amounts not in excess of those which the Company or any Restricted Subsidiary would otherwise have been obligated to pay to its vendor or supplier in respect of the applicable trade payables), (ii) customary leasing finance arrangements or (iii) any arrangement pursuant to which by any lender party to Debt Facility under which such Indebtedness was secured or any Affiliate of such lender (or any Person that was a lender or an Affiliate of a lender at the time the applicable agreements pursuant to which such Bank Products are provided were entered into) acquires payables owed by Company or any Restricted Subsidiary to its vendor or supplier.

"*Bankruptcy Code*" means Title 11 of the United States Code, as amended.

"*Bankruptcy Law*" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

"*Beneficial Owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time.

"*Board of Directors*" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the Board of Directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Business Day*" means each day that is not a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or the place of payment.

"*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.

"*Captive Insurance Subsidiary*" means a Subsidiary established by the Company or any of its Subsidiaries for the sole purpose of insuring the business, facilities and/or employees of the Company and its Subsidiaries.

"*Cash Equivalents*" means:

(1) U.S. dollars or, in the case of any Restricted Subsidiary that is a Foreign Subsidiary, any other currencies held from time to time in the ordinary course of business;

(2) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality of the U.S. government (*provided* that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than 12 months from the date of acquisition;

(3) direct obligations issued by any state of the United States of America or any political subdivision of any such state, or any public instrumentality thereof, in each case having maturities of not more than 12 months from the date of acquisition;

(4) certificates of deposit and eurodollar time deposits with maturities of 12 months or less from the date of acquisition, bankers' acceptances with maturities not exceeding 12 months and overnight bank deposits, in each case, with any lender party to the ABL Credit Agreement or with any domestic commercial bank that has capital and surplus of not less than $500.0 million;

(5) repurchase obligations with a term of not more than one year for underlying securities of the types described in clauses (2) and (4) above entered into with any financial institution meeting the qualifications specified in clause (4) above;

(6) commercial paper having one of the two highest ratings obtainable from Moody's, S&P or Fitch and, in each case, maturing within 12 months after the date of acquisition;

(7) Indebtedness or preferred stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or an equivalent rating by Fitch) with maturities of 12 months or less from the date of acquisition;

(8) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (6) of this definition; and

(9) solely with respect to any Restricted Subsidiary, which is not a Subsidiary that was formed under the laws of the United States or any state of the United States or the District of Columbia, investments of comparable tenor and credit quality to those described in the foregoing clauses (2) through (8) customarily utilized in countries in which such Subsidiary operates for short-term cash management purposes.

"*Cash Flow Documents*" means collectively, this Indenture, the Notes, the Intercreditor Agreement and the documents governing the Notes and other Additional Cash Flow Obligations and the security documents related to the foregoing.

"*Cash Flow Obligations*" means the Notes Obligations and any Additional Cash Flow Obligations.

"*Cash Flow Priority Collateral*" means:

(1) (x) all intellectual property and (y) all real property interests (including fixtures) over which a Lien has been granted pursuant to the terms of the Cash Flow Documents and has not been granted pursuant to the terms of the ABL Loan Documents;

(2) all capital stock and (y) other investment property (other than in the case of clause (y) investment property constituting ABL Priority Collateral under clause (4) or (6) of the definition of such term);

(3) all commercial tort claims to the extent not directly arising from the ABL Priority Collateral and any other commercial tort claims not constituting ABL Priority Collateral;

(4) all insurance policies relating to Cash Flow Priority Collateral, but, for the avoidance of doubt, excluding business interruption insurance and credit insurance with respect to any accounts receivable constituting ABL Priority Collateral;

(5) except to the extent constituting ABL Priority Collateral under clause (2), (6) or (7) of the definition of such term, all documents, all general intangibles, all instruments and all letter-of-credit rights;

(6) all collateral and guarantees given by any other person with respect to any of the foregoing, and all supporting obligations (including letter-of-credit rights) with respect to any of the foregoing;

(7) all books and records to the extent relating to any of the foregoing;

(8) all equipment; and

(9) all products (other than inventory) and the proceeds of the foregoing.

Notwithstanding the foregoing, the term "Cash Flow Priority Collateral" shall not include any assets referred to in clauses (1) through (5) and (9) of the definition of the term "ABL Priority Collateral" without giving effect to the lead-in to the definition of ABL Priority Collateral where it limits ABL Priority Collateral to Collateral not constituting Cash Flow Priority Collateral.

"*Cash Flow Secured Parties*" means the Notes Secured Parties and any Additional Cash Flow Secured Parties.

"*Change of Control*" means the occurrence of any of the following:

(1) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole to any "person" (as that term is used in Section 13(d) of the Exchange Act) other than to the Company or one of its Restricted Subsidiaries;

(2) the Company becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) of the consummation of any transaction (including, without limitation, any merger or consolidation), the result of which is that any "person" (as defined above) becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Company, measured by voting power rather than number of shares; *provided*, *however*, for purposes of this clause (2), each Person will be deemed to beneficially own any Voting Stock of another Person held by one or more of its Subsidiaries; or

(3) the merger or consolidation of the Company with or into another Person or the merger of another Person with or into the Company, unless the holders of a majority of the aggregate voting power of the Voting Stock of the Company immediately prior to such transaction, hold securities of the surviving or transferee Person (or in the case of any merger of another Person with or into the Company, hold securities of the Company) that represent, immediately after such transaction, at least a majority of the aggregate voting power of the Voting Stock of the surviving or transferee Person (or in the case of any merger of any Person with or into the Company, at least a majority of the aggregate voting power of the Voting Stock of the Company).

"*Collateral*" means the property subject or purported to be subject to a lien in favor of the Notes Collateral Agent, on behalf of itself, the Trustee and the Holders, under the Security Documents, and any other property, real or personal, tangible or intangible, now existing or hereafter acquired, that is subject to a lien in favor of the Notes Collateral Agent, on behalf of itself, the Trustee and the Holders, to secure the Obligations under the Notes, the Guarantees, this Indenture and the Security Documents.

"*Collateral Agent*" means the ABL Collateral Agent and/or the Notes Collateral Agent.

"*Consolidated Adjusted EBITDA*" means, with respect to any specified Person for any period (the "*Measurement Period*"), the Consolidated Net Income of such Person for such period *plus*, without duplication and to the extent deducted (and not added back or excluded) in determining such Consolidated Net Income, the amounts for such period of:

(1) the Fixed Charges of such Person and its Restricted Subsidiaries for the Measurement Period; *plus*

(2) the consolidated income tax expense of such Person and its Restricted Subsidiaries for the Measurement Period; *plus*

(3) the consolidated depreciation expense of such Person and its Restricted Subsidiaries for the Measurement Period; *plus*

(4) the consolidated amortization expense of such Person and its Restricted Subsidiaries for the Measurement Period; *plus*

(5) other non-cash expenses, charges, impairments or losses for the Measurement Period (but excluding (A) any non-cash charge, expense or loss in respect of amortization of a prepaid cash item that was included in Consolidated Net Income in a prior period and (B) any non-cash charge, expense or loss that relates to the write-down or write-off of inventory or accounts receivable); *provided* that if any non-cash charges, expenses or losses referred to in this clause (5) represents an accrual or reserve for potential cash items in any future period, (x) the Company may elect not to add back such non-cash charge, expense or loss in the current period and (y) to the extent the Company elects to add back such non-cash charge, expense or loss, the cash payment in respect thereof in such future period shall be subtracted from Consolidated Adjusted EBITDA in such future period to such extent paid; *plus*

(6) any non-recurring out-of-pocket fees, expenses or charges for the Measurement Period (including, without limitation, any premiums, make-whole or penalty payments) relating to any offering or issuance of Equity Interests by the Company or merger, recapitalization or acquisition transactions made by the Company or any of its Restricted Subsidiaries, or any Indebtedness incurred or repaid by the Company or any of its Restricted Subsidiaries (in each case, whether or not successful); *plus*

(7) all fees paid by the Company pursuant to clauses (7) and (11) of Section 4.11(b) of this Indenture; *plus*

(8) Consolidated Net Income attributable to non-controlling interests of a Restricted Subsidiary (less the amount of any mandatory cash distribution with respect to any non-controlling interest other than in connection with a proportionate discretionary cash distribution with respect to the interest held by the Company or any Restricted Subsidiary); *plus*

(9) any losses realized upon the disposition of assets outside the ordinary course of business (including any loss realized upon the disposition of any Equity Interests of any Person) and any losses on disposed, abandoned, and discontinued operations (including in connection with any disposal thereof) and any accretion or accrual of discounted liabilities; *plus*

(10) other cash expenses incurred during such period in connection with Permitted Investments made pursuant to clause (3) of the definition thereof to the extent that such expenses are reimbursed in cash during such period pursuant to indemnification provisions of any agreement relating to such transaction; *plus*

(11) any non-cash costs or expenses, incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement; *plus*

(12) changes in earn-out, deferred and contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise) and adjustments thereof and purchase price adjustments, including step-up for fair value of assets, in each case in connection with any acquisitions; *plus*

(13) costs, charges, accruals, reserves or expenses attributable to the undertaking and/or implementation of cost savings initiatives and operating expense reductions, restructuring and similar charges, severance, relocation costs, integration and facilities opening costs and other business optimization expenses, signing costs, retention or completion bonuses, transition costs, costs related to closure/consolidation of facilities and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities) in an aggregate amount not to exceed 20% (when taken together with amounts added under clause (14) below) of Consolidated Adjusted EBITDA in such Measurement Period; *plus*

(14) pro forma "run rate" cost savings, operating expense reductions and synergies (including post-acquisition price or administration fee increases) related to acquisitions, dispositions and other specified transactions (including, for the avoidance of doubt, acquisitions occurring prior to the Issue Date), restructurings, cost savings initiatives and other initiatives that are reasonably identifiable, factually supportable and projected by the Company in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Company) within 12 months after such acquisition, disposition or other specified transaction, restructuring, cost savings initiative or other initiative in an aggregate amount not to exceed 20% (when taken together with amounts under clause (13) above) of Consolidated Adjusted EBITDA in such Measurement Period; *plus*

(15) attorneys' fees and expenses associated with litigation based on enforcement and defense of the Company's intellectual property, settlement of disputes related to intellectual property, litigation, customs, duties and tax authorities, and expenses incurred with respect to remediating any matter associated with non-compliance alleged or determined by any tax, accounting or legal authority; plus

(16) any loss (after any offset) resulting from currency transaction or translation losses and any losses related to currency remeasurements of Indebtedness (including intercompany Indebtedness and foreign currency hedges for currency exchange risk) or associated with the settlement of any swap implemented for hedging purposes; *plus*

(17) charges, losses or expenses, to the extent indemnified or insured or reimbursed by a third party to the extent such indemnification, insurance or reimbursement is received in cash or reasonably be expected to be paid within 365 days after the incurrence of such charge, loss or expense to the extent not accrued; *minus*

(18) any gains realized upon the disposition of assets outside the ordinary course of business (including any gain realized upon the disposition of any Equity Interests of any Person) and any gains on disposed, abandoned, and discontinued operations (including in connection with any disposal thereof) and any accretion or accrual of discounted liabilities; *minus*

(19) any gain (after any offset) resulting from currency transaction or translation gains and any gains related to currency remeasurements of Indebtedness (including intercompany Indebtedness and foreign currency hedges for currency exchange risk) or associated with the settlement of any swap implemented for hedging purposes; *minus*

(20) without duplication, the consolidated income tax benefit of such Person and its Restricted Subsidiaries for the Measurement Period; *minus*

(21) without duplication, other non-cash items (other than the accrual of revenue in accordance with GAAP consistently applied in the ordinary course of business) increasing Consolidated Net Income for the Measurement Period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period); and

(22) without duplication, *plus* unrealized losses and *minus* unrealized gains in each case in respect of agreements governing Hedging Obligations, as determined in accordance with GAAP.

"*Consolidated Net Income*" means, with respect to any specified Person for any period, the aggregate of the Net Income attributable to such specified Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided* that:

(1) the Net Income (but not loss, to the extent that such loss has been funded with cash by the Company or a Restricted Subsidiary) of any other Person that is not a Restricted

Subsidiary of such specified Person or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions paid in Cash Equivalents (or to the extent subsequently converted into Cash Equivalents) to the specified Person or a Restricted Subsidiary of the specified Person in respect of such period;

(2) solely for purposes of Section 4.07(b)(3)(A) of this Indenture, the Net Income of any Restricted Subsidiary of such specified Person will be excluded to the extent that the declaration or payment of dividends or other distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders; *provided* that the Consolidated Net Income of such Person shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash to (or to the extent converted into cash by) such Person or a Restricted Subsidiary thereof (subject to provisions of this clause (2)) during such period, to the extent not previously included therein;

(3) the cumulative effect of a change in accounting principles will be excluded;

(4) any gains or losses (less all fees, expenses and charges relating thereto) attributable to any sale of assets outside the ordinary course of business, the disposition of any Equity Interests of any Person or any of its Restricted Subsidiaries, or the extinguishment of any Indebtedness, Hedging Obligations or other derivative instruments of such Person or any of its Restricted Subsidiaries, in each case, other than in the ordinary course of business, will be excluded;

(5) any currency translation gains and losses related to currency remeasurements of Indebtedness, and any net loss or gain resulting from hedging transactions for currency exchange risk, will be excluded;

(6) any extraordinary, unusual or non-recurring gain or loss, together with any related provision for taxes on such extraordinary, unusual or non-recurring gain or loss, and any non-cash charges, expenses or reserves in respect of any restructuring, redundancy or severance expense will be excluded;

(7) any (i) non-cash compensation charge or expense arising from any grant of stock, stock options or other equity-based awards and any non-cash deemed finance charges in respect of any pension liabilities or other provisions and (ii) income (loss) attributable to deferred compensation plans or trusts, will be excluded;

(8) income or losses attributable to discontinued operations (including, without limitation, operations disposed during such period whether or not such operations were classified as discontinued) and impairments will be excluded; and

(9) any non-cash charges (i) attributable to applying the purchase method of accounting in accordance with GAAP, (ii) resulting from the application of Accounting

Standards Codification ("*ASC*") Topic 350 or ASC Topic 360, and (iii) relating to the amortization of intangibles resulting from the application of ASC Topic 805, will be excluded.

"*Convertible Indebtedness*" means Indebtedness of the Company (which may be Guaranteed by the Guarantors) permitted to be incurred under the terms hereof that is either (a) convertible into common stock of the Company (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common stock) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common stock of the Company and/or cash (in an amount determined by reference to the price of such common stock).

"*Corporate Trust Office of the Trustee*" shall be at the address of the Trustee specified in Section 12.02 of this Indenture or such other address as to which the Trustee may give notice to the Company.

"*Debt Facilities*" means one or more debt facilities (including, without limitation, the ABL Credit Agreement) or commercial paper facilities with banks or other institutional lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit or issuances of debt securities evidenced by notes, indentures, debentures, bonds or similar instruments, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced (including by means of sales of debt securities) in whole or in part from time to time (and whether or not with the original administrative agent, lenders or trustee or another administrative agent or agents, other lenders or trustee and whether provided under the original debt facility or any other credit or other agreement or indenture).

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

"*Definitive Note*" means a certificated Initial Note or Additional Note (bearing the Restricted Notes Legend if the transfer of such Note is restricted by applicable law) that does not include the Global Notes Legend.

"*Depositary*" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 of this Indenture as the Depositary with respect to the Notes, and any and all successors thereto appointed as Depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"*Designated Noncash Consideration*" means any noncash consideration received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is designated as Designated Noncash Consideration pursuant to an Officer's Certificate.

"*Discharge of Capped ABL Secured Obligations"* shall mean the payment in full in cash of ABL Secured Obligations up to the ABL Cap Amount (as such term will be defined in the Intercreditor Agreement).

"*Discharge of Capped Cash Flow Obligations*" shall mean the payment in full in cash of Cash Flow Obligations up to the First Lien Notes Cap Amount (as such term will be defined in the Intercreditor Agreement).

"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 90 days after the date on which the Notes mature. Notwithstanding the preceding sentence, (x) any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Company or the Subsidiary that issued such Capital Stock to repurchase such Capital Stock upon the occurrence of a Change of Control or an Asset Sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Company may not repurchase such Capital Stock unless the Company would be permitted to do so in compliance with Section 4.07 of this Indenture, (y) any Capital Stock that would constitute Disqualified Stock solely as a result of any redemption feature that is conditioned upon, and subject to, compliance with Section 4.07 of this Indenture shall not constitute Disqualified Stock and (z) any Capital Stock issued to any plan for the benefit of employees will not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or the Subsidiary that issued such Capital Stock in order to satisfy applicable statutory or regulatory obligations. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that the Company and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

"*Division*" means the division or allocation of the assets, liabilities and/or obligations of a Person (the "*Dividing Person*") among two or more Persons (whether pursuant to a "plan of division" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"*Domestic Subsidiary*" means any Restricted Subsidiary that was formed under the laws of the United States or any state of the United States or the District of Columbia.

"*DTC*" means The Depository Trust Company.

"*Equity Interests*" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"*Equity Offering*" means a public or private offering of Qualified Capital Stock of the Company.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Excluded Assets*" has the meaning of "Excluded Property" set forth in the Security Agreement.

"*Excluded Contributions*" means net cash proceeds, marketable securities or Qualified Proceeds received by the Company from (i) contributions to its equity capital (other than Disqualified Stock) or (ii) the sale (other than to a Subsidiary of the Company or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Company) of Equity Interests (other than Disqualified Stock) of the Company, in each case designated as Excluded Contributions pursuant to an Officer's Certificate on the date such capital contributions are made or the date such Equity Interests are sold, as the case may be, that are excluded from the calculation set forth in Section 4.07(b)(3) of this Indenture.

"*Exercise any Secured Creditor Remedies*" or "*Exercise of Secured Creditor Remedies*" means, except as otherwise provided in the final sentence of this definition:

(1) the taking by any ABL Secured Party or Cash Flow Secured Party of any action to enforce or realize upon any Lien, including the institution of any foreclosure proceedings or the noticing of any public or private sale pursuant to Article 9 of the UCC;

(2) the exercise by any ABL Secured Party or Cash Flow Secured Party of any right or remedy provided to a secured creditor on account of a Lien under any of ABL Loan Documents or Cash Flow Documents, under applicable law, in an insolvency or liquidation proceeding or otherwise, including the election to retain any of the Collateral in satisfaction of a Lien;

(3) the taking by any ABL Secured Party or Cash Flow Secured Party of any action or the exercise of any right or remedy in respect of the collection on, set off against, marshaling of, injunction respecting or foreclosure on the Collateral or the proceeds thereof;

(4) the appointment on an application of an ABL Secured Party or Cash Flow Secured Party of a receiver, receiver and manager or interim receiver of all or part of the Collateral;

(5) the sale, lease, license, or other disposition of all or any portion of the Collateral by private or public sale conducted by an ABL Secured Party or Cash Flow Secured Party or any other means permissible under applicable law;

(6) the exercise of any other right of a secured creditor under Part 6 of Article 9 of the UCC;

(7) the exercise by any ABL Secured Party or Cash Flow Secured Party of any voting rights relating to any Capital Stock included in the Collateral; and

(8) the delivery of any claim or demand relating to the Collateral to any Person (including any securities intermediary, depository bank or landlord) in possession or control of

any Collateral in connection with the collection of the ABL Secured Obligations or Cash Flow Obligations after the occurrence of an Event of Default (except, with respect to the lenders under the ABL Credit Agreement, such action shall not be deemed an Exercise of Secured Creditor Remedies if the lenders under the ABL Credit Agreement have not terminated their commitments to the Company and the Guarantors under the ABL Credit Agreement and/or are continuing to make loans and advances to or for the benefit of the Company and the Guarantors).

"*Existing Indebtedness*" means Indebtedness existing on the Issue Date, other than the Notes and the related Guarantees and obligations under the ABL Credit Agreement.

"*Fair Market Value*" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the Board of Directors, chief executive officer or chief financial officer of the Company (unless otherwise provided in this Indenture).

"*First Lien Notes Enforcement Date*" means the date which is 180 days after the ABL Collateral Agent's receipt of an enforcement notice from the Notes Collateral Agent at any time that an Event of Default exists under the Cash Flow Documents and stating that the Notes Collateral Agent intends to commence the Exercise of Secured Creditor Remedies; *provided, however* that such 180 day period shall be stayed (x) at any time the Company or any Guarantor shall be subject to any insolvency proceeding and (y) at any time during which the ABL Collateral Agent shall be pursuing any Exercise of Secured Creditor Remedies against all or a material portion of the ABL Priority Collateral.

"*Fitch*" shall mean Fitch, Inc., and its successors.

"*Fixed Charge Coverage Ratio*" means with respect to any specified Person for any period, the ratio of the Consolidated Adjusted EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock or Disqualified Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "*Calculation Date*"), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock or Disqualified Stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) Investments, acquisitions, mergers, consolidations and dispositions that have been made by the specified Person or any of its Restricted Subsidiaries, or any Person or any of its Restricted Subsidiaries acquired by, merged or consolidated with the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and including

increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given pro forma effect, including giving effect to Pro Forma Cost Savings, as if they had occurred on the first day of the four-quarter reference period;

(2) the Consolidated Adjusted EBITDA attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period; and

(6) if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness).

For purposes of this definition, whenever pro forma effect is given to a transaction, the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Company. For purposes of determining whether any Indebtedness constituting a guarantee may be incurred, the interest on the Indebtedness to be guaranteed shall be included in calculating the Fixed Charge Coverage Ratio on a pro forma basis. Interest on a Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capital Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate. Notwithstanding anything to the contrary herein with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Indenture under a restrictive covenant that does not require compliance with a financial ratio or test (including, without limitation, any Fixed Charge Coverage Ratio test, any Secured Net Leverage Ratio test and any Total Net Leverage Ratio test) (any such amounts, the "*Fixed Amounts*") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this

Indenture in the same restrictive covenant that requires compliance with any such financial ratio or test (any such amounts, the "*Incurrence Based Amounts*"), it is understood and agreed that the Fixed Amounts (and any cash proceeds thereof) shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence Based Amounts in connection with such substantially concurrent incurrence.

"*Fixed Charges*" means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, net of interest income, whether paid or accrued, including, without limitation, original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all cash payments made or received pursuant to Hedging Obligations in respect of interest rates, and excluding amortization of deferred financing costs; *plus*

(2) any interest on Indebtedness of another Person that is guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, but only to the extent that such guarantee or Lien is called upon; *plus*

(3) the product of (A) all cash dividends paid on any series of preferred stock of such Person or any of its Restricted Subsidiaries (other than to the Company or a Restricted Subsidiary of the Company), in each case, determined on a consolidated basis in accordance with GAAP multiplied by (B) a fraction, the numerator of which is one and the denominator of which is one *minus* the then current combined federal, state and local statutory tax rate of the Company and its Restricted Subsidiaries expressed as a decimal; *plus*

(4) any Receivables Fees; *plus*

(5) the amount of dividends paid by the Company and its Restricted Subsidiaries pursuant to Section 4.07(c)(12) of this Indenture;

excluding the non-cash portion of interest expense resulting from the application of Accounting Standards Codification 470-20 or any similar accounting standard or pronouncement attributable to any Convertible Indebtedness that may be wholly or partially settled in cash.

"*Fixed GAAP Date*" means the Issue Date; *provided* that at any time after the Issue Date, the Company may by written notice to the Trustee elect to change the Fixed GAAP Date to be the date specified in such notice, and upon such notice, the Fixed GAAP Date shall be such date for all periods beginning on and after the date specified in such notice.

"*Fixed GAAP Terms*" means (a) the definitions of the terms "Consolidated Adjusted EBITDA," "Fixed Charges," "Fixed Charge Coverage Ratio," "Consolidated Net Income," "Secured Net Leverage Ratio," "Total Net Leverage Ratio," "Indebtedness," "Secured Indebtedness," and

"Total Assets," (b) all defined terms in this Indenture to the extent used in or relating to any of the foregoing definitions, and all ratios and computations based on any of the foregoing definitions, and (c) any other term or provision of this Indenture or the Notes that, at the Company's election, may be specified by the Company by written notice to the Trustee from time to time; *provided* that the Company may elect to remove any term from constituting a Fixed GAAP Term.

"*Foreign Subsidiary*" means any Restricted Subsidiary that is not a Domestic Subsidiary.

"*GAAP*" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, as in effect on the Fixed GAAP Date (for purposes of the Fixed GAAP Terms) and as in effect from time to time (for all other purposes of this Indenture); *provided*, *however*, that lease liabilities and associated expenses recorded by the Company and its Subsidiaries pursuant to ASU 2016-02, Leases, shall not be treated as Indebtedness and shall not be included in consolidated interest expense or Fixed Charges, unless the lease liabilities would have been treated as Capital Lease Obligations under GAAP as in effect prior to the adoption of ASU 2016-02, Leases (in which case such lease liabilities and associated expenses shall be treated as Capital Lease Obligations, and the interest component of such Capital Lease Obligation shall be included in consolidated interest expense and Fixed Charges).

"*Government Securities*" means direct obligations of, or obligations guaranteed by, the United States of America (including any agency or instrumentality thereof) and the payment for which the United States pledges its full faith and credit.

"*Grantors*" means the Company and the Guarantors that execute the applicable Security Documents.

"*Guarantee*" means a collective reference or individual reference to the guarantee by each Guarantor of the Company's obligations under this Indenture and the Notes, executed pursuant to the provisions of this Indenture.

"*guarantee*" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"*Guarantor*" or "*Guarantors*" means the collective reference to each Restricted Subsidiary of the Company that executes a Guarantee in accordance with the provisions of this Indenture, and their

respective successors and assigns, in each case, until the Guarantee of such Person has been released in accordance with the provisions of this Indenture.

"*Hedging Obligations*" means, with respect to any specified Person, the obligations of such Person under:

(1) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;

(2) other agreements or arrangements designed to manage interest rates or interest rate risk; and

(3) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices.

For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute Hedging Obligations.

"*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.

"*Holder*" means a Person in whose name a Note is registered on the Registrar's books.

"*Indebtedness*" means, with respect to any specified Person, the principal and premium (if any) of any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) (other than letters of credit issued in respect of trade payables);

(3) in respect of banker's acceptances;

(4) representing Capital Lease Obligations;

(5) representing the balance deferred and unpaid of the purchase price of any property or services due more than twelve months after such property is acquired or such services are completed (except any such balance that constitutes a trade payable or similar obligation to a trade creditor); or

(6) representing the net obligations under any Hedging Obligations, if and to the extent any of the preceding items (other than letters of credit, and Hedging Obligations) would

appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the guarantee by the specified Person of any Indebtedness of any other Person.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

"*Initial Notes*" has the meaning set forth in the recitals hereto.

"*Intercreditor Agreement*" means the intercreditor agreement, dated as of the Issue Date between the Notes Collateral Agent and the ABL Collateral Agent.

"*Interest Payment Date*" means April 15 and October 15 of each year to stated maturity of the Notes.

"*Investment Grade Rating*" means a rating equal to or higher than:

(1) Baa3 (or the equivalent) by Moody's;

(2) BBB- (or the equivalent) by S&P; or

(3) BBB- (or the equivalent) by Fitch,

or, if any two of such entities cease to rate the Notes for reasons outside of the Company's control, the equivalent investment grade credit rating from any other Rating Agency.

"*Investment Grade Rating Event*" means the first day on which (a) the Notes have an Investment Grade Rating from two Rating Agencies, (b) no Default with respect to the Notes has occurred and is then continuing under this Indenture and (c) the Company has delivered to the Trustee an Officer's Certificate certifying as to the satisfaction of the conditions set forth in clauses (a) and (b) of this definition.

"*Investments*" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including guarantees or other obligations), advances or capital contributions (excluding commission, travel, relocation and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities of other Persons, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of the Company, the Company will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Company's Investments in such Subsidiary that were not sold or disposed of in an amount determined as provided in Section 4.07(d) of this Indenture. The acquisition by the Company or any Restricted Subsidiary of the Company of a Person that holds an Investment in a third Person

will be deemed to be an Investment by the Company or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in Section 4.07(d) of this Indenture.

"*Issue Date*" means September 30, 2020.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or 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, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

"*Moody's*" means Moody's Investors Service, Inc., and its successors.

"*Net Income*" means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

"*Net Proceeds*" means the aggregate cash proceeds received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, taxes paid or payable as a result of the Asset Sale, including taxes resulting from the transfer of the proceeds of such Asset Sale to the Company, in each case, after taking into account:

(1) any available tax credits or deductions and any tax sharing arrangements;

(2) amounts required to be applied to the repayment of Indebtedness secured by a Lien on the asset or assets that were the subject of such Asset Sale;

(3) any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP;

(4) any reserve for adjustment in respect of any liabilities associated with the asset disposed of in such transaction and retained by the Company or any Restricted Subsidiary after such sale or other disposition thereof;

(5) any distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Sale; and

(6) in the event that a Restricted Subsidiary consummates an Asset Sale and makes a pro rata payment of dividends to all of its stockholders from any cash proceeds of such Asset

Sale, the amount of dividends paid to any stockholder other than the Company or any other Restricted Subsidiary; *provided* that any net proceeds of an Asset Sale by a Non-Guarantor Subsidiary that are subject to restrictions on repatriation to the Company will not be considered Net Proceeds for so long as such proceeds are subject to such restrictions.

"*Non-Guarantor Subsidiaries*" means (x) any Unrestricted Subsidiary, (y) any Receivables Subsidiary and (z) any Subsidiary of the Company that does not guarantee the Company's Obligations under the ABL Credit Agreement or any other Indebtedness of the Company or a Guarantor of $25.0 million or more. The Board of Directors of the Company may designate any Restricted Subsidiary as a Non-Guarantor Subsidiary by filing with the Trustee a certified copy of a resolution of such Board of Directors giving effect to such designation and an Officer's Certificate certifying as to the applicable clause of the definition of Non-Guarantor Subsidiaries that warrants such designation.

"*Notes Collateral Agent*" means means the party named as such in the preamble to this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*Notes*" means any Notes authenticated and delivered under this Indenture, including the Initial Notes, any Additional Notes that may be issued under a supplemental indenture and Notes to be issued or authenticated upon transfer, replacement or exchange of Notes.

"*Notes Obligations*" means Obligations in respect of the Notes, this Indenture and the Guarantees.

"*Notes Secured Parties*" means the Trustee, the Notes Collateral Agent and the Holders of the Notes.

"*Obligations*" means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), other monetary obligations, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker's acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness; *provided* that

Obligations with respect to the Notes shall not include fees or indemnifications in favor of third parties other than the Trustee, the Notes Collateral Agent and the Holders of the Notes.

"*Offering Circular*" means the confidential offering circular, dated September 25, 2020, relating to the sale of the Initial Notes.

"*Officer*" means the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Company. "*Officer*" of any Guarantor has a correlative meaning.

"*Officer's Certificate*" means a certificate signed on behalf of the Company by one of its Officers, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Company that meets the requirements set forth in this Indenture.

"*Opinion of Counsel*" means, with respect to any Person, a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to such Person.

"*Permitted Bond Hedge Transaction*" means any call or capped call option (or substantively equivalent derivative transaction) on the Company's common stock purchased by the Company in connection with the issuance of any Convertible Indebtedness; *provided* that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Company from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Company from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

"*Permitted Business*" means (i) any business engaged in by the Company or any of its Restricted Subsidiaries on the Issue Date, and (ii) any medical or industrial technology business or other activities that are reasonably similar, ancillary, complementary or related to, or a reasonable extension, development or expansion of, the businesses in which the Company and its Restricted Subsidiaries were engaged on the Issue Date.

"*Permitted Convertible Indebtedness Call Transaction*" means any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

"*Permitted Investments*" means:

(1) any Investment in (a) the Company or a Guarantor or (b) solely in the case of an Investment by a non-Guarantor Restricted Subsidiary, a Restricted Subsidiary of the Company;

(2) any Investment in Cash Equivalents;

(3) any Investment by the Company or any Restricted Subsidiary of the Company in a Person, if as a result of such Investment:

(a) such Person becomes (i) a Guarantor or (ii) solely in the case of an Investment by a non-Guarantor Restricted Subsidiary, a Restricted Subsidiary of the Company (in each case including by means of a Division); or

(b) such Person, in one transaction or a series of transactions, is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets or assets constituting a business unit, a division or line of business of such Person or a facility of such Person to, or is liquidated into, the Company or a Restricted Subsidiary of the Company;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 4.10 of this Indenture;

(5) any Investment solely in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Company;

(6) any Investments received in compromise, settlement or resolution of (A) obligations of trade debtors or customers that were incurred in the ordinary course of business of the Company or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade debtor or customer, (B) litigation, arbitration or other disputes with Persons who are not Affiliates or (C) as a result of a foreclosure by the Company or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(7) Investments represented by Hedging Obligations entered into to protect against fluctuations in interest rates, exchange rates and commodity prices;

(8) any Investment in payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(9) Investments in receivables or other trade payables owing to the Company or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; *provided*, *however*, that such trade terms may include such concessionary trade terms as the Company or any such Restricted Subsidiary deems reasonable under the circumstances;

(10) Investments in (x) prepaid expenses and negotiable instruments held for collection and (y) lease, utility and workers compensation, unemployment insurance, other social security benefits or other insurance-related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto), performance, progress, and similar deposits entered into as a result of the operations of the business in the ordinary course of business;

(11) obligations of one or more officers or other employees of the Company or any of its Restricted Subsidiaries in connection with such officer’s or employee’s acquisition of shares

of Capital Stock of the Company so long as no cash or other assets are paid by the Company or any of its Restricted Subsidiaries to such officers or employees in connection with the acquisition of any such obligations;

(12) loans or advances to and guarantees provided for the benefit of employees and other individual service providers in each case made in the ordinary course of business (including travel, entertainment and relocation expenses) of the Company or any of its Restricted Subsidiaries in an aggregate principal amount not to exceed $5.0 million at any one time outstanding;

(13) Investments existing as on the Issue Date or an Investment consisting of any extension, modification or renewal of any Investment existing as of the Issue Date (excluding any such extension, modification or renewal involving additional advances, contributions or other investments of cash or property or other increases thereof unless it is a result of the accrual or accretion of interest or original issue discount or payment-in-kind pursuant to the terms, as of the Issue Date, of the original Investment so extended, modified or renewed);

(14) repurchases of the Notes;

(15) other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (15) that are at the time outstanding not to exceed the greater of (a) $30.0 million and (b) 2.7% of Total Assets outstanding at any time; *provided*, *however*, that if any Investment pursuant to this clause (15) is made in any Person that is not a Restricted Subsidiary of the Company at the date of the making of such Investment and such Person becomes a Restricted Subsidiary of the Company after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (15) for so long as such Person continues to be a Restricted Subsidiary (it being understood that if such Person thereafter ceases to be a Restricted Subsidiary of the Company, such Investment will again be deemed to have been made pursuant to this clause (15));

(16) Investments, loans and advances to any Captive Insurance Subsidiary in an amount equal to (i) the capital required under the applicable laws or regulations of the jurisdiction in which such Captive Insurance Subsidiary is formed or determined by independent actuaries as prudent and necessary capital to operate such Captive Insurance Subsidiary *plus* (ii) any reasonable general corporate and overhead expenses of such Captive Insurance Subsidiary;

(17) guarantees of Indebtedness of the Company or a Restricted Subsidiary permitted under Section 4.09 of this Indenture and performance guarantees in the ordinary course of business;

(18) Investments in Unrestricted Subsidiaries or joint ventures in an aggregate amount, taken together with all other Investments made after the Issue Date pursuant to this clause (18) that are at that time outstanding, not to exceed the greater of (a) $30.0 million and (b) 2.5%

of Total Assets (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *provided* that the amount of Investments deemed to have been made pursuant to this clause (18) at any time shall be reduced by the Fair Market Value of the proceeds actually received by the Company or any Restricted Subsidiary from the subsequent sale, disposition or other transfer of such Investments without giving effect to subsequent changes in value;

(19) additional Investments; *provided* that (x) no Default or Event of Default has occurred and is continuing or would result therefrom and (y) immediately after giving effect to such Investment on a pro forma basis, the Total Net Leverage Ratio does not exceed 3.00 to 1.00;

(20) Permitted Bond Hedge Transactions which constitute Investments; and

(21) Investments in non-Guarantor Restricted Subsidiaries in an aggregate amount, taken together with all other Investments made after the Issue Date pursuant to this clause (21), not to exceed $20.0 million (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value) in any calendar year (with up to $10.0 million of unused amounts in any calendar year being carried forward to the immediately succeeding calendar year).

"*Permitted Liens*" means:

(1) Liens on assets of the Company or any of its Restricted Subsidiaries securing Indebtedness in an amount not to exceed the maximum amount of Indebtedness permitted by Section 4.09(b)(1) of this Indenture and Obligations of the Company or any Restricted Subsidiary in respect of any Bank Products provided by any lender party to Debt Facility under which such Indebtedness was secured or any Affiliate of such lender (or any Person that was a lender or an Affiliate of a lender at the time the applicable agreements pursuant to which such Bank Products are provided were entered into); *provided* that (a) if such Liens are secured by Cash Flow Priority Collateral, such Liens on the Cash Flow Priority Collateral must be secured on a junior basis to the Notes and the representative in respect of such obligations must enter into a joinder to the security documents in respect of the ABL Credit Agreement and (b) if such Liens are secured by ABL Priority Collateral, the representative in respect of such obligations must enter into a joinder to the Security Documents;

(2) Liens in favor of the Company or the Guarantors;

(3) Liens on property or assets of a Person existing at the time such Person is merged with or into, consolidated with or acquired by the Company or any Restricted Subsidiary of the Company; *provided* that such Liens were in existence prior to the contemplation of such merger, consolidation or acquisition and do not extend to any assets other than those of the Person merged into, consolidated with or acquired by the Company or such Restricted Subsidiary;

(4) Liens on property (including Capital Stock) existing at the time of acquisition of the property by the Company or any Restricted Subsidiary of the Company; *provided* that such

Liens were in existence prior to such acquisition and not incurred in contemplation of such acquisition;

(5) Liens (including deposits and pledges) to secure the performance of public or statutory obligations, progress payments, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the ordinary course of business;

(6) Liens to secure Indebtedness (including Capital Lease Obligations) permitted by Section 4.09(b)(4) of this Indenture and any Permitted Refinancing Indebtedness in respect thereof, in each case, covering only the assets acquired, constructed or improved with, financed or re-financed by such Indebtedness;

(7) Liens existing on the Issue Date (other than Liens described in clause (1) above), *plus* renewals and extensions of such Liens;

(8) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(9) Liens imposed by law, such as carriers', warehousemen's, landlord's, materialmen's, laborers', employees', suppliers' and mechanics' Liens, in each case, incurred in the ordinary course of business;

(10) survey exceptions, title defects, encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that do not materially interfere with the ordinary conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole, and any title exceptions contained in title policies in effect as of the Issue Date or title reports or commitments issued in connection with the Collateral prior to the Issue Date;

(11) Liens created for the benefit of (or to secure) the Notes (or the Guarantees);

(12) Liens to secure any Permitted Refinancing Indebtedness in respect of Indebtedness secured by Liens permitted by clause (3), (4), (7) or (12) of this definition; *provided*, *however*, that:

(a) the new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Indebtedness (*plus* improvements and accessions to, such property or proceeds or distributions thereof); and

(b) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount, or, if greater, committed amount, of the Permitted Refinancing Indebtedness and (y) an amount necessary to pay

any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge;

(13) other Liens with respect to obligations that do not exceed the greater of (a) $30.0 million and (b) 2.7% of Total Assets at any one time outstanding; *provided* that if such Liens are secured by Cash Flow Priority Collateral, such Liens on the Cash Flow Priority Collateral must be secured on a pari passu or junior basis to the Notes and, if such Liens are secured by Cash Flow Priority Collateral on a pari passu basis with the Notes, the representative in respect of such obligations must enter into a joinder to the Security Documents, and if such Liens are secured by Cash Flow Priority Collateral on a junior basis to the Notes, the representative in respect of such obligations must enter into a joinder to the security documents in respect of the ABL Credit Agreement;

(14) security for the payment of workers' compensation, unemployment insurance, other social security benefits or other insurance-related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) entered into in the ordinary course of business;

(15) deposits or pledges in connection with bids, tenders, leases and contracts (other than contracts for the payment of money) entered into in the ordinary course of business;

(16) zoning restrictions, easements, licenses, reservations, provisions, encroachments, encumbrances, protrusion permits, servitudes, covenants, conditions, waivers, restrictions on the use of property or minor irregularities of title (and with respect to leasehold interests, mortgages, obligations, liens and other encumbrances incurred, created, assumed or permitted to exist and arising by, through or under a landlord or owner of the leased property, with or without consent of the lessee), in each case, not materially interfering with the ordinary conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole;

(17) leases, subleases, licenses or sublicenses of assets (including real property and intellectual property rights) to third parties not interfering in any material respect with the business of the Company or any Restricted Subsidiary;

(18) Liens securing Hedging Obligations incurred pursuant to Section 4.09(b)(8) of this Indenture;

(19) Liens arising out of judgments, decrees, orders or awards in respect of which the Company shall in good faith be prosecuting an appeal or proceedings for review which appeal or proceedings shall not have been finally terminated, or if the period within which such appeal or proceedings may be initiated shall not have expired;

(20) Liens on the Equity Interests of an Unrestricted Subsidiary that secure Indebtedness or other obligation of such Unrestricted Subsidiary;

(21) Liens on the assets of Non-Guarantor Subsidiaries securing Indebtedness incurred pursuant to Section 4(b)(13) of this Indenture;

(22) Liens arising from filing Uniform Commercial Code financing statements regarding leases or precautionary Uniform Commercial Code financings statements or similar filings;

(23) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) in favor of a banking institution encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(24) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(25) Liens arising out of permitted sale and leaseback transactions;

(26) Liens created or deemed to exist by the establishment of trusts for the purpose of satisfying government reimbursement program costs and other actions or claims pertaining to the same or related matters or other medical reimbursement programs;

(27) Liens solely on any cash earnest money deposits made by the Company or any Restricted Subsidiary with any letter of intent or purchase agreement permitted by the terms of this Indenture;

(28) Liens deemed to exist by reason of (x) any encumbrance or restriction (including put and call arrangements) with respect to the Equity Interests of any joint venture or similar arrangement pursuant to any joint venture or similar agreement or (y) any encumbrance or restriction imposed under any contract for the sale by the Company or any of its Restricted Subsidiaries of the Equity Interests of any Restricted Subsidiary, or any business unit or division of the business or any Restricted Subsidiary permitted by the terms of this Indenture; *provided* that in each case such Liens shall extend only to the relevant Equity Interests; and

(29) Liens on the Collateral securing Indebtedness Incurred pursuant to Section 4.09 of this Indenture, *provided* that, immediately after giving effect to such Incurrence on a pro forma basis, the Secured Net Leverage Ratio does not exceed 2.25 to 1.00; *provided further that* such Liens must be secured on a pari passu or junior basis to the Notes, and if such Liens are secured on a pari passu basis with the Notes, the representative in respect of such obligations must enter into a joinder to the Security Documents, and if such Liens are secured on a junior basis to the Notes, the representative in respect of such obligations must enter into an intercreditor agreement satisfactory to the ABL Collateral Agent that subordinates such Liens to the Liens securing the Notes and the Liens securing the ABL Secured Obligations, and provides for at least a 270 day standstill on enforcement.

"*Permitted Refinancing Indebtedness*" means any Indebtedness of the Company or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, renew, refund, refinance, replace, defease or discharge other Indebtedness of the Company or any of its Restricted Subsidiaries (other than intercompany Indebtedness); *provided* that:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness extended, renewed, refunded, refinanced, replaced, defeased or discharged (*plus* all accrued interest on the Indebtedness and the amount of all fees, commissions, discounts and expenses, including premiums, incurred in connection therewith);

(2) either (a) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, renewed, refunded, refinanced, replaced, defeased or discharged or (b) all scheduled payments on or in respect of such Permitted Refinancing Indebtedness (other than interest payments) shall be at least 91 days following the final scheduled maturity of the Notes;

(3) if the Indebtedness being extended, renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Notes on terms at least as favorable to the Holders as those contained in the documentation governing the Indebtedness being extended, renewed, refunded, refinanced, replaced, defeased or discharged; and

(4) such Indebtedness is incurred:

(a) by the Company or by the Restricted Subsidiary who is the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;

(b) by any Guarantor if the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is a Guarantor; or

(c) by any Non-Guarantor Subsidiary if the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is a Non-Guarantor Subsidiary.

"*Permitted Warrant Transaction*" means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Company's common stock sold by the Company substantially concurrently with any purchase by the Company of a related Permitted Bond Hedge Transaction.

"*Person*" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"*Pro Forma Cost Savings*" means, with respect to any period, cost savings, operating expense reductions and synergies that are reasonably identifiable and projected by the Company in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Company) within 18 months after the relevant Investment, acquisition, merger, consolidation or disposition, as if all such cost savings, operating expense reductions and synergies in costs had been effected as of the beginning of such period.

"*Qualified Capital Stock*" means any Capital Stock that is not Disqualified Stock.

"*Qualified Proceeds*" means any of the following or any combination of the following:

(1) Cash Equivalents;

(2) the Fair Market Value of assets that are used or useful in the Permitted Business; and

(3) the Fair Market Value of the Capital Stock of any Person engaged primarily in a Permitted Business if, in connection with the receipt by the Company or any of its Restricted Subsidiaries of such Capital Stock, such Person becomes a Restricted Subsidiary or such Person is merged or consolidated into the Company or any Restricted Subsidiary;

provided that for purposes of Section 4.07(b)(3) of this Indenture, Qualified Proceeds shall not include Excluded Contributions.

"*Rating Agency*" means each of S&P, Moody's or Fitch, or if (and only if) S&P, Moody's, Fitch or any combination thereof shall not make a rating on the Notes publicly available, a nationally recognized statistical rating organization or organizations, as the case may be, selected by the Company, which shall be substituted for S&P, Moody's or Fitch, or any combination thereof, as the case may be.

"*Record Date*" for the interest payable on any applicable Interest Payment Date means April 1 or October 1 (whether or not a Business Day) immediately preceding such Interest Payment Date.

"*Replacement Preferred Stock*" means any Disqualified Stock of the Company or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace or discharge any Disqualified Stock of the Company or any of its Restricted Subsidiaries (other than intercompany Disqualified Stock); *provided* that such Replacement Preferred Stock (i) is issued by the Company or by the Restricted Subsidiary who is the Company of the Disqualified Stock being redeemed, refunded, refinanced, replaced or discharged, and (ii) does not have an initial liquidation preference in excess of the liquidation preference *plus* accrued and unpaid dividends on the Disqualified Stock being redeemed, refunded, refinanced, replaced or discharged.

"*Responsible Officer*," when used with respect to the Trustee, means any officer within the Corporate Trust Office of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by such officers and also means, with respect to a particular corporate trust matter, any other officer of employee to whom such matter is referred because of his or her knowledge of and familiarity with the

particular subject and who shall have direct responsibility for the administration of this Indenture.

"*Restricted Investment*" means an Investment other than a Permitted Investment.

"*Restricted Subsidiary*" of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary. For the avoidance of doubt, unless specified otherwise, references to "Restricted Subsidiaries" shall be Restricted Subsidiaries of the Company.

"*S&P*" means S&P Global Ratings, a business unit of S&P Global Inc., and any successor to its rating agency business.

"*SEC*" means the U.S. Securities and Exchange Commission.

"*Secured Indebtedness*" at any date shall mean the aggregate principal amount of Indebtedness outstanding at such date described in clause (a) of the definition of "Total Net Leverage Ratio" that in each case is then secured by Liens on any property or assets of the Company or any Restricted Subsidiary; *provided* that the Company may elect to treat Indebtedness under revolving credit commitments as having been incurred at the time the related revolving credit commitment is established, in which case, Secured Indebtedness shall have been deemed to have been incurred at the time such commitment is provided (and shall thereafter be deemed to be outstanding in the amount of such commitment until such commitment is terminated) but not at the time of any drawing thereunder (or replacement thereof to the extent such replacement or refinancing does not increase the amount of such commitment).

"*Secured Net Leverage Ratio*" shall mean, on any date, the ratio of (a) Secured Indebtedness (*minus* the amount of unrestricted cash and Cash Equivalents held, on such date, by the Company and the Restricted Subsidiaries on such date, except the proceeds of Indebtedness that is Incurred for which the Secured Net Leverage Ratio is to be calculated and the proceeds of any other Indebtedness Incurred substantially contemporaneously therewith (the aggregate amount of such deduction shall not exceed $50.0 million)) on such date to (b) Consolidated Adjusted EBITDA for the most recent period of four consecutive fiscal quarters of the Company ended prior to such date for which internal financial statements are available, in the case of this clause (b), with such adjustments to Consolidated Adjusted EBITDA for such period as are consistent with those set forth in the definition of Fixed Charge Coverage Ratio.

"*Securities Act*" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Security Documents*" means the Intercreditor Agreement, each joinder or amendment thereto, and all security agreements, pledge agreements, control agreements, collateral assignments, mortgages, deeds of trust, security deeds, deeds to secure debt, hypothecs, collateral agency agreements, debentures or other instruments, pledges, grants or transfers for security or agreements related thereto executed and delivered by the Company or any Guarantor creating or perfecting (or purporting to create or perfect) a Lien upon Collateral (including, without limitation, financing statements under the UCC) in favor of the Notes Collateral Agent on behalf

of the Trustee and the Holders to secure the Notes and the Guarantees, in each case, as amended, modified, restated, supplemented or replaced, in whole or in part, from time to time, in accordance with its terms and terms hereof subject to the terms of the Intercreditor Agreement.

"*Significant Subsidiary*" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the Issue Date. For purposes of determining whether an Event of Default has occurred, if any group of Restricted Subsidiaries as to which a particular event has occurred and is continuing at any time would be, taken as a whole, a "Significant Subsidiary" then such event shall be deemed to have occurred with respect to a Significant Subsidiary.

"*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 Issue 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 specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

"*Total Assets*" means the total consolidated assets of the Company and its Restricted Subsidiaries as set forth on the most recent consolidated balance sheet of the Company and its Restricted Subsidiaries.

"*Total Net Leverage Ratio*" shall mean, on any date, the ratio of (a) Indebtedness of the Company and its Restricted Subsidiaries outstanding on such date consisting of Indebtedness for borrowed money, Attributable Indebtedness, purchase money debt, unreimbursed amounts under letters of credit (subject to the proviso below) and all guarantees of the foregoing, in each case (except in the case of guarantees) in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of acquisition accounting in connection with any acquisition constituting an Investment permitted under this Indenture); *minus* the amount of unrestricted cash and Cash Equivalents held, on such date, by the Company and the Restricted Subsidiaries on such date, except the proceeds of Indebtedness

that is Incurred for which the Total Net Leverage Ratio is to be calculated and the proceeds of any other Indebtedness Incurred substantially contemporaneously therewith (the aggregate amount of such deduction shall not exceed $50.0 million) to (b) Consolidated Adjusted EBITDA for the most recent period of four consecutive fiscal quarters of the Company ended prior to such date for which internal financial statements are available, in the case of this clause (b), with such adjustments to Consolidated Adjusted EBITDA for such period as are consistent with those set forth in the definition of Fixed Charge Coverage Ratio.

"*Treasury Rate*" means, as of any redemption date, as determined by the Company, the yield to maturity as of such redemption date of U.S. Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 that has become publicly available at least two Business Days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data) or, if earlier, at least two Business Days prior to the date on which a satisfaction and discharge of this Indenture or a defeasance of Notes occurs) most nearly equal to the period from the redemption date to October 15, 2023; *provided*, *however*, that if the period from the redemption date to October 15, 2023 is less than one year, the average yield of the most recent five Business Days on actually traded U.S. Treasury securities adjusted to a constant maturity of one year will be used.

"*Trustee*" means the party named as such in the preamble to this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*UCC*" means the Uniform Commercial Code of any applicable jurisdiction.

"*Unrestricted Subsidiary*" means (1) any Subsidiary of the Company that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Company in accordance with Section 4.16 of this Indenture and (2) any Subsidiary of an Unrestricted Subsidiary.

"*Voting Stock*" of any specified Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

"*Wholly Owned Subsidiary*" of any specified Person means a Subsidiary of such Person all of the outstanding Capital Stock or other ownership interest of which (other than directors' qualifying shares) will at that time be owned by such Person or by one or more Wholly Owned Subsidiaries of such person.

Section 1.02 Other Definitions.

Term	**Defined in Section**
"*Affiliate Transaction*"	4.11
"*ASC*"	1.01 (Definition of "*Consolidated Net Income*")
"*Asset Sale Offer*"	4.10
"*Authentication Order*"	2.02
"*Calculation Date*"	1.01 (Definition of "*Fixed Charge Coverage Ratio*")
"*Change of Control Offer*"	4.15
"*Change of Control Payment*"	4.15
"*Change of Control Payment Date*"	4.15
"*Covenant Defeasance*"	8.03
"*Dividing Person*"	1.01 (Definition of "*Division*")
"*Event of Default*"	6.01
"*Excess Proceeds*"	4.10
"*Expiration Date*"	1.05
"*FATCA*"	13.18
"*Fixed Amounts*"	1.01 (Definition of "*Fixed Charge Coverage Ratio*")
"*Guaranteed Obligations*"	10.01
"incur"	4.09
"*Incurrence Based Amounts*"	1.01 (Definition of "*Fixed Charge Coverage Ratio*")
"*Legal Defeasance*"	8.02
"*Make-Whole Redemption Date*"	3.07
"*Measurement Period*"	1.01 (Definition of "*Consolidated Adjusted EBITDA*")
"*Note Register*"	2.03
"*Paying Agent*"	2.03
"*PDF*"	13.16
"*Payment Default*"	6.01
"*Permitted Debt*"	4.09
"*Qualified Reporting Subsidiary*"	4.04
"*Registrar*"	2.03
"*Restricted Payments*"	4.07
"*Reversion Date*"	4.13
"*Suspended Covenants*"	4.13
"*Suspension Date*"	4.13
"*Suspension Period*"	4.13
"*Temporary Notes*"	2.10

Section 1.03 Rules of Construction.

Unless the context otherwise requires:

(1) a term defined in Sections 1.01 or 1.02 of this Indenture shall have the meaning assigned to it herein;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) words in the singular include the plural, and words in the plural include the singular;

(5) provisions apply to successive events and transactions;

(6) unless the context otherwise requires, any reference to an "Appendix," "Article," "Section," "clause," "Schedule" or "Exhibit" refers to an Appendix, Article, Section, clause, Schedule or Exhibit, as the case may be, of this Indenture;

(7) the words "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision;

(8) "including" means "including without limitation";

(9) references to sections of, or rules under, the Securities Act or the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

(10) unless otherwise provided, references to agreements and other instruments shall be deemed to include all amendments and other modifications to such agreements or instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Indenture; and

(11) in the event that a transaction meets the criteria of more than one category of permitted transactions or listed exceptions, the Company may classify such transaction as it, in its sole discretion, determines.

Section 1.04 Trust Indenture Act.

This Indenture is not qualified under, and, does not incorporate or include any of the provisions of, the Trust Indenture Action of 1939, as amended.

Section 1.05 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given or taken by Holders may be embodied

in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company and the Guarantors. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 7.01 of this Indenture) conclusive in favor of the Trustee, the Company and the Guarantors, if made in the manner provided in this Section 1.05.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved (1) by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof or (2) in any other manner deemed reasonably sufficient by the Trustee. Where such execution is by a signer in a capacity other than an individual capacity, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee and the Company deem sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Trustee, the Company or the Guarantors in reliance thereon, whether or not notation of such action is made upon such Note.

(e) The Company may set a record date for purposes of determining the identity of Holders entitled to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, or to vote on or consent to any action authorized or permitted to be taken by Holders; *provided* that the Company may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in clause (f) below. Unless otherwise specified, if not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date shall be the later of 30 days prior to the first solicitation of such consent or vote or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation or vote. If any record date is set pursuant to this clause (e), the Holders on such record date, and only such Holders, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action (including revocation of any action), whether or not such Holders remain Holders after such record date; *provided* that no such action shall be effective hereunder unless made, given or taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Notes, or each affected Holder, as applicable, on such record date. Promptly after any record date is set pursuant to this

paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder in the manner set forth in Section 12.02 of this Indenture.

(f) The Trustee may set any day as a record date for the purpose of determining the Holders entitled to join in the giving or making of (1) any notice of default under Section 6.01 of this Indenture, (2) any declaration of acceleration referred to in Section 6.02 of this Indenture, (3) any direction referred to in Section 6.05 of this Indenture or (4) any request to pursue a remedy as permitted in Section 6.06 of this Indenture. If any record date is set pursuant to this paragraph, the Holders on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; *provided* that no such action shall be effective hereunder unless made, given or taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Notes or each affected Holder, as applicable, on such record date. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company and to each Holder in the manner set forth in Section 12.02 of this Indenture.

(g) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(h) Without limiting the generality of the foregoing, a Holder, including a Depositary that is the Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and a Depositary that is the Holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such Depositary's standing instructions and customary practices.

(i) The Company may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by a Depositary entitled under the procedures of such Depositary, if any, to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders; *provided* that if such a record date is fixed, only the beneficial owners of interests in such Global Note on such record date or their duly appointed proxy or proxies shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such beneficial owners remain beneficial owners of interests in such Global Note after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other

action shall be effective hereunder unless made, given or taken on or prior to the applicable Expiration Date.

(j) With respect to any record date set pursuant to this Section 1.05, the party hereto that sets such record date may designate any day as the "*Expiration Date*" and from time to time may change the Expiration Date to any earlier or later day; *provided* that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder in the manner set forth in Section 12.02 of this Indenture, on or prior to both the existing and the new Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.05, the party hereto which set such record date shall be deemed to have initially designated the 90th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this clause (j).

ARTICLE 2
THE NOTES

Section 2.01 Form and Dating; Terms.

(a) Provisions relating to the Initial Notes, Additional Notes and any other Notes issued under this Indenture are set forth in Appendix A, which is hereby incorporated in and expressly made a part of this Indenture. The Notes and the Trustee's certificate of authentication shall each be substantially in the form of Exhibit A hereto, which is hereby incorporated in and expressly made a part of this Indenture. The Notes may have notations, legends or endorsements required by law, rules or agreements with national securities exchanges to which the Company or any Guarantor is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form acceptable to the Company). Each Note shall be dated the date of its authentication. The Notes shall be in denominations of $2,000 and integral multiples of $1,000 in excess thereof.

(b) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture, and the Company, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

The Notes shall be subject to repurchase by the Company pursuant to an Asset Sale Offer as provided in Section 4.10 of this Indenture or a Change of Control Offer as provided in Section 4.15 of this Indenture, and otherwise as not prohibited by this Indenture. The Notes shall not be redeemable, other than as provided in Article 3.

Additional Notes ranking *pari passu* with the Initial Notes may be created and issued from time to time by the Company without notice to or consent of the Holders and shall be consolidated with and form a single class with the Initial Notes and shall have the same terms as

to status, redemption or otherwise (other than issue date, issue price and, if applicable, the first Interest Payment Date and the first date from which interest will accrue) as the Initial Notes; *provided* that if any Additional Notes are not fungible with the Initial Notes for U.S. federal income tax purposes, such Additional Notes will be issued as a separate series under this Indenture and will have a separate CUSIP number and ISIN from the Initial Notes; *provided*, *further*, that the Company's ability to issue Additional Notes shall be subject to the Company's compliance with Section 4.09 of this Indenture. Any Additional Notes shall be issued with the benefit of an indenture supplemental to this Indenture.

Section 2.02 Execution and Authentication.

(a) At least one Officer shall execute the Notes on behalf of the Company by manual, electronic or facsimile signature. If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

(b) A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form of Exhibit A attached hereto by the manual or electronic signature of an authorized signatory of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

(c) The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders, the Company or an Affiliate of the Company.

(d) The Trustee shall authenticate upon a written order of the Company signed by one Officer of the Company (an "*Authentication Order*") (i) Initial Notes for original issue on the Issue Date in an aggregate principal amount of $300,000,000, (ii) subject to the terms of this Indenture, Additional Notes and (iii) any Unrestricted Global Notes issued in exchange for any of the foregoing in accordance with this Indenture. Such Authentication Order shall specify the amount of the Notes to be authenticated, the date on which the original issue of Notes is to be authenticated and whether the Notes are to be Initial Notes, Additional Notes or Unrestricted Global Notes.

Section 2.03 Registrar and Paying Agent.

(a) The Company shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and at least one office or agency where Notes may be presented for payment ("*Paying Agent*"). The Registrar shall keep a register of the Notes ("*Note Register*") and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "*Registrar*" includes any co-registrar, and the term "*Paying Agent*" includes any additional paying agent. The Company may change any Paying Agent or Registrar without prior notice to any Holder. The Company shall notify the Trustee in writing of the name and address of any Agent not a party to this

Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any of its Restricted Subsidiaries may act as Paying Agent or Registrar.

(b) The Company initially appoints The Depository Trust Company to act as Depositary with respect to the Global Notes. The Company initially appoints the Trustee to act as Paying Agent and Registrar for the Notes and to act as custodian with respect to the Global Notes.

Section 2.04 Paying Agent to Hold Money in Trust.

The Company shall, no later than 11:00 a.m. (New York City time) on each due date for the payment of principal, premium, if any, and interest on any of the Notes, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held in trust for the Holders entitled to the same, and (unless such Paying Agent is the Trustee) the Company shall promptly notify the Trustee of its action or failure so to act. The Company shall require each Paying Agent other than the Trustee to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal, premium, if any, and interest on the Notes, and shall notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, a Paying Agent shall have no further liability for the money. If the Company or a Restricted Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05 Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least two Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders.

Section 2.06 Transfer and Exchange.

(a) The Notes shall be issued in registered form and shall be transferable only upon the surrender of a Note for registration of transfer and in compliance with Appendix A.

(b) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 of this Indenture or at the Registrar’s request.

(c) No service charge shall be imposed in connection with any registration of transfer or exchange (other than pursuant to Section 2.07 of this Indenture), but the Holders shall be required to pay any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.06, 4.10, 4.15 and 9.05 of this Indenture). Holders shall be required to pay all taxes due on transfer or exchange. The transferor shall also provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on information provided to it and shall have no responsibility whatsoever to verify or ensure the accuracy of such information.

(d) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(e) Neither the Company nor the Registrar shall be required (1) to issue, to register the transfer of or to exchange any Note during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 of this Indenture and ending at the close of business on the day of selection, (2) to register the transfer of or to exchange any Note so selected for redemption, or tendered for repurchase (and not withdrawn) in connection with a Change of Control Offer or an Asset Sale Offer, in whole or in part, except the unredeemed or unpurchased portion of any Note being redeemed or repurchased in part or (3) to register the transfer of or to exchange any Note between a Record Date and the next succeeding Interest Payment Date.

(f) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal, premium, if any, and (subject to the Record Date provisions of the Notes) interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(g) Upon surrender for registration of transfer of any Note at the office or agency of the Company designated pursuant to Section 4.02 of this Indenture, the Company shall execute, and the Trustee shall authenticate and mail, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(h) At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes or Definitive Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and mail, the replacement Global Notes and Definitive Notes which the Holder making the exchange is entitled to in accordance with the provisions of Appendix A.

(i) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by mail or by facsimile or electronic transmission.

Section 2.07 Replacement Notes.

If a mutilated Note is surrendered to the Trustee or if a Holder claims that its Note has been lost, destroyed or wrongfully taken and the Trustee receives evidence to its satisfaction of the ownership and loss, destruction or theft of such Note, the Company shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee's requirements are otherwise met. If required by the Trustee or the Company, an indemnity bond must be provided by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company may charge the Holder for the expenses of the Company and the Trustee in replacing a Note. Every replacement Note is a contractual obligation of the Company and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder. Notwithstanding the foregoing provisions of this Section 2.07, in case any mutilated, lost, destroyed or wrongfully taken Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Note, pay such Note.

Section 2.08 Outstanding Notes.

(a) The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 of this Indenture, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

(b) If a Note is replaced pursuant to Section 2.07 of this Indenture, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser, as such term is defined in Section 8-303 of the Uniform Commercial Code in effect in the State of New York.

(c) If the principal amount of any Note is considered paid under Section 4.01 of this Indenture, it ceases to be outstanding and interest on it ceases to accrue from and after the date of such payment.

(d) If a Paying Agent (other than the Company, a Restricted Subsidiary or an Affiliate of any thereof) holds, on the maturity date, any redemption date or any repurchase date, money sufficient to pay Notes payable or to be redeemed or purchased on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09 Treasury Notes.

In determining whether the Holders of the requisite principal amount of Notes have concurred in any direction, waiver or consent, Notes beneficially owned by the Company, or by any Affiliate of the Company, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to the Notes and that the pledgee is not the Company or any obligor upon the Notes or any Affiliate of the Company or of such other obligor.

Section 2.10 Temporary Notes.

Until Definitive Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes ("*Temporary Notes*"). Temporary Notes shall be substantially in the form of Definitive Notes but may have variations that the Company considers appropriate for Temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate Definitive Notes in exchange for Temporary Notes. Holders and beneficial holders, as the case may be, of Temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial holders, respectively, of Notes under this Indenture.

Section 2.11 Cancellation.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee for cancellation any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall destroy cancelled Notes in accordance with its customary procedures (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all cancelled Notes shall, upon the written request of the Company, be delivered to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 Defaulted Interest.

(a) If the Company defaults in a payment of interest on the Notes, it shall pay the defaulted interest in any lawful manner *plus*, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 of this Indenture. The Company shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of

such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Trustee shall promptly notify the Company of such special record date. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) shall mail or deliver by electronic transmission in accordance with the applicable procedures of the Depositary, or cause to be mailed or delivered by electronic transmission in accordance with the applicable procedures of the Depositary, to each Holder a notice that states the special record date, the related payment date and the amount of such interest to be paid.

(a) Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue interest, which were carried by such other Note.

Section 2.13 CUSIP and ISIN Numbers.

The Company in issuing the Notes may use CUSIP or ISIN numbers (if then generally in use) and, if so, the Trustee shall use CUSIP or ISIN numbers in notices of redemption, exchange or repurchase as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption, exchange or repurchase and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption, exchange or repurchase shall not be affected by any defect in or omission of such numbers. The Company shall as promptly as practicable notify the Trustee in writing of any change in the CUSIP or ISIN numbers.

ARTICLE 3
REDEMPTION

Section 3.01 Notices to Trustee.

If the Company elects to redeem Notes pursuant to Section 3.07 of this Indenture, it shall furnish to the Trustee, at least five Business Days before notice of redemption is required to be mailed or transmitted or caused to be mailed or transmitted to Holders pursuant to Section 3.03 of this Indenture (unless a shorter notice shall be agreed to by the Trustee) but not more than 60 days before a redemption date, an Officer's Certificate setting forth (a) the paragraph or subparagraph of such Note or Section of this Indenture pursuant to which the redemption shall occur, (b) the redemption date, (c) the principal amount of the Notes to be redeemed and (d) the redemption price, if then ascertainable.

Section 3.02 Selection and Notice.

(a) If less than all of the Notes are to be redeemed at any time, the Trustee will select Notes for redemption in accordance with DTC's requirements, or by lot on a pro rata basis if in physical or certificated form, unless otherwise required by law or the requirements of the principal securities exchange, if any, on which the Notes are listed.

(b) No Notes of $2,000 or less can be redeemed in part. Notices of redemption will be transmitted at least ten but not more than 60 days before the redemption date to each Holder to be redeemed at its registered address, except that redemption notices may be transmitted more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture.

(c) If any Note is to be redeemed in part only, the notice of redemption that relates to that Note will state the portion of the principal amount of that Note that is to be redeemed. A new Note in principal amount equal to the unredeemed portion of the original Note will be issued in the name of the Holder upon cancellation of the original Note. Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest will cease to accrue on Notes or portions of Notes called for redemption unless the Company defaults in the payment of the redemption price or the applicable notice of redemption is conditional and the conditions are not satisfied or waived.

Section 3.03 Notice of Redemption.

(a) The Company shall mail or deliver by electronic transmission in accordance with the applicable procedures of the Depositary, or cause to be mailed or delivered by electronic transmission in accordance with the applicable procedures of the Depositary, notices of redemption at least ten but not more than 60 days before the redemption date to each Holder of Notes to be redeemed at its registered address, except that redemption notices may be transmitted more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge.

(b) The notice shall identify the Notes to be redeemed (including CUSIP and ISIN number, if applicable) and shall state:

(a) the redemption date;

(b) the redemption price, including the portion thereof representing any accrued and unpaid interest; *provided* that in connection with a redemption under Section 3.07(a) of this Indenture, the notice need not set forth the redemption price but only the manner of calculation thereof;

(3) if any Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed;

(4) the name and address of the Paying Agent;

(5) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(6) that, unless the Company defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(7) the paragraph or subparagraph of the Notes or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;

(8) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Notes; and

(9) if applicable, any condition to such redemption.

(c) At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense; *provided* that the Company shall have delivered to the Trustee, at least five Business Days before notice of redemption is required to be sent or caused to be sent to Holders pursuant to this Section 3.03 (unless a shorter notice shall be agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in Section 3.03(b) of this Indenture.

Section 3.04 Effect of Notice of Redemption.

Once a notice of redemption is transmitted or mailed in accordance with Section 3.03 of this Indenture, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price, except as otherwise set forth in this Section 3.04. Notice of any redemption of the Notes in connection with a transaction or an event (including an Equity Offering, an incurrence of Indebtedness or a Change of Control) may, at the Company's discretion, be given prior to the completion or the occurrence thereof and any such redemption or notice may, at the Company's discretion, be subject to one or more conditions precedent, including, but not limited to, completion or occurrence of the related transaction or event. In addition, if such redemption is subject to the satisfaction (or waiver by the Company) of one or more conditions precedent, such notice shall describe each such condition, and if applicable, shall state that, in the Company's discretion, the redemption date may be delayed until such time (including more than 60 days after the date the notice of redemption was delivered) as any or all conditions shall be satisfied (or waived), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date, or by the redemption date as so delayed. In the case of such delay or rescission, the Company shall provide written notice to the Trustee prior to the close of business two Business Days prior to the date of redemption and a written request to the Trustee to promptly provide such notice to each Holder. In addition, the Company may provide in such notice that payment of the redemption price and performance of the Company's obligations with respect to such redemption may be performed by another Person.

Section 3.05 Deposit of Redemption or Purchase Price.

(a) No later than 11:00 a.m. (New York City time) on the redemption or purchase date (or such later time as such date to which the Trustee may reasonably agree), the Company shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued and unpaid interest on all Notes to be redeemed or purchased on that date. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest shall be paid to the Holder of record on such Record Date. The Paying Agent shall promptly mail to each Holder whose Notes are to be redeemed or repurchased the applicable redemption or purchase price thereof and accrued and unpaid interest thereon. The Trustee or the Paying Agent shall promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption or purchase price of, and accrued and unpaid interest on, all Notes to be redeemed or purchased.

(b) If the Company complies with the provisions of Section 3.05(a) of this Indenture, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to the redemption or purchase date in respect of such Note will be paid on such redemption or purchase date to the Person in whose name such Note is registered at the close of business on such Record Date. If any Note called for redemption or purchase shall not be so paid upon surrender for redemption or purchase because of the failure of the Company to comply with Section 3.05(a) of this Indenture, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and, to the extent lawful, on any interest accrued to the redemption or purchase date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 of this Indenture.

Section 3.06 Notes Redeemed or Purchased in Part.

Upon surrender of a Note that is redeemed or purchased in part, the Company shall issue and, upon receipt of an Authentication Order, the Trustee shall promptly authenticate and mail to the Holder (or cause to be transferred by book entry) at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered representing the same Indebtedness to the extent not redeemed or purchased; *provided* that each new Note shall be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof.

Section 3.07 Optional Redemption.

(a) At any time prior to October 15, 2023, the Company may, on any one or more occasions, redeem up to 30% of the aggregate principal amount of Notes issued under this Indenture (including any Additional Notes) at a redemption price of 107.875% of the principal amount, *plus* accrued and unpaid interest, if any, to, but excluding, the redemption date, with the net cash proceeds of one or more Equity Offerings by the Company (in each case, other than Excluded Contributions), in each case, received after the Issue Date; *provided* that (1) at least

70% of the aggregate principal amount of Notes originally issued under this Indenture (including any Additional Notes but excluding Notes held by the Company and its Subsidiaries) remains outstanding immediately after the occurrence of such redemption; and (2) the redemption occurs within 90 days of the date of the closing of such Equity Offering or equity contribution.

(b) On or after October 15, 2023, the Company may redeem all or a part of the Notes upon not less than ten nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below *plus* accrued and unpaid interest, if any, on the Notes redeemed, to, but excluding, the applicable redemption date, if redeemed during the 12month period beginning on October 15 of the years indicated below subject to the rights of Holders of Notes on the relevant Record Date to receive interest on the relevant Interest Payment Date:

Year	**Percentage**
2023	105.906%
2024	103.938%
2025	101.969%
2026 and thereafter	100.000%

(c) Prior to October 15, 2023, the Company may also redeem all or any portion of the Notes upon not less than ten nor more than 60 days' prior notice, at a redemption price equal to 100% of the principal amount thereof *plus* the Applicable Premium as of, and accrued and unpaid interest thereon, if any, to, but excluding, the date of redemption (a "*Make-Whole Redemption Date*").

(d) In addition, prior to October 15, 2023, the Company may redeem during each calendar year commencing with the calendar year in which the Issue Date occurs up to 10.0% of the aggregate principal amount of the Notes, at its option, from time to time at a redemption price equal to 103.0% of the aggregate principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date (subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date).

(e) Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(f) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 of this Indenture.

Section 3.08 Redemption for Changes in Taxes

(a) The Company may redeem the Notes, in whole but not in part, at any time upon giving not less than 30 nor more than 60 days' prior notice to the Holders (with a copy to the Trustee) (which notice will be irrevocable and given in accordance with the procedures described in Section 3.02 of this Indenture), at a redemption price equal to 100% of the principal amount

thereof, together with accrued and unpaid interest, if any, to the date fixed by the Company for redemption (a "Tax Redemption Date") and all Additional Amounts (if any) then due and that will become due on the Tax Redemption Date as a result of the redemption or otherwise (subject to the right of Holders on the relevant Record Date to receive interest due on an Interest Payment Date that is prior to the Tax Redemption Date and Additional Amounts (if any) in respect thereof), if on the next date on which any amount would be payable in respect of the Notes, the Company or any Guarantor is or would be required to pay Additional Amounts, and the Company or the relevant Guarantor (but, in the case of a Guarantor, only if the payment giving rise to such requirement cannot be made by the Company or another Guarantor without the obligation to pay Additional Amounts) cannot avoid any such payment obligation taking reasonable measures available (provided that changing the jurisdiction of the Company is not a reasonable measure for purposes of this Section 3.08, and that changing the jurisdiction of a paying agent is a reasonable measure), as a result of:

(i) any change in, or amendment to, the laws (or any regulations, protocols or rulings promulgated thereunder) of the relevant Tax Jurisdiction affecting taxation which change or amendment has not been publicly announced in writing by the applicable governmental authority before and which becomes effective on or after September 25, 2020 (or, if the relevant Tax Jurisdiction was not a Tax Jurisdiction on the Issue Date, the date on which such Tax Jurisdiction became a Tax Jurisdiction under this Indenture); or

(ii) any change in, or amendment to, the existing official written position or the introduction of a written official position regarding the application, administration or interpretation of such laws, treaties, regulations or rulings (including a holding, judgment or order by a court of competent jurisdiction or a change in published administrative practice), which change or amendment has not been publicly announced in writing by the applicable governmental authority before and which becomes effective on or after September 25, 2020 (or, if the relevant Tax Jurisdiction was not a Tax Jurisdiction on the Issue Date, the date on which such Tax Jurisdiction became a Tax Jurisdiction under this Indenture).

(b) The Company will not give any such notice of redemption earlier than 90 days prior to the earliest date on which the Company or the relevant Guarantor would be obligated to make such payment or withholding (if a payment in respect of the Notes or the Guarantees were then due) and unless at the time such notice is given, the obligation to pay Additional Amounts remains in effect.

(c) Prior to the publication or, where relevant, mailing of any notice of redemption of the Notes pursuant to the foregoing, the Company will deliver the Trustee an Opinion of Counsel to the effect that there has been such change or amendment which would entitle the Company to redeem the Notes hereunder. In addition, before the Company publishes or mails notice of redemption of the Notes as described above, it will deliver to the Trustee an Officer's Certificate to the effect that the obligation to pay Additional Amounts cannot be avoided by the Company or the relevant Guarantor (but, in the case of a Guarantor, only if the payment giving rise to such

requirement cannot be made by the Company or another Guarantor without the obligation to pay Additional Amounts) taking reasonable measures available to it.

(d) The Trustee will accept and may conclusively rely on such Officer's Certificate and Opinion of Counsel as sufficient evidence of the existence and satisfaction of the conditions precedent as described above, in which event it will be conclusive and binding on the Holders.

Section 3.09 Mandatory Redemption.

Other than with respect to Section 4.10(b), the Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

ARTICLE 4
COVENANTS

Section 4.01 Payment of Notes.

(a) The Company shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Company or a Restricted Subsidiary thereof, holds on the due date money deposited by or on behalf of the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

(b) The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, at the rate equal to the then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02 Maintenance of Office or Agency.

(a) The Company shall maintain in the Borough of Manhattan, the City of New York, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company and the Guarantors in respect of the Notes and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

(b) The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or

agency in the Borough of Manhattan, the City of New York for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

(c) The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 of this Indenture.

Section 4.03 Taxes.

The Company shall pay, and shall cause each of its Restricted Subsidiaries to pay, prior to delinquency, all material taxes, assessments and governmental levies except (a) such as are being contested in good faith and by appropriate negotiations or proceedings or (b) where the failure to effect such payment is not adverse in any material respect to the Holders.

Section 4.04 Reports.

(a) So long as any Notes are outstanding, the Company will furnish to the Trustee and the Holders:

(1) within the time period specified in the SEC's rules and regulations for non-accelerated filers, annual financial statements of the Company substantially in the form that would be required to be contained in a filing with the SEC on Form 10-K (or required in such successor or comparable form), if the Company were required to file such form, together with a report thereon by the Company's independent registered public accounting firm, and a "Management's Discussion and Analysis of Financial Condition and Results of Operations," that is substantially consistent with the presentation thereof included in the Offering Circular;

(2) within the time period specified in the SEC's rules and regulations for non-accelerated filers (solely with respect to the first three fiscal quarters of each fiscal year), all quarterly financial statements of the Company substantially in the form that would be required to be contained in a filing with the SEC on Form 10-Q (or required in such successor or comparable form), in accordance with the requirements of such Form 10-Q as of the Issue Date, if the Company were required to file such form, and a "Management's Discussion and Analysis of Financial Condition and Results of Operations;" and

(3) promptly from time to time after the occurrence of an event required to be therein reported, such other information containing substantially the same information that would be required to be contained in filings with the SEC on Form 8-K (or required in such successor or comparable form), under Items:

- 1.01 (Entry into a Material Definitive Agreement);
- 1.03 (Bankruptcy or Receivership);
- 2.01 (Completion of Acquisition or Disposition of Assets);

- 2.03 (Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant);
- 2.04 (Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement);
- 4.02 (Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review);
- 5.01 (Changes in Control of Registrant);
- 5.02(a)(1) (Resignation of Director due to Disagreement with Registrant);
- 5.02(c)(1) (Name and Position of Newly Appointed Officer and Date of Appointment); and
- 5.03(b) (Changes in Fiscal Year),

if the Company were required to file such reports; *provided*, *however*, that no such Form 8-K report will be required to be furnished if the Company determines in its good faith judgment that such event is not material to Holders or the business, assets, operations, financial position or prospects of the Company and its Restricted Subsidiaries, taken as a whole, or if the Company determines in its good faith judgment that such disclosure would otherwise cause material competitive harm to the business, assets, operations, financial position or prospects of the Company and its Restricted Subsidiaries, taken as a whole.

(b) With respect to the reports required to be furnished by clause (a) above:

(1) no such reports referenced under clause (a)(3) above will be required to include as an exhibit or summary of terms of, any employment or compensatory arrangement agreement, plan or understanding between the Company or any of its Subsidiaries and any director, manager or executive officer, of the Company or any of its Subsidiaries;

(2) in no event will such reports be required to comply with Section 302, Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the SEC;

(3) in no event will such reports be required to comply with Item 302 of Regulation S-K promulgated by the SEC;

(4) in no event will such reports be required to comply with Rule 3-10 or Rule 3-16 of Regulation S-X promulgated by the SEC or contain separate financial statements for the Company or the Guarantors;

(5) in no event will such reports be required to comply with Item 601 of Regulation S-K promulgated by the SEC (with respect to exhibits) or, with respect to reports referenced in clause (a)(3) above, to include as an exhibit copies of any agreements, financial statements or other items that would be required to be filed as exhibits to a current report on Form 8-K;

(6) trade secrets and other confidential information that is competitively sensitive in the good faith and reasonable determination of the Company may be excluded from any disclosures;

(7) to the extent that the Company is not a reporting company under the Exchange Act, in no event will such reports be required to be presented in compliance with the requirements of the Public Company Accounting Oversight Board; and

(8) in no event will such reports contain compensation or beneficial ownership information.

(c) [Reserved].

(d) In addition, notwithstanding the foregoing, the financial statements, information, auditors' reports and other documents and information required to be provided pursuant to clause (a) above may be, rather than those of the Company, those of (a) any predecessor or successor of the Company or (b) any Wholly Owned Subsidiary which is a Restricted Subsidiary of the Company that, together with its consolidated Subsidiaries, constitutes substantially all of the assets of the Company and its consolidated Subsidiaries ("*Qualified Reporting Subsidiary*"); *provided* that, if the financial information required to be provided pursuant to clause (a) above relates to such Qualified Reporting Subsidiary of the Company, such financial information will be accompanied by consolidating information (which need not be audited) that explains in reasonable detail (in the good faith judgment of the Company) the differences between the information relating to such Qualified Reporting Subsidiary, on the one hand, and the information relating to the Company and its Subsidiaries on a stand-alone basis, on the other hand. If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries and such Unrestricted Subsidiaries, either individually or collectively, would otherwise have been a Significant Subsidiary of the Company, then the annual and quarterly financial information required by the preceding paragraphs shall include a reasonably detailed presentation, as determined in good faith by senior management of the Company, either on the face of the financial statements or in the footnotes to the financial statements and in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section, of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries.

(e) During any period that the Company has not filed the corresponding reports referred to in clause (a) above with the SEC via the EDGAR filing system (or any successor system), the Company will make available such information and such reports to the Trustee, any Holder and, upon request, to any beneficial owner of the Notes, in each case by posting such information on its website, on Intralinks, SyndTrak, ClearPar or any comparable password-protected online data system that will require a confidentiality acknowledgment, and will make such information readily available to any Holder, any bona fide prospective investor in the Notes (which prospective investors will be limited to "qualified institutional buyers" within the meaning of Rule 144A under the Securities Act that certify their status as such to the reasonable satisfaction of the Company), any bona fide securities analyst (to the extent providing analysis of investment in the Notes to investors and prospective investors therein) or any bona fide market

maker in the Notes who agrees to treat such information as confidential or accesses such information on Intralinks SyndTrak, ClearPar or any comparable password-protected online data system that will require a confidentiality acknowledgment; *provided* that the Company may deny access to any competitively-sensitive information otherwise to be provided pursuant to this clause (e) to any such Holder, prospective investor, security analyst or market maker that is a competitor of the Company and its Subsidiaries, or an affiliate of such a competitor (other than any affiliate that is a bona fide bank debt fund, distressed asset fund, hedge fund, mutual fund, insurance company, financial institution or investment vehicle engaged in the business of investing in, acquiring or trading commercial loans, bonds and similar extensions of credit in the ordinary course (and not organized primarily for the purpose of making equity investments)) to the extent that the Company determines in good faith that the provision of such information to such Person would be competitively harmful to the Company and its Subsidiaries; *provided*, *further*, that such Holders, prospective investors, security analysts or market makers will agree to (1) treat all such reports (and the information contained therein) and information as confidential, (2) not use such reports and the information contained therein for any purpose other than their investment or potential investment in the Notes and (3) not publicly disclose or distribute any such reports (and the information contained therein).

(f) In addition, to the extent not satisfied by the reports required by this Section 4.04 or otherwise made publicly available by the Company, the Company will furnish to Holders thereof and prospective investors in the Notes, upon their request, the information, if any, required to be delivered pursuant to Rule 144A(d)(4) (or any successor provision) under the Securities Act.

(g) The Company will be deemed to have furnished the reports referred to in clause (a) above if the Company has filed the corresponding reports containing such information with the SEC via the EDGAR filing system (or any successor system).

(h) The Company will furnish to the Notes Collateral Agent, on a quarterly basis, written notice of any change in the (1) legal name, (2) jurisdiction of organization or formation or (3) identity or corporate structure of the Company or any Guarantor. Promptly thereafter, the Company and the Guarantors will make all filings under the UCC and any other applicable laws so that the Lien of the Notes Collateral Agent remains perfected at all times following such change with the same priority as immediately prior to such change.

(i) It is understood that neither the Trustee nor the Notes Collateral Agent shall have any obligation whatsoever to determine whether or not such information, documents or reports have been posted on the Company's website or filed with the SEC or filed under the UCC or any other applicable laws. The posting or delivery of any such reports, information and documents to the Trustee and the Notes Collateral Agent is for informational purposes only and the Trustee's and the Notes Collateral Agent's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of the covenants under this Indenture (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate).

Section 4.05 Compliance Certificate.

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, an Officer's Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto).

(b) So long as any of the Notes are outstanding, the Company shall deliver to the Trustee, within 30 days upon any Officer becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.06 Stay, Extension and Usury Laws.

The Company and each of the Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company and each of the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 Restricted Payments.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any other payment or distribution on account of the Company's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Company's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Company); *provided* that the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of a Restricted Subsidiary of the Company shall not constitute a Restricted Payment;

(2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Company) any Equity Interests of the Company;

(3) make any payment on or with respect to, or purchase, repurchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Company or any Guarantor that is contractually subordinated to the Notes or to any Guarantee (excluding any intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries), except (i) a payment of interest or principal at the Stated Maturity thereof or (ii) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of any such subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or payment at final maturity, in each case within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition or retirement; or

(4) make any Restricted Investment;

(All such payments and other actions set forth in these clauses (1) through (4) of this Section 4.07(a) are collectively referred to as "*Restricted Payments*").

(b) Notwithstanding clause (a) above, the Company and its Restricted Subsidiaries shall be permitted to make Restricted Payments if at the time of and after giving effect to such Restricted Payment:

(1) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(2) the Company would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) of this Indenture; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries since the Issue Date (excluding Restricted Payments permitted by clauses (2), (3), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15) and (16) of Section 4.07(c) of this Indenture), is less than the sum, without duplication, of:

(A) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from the beginning of the first fiscal quarter in which the Issue Date occurs, to the end of the Company's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); *plus*

(B) 100% of the aggregate Qualified Proceeds received by the Company since the Issue Date as a contribution to its equity capital (other than Disqualified Stock) or from the issue or sale of Equity Interests of the Company (other than any Permitted Warrant Transaction, Disqualified Stock, Excluded Contributions and Qualified Proceeds applied in accordance with Section 4.07(c)(7)(A) of this Indenture) or from the issue or sale of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities of the Company (other than Equity Interests (or Disqualified Stock or debt securities) sold to a Subsidiary of the Company) that have been converted into or exchanged for such Equity Interests (other than Disqualified Stock); *plus*

(C) an amount equal to the net reduction in Investments by the Company and its Restricted Subsidiaries resulting from (x) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of any Restricted Investment that was made after the Issue Date (other than Section 4.07(c)(16) of this Indenture) and (y) repurchases, redemptions and repayments of such Restricted Investments and the receipt of any dividends or distributions from such Restricted Investments to the extent not otherwise included in Consolidated Net Income; *plus*

(D) to the extent that any Unrestricted Subsidiary of the Company was or is redesignated as a Restricted Subsidiary after the Issue Date, an amount equal to the Fair Market Value of the Company's interest in such Subsidiary immediately prior to such redesignation; *plus*

(E) in the event the Company and/or any Restricted Subsidiary of the Company makes any Restricted Investment in a Person that, as a result of or in connection with such Investment, becomes a Restricted Subsidiary of the Company, an amount equal to the existing Investment of the Company and/or any of its Restricted Subsidiaries in such Person that was previously treated as a Restricted Payment (other than Section 4.07(c)(16) of this Indenture).

(c) Section 4.07(a) of this Indenture shall not prohibit:

(1) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or redemption payment would have complied with the provisions of this Indenture;

(2) the making of any Restricted Payment in exchange for, or out of the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of the Company) of Equity Interests of the Company (other than Disqualified Stock) or from the substantially concurrent contribution of equity capital to the Company (other than Disqualified Stock); *provided* that the amount of any such net cash proceeds that are

utilized for any such Restricted Payment will be excluded from Section 4.07(b)(3)(B) of this Indenture;

(3) the repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of the Company or any Guarantor that is contractually subordinated to the Notes or to any Guarantee with the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness, or from the substantially concurrent sale (other than to a Restricted Subsidiary of the Company) of, Equity Interests of the Company (other than Disqualified Stock) or from the substantially concurrent contribution of equity capital to the Company (other than Disqualified Stock); *provided* that the amount of any such net cash proceeds that are utilized for any such Restricted Payment will be excluded from Section 4.07(b)(3)(B) of this Indenture;

(4) the declaration and payment of regularly scheduled or accrued dividends to holders of any class or series of Disqualified Stock of the Company or any Restricted Subsidiary of the Company which Disqualified Stock was issued after the Issue Date in accordance with Section 4.09 of this Indenture;

(5) the repurchase, redemption or other acquisition or retirement for value of Disqualified Stock of the Company or any Restricted Subsidiary of the Company made by exchange for, or out of the proceeds of the substantially concurrent sale of Replacement Preferred Stock that is permitted to be incurred pursuant to Section 4.09 of this Indenture;

(6) the payment of any dividend (or any similar distribution) by a Restricted Subsidiary of the Company to the holders of its Equity Interests on a pro rata basis;

(7) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Company or any Restricted Subsidiary of the Company held by any current or former officer, director, employee or consultant (or their estates or beneficiaries under their estates) of the Company or any of its Restricted Subsidiaries upon such Person's death, disability, retirement or termination of employment; *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed $10.0 million in any fiscal year (it being understood, however, that unused amounts permitted to be paid pursuant to this proviso are available to be carried over to subsequent fiscal years subject to a maximum of $40.0 million in any fiscal year); *provided*, *further*, that such amount in any fiscal year may be increased by an amount not to exceed:

(A) the cash proceeds from the sale of Equity Interests of the Company to members of management, directors or consultants of the Company or any of its Subsidiaries that occurred or occurs after the Issue Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of Section 4.07(b)(3)(B) of this Indenture, and excluding Excluded Contributions, *plus*

(B) the cash proceeds of key man life insurance policies received by the Company and its Restricted Subsidiaries after the Issue Date, *less*

(C) the amount of any Restricted Payments previously made pursuant to clauses (A) and (B) of this clause (7);

(8) the repurchase of Equity Interests deemed to occur upon the exercise of options, rights or warrants or upon vesting of common stock, in each case, to the extent such Equity Interests represent a portion of the exercise price of those options, rights, warrants or common stock;

(9) the repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of the Company or any Guarantor that is contractually subordinated to the Notes or to any Guarantee with any Excess Proceeds that remain after consummation of an Asset Sale Offer;

(10) so long as no Default has occurred and is continuing or would be caused thereby, after the occurrence of a Change of Control and the completion of the offer to repurchase the Notes pursuant to Section 4.15 of this Indenture (including the purchase of the Notes tendered), any purchase or redemption of Indebtedness that is contractually subordinated to the Notes or to any Guarantee required pursuant to the terms thereof as a result of such Change of Control at a purchase or redemption price not to exceed 101% of the outstanding principal amount thereof, *plus* any accrued and unpaid interest;

(11) cash payments in lieu of fractional shares issuable as dividends on common stock or preferred stock, upon the exercise of stock options, warrants, other securities convertible into or exchangeable for Equity Interests or upon the conversion of any convertible debt securities of the Company or any of its Restricted Subsidiaries;

(12) Investments that are made with Excluded Contributions;

(13) distributions or payments of Receivables Fees;

(14) the making of cash payments in connection with any conversion of Convertible Indebtedness in an aggregate amount since the date of this Indenture not to exceed the sum of (a) the principal amount of such Convertible Indebtedness plus (b) any payments received by the Company or any of its Restricted Subsidiaries pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction;

(15) (a) any payments in connection with a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Company's common stock upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common stock upon any early termination thereof;

(16) so long as no Default or Event of Default has occurred and is continuing or would be caused thereby, other Restricted Payments in an aggregate amount since the Issue Date not to exceed the greater of (a) $30.0 million and (b) 2.7% of Total Assets; and

(17) additional Restricted Payments; *provided* that (x) no Event of Default has occurred and is continuing or would result therefrom and (y) on a pro forma basis after giving effect to any such Restricted Payment pursuant to this clause (17), the Total Net Leverage Ratio would not exceed 3.00 to 1.00.

(d) The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities that are required to be valued by this Section 4.07 will, if the fair market value thereof exceeds $25.0 million, be determined by the Board of Directors of the Company.

(e) For purposes of determining compliance with the provisions of this Section 4.07, in the event that a Restricted Payment meets the criteria of more than one of the types of Restricted Payments described in the above clauses, the Company, in its sole discretion, may order and classify, and from time to time may reorder and reclassify, such Restricted Payment if it would have been permitted at the time such Restricted Payment was made and at the time of any such reclassification.

Section 4.08 Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(1) pay dividends or make any other distributions on its Capital Stock to the Company or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any Indebtedness owed to the Company or any of its Restricted Subsidiaries;

(2) make loans or advances to the Company or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

(b) Section 4.08(a) of this Indenture shall not apply to encumbrances or restrictions existing under or by reason of:

(1) agreements governing Existing Indebtedness and the ABL Credit Agreement as in effect on the Issue Date;

(2) this Indenture, the Notes, the Guarantees, the Security Documents and the Intercreditor Agreement;

(3) applicable law, rule, regulation or order;

(4) any instrument or agreement governing Indebtedness or Capital Stock of a Restricted Subsidiary acquired by the Company or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or any of its Subsidiaries, or the property or assets of the Person or any of its Subsidiaries, so acquired; *provided* that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;

(5) customary non-assignment provisions in contracts, leases, subleases, licenses and sublicenses entered into in the ordinary course of business;

(6) customary restrictions in leases (including capital leases), security agreements or mortgages or other purchase money obligations for property acquired in the ordinary course of business that impose restrictions on the property purchased or leased of the nature described in Section 4.08(a)(3) of this Indenture;

(7) any agreement for the sale or other disposition of all or substantially all the Capital Stock or the assets of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending the sale or other disposition;

(8) any instrument or agreement governing Permitted Refinancing Indebtedness; *provided* that the restrictions contained therein are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(9) Liens permitted to be incurred under Section 4.12 of this Indenture that limit the right of the debtor to dispose of the assets subject to such Liens;

(10) provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, which limitation is applicable only to the assets that are the subject of such agreements;

(11) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(12) customary provisions imposed on the transfer of copyrighted or patented materials;

(13) customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Company or any Restricted Subsidiary;

(14) contracts entered into in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Company or any Restricted Subsidiary of the Company in any manner material to the Company or any Restricted Subsidiary of the Company;

(15) agreements relating to Hedging Obligations;

(16) restrictions on the transfer of property or assets required by any regulatory authority having jurisdiction over the Company or any Restricted Subsidiary of the Company or any of their businesses;

(17) any instrument or agreement governing Indebtedness or preferred stock (i) of any Non-Guarantor Subsidiary and (ii) of the Company or any Restricted Subsidiary that is incurred or issued subsequent to the Issue Date and not in violation of Section 4.09 of this Indenture; *provided* that (x) in the case of preferred stock and Indebtedness that is not secured by any Permitted Liens, such encumbrances and restrictions are not materially more restrictive in the aggregate than the restrictions contained in this Indenture and (y) in the case of Indebtedness secured by Permitted Liens, are not materially more restrictive in the aggregate than the restrictions contained in the ABL Credit Agreement; and

(18) any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the Indebtedness, preferred stock, Liens, agreements, contracts, licenses, leases, subleases, instruments or obligations referred to in clauses (1), (2), (4) through (15) and (17) above; *provided*, *however*, that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are in the good faith judgment of the Company's Board of Directors, whose determination shall be conclusive, not materially more restrictive, taken as a whole, than those restrictions contained in the Indebtedness, preferred stock, Liens, agreements, contracts, licenses, leases, subleases, instruments or obligations referred to in clauses (1), (2), (4) through (15) and (17) above, as applicable prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 4.09 Incurrence of Indebtedness and Issuance of Disqualified Stock.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "*incur*") any Indebtedness (including Acquired Debt), and the Company will not issue any Disqualified Stock and will not permit any of its Restricted Subsidiaries to issue any shares of preferred stock; *provided*, *however*, that the Company or any Restricted Subsidiary may incur Indebtedness

(including Acquired Debt) or issue Disqualified Stock or preferred stock, if the Fixed Charge Coverage Ratio for the Company's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or such preferred stock is issued, as the case may be, would have been at least 2.0 to 1.0, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, and the application of the proceeds therefrom had occurred at the beginning of such four-quarter period; *provided*, *further*, that the aggregate principal amount of Indebtedness incurred by Restricted Subsidiaries that are not Guarantors pursuant to this paragraph shall not exceed $10.0 million.

(b) Section 4.09(a) of this Indenture will not prohibit the incurrence of any of the following items of Indebtedness or the issuance of any of the following items of Disqualified Stock or preferred stock (collectively, "*Permitted Debt*")*:*

(1) the incurrence by the Company and/or any Guarantor (and the Guarantee thereof by the Guarantors) of Indebtedness under the ABL Credit Agreement and other Debt Facilities entered into after the Issue Date in an aggregate principal amount at any one time outstanding under this clause (1) (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Company and its Restricted Subsidiaries thereunder) not to exceed (except as permitted by the definition of "*Permitted Refinancing Indebtedness*") an amount equal to $125.0 million;

(2) the incurrence by the Company and its Restricted Subsidiaries of the Existing Indebtedness;

(3) the incurrence by the Company and the Guarantors of Indebtedness represented by the Notes and the related Guarantees;

(4) the incurrence or issuance by the Company or any of its Restricted Subsidiaries of Indebtedness (including Capital Lease Obligations), Disqualified Stock or preferred stock, in each case, incurred or issued for the purpose of financing all or any part of the purchase price or cost of design, construction, lease, installation or improvement of any fixed or capital assets and any Indebtedness assumed by the Company or any of its Restricted Subsidiaries in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, in an aggregate principal amount, including all Permitted Refinancing Indebtedness (except as permitted by the definition of "*Permitted Refinancing Indebtedness*") and Replacement Preferred Stock (except as permitted by the definition of "*Replacement Preferred Stock*") incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (4), not to exceed the greater of (a) $30.0 million and (b) 2.5% of Total Assets and at any time outstanding;

(5) the incurrence by the Company or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness or Replacement Preferred Stock in exchange for, or

the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Indebtedness (other than intercompany Indebtedness) or any Disqualified Stock or preferred stock that was permitted by this Indenture to be incurred under Section 4.09(a) of this Indenture or clauses (2), (3), (4), (5), (13), (15) or (17) of this Section 4.09(b);

(6) the incurrence by the Company or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries; *provided*, *however*, that:

(A) if the Company or any Guarantor is the obligor on such Indebtedness and the payee is not the Company or a Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations with respect to the Notes, in the case of the Company or the Guarantee, in the case of a Guarantor, except to the extent such subordination would violate any applicable law, rule or regulation; and

(B) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Company or a Restricted Subsidiary of the Company and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Company or a Restricted Subsidiary of the Company, will be deemed, in each case, to constitute a new incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be, which new incurrence is not permitted by this clause (6);

(7) the issuance by any of the Company's Restricted Subsidiaries to the Company or to any of its Restricted Subsidiaries of shares of preferred stock; *provided*, *however*, that:

(A) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Company or a Restricted Subsidiary of the Company; and

(B) any sale or other transfer of any such preferred stock to a Person that is not either the Company or a Restricted Subsidiary of the Company,

(C) will be deemed, in each case, to constitute a new issuance of such preferred stock by such Restricted Subsidiary which new issuance is not permitted by this clause (7);

(8) the incurrence by the Company or any of its Restricted Subsidiaries of Hedging Obligations in the ordinary course of business and not for speculative purposes;

(9) the guarantee:

(A) by the Company or any of the Guarantors of Indebtedness of the Company or a Restricted Subsidiary of the Company that was permitted to be

incurred by another provision of this Section 4.09; *provided* that if the Indebtedness being guaranteed is subordinated to the Notes, then the guarantee shall be subordinated to the same extent as the Indebtedness guaranteed; and

(B) by any Non-Guarantor Subsidiary of Indebtedness of a Non-Guarantor Subsidiary;

(10) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, letters of credit, performance bonds, surety bonds, appeal bonds or other similar bonds in the ordinary course of business; *provided*, *however*, that upon the drawing of letters of credit for reimbursement obligations, including with respect to workers' compensation claims, or the incurrence of other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims, such obligations are reimbursed within 30 days following such drawing or incurrence;

(11) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness is extinguished within five Business Days;

(12) the incurrence of Indebtedness arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, adjustment of purchase price, holdback, contingency payment obligations or similar obligations (including earn-outs), in each case, incurred or assumed in connection with the disposition or acquisition of any business, assets or Capital Stock of the Company or any Restricted Subsidiary;

(13) the incurrence of Indebtedness or the issuance of any Disqualified Stock or preferred stock by any Non-Guarantor Subsidiary in an aggregate principal amount, including all Permitted Refinancing Indebtedness (except as permitted by the definition of "*Permitted Refinancing Indebtedness*") and Replacement Preferred Stock (except as permitted by the definition of "*Replacement Preferred Stock*") incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (13), not to exceed $20.0 million at any time outstanding;

(14) the incurrence of Indebtedness in respect of Bank Products provided by banks or other financial institutions to the Company and its Restricted Subsidiaries in the ordinary course of business or resulting from endorsements of negotiable instruments for collection in the ordinary course of business;

(15) Indebtedness, Disqualified Stock or preferred stock of Persons that are acquired by the Company or any Restricted Subsidiary (including by way of merger or consolidation) in accordance with the terms of this Indenture; and Indebtedness, Disqualified Stock or preferred stock of the Company or a Guarantor incurred in connection with, or to provide all or a portion of the funds or credit support utilized to

consummate, the transaction or series of related transactions pursuant to which such Person became a Subsidiary or was acquired by the Company; *provided* that after giving effect to such acquisition, merger or consolidation, either

(A) the Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) of this Indenture or

(B) the Company's Fixed Charge Coverage Ratio after giving pro forma effect to such acquisition, merger or consolidation would be greater than the Company's actual Fixed Charge Coverage Ratio immediately prior to such acquisition, merger or consolidation;

(16) Indebtedness of the Company or a Restricted Subsidiary in respect of netting services, overdraft protection and otherwise in connection with deposit accounts; *provided* that such Indebtedness remains outstanding for ten Business Days or less;

(17) the incurrence or issuance by the Company or any of its Restricted Subsidiaries of additional Indebtedness, Disqualified Stock or preferred stock in an aggregate principal amount (or accreted value or liquidation preference, as applicable) at any time outstanding, including all Permitted Refinancing Indebtedness (except as permitted by the definition of "*Permitted Refinancing Indebtedness*") and all Replacement Preferred Stock (except as permitted by the definition of "*Replacement Preferred Stock*") incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness, Disqualified Stock and preferred stock incurred or issued pursuant to this clause (17), not to exceed the greater of (A) $55.0 million and (B) 5.0% of Total Assets at any time outstanding;

(18) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness in the form of loans from a Captive Insurance Subsidiary;

(19) Indebtedness representing deferred compensation to employees of the Company and its Restricted Subsidiaries incurred in the ordinary course of business; and

(20) Indebtedness in respect of promissory notes issued to consultants, employees or directors or former employees, consultants or directors in connection with repurchases of Equity Interests permitted by Section 4.07(c)(7) of this Indenture.

For purposes of determining compliance with this Section 4.09, in the event that an item of Indebtedness (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (20) above, or is entitled to be incurred pursuant to Section 4.09(a) of this Indenture, the Company will be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify all or a portion of such item of Indebtedness, in any manner that complies with this Section 4.09 except that Indebtedness under the ABL Credit Agreement outstanding on the Issue Date will be

deemed to have been incurred in reliance on the exception provided by Section 4.09(b)(1) of this Indenture. The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the reclassification of preferred stock as Indebtedness due to a change in accounting principles, and the payment of dividends on Disqualified Stock or preferred stock in the form of additional shares of the same class of Disqualified Stock or preferred stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock or preferred stock for purposes of this Section 4.09; *provided* in each such case, that the amount thereof is included in Fixed Charges of the Company as accrued (other than the reclassification of preferred stock as Indebtedness due to a change in accounting principles).

For purposes of determining compliance with any dollar-denominated restriction on the incurrence of Indebtedness, the dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, *plus* the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including original issue discount) incurred in connection with such refinancing.

The amount of any Indebtedness outstanding as of any date will be:

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

  (A) the Fair Market Value of such assets at the date of determination; and

  (B) the amount of the Indebtedness of the other Person.

Notwithstanding any other provision of this Section 4.09, the maximum amount of Indebtedness that the Company or a Restricted Subsidiary may incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated by

the Company based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

Section 4.10 Asset Sales.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Company (or the Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of; and

(2) at least 75% of the consideration received in the Asset Sale by the Company or such Restricted Subsidiary is in the form of cash. For purposes of this clause (2), each of the following will be deemed to be cash:

(A) Cash Equivalents;

(B) any liabilities, as shown on the Company's most recent consolidated balance sheet or in the notes thereto, of the Company or any Restricted Subsidiary (other than contingent liabilities and liabilities that are (i) in the case of Cash Flow Priority Collateral, liabilities of the Company or any Guarantor that are not secured by a Lien ranking prior to the Lien securing the Notes or (ii) by their terms subordinated in right of payment to the Notes or any Guarantee) that are assumed by the transferee of any such assets pursuant to a customary novation or indemnity agreement that releases the Company or such Restricted Subsidiary from or indemnifies against further liability;

(C) any securities, notes or other obligations received by the Company or any such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash within 180 days of receipt, to the extent of the cash received in that conversion;

(D) any Designated Noncash Consideration the Fair Market Value of which, when taken together with all other Designated Noncash Consideration received pursuant to this clause (D) (and not subsequently converted into Cash Equivalents that are treated as Net Proceeds of an Asset Sale), does not exceed $30.0 million since the Issue Date, with the Fair Market Value of each item of Designated Noncash Consideration being measured at the time received and without giving effect to subsequent changes in value; and

(E) any stock or assets of the kind referred to in clauses (1) or (3) of Section 4.10(b) of this Indenture.

(b) Within 365 days after the receipt of any Net Proceeds from an Asset Sale, the Company (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Proceeds at its option:

(1) to acquire all or substantially all of the assets of, or any Capital Stock of, another Permitted Business, if, after giving effect to any such acquisition of Capital Stock, the Permitted Business is or becomes a Restricted Subsidiary of the Company or additional Capital Stock of an existing non-Wholly Owned Subsidiary which is a Restricted Subsidiary; *provided* that the assets (including Capital Stock) acquired with the Net Proceeds of a disposition of Collateral are pledged as Collateral as required and as provided under this Indenture and the Security Documents;

(2) to make a capital expenditure with respect to a Permitted Business or to make expenditures for maintenance, repair or improvement of existing properties and assets;

(3) to acquire Additional Assets; *provided* that the assets (including Capital Stock) acquired with the Net Proceeds of a disposition of Collateral are pledged as Collateral as required and as provided under this Indenture and the Security Documents;

(4) to repay (i) to the extent such Net Proceeds constitute proceeds from the sale of ABL Priority Collateral, obligations under the ABL Credit Agreement, (ii) to the extent such Net Proceeds constitute proceeds from the sale of Cash Flow Priority Collateral, or from other assets (other than ABL Priority Collateral), either (x) Additional Cash Flow Obligations or (y) Obligations under the Notes on a pro rata basis; *provided* that if the Company or any of its Restricted Subsidiaries shall so repay any Indebtedness under clause (ii)(x), the Company will repay the Notes on a pro rata basis by, at its option, (A) redeeming Notes pursuant to Section 3.07 of this Indenture or (B) purchasing Notes through open-market purchases, at a price equal to or higher than 100% of the principal amount thereof, or making an offer (in accordance with the procedures set forth below) to all holders to purchase their Notes on a ratable basis with such other Indebtedness for no less than 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, thereon up to the principal amount of Notes to be repurchased or (iii) to the extent such Net Proceeds are not from an Asset Sale of Collateral, Indebtedness of a Restricted Subsidiary that is not a Guarantor; or

(5) any combination of the foregoing;

provided that the requirements of clauses (1) through (3) above shall be deemed to be satisfied if an agreement (including a lease, whether a capital lease or an operating lease) committing to make the acquisitions or expenditures referred to in any of clauses (1) through (3) above is entered into by the Company or its Restricted Subsidiary within 365 days after the receipt of such Net Proceeds and such Net Proceeds are applied in accordance with such agreement; *provided*, *further*, that (x) such acquisition or investment is then consummated within 545 days after the receipt of such Net Proceeds and (y) if such acquisition or investment is not consummated within the period set forth in sub clause (x), or otherwise applied as set forth in clause (4) above, the Net Proceeds not so applied will be deemed to constitute Excess Proceeds under Section 4.10(c) of this Indenture.

Pending the final application of any Net Proceeds, the Company may temporarily reduce revolving credit borrowings or otherwise invest the Net Proceeds in any manner that is not prohibited by this Indenture.

Notwithstanding the foregoing, to the extent a distribution of any or all of the Net Proceeds of any Asset Sales by a Foreign Subsidiary to the Company or another Restricted Subsidiary (i) is (x) prohibited or delayed by applicable local law, (y) restricted by applicable organizational documents or any agreement or (z) subject to other organizational or administrative impediments from being repatriated to the United States or (ii) would have a material adverse tax consequence, as reasonably determined by the Company, the portion of such Net Proceeds so affected will not be required to be applied in compliance with this Section 4.10; *provided* that if at any time within one year following the date on which such affected Net Proceeds would otherwise have been required to be applied pursuant to this Section 4.10, distribution of any of such affected Net Proceeds is no longer prohibited or delayed by applicable local law, restricted by any applicable organizational document or agreement, subject to other organizational or administrative impediment from being repatriated to the United States, and would not result in a material adverse tax consequence, then an amount equal to such amount of Net Proceeds so permitted to be repatriated will be promptly applied (net of any taxes, costs or expenses that would be payable or reserved against if such amounts were actually repatriated, whether or not they are repatriated) in compliance with this Section 4.10. The non-application of any prepayment amounts as a consequence of the foregoing provisions will not, for the avoidance of doubt, constitute a Default or an Event of Default. For the avoidance of doubt, nothing in this Indenture shall be construed to require the Company or any Foreign Subsidiary to repatriate cash or to apply any Net Proceeds described in clause (i) above in compliance with this Section 4.10 in the event that such repatriation is not permitted under applicable local law, applicable organizational documents or agreements or other impediment within one year following the date on which the respective payment would otherwise have been required.

(c) Any Net Proceeds from Asset Sales received since the Issue Date that were not or are not applied or invested as provided in Section 4.10(b) of this Indenture shall constitute "*Excess Proceeds*." When the aggregate amount of Excess Proceeds exceeds $20.0 million, within ten Business Days thereof, the Company will make an offer (an "*Asset Sale Offer*") to all Holders and if the Company elects (or is required by the terms of such other Additional Cash Flow Obligations), any holders of other Additional Cash Flow Obligations that are *pari passu* in right of payment with the Notes. The offer price in any Asset Sale Offer will be equal to 100% of the principal amount *plus* accrued and unpaid interest (or, in respect of such other Additional Cash Flow Obligations, such lesser price, if any, as may be provided for by the terms of such other Additional Cash Flow Obligations), if any to, but excluding, the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Company may use those Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes and such other Additional Cash Flow Obligations tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Company shall select the Notes to be purchased on a pro rata basis. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

(d) If more Notes (and such other Additional Cash Flow Obligations) are tendered pursuant to an Asset Sale Offer than the Company is required to purchase, selection of the amount of Notes in respect of which an Asset Sale Offer was made shall be designated in writing by the Company to the Trustee on a pro rata basis to the extent practicable, by lot or by such other method as the Trustee shall deem fair and appropriate (and in such manner as complies with the requirements of DTC); provided that only Notes in denominations of $2,000, or an integral multiple of $1,000 in excess thereof, will be purchased. Selection of such other Additional Cash Flow Obligations will be made pursuant to the terms of such other Additional Cash Flow Obligations.

(e) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.10, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.10 by virtue of such compliance.

(f) For purposes of this Section 4.10, any sale by the Company or a Restricted Subsidiary of the Capital Stock of a Restricted Subsidiary that owns assets constituting Collateral shall be deemed to be a sale of such Collateral.

Section 4.11 Transactions with Affiliates.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company involving aggregate consideration in excess of $5.0 million for any individual transaction or series of related transactions (each, an "*Affiliate Transaction*"), unless:

(1) the Affiliate Transaction is on terms that, taken as a whole, are not materially less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person; and

(2) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $25.0 million, the Company delivers to the Trustee an Officer's Certificate certifying that such Affiliate Transaction complies with this Section 4.11 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors of the Company, together with a certified copy of the resolutions of the Board of Directors of the Company approving such Affiliate Transaction or Affiliate Transactions. Such Officer's Certificate shall be provided to the Trustee for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or

determinable from information contained therein, including the Company's compliance with any of its covenants (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 4.11(a) of this Indenture:

(1) any employment agreement, change of control agreement, severance agreement, employee benefit plan, officer or director indemnification agreement or any similar arrangement entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business and payments pursuant thereto;

(2) transactions between or among the Company, its Restricted Subsidiaries and/or any entity that becomes a Restricted Subsidiary as a result of such transaction;

(3) transactions with a Person (other than an Unrestricted Subsidiary of the Company) that is an Affiliate of the Company solely because the Company owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

(4) payment of reasonable directors' fees and any employment and consulting arrangements entered into by the Company or any Restricted Subsidiary with their executives or consultants in the ordinary course of business;

(5) any issuance of Equity Interests (other than Disqualified Stock) of the Company to Affiliates of the Company;

(6) Permitted Investments or Restricted Payments that do not violate Section 4.07 of this Indenture;

(7) loans (or cancellation of loans) or advances to employees in the ordinary course of business;

(8) any employment, indemnification, severance or other agreement or transactions relating to employee benefits or benefit plans with any employee, consultant or director of the Company or a Restricted Subsidiary that is entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business;

(9) transactions with customers, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, in each case which are in the ordinary course of business (including, without limitation, pursuant to joint venture agreements) and otherwise in compliance with the terms of this Indenture;

(10) the issuance of Equity Interests (other than Disqualified Stock) in the Company or any Restricted Subsidiary for compensation purposes;

(11) any lease entered into between the Company or any Restricted Subsidiary, as lessee and any Affiliate of the Company, as lessor, which is approved by a majority of the disinterested members of the Board of Directors of the Company in good faith;

(12) intellectual property licenses in the ordinary course of business;

(13) Existing Indebtedness and any other obligations pursuant to an agreement existing on the Issue Date and described in the Offering Circular, including any amendment thereto (so long as such amendment is not disadvantageous to the Holders in any material respect);

(14) payments by the Company or any of its Restricted Subsidiaries of reasonable insurance premiums to, and any borrowings or dividends received from, any Captive Insurance Subsidiary;

(15) transactions in which the Company or any Restricted Subsidiary delivers to the Trustee a letter from an accounting, appraisal or investment banking firm of national standing stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view and which are approved by a majority of the disinterested members of the Board of Directors of the Company in good faith; and

(16) any customary management services agreements or similar agreements between the Company or any of its Subsidiaries and any joint venture.

Section 4.12 Lien.

The Company will not, and will not permit any of its Restricted Subsidiaries to create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind (other than Permitted Liens) securing Indebtedness upon any of their property or assets, whether owned on the Issue Date or thereafter acquired.

Section 4.13 Effectiveness of Covenants.

(a) From and after the occurrence of an Investment Grade Rating Event (such date, a "*Suspension Date*"), the Company and its Restricted Subsidiaries will not be subject to Section 4.07, Section 4.08, Section 4.09, Section 4.10, Section 4.11, Section 4.16, Section 4.17 (but only with respect to any Person that is required to become a Guarantor after the date of the commencement of the applicable Suspension Date) and Section 5.01(a)(4) of this Indenture (collectively, the "*Suspended Covenants*").

(b) If at any date (each such date, a "*Reversion Date*"), the credit rating of the Notes is downgraded from an Investment Grade Rating by two Rating Agencies, then the Suspended Covenants will thereafter be reinstated and again be applicable pursuant to the terms of this Indenture, unless and until the occurrence of a subsequent Investment Grade Rating Event.

(c) The period of time between the occurrence of an Investment Grade Rating Event and its respective Reversion Date is referred to herein as the "*Suspension Period*." Calculations

made after a Reversion Date of the amount available to be made as Restricted Payments pursuant to Section 4.07 of this Indenture will be made as though Section 4.07 of this Indenture had been in effect at all times since the Issue Date, including during any Suspension Period. Any Indebtedness incurred during any Suspension Period would be deemed to be Permitted Indebtedness subsequent to the Reversion Date. Neither the failure of the Company or any of its Subsidiaries to comply with a Suspended Covenant during any Suspension Period nor compliance by the Company or any of its Subsidiaries with any contractual obligation entered into in compliance with this Indenture during any Suspension Period will constitute a Default, Event of Default or breach of any kind under this Indenture or the Notes.

(d) During any Suspension Period, the Company may not designate any of its Subsidiaries as Unrestricted Subsidiaries. Additionally, during any Suspension Period, the Holders will be entitled to substantially reduced covenant protection. However, the Company and its Restricted Subsidiaries will remain subject to all other covenants in this Indenture during any such time, including to Section 4.15 of this Indenture.

Section 4.14 Corporate Existence.

Subject to Article 5, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect (1) its corporate existence and the corporate, partnership, limited liability company or other existence of each of its Restricted Subsidiaries in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company, any such Restricted Subsidiary and (2) the rights (charter and statutory), licenses and franchises of the Company and its Restricted Subsidiaries; *provided* that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership, limited liability company or other existence of any of its Restricted Subsidiaries, if the Company in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

Section 4.15 Offer to Repurchase Upon a Change of Control.

(a) If a Change of Control occurs, each Holder will have the right to require the Company to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000) of that Holder's Notes pursuant to an offer made by the Company (the "*Change of Control Offer*"). In the Change of Control Offer, the Company will offer to make a payment (the "*Change of Control Payment*") in cash equal to 101% of the aggregate principal amount of Notes repurchased *plus* accrued and unpaid interest, if any, on the Notes repurchased to, but excluding, the date of purchase, subject to the rights of Holders on the relevant Record Date to receive interest due on the relevant Interest Payment Date. Within 30 days following any Change of Control, the Company will transmit a notice to each Holder describing the transaction or transactions that constitute the Change of Control and offering to repurchase Notes on the date specified in such notice (the "*Change of Control Payment Date*"), which date will be no earlier than 30 days and no later than 60 days from the date such notice is transmitted, pursuant to the procedures required by this Indenture and described in such notice. The Company will comply with the requirements of Rule 14e1 under the Exchange Act and any other securities laws and regulations thereunder

to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of this Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.15 by virtue of such compliance.

(b) On the Change of Control Payment Date, the Company will, to the extent lawful:

(1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Company.

The Paying Agent will promptly transmit to each Holder properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and transmit (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) If Holders of not less than 90% in aggregate principal amount of the then outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Company, or any third party making an offer to purchase the Notes upon a Change of Control in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, all of the Holders of the Notes will be deemed to have consented to such tender or other offer and, accordingly, the Company or such third party shall have the right, upon not less than 30 nor more than 60 days' prior written notice, given not more than 30 days following the Change of Control Payment Date, to redeem all Notes that remain outstanding following such purchase at a redemption price in cash equal to 101% of the aggregate principal amount of Notes repurchased *plus* accrued and unpaid interest, if any, on the Notes repurchased to, but excluding, the date of purchase, subject to the rights of Holders on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(d) The provisions described above in clauses (a) through (c) of this Section 4.15 that require the Company to make a Change of Control Offer following a Change of Control will be applicable whether or not any other provisions of this Indenture are applicable. Except as described above with respect to a Change of Control, this Indenture does not contain provisions that permit the Holders to require that the Company repurchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

(e) Notwithstanding anything to the contrary in this Section 4.15, the Company will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer or (2) notice of redemption has been given pursuant to this Indenture in respect of all Notes pursuant to Section 3.07 of this Indenture, unless and until there is a Default in payment of the applicable redemption price.

(f) A Change of Control Offer may be made in advance of and conditioned on the occurrence of a Change of Control if there is a definitive agreement in place to consummate a transaction that would constitute a Change of Control if consummated at the time such Change of Control Offer is made.

(g) The provisions described above in clauses (a) through (c) of this Section 4.15 may be waived or modified with the written consent of the Holders of a majority in principal amount of the Notes then outstanding.

Section 4.16 Designation of Restricted and Unrestricted Subsidiaries.

The Board of Directors of the Company may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if no Default or Event of Default would be in existence following such designation. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Company and its Restricted Subsidiaries in the Subsidiary designated as an Unrestricted Subsidiary will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under Section 4.07 of this Indenture or under one or more clauses of the definition of Permitted Investments, as determined by the Company. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Company; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Company of any outstanding Indebtedness of such Unrestricted Subsidiary, and such designation will only be permitted if (a) such Indebtedness is permitted under Section 4.09 of this Indenture and (b) no Default or Event of Default would be in existence following such designation.

Section 4.17 Additional Guarantees.

If the Company or any of its Restricted Subsidiaries, acquires or creates another Subsidiary, other than a Non-Guarantor Subsidiary or if any Non-Guarantor Subsidiary otherwise ceases to be a Non-Guarantor Subsidiary, in each case, after the Issue Date, then such newly acquired or created Subsidiary or Subsidiary that has ceased to be a Non-Guarantor Subsidiary, as applicable, will become a Guarantor and execute a supplemental indenture substantially in the form attached as Exhibit C and deliver an Opinion of Counsel and Officer's

Certificate to the Trustee within 30 Business Days of the date on which it was acquired or created or ceased to be a Non-Guarantor Subsidiary, as applicable.

Section 4.18 Further Assurances.

(a) Subject to the limitations set forth in the Security Documents, the Company and each of the Guarantors will execute, deliver and file, if applicable any and all further documents, financing statements, agreements and instruments, and take all further action that may be reasonably required under applicable law (including the filing of continuation financing statements and amendments to financing statements), or that the Notes Collateral Agent may (but shall not be obligated to) reasonably request, in order to grant, preserve, protect and perfect the validity and priority of the security interests and Liens created or intended to be created by the Security Documents in the Collateral.

(b) In the event the German Guarantor owns or in the future owns intellectual property assets that constitute Collateral, the German Guarantor will promptly enter into an intellectual property security agreement in favor of the Notes Collateral Agent, substantially in the form attached hereto as Exhibit D.

ARTICLE 5
SUCCESSORS

Section 5.01 Merger, Consolidation or Sale of Assets.

(a) The Company will not, directly or indirectly: (1) consolidate or merge with or into another Person or consummate a Division as the Dividing Person (whether or not the Company is the surviving Person); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

(1) Either:

(A) the Company is the surviving entity; or

(B) the Person formed by or surviving any such consolidation, merger or Division (if other than the Company) or to which such sale, assignment, transfer, conveyance or other disposition has been made is an entity organized or existing under the laws of the United States, any state of the United States or the District of Columbia (the Company or such Person, as the case may be, the "Successor Company") and, if such Successor Company is not a corporation, the Notes are co-issued by a Wholly Owned Subsidiary of the Successor Company that is a corporation organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(2) the Successor Company (if other than the Company) assumes all the obligations of the Company under the Notes, this Indenture, the Security Documents and

the Intercreditor Agreement pursuant to agreements (accompanied by an opinion of counsel and Officer's Certificate upon which the Trustee and Notes Collateral Agent may conclusively rely) reasonably satisfactory to the Trustee and the Notes Collateral Agent, as applicable;

(3) immediately after such transaction, no Event of Default exists;

(4) the Successor Company would, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period;

(A) be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) of this Indenture; or

(B) have a Fixed Charge Coverage Ratio that is no less than the actual Fixed Charge Coverage Ratio of the Company immediately prior to such transaction;

(5) if the Company is not the Successor Company, each Guarantor, unless it is the other party to the transactions described above, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person's obligations under this Indenture and the Notes;

(6) the Successor Company promptly causes such amendments, supplements or other instruments to be executed, delivered, filed and recorded, as applicable, in such jurisdictions as may be reasonably required by applicable law to preserve and protect the Lien on the Security Documents on the Collateral owned by or transferred to the Successor Company

(7) the Collateral owned by or transferred to the Successor Company, as applicable, shall (a) continue to constitute Collateral under this Indenture and the Security Documents, (b) be subject to the Lien in favor of the Notes Collateral Agent for the benefit of the Trustee and the Holders of the Notes, and (c) not be subject to any Lien other than Permitted Liens; and

(8) the property and assets of the Person which is merged or consolidated with or into the Successor Company, as applicable, to the extent that they are property or assets or of the types which would constitute Collateral under the Security Documents, shall be treated as after-acquired property and the Successor Company shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Lien on the Security Documents in the manner and to the extent required in this Indenture.

(b) The Company will not, directly or indirectly, lease all or substantially all of the properties and assets of it and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to any other Person.

(c) Clauses (3) and (4) of Section 5.01(a) of this Indenture shall not apply to:

(1) a merger of the Company with an Affiliate solely for the purpose of reincorporating the Company in another jurisdiction; and

(2) any consolidation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of assets between or among the Company and its Restricted Subsidiaries, or, so long as the Company is a surviving Person and any other surviving Person is a Restricted Subsidiary of the Company, any Division of the Company as the Dividing Person.

tion 5.02 Successor Entity Substituted.

Upon any consolidation, merger, Division, sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.01 of this Indenture or a Guarantor in accordance with Section 10.04 of this Indenture, the Company and a Guarantor, as the case may be, will be released from its obligations under this Indenture and the Notes or its Guarantee, as the case may be, and the successor Company and the successor Guarantor, as the case may be, will succeed to, and be substituted for, and may exercise every right and power of, the Company or a Guarantor, as the case may be, under this Indenture, the Notes and such Guarantee; *provided* that, in the case of a lease of all or substantially all its assets, the Company will not be released from the obligation to pay the principal of and interest on the Notes and a Guarantor will not be released from its obligations under its Guarantee.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 Events of Default and Remedies.

Each of the following is an event of default (an "*Event of Default*")*:*

(1) default in any payment of interest on any Note when due, continued for 30 days;

(2) default in the payment of principal or premium, if any, on any Note when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;

(3) failure by the Company or any of its Restricted Subsidiaries to comply with the provisions of Section 5.01 or 10.04 of this Indenture;

(4) failure by the Company for 90 days after notice to the Company by the Trustee (which notice the Trustee shall have no obligation to provide) or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class (with a copy to the Trustee) to comply with the Section 4.04 of this Indenture;

(5) failure by the Company or any of its Restricted Subsidiaries for 60 days after notice to the Company by the Trustee (which notice the Trustee shall have no obligation to provide) or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class (with a copy to the Trustee) to comply with any of the other agreements in this Indenture;

(6) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Significant Subsidiaries (or the payment of which is guaranteed by the Company or any of its Significant Subsidiaries) other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or guarantee existed on the Issue Date, or is or was created thereafter, if that default:

(A) is caused by a failure to pay principal at the final Stated Maturity (after giving effect to any applicable grace periods) of such Indebtedness (a "*Payment Default*")*;* or

(B) results in the acceleration of such Indebtedness prior to its express maturity

and, in each case, the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates $25.0 million or more;

(7) with respect to any judgment or decree for the payment of money (net of any amount covered by insurance issued by a reputable and creditworthy insurer that has not contested coverage or reserved rights with respect to an underlying claim) in excess of $25.0 million or its foreign currency equivalent against the Company or any Significant Subsidiary of the Company, the failure by the Company or such Significant Subsidiary, as applicable, to pay such judgment or decree, which judgment or decree has remained outstanding for a period of 60 days after such judgment or decree became final and nonappealable without being paid, discharged, waived or stayed;

(8) except as permitted by this Indenture, the Guarantee of any Significant Subsidiary of the Company is declared to be unenforceable or invalid by any final and nonappealable judgment or decree or ceases for any reason to be in full force and effect, or any Guarantor that is a Significant Subsidiary of the Company or any Person acting on behalf of any Guarantor that is a Significant Subsidiary of the Company, denies or

disaffirms its obligations in writing under its Guarantee and such Default continues for ten days after receipt of the notice specified in this Indenture;

(9) except as permitted by the terms of this Indenture or the Security Documents, (a) any lien or security interest on a material portion of Collateral created by any Security Documents ceases to be a valid and perfected lien or security interest or any default by the Company or any such Guarantor in the performance of any of their obligations under any of the Security Documents shall occur which adversely affects the enforceability, validity, perfection or priority of the Lien on a material portion of Collateral securing the Obligations under this Indenture, the Notes and the Guarantees, (b) any repudiation or disaffirmation in writing by the Company or any Guarantor of its obligations under the Security Documents or assertion by the Company or any Guarantor that any security interest with respect to the Collateral granted pursuant to the Security Documents is invalid and unenforceable or (c) any determination in a judicial proceeding that the security interest with respect to the Collateral granted pursuant to the Security Documents or all or any material portion of the Security Documents, taken as a whole, are unenforceable or invalid, for any reason, against the Company or any Guarantor; and

(10) the Company or any Subsidiary that is a Significant Subsidiary of the Company pursuant to or within the meaning of Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) generally is not paying its debts as they become due; and

(11) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any of the Company's Restricted Subsidiaries that is a Significant Subsidiary of the Company in an involuntary case;

(B) appoints a custodian of the Company or any of the Company's Restricted Subsidiaries that is a Significant Subsidiary of the Company for all or substantially all of the property of the Company or any of the Company's Restricted Subsidiaries that is a Significant Subsidiary of the Company; or

(C) orders the liquidation of the Company or any of the Company's Restricted Subsidiaries that is a Significant Subsidiary of the Company; and

(D) and the order or decree remains unstayed and in effect for 60 consecutive days.

Section 6.02 Acceleration.

(a) In the case of an Event of Default arising under clauses (10) or (11) of Section 6.01 of this Indenture with respect to the Company or any Significant Subsidiary of the Company, all outstanding Notes shall become due and payable immediately without further action or notice. A Default arising under clause (4) or (5) of Section 6.01 will not constitute an Event of Default until the Trustee (which shall have no obligation to notify) or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding notify the Company, with a copy to the Trustee, of the Default and the Company does not cure such Default within the time specified in clause (4) or (5) of Section 6.01 after receipt of such notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes may (but shall not be obligated to) declare all the Notes to be due and payable immediately by notice in writing to the Company and, in the case of a notice by Holders, also to the Trustee specifying the respective Event of Default and that it is a notice of acceleration.

(b) The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of all of the Holders, rescind an acceleration or waive any existing Default or Event of Default and its consequences under this Indenture except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes.

Section 6.03 Other Remedies.

(a) If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

(b) The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 Waiver of Past Defaults.

(a) Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in writing in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing Default or Event of

Default if it determines that withholding notice is in their interest, except a Default or Event of Default relating to the payment of principal, interest or premium, if any.

(b) Subject to the provisions of this Indenture relating to the duties of the Trustee, in case an Event of Default occurs and is continuing, neither the Trustee nor the Notes Collateral Agent will be under any obligation to exercise any of the rights or powers under this Indenture at the request or direction of any Holders unless such Holders have offered and, if requested, provided to the Trustee and the Notes Collateral Agent indemnity or security satisfactory to each of them against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium, if any, or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(2) Holders of at least 25% in aggregate principal amount of the then outstanding Notes have requested in writing the Trustee to pursue the remedy;

(3) such Holders have offered and, if requested, provided the Trustee security or indemnity satisfactory to it against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and

(5) Holders of a majority in aggregate principal amount of the then outstanding Notes have not given the Trustee a written direction inconsistent with such request within such 60-day period.

Section 6.05 Control by Majority.

Subject to the terms of the Security Documents, Holders of a majority in principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or the Notes Collateral Agent or exercising any trust or power conferred on each of them. However, the Trustee or the Notes Collateral Agent may refuse to follow any direction that conflicts with law or this Indenture that the Trustee or the Notes Collateral Agent determines may be unduly prejudicial to the rights of other Holders or that may involve the Trustee or the Notes Collateral Agent in personal liability. Prior to taking any action under this Indenture, the Trustee or the Notes Collateral Agent shall be entitled to indemnification satisfactory to each of them against all losses and expenses caused by taking or not taking such action.

Section 6.06 Limitation on Suits.

Subject to Section 6.07 of this Indenture, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee notice that an Event of Default is continuing;

(2) Holders of at least 25% in aggregate principal amount of the then outstanding Notes have requested the Trustee to pursue the remedy;

(3) such Holders have offered and, if requested, provided the Trustee reasonable security or indemnity against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and

(5) Holders of a majority in aggregate principal amount of the then outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

Section 6.07 Rights of Holders to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 Collection Suit by Trustee.

If an Event of Default specified in clauses (1) or (2) of Section 6.01 of this Indenture occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company and each Guarantor for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Company, the Guarantors, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter and all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 6.10 Rights and Remedies Cumulative

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Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07 of this Indenture, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy are, to the extent permitted by law, cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.12 Trustee May File Proofs of Claim.

The Trustee may file proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes, including the Guarantors), its creditors or its property and is entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims. Any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel, and any other amounts due the Trustee under Section 7.06 of this Indenture. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06 of this Indenture out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.13 Priorities.

If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money in the following order:

(1) to the Trustee and its agents and attorneys for amounts due under Section 7.06 of this Indenture, including payment of all reasonable compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

(2) to Holders for amounts due and unpaid on the Notes for principal, premium, if any, and interest ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and

(3) to the Company or to such party as a court of competent jurisdiction shall direct, including a Guarantor, if applicable.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.13. Promptly after any record date is set pursuant to this Section 6.13, the Trustee shall cause notice of such record date and payment date to be given to the Company and to each Holder in the manner set forth in Section 13.02 of this Indenture.

Section 6.14 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.14 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 of this Indenture, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

Section 6.15 Additional Amounts.

(a) All payments made on behalf of the Company under or with respect to the Notes or by or on behalf of any of the Guarantors under or with respect to its Guarantee will be made free and clear of and without withholding or deduction for, or on account of, any present or future Taxes unless the withholding or deduction of such Taxes is then required by law. If any deduction or withholding for, or on account of, any Taxes imposed or levied by or on behalf of any jurisdiction in which any Guarantor is then incorporated, organized, engaged in business for tax purposes or resident for tax purposes, or any political subdivision or governmental authority thereof or therein having power to tax or any jurisdiction from or through which payment is made, excluding the United States and any political subdivision or taxing authorities therein (each, a "Tax Jurisdiction"), will at any time be required to be made from any payments made on behalf of the Company under or with respect to the Notes or by or on behalf of any of the Guarantors with respect to any Guarantee, including, without limitation, payments of principal,

redemption price, purchase price, interest or premium, the Company or the relevant Guarantor, as applicable, will pay such additional amounts (the "Additional Amounts") as may be necessary in order that the net amounts received in respect of such payments (including payments of Additional Amounts) after such withholding, deduction will equal the respective amounts that would have been received in respect of such payments in the absence of such withholding or deduction; provided, however, that no Additional Amounts will be payable with respect to:

(i) any Taxes that would not have been imposed but for the Holder or beneficial owner of the Notes being a citizen, resident or national of, incorporated in or carrying on a business in the relevant Tax Jurisdiction in which such Taxes are imposed, or having any other present or former connection with the relevant Tax Jurisdiction in which such Taxes are imposed other than by the mere acquisition or holding of any Note or the enforcement or receipt of payment under or in respect of any Note or any Guarantee;

(ii) any Taxes imposed or withheld as a result of the failure of the Holder or beneficial owner of the Notes to comply with any written request, made to that Holder or beneficial owner in writing at least 30 days before any such withholding or deduction would be payable, by the Company or any of the Guarantors to provide timely or accurate information concerning the nationality, residence or identity of such Holder or beneficial owner or to make any valid or timely declaration or similar claim or satisfy any certification information or other reporting requirements (to the extent such Holder or beneficial owner is eligible to do so legally and without material burden), which is required or imposed by a statute, treaty, regulation or administrative practice of the relevant Tax Jurisdiction as a precondition to exemption from, or reduction in the rate of deduction or withholding of, such Taxes;

(iii) any estate, inheritance, gift, sale, transfer, personal property or similar Taxes;

(iv) any Taxes which are payable otherwise than by deduction or withholding from payments made under or with respect to the Notes or any Guarantee;

(v) any Taxes that were imposed with respect to any payment on a Note to any Holder who is a fiduciary or partnership or person other than the sole beneficial owner of such payment to the extent that no Additional Amounts would have been payable had the beneficial owner of the applicable Note been the Holder of such Note;

(vi) any Taxes that are imposed or withheld pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), as of the Issue Date (or any amended or successor version of such sections that is substantively comparable and not materially more onerous to comply with), any current or future regulations promulgated thereunder, any official interpretations thereof, any similar law, regulation or practice adopted pursuant to an intergovernmental agreement between a non-U.S. jurisdiction and the United States with respect to the foregoing or any agreements entered into pursuant to Section 1471(b)(1) of the Code; or

(vii) any combination of items (i) through (vi) above.

(b) In addition to the foregoing, the Company and the Guarantors will pay and indemnify the Holder or beneficial owner for any present or future stamp, issue, registration, transfer, court or documentary Taxes, or similar Taxes levied by any jurisdiction in connection with the execution, delivery, registration or enforcement of any of the Notes, any Guarantee or any other document or instrument referred to therein, or the receipt of any payments with respect thereto (limited, solely in the case of Taxes attributable to the receipt of any payments with respect thereto, to any such Taxes imposed in a relevant Tax Jurisdiction that are not excluded under clauses (i) through (iii) and (v) through (vi) or any combination thereof).

(c) If the Company or any Guarantor, as the case may be, becomes aware that it will be obligated to pay Additional Amounts with respect to any payment under or with respect to the Notes or any Guarantee, the Company or the relevant Guarantor, as the case may be, will deliver to the Trustee on a date at least 30 days prior to the date of payment (unless the obligation to pay Additional Amounts arises after the 30th day prior to that payment date, in which case the Company or the relevant Guarantor shall notify the Trustee promptly thereafter) an Officer's Certificate stating the fact that Additional Amounts will be payable and the amount estimated to be so payable. The Officer's Certificate must also set forth any other information reasonably necessary (including, without limitation, any other information requested by the paying agent) to enable the paying agent to pay Additional Amounts on the relevant payment date. The Trustee shall be entitled to rely solely on such Officer's Certificate as conclusive proof that such payments are necessary. The Company or the relevant Guarantor will provide the Trustee with documentation reasonably satisfactory to the Trustee evidencing the payment of Additional Amounts.

(d) The Company or the relevant Guarantor will make all withholdings and deductions required by law and will remit the full amount deducted or withheld to the relevant Tax authority in accordance with applicable law. The Company or the relevant Guarantor will use its reasonable efforts to obtain Tax receipts from each Tax authority evidencing the payment of any Taxes so deducted or withheld. The Company or the relevant Guarantor will furnish to the Holders and the Trustee, within 60 days after the date the payment of any Taxes so deducted or withheld is made, certified copies of Tax receipts evidencing payment by the Company or a Guarantor, as the case may be, or if, notwithstanding such entity's efforts to obtain receipts, receipts are not obtained, other evidence of payments by such entity.

(e) Any reference in this Indenture to the payment of amounts based on the principal amount, interest of any other amount payable under, or with respect to, any of the Notes or any Guarantee, shall be deemed to include the payment of Additional Amounts to the extent that, in such context Additional Amounts are, were or would be payable in respect thereof.

(f) The obligations under this Section 6.15 will survive any termination, defeasance or discharge of this Indenture, any transfer by a Holder or beneficial owner of its Notes, and will apply, mutatis mutandis, to any jurisdiction in which any successor Person to the Company or any Guarantor is then incorporated, organized, engaged in business or resident for tax purposes or any jurisdiction from or through which any payment under, or with respect to, the Notes (or

any Guarantee) is made and any political subdivision or taxing authority or agency thereof or therein having the power to tax.

ARTICLE 7
TRUSTEE

Section 7.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy or mathematical calculation or facts stated therein).

(c) The Trustee may not be relieved from liabilities for its own grossly negligent action, its own grossly negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was grossly negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 of this Indenture.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01.

(e) Subject to this Article 7, if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture, the Notes and the Guarantees at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) The Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

Section 7.02 Rights of Trustee.

(a) The Trustee may conclusively rely upon and shall be fully protected in acting or refraining from acting upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine in good faith to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both which shall conform to the provisions of Section 13.05 of this Indenture, except that no Opinion of Counsel will be required to be furnished to the Trustee in connection with the authentication and delivery of the Initial Notes on the Issue Date. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company or a Guarantor shall be sufficient if signed by an Officer of the Company or such Guarantor.

(f) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or security or indemnity satisfactory to it against such risk or liability is not assured to it.

(g) The Trustee shall not be deemed to have notice or knowledge of any Default or Event of Default unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the existence of a Default or Event of Default, the Notes and this Indenture.

(h) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including, without limitation, Notes Collateral Agent), and each agent, custodian and other Person employed to act hereunder.

(j) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(k) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(l) The permissive rights of the Trustee hereunder (in any of its capacities hereunder) shall not be construed as a duty.

Section 7.03 Individual Rights of Trustee and the Notes Collateral Agent.

The Trustee, the Notes Collateral Agent or any Agent in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee, the Notes Collateral Agent or such Agent. However, in the event that either of the Trustee or the Notes Collateral Agent acquires any conflicting interest it must eliminate such conflict within 90 days or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.09 of this Indenture.

Section 7.04 Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication on the Notes.

Section 7.05 Notice of Defaults.

If a Default occurs and is continuing and a Responsible Officer of Trustee has received written notice thereof, the Trustee will transmit to each Holder a notice of the Default within 90 days thereafter. Except in the case of an Event of Default specified in clauses (1) or (2) of Section 6.01 of this Indenture, the Trustee may withhold from the Holders notice of any continuing Default if the Trustee determines in good faith that withholding the notice is in the interest of the Holders.

Section 7.06 Compensation and Indemnity.

(a) The Company and the Guarantors, jointly and severally, shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services, except for any such disbursements, advances or expenses as shall have been caused by the Trustee's willful misconduct, negligence or bad faith. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel. The Trustee shall provide the Company reasonable notice of any expenditure not in the ordinary course of business.

(b) The Company and the Guarantors, jointly and severally, shall indemnify the Trustee and the Notes Collateral Agent for, and hold each of the Trustee and the Notes Collateral Agent and any predecessor harmless against, any and all loss, damage, claims, liability or expense (including reasonable attorneys' fees and expenses) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder and under any and all of the Security Documents and the Intercreditor Agreement (including the reasonable costs and expenses of enforcing this Indenture and any Security Document and the Intercreditor Agreement against the Company, any Grantor or any Guarantor (including this Section 7.06) or defending itself against any claim whether asserted by any Holder, the Company, any Grantor or any Guarantor, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee or the Notes Collateral Agent shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee or the Notes Collateral Agent to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee and the Notes Collateral Agent may have separate counsel and the Company shall pay the reasonable fees and expenses of such

counsel. Neither the Company nor any Guarantor needs to pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The Company need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, gross negligence or bad faith.

(c) The obligations of the Company and the Guarantors under this Section 7.06 shall survive the satisfaction, discharge or termination of this Indenture or the resignation or removal of the Trustee and/or the Notes Collateral Agent.

(d) To secure the payment obligations of the Company and the Guarantors in this Section 7.06, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(10) or (11) of this Indenture occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.07 Replacement of Trustee.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07. The Trustee may resign in writing at any time by giving 30 days' prior notice of such resignation to the Company and be discharged from the trust hereby created by so notifying the Company. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

(1) the Trustee fails to comply with Section 7.09 of this Indenture;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a receiver or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(b) If the Trustee resigns or is removed or if a vacancy exists in the office of the Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the successor Trustee to replace it with another successor Trustee appointed by the Company.

(c) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company or the

Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.09 of this Indenture, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall transmit a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* that all sums owing to the Trustee hereunder have been paid and such transfer shall be subject to the Lien provided for in Section 7.06 of this Indenture. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under this Section 7.07 shall continue for the benefit of the retiring Trustee.

(f) As used in this Section 7.07, the term "*Trustee*" shall also include each Agent.

Section 7.08 Successor Trustee by Merger, etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation or national banking association, the successor corporation or national banking association without any further act shall be the successor Trustee, subject to Section 7.09 of this Indenture.

Section 7.09 Eligibility; Disqualification.

There shall at all times be a Trustee hereunder that is a corporation or national banking association organized and doing business under the laws of the United States or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition.

ARTICLE 8
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 Option to Effect Legal Defeasance or Covenant Defeasance.

The Company may, at its option and at any time, elect to have either Section 8.02 of this Indenture or Section 8.03 of this Indenture applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 Legal Defeasance and Discharge

.

Upon the Company's exercise under Section 8.01 of this Indenture of the option applicable to this Section 8.02, the Company and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 of this Indenture, be deemed to have been discharged from their obligations with respect to this Indenture, all outstanding Notes and Guarantees on the date the conditions set forth below are satisfied ("*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 and the other Sections of this Indenture referred to in clauses (1) through (4) below, and to have satisfied all of its other obligations under such Notes and this Indenture, including that of the Guarantors (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders to receive payments in respect of the principal, premium, if any, and interest on the Notes when such payments are due, solely out of the trust created pursuant to this Indenture referred to in Section 8.04 of this Indenture;

(2) the Company's obligations with respect to the Notes concerning issuing the Temporary Notes, registration of Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for Note payments held in trust;

(3) the rights, powers, trusts, duties and immunities of the Trustee, the Notes Collateral Agent and the Company's and the Guarantors' obligations in connection therewith; and

(4) this Section 8.02.

(b) Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 of this Indenture.

Section 8.03 Covenant Defeasance.

Upon the Company's exercise under Section 8.01 of this Indenture of the option applicable to this Section 8.03, the Company and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 of this Indenture, be released from their obligations under the covenants contained in Sections 4.03, 4.04, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18 and Section 5.01(a) of this Indenture with respect to the outstanding Notes, and the Guarantors shall be deemed to have been discharged from their obligations with respect to all Guarantees, and the Events of Default in clauses (3) through (9) of Section 6.01 shall not be applicable, on and after the date the conditions set forth in Section 8.04 of this Indenture are satisfied ("*Covenant Defeasance*"), and the Notes shall thereafter be deemed not

"outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to this Indenture and the outstanding Notes, the Company and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 of this Indenture, but, except as specified above, the remainder of this Indenture, and such Notes and the Guarantees shall be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 of this Indenture of the option applicable to this Section 8.03 of this Indenture, subject to the satisfaction of the conditions set forth in Section 8.04 of this Indenture, an Event of Default specified in Section 6.01(3) of this Indenture that resulted solely from the failure of the Company to comply with clause (4) of Section 5.01, Sections 6.01(4) (only with respect to covenants that are released as a result of such Covenant Defeasance), 6.01(5), 6.01(6), 6.01(7), 6.01(8), 6.01(9), 6.01(10) (solely with respect to Significant Subsidiaries of the Company) and 6.01(11) (solely with respect to Significant Subsidiaries of the Company) of this Indenture, in each case, shall not constitute an Event of Default.

Section 8.04 Conditions to Legal or Covenant Defeasance.

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 of this Indenture:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination of cash in U.S. dollars and non-callable Government Securities, in amounts as will be sufficient, in the written opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of, or interest and premium, if any, on, the outstanding Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be, and the Company must specify whether the Notes are being defeased to such stated date for payment or to a particular redemption date;

(2) in the case of Legal Defeasance, the Company must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that (a) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (b) since the Issue Date, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will confirm that, the beneficial owners of the outstanding Notes shall not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same

manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Company must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the beneficial owners of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement (including, without limitation, the ABL Credit Agreement) or instrument (other than this Indenture) to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(5) the Company must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(6) the Company must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

The Collateral will be released from the lien securing the Notes as provided in this Section 8.04 upon a defeasance in accordance with the provisions described herein.

Section 8.05 Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.

(a) Subject to Section 8.06 of this Indenture, all money and Government Securities (including the proceeds thereof) deposited with the Trustee pursuant to Section 8.04 of this Indenture in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company or a Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of all sums due and to become due thereon in respect of principal, premium, if any, and interest on the Notes, but such money need not be segregated from other funds except to the extent required by law.

(b) The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 8.04 of this Indenture or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders.

(c) Anything in this Article 8 to the contrary notwithstanding, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or Government Securities held by it as provided in Section 8.04 of this Indenture which, in the opinion of an independent financial advisor expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) of this Indenture), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 Repayment to the Company.

Subject to any applicable abandoned property law, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall be paid to the Company on its request or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

Section 8.07 Reinstatement.

If the Trustee or Paying Agent is unable to apply any U.S. dollars or Government Securities in accordance with Section 8.02 or Section 8.03 of this Indenture, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's and the Guarantors' obligations under this Indenture, the Notes and the Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or Section 8.03 of this Indenture until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or Section 8.03 of this Indenture, as the case may be; *provided* that, if the Company makes any payment of principal, premium, if any, or interest on any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 Without Consent of Holders.

(a) Notwithstanding Section 9.02 of this Indenture, the Company, the Trustee and the Notes Collateral Agent may amend or supplement this Indenture, the Notes, the Guarantees the Security Documents or the Intercreditor Agreement without the consent of any Holder:

(1) to cure any mistake, ambiguity, defect or inconsistency;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes

(3) to provide for the assumption of the Company's or a Guarantor's obligations to the Holders and Guarantees in the case of a merger, consolidation, Division or sale of all or substantially all of the Company's or such Guarantor's assets, as applicable;

(4) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights hereunder of any Holder;

(5) to conform the text of this Indenture, the Guarantees, the Notes, the Security Documents or the Intercreditor Agreement to any provision of the section described under the caption "Description of Notes" in the Offering Circular to the extent that such provision in such "Description of Notes" was intended to be a verbatim recitation of a provision of this Indenture, the Guarantees, the Notes the Security Documents or the Intercreditor Agreement;

(6) to provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture as of the Issue Date;

(7) to allow any Restricted Subsidiary of the Company to execute a supplemental indenture and/or a Guarantee with respect to the Notes;

(8) to add additional assets as Collateral;

(9) to make, complete or confirm any grant of security interest in any property or assets as additional collateral securing the obligations under this Indenture, the Notes and the Guarantees, including when permitted or required by this Indenture or any of the Security Documents;

(10) to provide for the release, termination and discharge of Collateral when permitted or required by any of the Security Documents, the Intercreditor Agreement or this Indenture; or

(11) to issue the Notes.

(b) Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 13.04 of this Indenture, the Trustee shall join with the Company and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture, but the Trustee shall not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel and Officer's Certificate stating that such amendment or supplement is authorized or permitted by this Indenture.

Section 9.02 With Consent of Holders

.

(a) Except as provided in Section 9.01 of this Indenture and this Section 9.02, the Company, the Guarantors and the Trustee may amend or supplement this Indenture, the Notes, the Guarantees, the Security Documents or the Intercreditor Agreement with the consent of the Holders of a majority in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) and, subject to Section 6.04 and Section 6.07 of this Indenture, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes, the Guarantees, the Security Documents or the Intercreditor Agreement may be waived with the consent of the Holders of a majority in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). Section 2.08 and Section 2.09 of this Indenture shall determine which Notes are considered to be "outstanding" for the purposes of this Section 9.02.

(b) Upon the request of the Company, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Section 13.04 of this Indenture, the Trustee shall join with the Company and the Guarantors in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

(c) It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver. It shall be sufficient if such consent approves the substance of such proposed amendment, supplement or waiver.

(d) After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company will give to the Holders a notice briefly describing such amendment, supplement or waiver. However, the failure of the Company to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of any such amendment, supplement or waiver.

(e) However, without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to the optional redemption of the Notes pursuant to

Section 3.07 of this Indenture (other than provisions relating to notice period for consummating an optional redemption of the Notes);

(3) reduce the rate of or change the time for payment of interest, including default interest, on any Note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in money other than that stated in the Notes;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the contractual rights of Holders to receive payments of principal of, or interest or premium, if any, on, the Notes; or

(7) make any change in the preceding amendment and waiver provisions.

(f) A consent to any amendment, supplement or waiver of this Indenture, the Notes or the Guarantee by any Holder given in connection with a tender of such Holder's Notes will not be rendered invalid by such tender.

(g) Without the consent of the Holders of at least 66 2/3% in aggregate principal amount of the Notes then outstanding, an amendment, supplement or waiver may not:

(i) modify any Security Document or the provisions of this Indenture dealing with the Security Documents or application of trust moneys under the Security Documents, or (ii) release a lien of the Security Documents securing the Notes on all or substantially all of the Collateral, or otherwise release any Collateral, in any manner materially adverse to the Holders of the Notes other than in accordance with this Indenture, the Security Documents and the Intercreditor Agreement;

(ii) modify the Intercreditor Agreement in any manner materially adverse to the Holders of the Notes other than in accordance with this Indenture, the Security Documents and the Intercreditor Agreement;

(iii) release any Guarantor's Guarantee other than in accordance with this Indenture; or

(iv) modify the seniority in right of payment of the Notes or any Guarantor's Guarantee.

Section 9.03 Revocation and Effect of Consents.

(a) Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder or portion of a Note

that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder or subsequent Holder may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

(b) The Company may, but shall not be obliged to, fix a record date pursuant to Section 1.05 of this Indenture for the purpose of determining the Holders entitled to consent to any amendment or waiver.

Section 9.04 Notation on or Exchange of Notes.

(a) The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Company in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

(b) Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 9.05 Trustee to Sign Amendments, etc.

The Trustee shall sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amended or supplemental indenture until the Board of Directors of the Company approves it. In executing any amended or supplemental indenture, the Trustee shall be provided with and (subject to Section 7.01 of this Indenture) shall be fully protected in relying upon, in addition to the documents required by Section 13.04 of this Indenture, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture.

ARTICLE 10
GUARANTEES

Section 10.01 Guarantees.

(a) Subject to this Article 10, each of the Guarantors hereby, jointly and severally, irrevocably and unconditionally guarantees, on a senior unsecured basis, to each Holder and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that: (1) the principal, premium, if any, and interest on the Notes shall be promptly paid in full when due, whether at Stated Maturity, by acceleration, redemption or otherwise, and interest on the overdue principal and interest on the Notes, if any, if lawful, and all other Obligations of the Company to the Holders or the Trustee hereunder or under the Notes shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (2) in case of any extension

of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise (collectively, the "*Guaranteed Obligations*"). Failing payment by the Company when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenants that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture, or pursuant to Section 10.05 of this Indenture.

(c) Each of the Guarantors also agrees, jointly and severally, to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee or any Holder in enforcing any rights under this Section 10.01 of this Indenture.

(d) If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to the Company or the Guarantors, any amount paid either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(e) Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all Obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the Obligations guaranteed hereby may be accelerated as provided in Article 6 for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such Obligations as provided in Article 6 of this Indenture, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantees.

(f) Each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Company for liquidation or reorganization, should the Company become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Company's assets, and shall,

to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or the Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(g) In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(h) Each payment to be made by a Guarantor in respect of its Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

Section 10.02 Limitation on Guarantor Liability.

(a) Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent conveyance or a fraudulent transfer for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law. Each Guarantor that makes a payment under its Guarantee will be entitled upon payment in full of all Guaranteed Obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment, determined in accordance with GAAP.

Section 10.03 German Guarantee Limitations

(a) The parties agree that no director (*Vorstand*), manager, and other person holding a similar position shall incur any personal liability resulting from the granting or enforcement of any security granted under this Indenture or any guarantee and any other liability, indemnity or other payment obligation under or in connection with this Indenture or any other Cash Flow Document. Therefore, the parties agree to limit the granting and/or the enforcement of such security, guarantee, other liability, indemnity or other payment obligation under or in connection with this Indenture or any other Cash Flow Document (but only if and to the extent required) in order to protect a director (*Vorstand*), managing director, and other person holding a similar

position of a Guarantor incorporated in the form of a German stock corporation (the "**German Guarantor**") from such liability.

(b) Therefore, to the extent the German Guarantor secures, guarantees or indemnifies any obligations under this Indenture or any other provision of the Cash Flow Documents of any of its holding companies or affiliates (other than a subsidiary of a German Guarantor), the granting of such guarantees, security and/or indemnification and the enforcement of the respective obligations of that German Guarantor under this Indenture (or any other (relevant provision of the) Cash Flow Documents) shall be limited to the amount that would not (i) constitute a repayment of the contributions (*Rückgewähr der Einlagen*) of the shareholders of that German Guarantor or (ii) otherwise be in violation of Section 57 of the German Stock Corporation Act (AktG).

(c) Nothing in this Section 10.03 shall prevent the Trustee or the German Guarantor from claiming in court that payments under and/or an enforcement of any of the security, guarantee, indemnity or other obligations do or do not fall within the scope of Section 57 AktG and/or any other provision that may be relevant from time to time.

(d) Nothing in this Section 10.03 shall constitute a waiver (*Verzicht*) of any right granted under this Indenture or any other Cash Flow Document to the Trustee or any Holders or vice versa.

(e) The parties agree already now that this Section 10.03 shall be amended as required or advisable in case of any changes in law, jurisprudence or facts. In addition, in case of an accession by any additional party to this Indenture, the respective accession document will, if required, include a limitation language.

(f) Notwithstanding anything to the contrary in this Indenture, this Section 10.03 and any rights and/or obligations arising out of it shall be governed by, and construed in accordance with, German law.

Section 10.04 Execution and Delivery.

(a) To evidence its Guarantee set forth in Section 10.01 of this Indenture, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by an Officer or person holding an equivalent title.

(b) Each Guarantor hereby agrees that its Guarantee set forth in Section 10.01 of this Indenture shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

(c) If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Guarantees shall be valid nevertheless.

(d) The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

Section 10.05 Guarantors May Consolidate, etc., on Certain Terms.

Except as otherwise provided in this Section 10.04, a Guarantor may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into another Person (other than the Company or another Guarantor) or consummate a Division as the Dividing Person (in each case, whether or not such Guarantor is the surviving Person), unless:

(1) immediately after giving effect to such transaction, no Event of Default exists; and

(2) either:

(A) the Person (if other than the Company or a Guarantor) acquiring the property in any such sale or disposition or the Person (if other than the Company or a Guarantor) formed by or surviving any such consolidation, merger or Division assumes all the obligations of that Guarantor under this Indenture and its Guarantee, pursuant to a supplemental indenture satisfactory to the Trustee; or

(3) such transaction does not violate Section 4.10 of this Indenture.

Section 10.06 Releases.

The Guarantee of a Guarantor will be released:

(1) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor (including by way of merger, consolidation or Division) to a Person that is not (either before or after giving effect to such transaction) the Company or a Guarantor, if the sale or other disposition does not violate Section 4.10 of this Indenture;

(2) in connection with any sale of Capital Stock of that Guarantor following which such Guarantor is no longer a Restricted Subsidiary, if the sale or other disposition does not violate Section 4.10 of this Indenture;

(3) if any Restricted Subsidiary that is a Guarantor becomes a Non-Guarantor Subsidiary in accordance with the applicable provisions of this Indenture; or

(4) upon Legal Defeasance or Covenant Defeasance in accordance with Article 8 of this Indenture or satisfaction and discharge of this Indenture in accordance with Article 11 of this Indenture

ARTICLE 11
SECURITY

Section 11.01 Collateral

(a) In order to secure the due and punctual payment of the Obligations under this Indenture, the Notes and Security Documents and any Additional Cash Flow Obligations, the Company, the Guarantors, the Notes Collateral Agent and the other parties thereto, or other parties in accordance with the provisions of Section 4.17 and this Article 11, will enter into the applicable Security Documents. The Company shall and shall cause each other Guarantor to, and each Guarantor shall, make all filings (including filings of continuation statements and amendments to UCC financing statements that may be necessary to continue the effectiveness of such UCC financing statements) as are required to maintain (at the sole cost and expense of the Company and the Guarantors) the security interests created by the Security Documents in the Collateral (subject to the terms of the Intercreditor Agreement and the Security Documents) as a perfected security interest to the extent perfection is required by the Security Documents and within the time frames set forth therein, subject only to Permitted Liens, and with the priority required by the Intercreditor Agreement and the other Security Documents

(b) The security interests in favor of the Notes Collateral Agent in the Collateral will be perfected by the Company, the Guarantors or any other Grantor, as applicable, within 180 days of the Issue Date (or as promptly as reasonably possible thereafter), and the title insurance, surveys and legal opinions and other deliverables in respect of the security interests in favor of the Notes Collateral Agent in the real property located at 6811 Spencer Street, Las Vegas, Nevada and 1678 Pioneer Road, Salt Lake City, Utah owned in fee by the Company will be provided by the Company, the Guarantors or any other Grantor, as applicable, within 180 days of the Issue Date (or as promptly as reasonably possible thereafter).

(c) From and after the Issue Date and subject to certain limitations, if any Grantor acquires any property which is of a type constituting Collateral under any Security Document (excluding, for the avoidance of doubt, any Excluded Assets), it shall promptly after the acquisition thereof execute and deliver such security instruments, mortgages and financing statements as are reasonably necessary to vest in the Notes Collateral Agent a perfected security interest (subject only to Permitted Liens) in such after-acquired property and to have such after-acquired property added to the Collateral, and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such after-acquired property to the same extent and with the same force and effect.

(d) By accepting a Note, each Holder thereof will be deemed to have irrevocably appointed the Notes Collateral Agent to act as its agent under the Security Documents and irrevocably authorized the Notes Collateral Agent to (i) perform the duties and exercise the rights, powers and discretions that are specifically given to it under the Security Documents or other documents to which it is a party, together with any other incidental rights, power and discretions and (ii) execute each document, including each Security Document and the Intercreditor Agreement, expressed to be executed by the Notes Collateral Agent on its behalf, binding the Holders to the terms thereof.

Section 11.02 Concerning the Notes Collateral Agent

(a) The provisions of this Section 11.02 are solely for the benefit of the Notes Collateral Agent and none of the Company, any of the other Guarantors nor any of the Holders shall have any rights as a third party beneficiary of any of the provisions contained herein. Notwithstanding any provision to the contrary contained elsewhere in this Indenture and the Security Documents, the Notes Collateral Agent shall have only those duties or responsibilities expressly provided hereunder or thereunder and the Notes Collateral Agent shall not have nor be deemed to have any fiduciary relationship with the Trustee, the Company, any other Guarantor or any Holder, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture and the Security Documents or otherwise exist against the Notes Collateral Agent.

(b) The Notes Collateral Agent shall act pursuant to the written instructions of the Holders and the Trustee (or such other persons as set forth in the Security Documents) with respect to the Security Documents and the Collateral. For the avoidance of doubt, the Notes Collateral Agent shall have no discretion under this Indenture, the Intercreditor Agreement or the Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the Holders of a majority in aggregate principal amount of the then outstanding Notes or the Trustee, as applicable, or, if applicable, such other persons as set forth in the Security Documents. After the occurrence and during the continuance of an Event of Default, subject to the provisions of the Security Documents, the Trustee may direct the Notes Collateral Agent in connection with any action required or permitted by this Indenture or the Security Documents.

(c) None of the Notes Collateral Agent or any of its respective Affiliates shall be liable for any action taken or omitted to be taken by any of them under or in connection with this Indenture or the transactions contemplated hereby (except for its own gross negligence or willful misconduct) or under or in connection with any Security Document or the transactions contemplated thereby (except for its own gross negligence or willful misconduct).

(d) Other than in connection with a release of Collateral permitted under Section 11.03 (except as may be required by Section 9.02), in each case that the Notes Collateral Agent may or is required hereunder or under any other Security Documents to take any action (an "Action"), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under any other Security Document, the Notes Collateral Agent may seek direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. The Notes Collateral Agent shall not be liable with respect to any Action taken or omitted to be taken by it in accordance with the direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. Subject to the Security Documents, if the Notes Collateral Agent shall request direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes with respect to any Action, the Notes Collateral Agent shall be entitled to refrain from such Action unless and until the Notes Collateral Agent shall have received written direction from the Holders of a majority in aggregate principal amount of the then outstanding

Notes, and the Notes Collateral Agent shall not incur liability to any Person by reason of so refraining.

(e) Beyond the exercise of reasonable care in the custody of the Collateral in its possession, the Notes Collateral Agent will have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto. The Notes Collateral Agent will be deemed to have exercised reasonable care in the custody of the collateral in its possession if the collateral is accorded treatment substantially equal to that which it accords its own property, and the Notes Collateral Agent will not be liable or responsible for any loss or diminution in the value of any of the collateral by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Notes Collateral Agent in good faith.

(f) The Notes Collateral Agent will not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence or willful misconduct on the part of the Notes Collateral Agent, as determined by a court of competent jurisdiction in a final, nonappealable order, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of any grantor to the Collateral, for insuring the collateral or for the payment of taxes, charges, assessments or liens upon the Collateral or otherwise as to the maintenance of the Collateral. The Notes Collateral Agent hereby disclaims any representation or warranty to the present and future Holders of the Notes concerning the perfection of the liens granted hereunder or in the value of any of the Collateral. Notwithstanding anything to the contrary in this Indenture or any other Cash Flow Document, in no event shall the Collateral Agent or the Trustee be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or Liens intended to be created by this Indenture or the other Cash Flow Documents (including without limitation the filing or continuation of any UCC financing statement).

(g) In the event that the Notes Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in the Notes Collateral Agent's sole discretion may cause the Notes Collateral Agent, as applicable, to be considered an "owner or operator" under any environmental laws or otherwise cause the Notes Collateral Agent to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law, the Notes Collateral Agent reserves the right, instead of taking such action, either to resign as Notes Collateral Agent or to arrange for the transfer of the title or control of the asset to a court appointed receiver. The Notes Collateral Agent will not be liable to any person for any environmental claims or any environmental liabilities or contribution actions under any federal, state or local law, rule or regulation by reason of the Notes Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment. Notwithstanding anything to the contrary contained in this Indenture, the Security Documents or

the other Cash Flow Documents, in the event the Notes Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Notes Collateral Agent shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under any mortgages or take any such other action if the Notes Collateral Agent has determined that the Notes Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances unless the Notes Collateral Agent has received security or indemnity from the holders in an amount and in a form all satisfactory to the Notes Collateral Agent in its sole discretion, protecting the Notes Collateral Agent from all such liability. The Notes Collateral Agent shall at any time be entitled to cease taking any action described above if it no longer reasonably deems any indemnity, security or undertaking from the Company or the Holders to be sufficient.

(h) The Notes Collateral Agent shall be entitled to all of the protections, immunities, indemnities, rights and privileges of the Trustee set forth in this Indenture and all such protections, immunities, indemnities, rights and privileges shall apply to the Notes Collateral Agent in its roles under any other Security Document, whether or not expressly stated therein.

(i) The Notes Collateral Agent shall be entitled to compensation, reimbursement and indemnity as set forth in Section 7.06.

Section 11.03 Release of Liens

(a) If in connection with the exercise of the ABL Collateral Agent's remedies in respect of any Collateral as provided for in the Intercreditor Agreement, the ABL Collateral Agent, for itself or on behalf of any of the holders of ABL Secured Obligations, releases any of its Liens on any part of the ABL Priority Collateral, then the Liens, if any, of the Notes Collateral Agent, for itself or for the benefit of the Holders of the Notes and the other Cash Flow Obligations, on the ABL Priority Collateral sold or disposed of in connection with such exercise, shall be automatically, unconditionally and simultaneously released subject to lien retention on proceeds in same priority so long as all the Liens on such ABL Priority Collateral attach to the proceeds of such sale, transfer or other disposition in the order of priority set forth in the Intercreditor Agreement. The Notes Collateral Agent, for itself or on behalf of the Holders of the Notes and any other Cash Flow Priority Collateral, at the Company's or the Guarantors' written request and expense promptly shall, upon being provided with indemnification to its satisfaction, execute and deliver to the ABL Collateral Agent or the Company or Guarantor such termination statements, releases and other documents as the ABL Collateral Agent or the Company or Guarantor may request to effectively confirm such release.

(b) The Liens on the Collateral will be released with respect to the Notes and the related guarantees:

(i) upon payment in full of the principal of, together with any accrued and unpaid interest on and all other obligations owed under the Notes and this Indenture, the Guarantees and the Security Documents that are payable at or prior to the time such principal together with accrued and unpaid interest are paid;

(ii) in whole, upon satisfaction and discharge of this Indenture;

(iii) in whole, upon a legal defeasance or covenant defeasance with respect to the Notes pursuant to Section 11.01;

(iv) in part, as to any property or asset constituting Collateral (a) that is sold or otherwise disposed of (other than to another Grantor) in a transaction not prohibited under Section 4.10 or (b) that is owned by a Guarantor to the extent such Guarantor has been released from its guarantee in accordance with the terms of this Indenture;

(v) pursuant to Section 9.02 of this Indenture;

(vi) to the extent such Collateral becomes Excluded Assets as a result of a transaction not prohibited by this indenture; or

(vii) to the extent required by the Intercreditor Agreement.

(c) Upon any sale or disposition of Collateral in compliance with this Indenture and the Security Documents (other than to another Grantor), the Liens in favor of the Notes Collateral Agent on such Collateral and (subject to the Section 11.02 of this Indenture) all proceeds thereof (other than any proceeds received by a Grantor from such sale or disposition) shall automatically terminate and be released and the Notes Collateral Agent will, upon being provided with indemnification to its satisfaction, execute and deliver such documents and instruments, prepared by the Company, as the Company and the Guarantors may request in writing to evidence such termination and release (without recourse, representation or warranty) without the consent of the Holders of the Notes.

(d) If the Notes Collateral Agent is requested to authorize or sign a release of Collateral, the Company will furnish to the Notes Collateral Agent and the Trustee (if not the Notes Collateral Agent), prior to each proposed release of Collateral pursuant to the Security Documents and this Indenture, an Officer's Certificate and Opinion of Counsel and such other documentation as is required by this Indenture, the Security Documents and the Intercreditor Agreement.

Section 11.04 Form and Sufficiency of Release.

In the event that the Company or any Guarantor has sold, exchanged, or otherwise disposed of or proposes to sell, exchange or otherwise dispose of any portion of the Collateral that, under the terms of this Indenture may be sold, exchanged or otherwise disposed of by the Company or any Guarantor, and the Company or such Guarantor requests the Notes Collateral Agent to furnish a written disclaimer, release or quitclaim of any interest in such property under this Indenture, the applicable Note Guarantee and the Security Documents, upon receipt of an Officer's Certificate from the Company and Opinion of Counsel certifying that all conditions precedent to such release have been met, the Notes Collateral Agent shall, at the sole cost and expense of the Company, execute, acknowledge and deliver to the Company or such Guarantor

such an instrument in the form provided by the Company (to the extent acceptable to the Notes Collateral Agent, acting reasonably), and providing for release without recourse, representation or warranty, promptly after satisfaction of the conditions set forth herein for delivery of such release and shall, at the sole cost and expense of the Company take such other action as the Company or such Guarantor may reasonably request to effect such release.

Section 11.05 Purchaser Protected.

No purchaser or grantee of any property or rights purporting to be released shall be bound to ascertain the authority of the Trustee or the Notes Collateral Agent to execute the release or to inquire as to the existence of any conditions herein prescribed for the exercise of such authority.

Section 11.06 Authorization of Actions to be Taken by the Notes Collateral Agent under the Security Documents.

(a) The Company, the Guarantors and each Holder of Notes, by their acceptance of any Notes and the Note Guarantees, (a) hereby appoints Wells Fargo Bank, National Association, as Notes Collateral Agent, and Wells Fargo Bank, National Association accepts such appointment and (b) agrees that the Notes Collateral Agent shall be entitled to the rights, privileges, protections, immunities, indemnities and benefits provided to the Trustee under Article 7 hereof, including the compensation, reimbursement, and indemnification provisions set forth in Section 7.06 hereof and the resignation and removal provisions of Section 7.07 hereof (with the references to the Trustee therein being deemed to refer to the Notes Collateral Agent). Furthermore, each holder of a Note, by accepting such Note, consents to and approves the terms of and authorizes and directs the Notes Collateral Agent to (i) enter into and perform the duties provided for in the Intercreditor Agreement and each other Security Document in each of its capacities thereunder and (ii) bind the Holders to the terms of the Intercreditor Agreement.

(b) If the Company or any Guarantor (i) incurs any obligations secured by liens permitted by clause (1) of the definition of "Permitted Liens", and (ii) delivers to the Notes Collateral Agent an Officer's Certificate so stating and requesting the Notes Collateral Agent to enter into an intercreditor agreement contemplated thereby and certifying that such intercreditor agreement complies with such therewith, the Notes Collateral Agent shall (and is hereby authorized and directed to) enter into such intercreditor agreement (at the sole expense and cost of the Company, including legal fees and expenses of the Notes Collateral Agent), bind the Holders on the terms set forth therein and perform and observe its obligations thereunder.

Section 11.07 Authorization of Receipt of Funds by the Trustee and the Notes Collateral Agent under the Security Agreement.

The Trustee and the Notes Collateral Agent are authorized to receive any funds for the benefit of Holders distributed under the Security Documents to the Trustee or the Notes Collateral Agent, to apply such funds as provided in this Indenture and the Security Documents and to make further distributions of such funds in accordance with the applicable provisions of Section 6.13 hereof.

Section 11.08 Powers Exercisable by Receiver or Notes Collateral Agent.

In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article 11 upon the Company or any Guarantor, as applicable, with respect to the release, sale or other disposition of such property may be exercised by such receiver or Trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Company or any Guarantor, as applicable, or of any officer or officers thereof required by the provisions of this Article 11.

Section 11.09 Future Subordination of the Las Vegas, Nevada Mortgage Lien

The Company may, in its sole and absolute discretion, elect to cause the lien of the mortgage or deed of trust encumbering the Company's real property the Las Vegas, Nevada Collateral described in Section 11.1(b) above to be subordinated to a new mortgage lien on such property in favor of the ABL Collateral Agent. If the Company provides written notice to the Note Collateral Agent of such election, the Notes Collateral Agent shall, at the sole cost and expense of the Company, execute, acknowledge and deliver to the Company a subordination agreement in the form provided by the ABL Collateral Agent, and shall, at the sole cost and expense of the Company take such other action as the Company or such Guarantor may reasonably request to effect such subordination. The Company shall provide the Trustee with an Officer's Certificate and Opinion of Counsel on which it may conclusively rely in connection with the execution of any such subordination agreement or action related thereto.

ARTICLE 12
SATISFACTION AND DISCHARGE

Section 12.01 Satisfaction and Discharge.

(a) This Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(1) either:

(A) all Notes that have been authenticated and delivered, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(B) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the transmitting of a notice of redemption or otherwise or will become due and payable within one year and the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination of cash in U.S. dollars and non-callable Government Securities, in amounts as will be sufficient, without consideration of any reinvestment of

interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Event of Default has occurred and is continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound;

(3) the Company or any Guarantor has paid or caused to be paid all other sums payable by it under this Indenture; and

(4) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be.

(b) In addition, the Company must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

(c) Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to Section 12.01(a)(1)(B) of this Indenture, the provisions of Section 12.02 and Section 8.06 of this Indenture shall survive.

Section 12.02 Application of Trust Money.

(a) Subject to the provisions of Section 8.06 of this Indenture, all money and Government Securities deposited with the Trustee pursuant to Section 12.01 of this Indenture shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, if any, and interest for whose payment such money has been deposited with the Trustee, but such money need not be segregated from other funds except to the extent required by law.

(b) If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 12.01 of this Indenture by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and any Guarantor's obligations under this Indenture, the Notes and the Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.01 of this Indenture; *provided* that if the Company has made any payment of principal, premium, if any, or interest on any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent, as the case may be.

ARTICLE 13
MISCELLANEOUS

Section 13.01 [Reserved].

Section 13.02 Notices.

(a) Any notice or communication to the Company, any Guarantor or the Trustee is duly given if in writing and (1) delivered in person, (2) mailed by first-class mail (certified or registered, return receipt requested), postage prepaid, or overnight air courier guaranteeing next day delivery or (3) sent by facsimile or electronic transmission, to its address:

if to the Company or any Guarantor:

Varex Imaging Corporation
1678 S. Pioneer Road
Salt Lake City, Utah 84104
Attention: Kim Honeysett
Email: Kim.Honeysett@vareximaging.com
with a copy to:

Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, California 94105
Attention: Brett Cooper
Email: bcooper@orrick.com

if to the Trustee:

[Wells Fargo Bank, National Association
1 Independent Drive, Suite 620
Jacksonville, Florida 32202]

The Company, any Guarantor or the Trustee, by like notice, may designate additional or different addresses for subsequent notices or communications.

(b) All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; on the first date of which publication is made, if by publication; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; the next Business Day after timely delivery to the courier, if mailed by overnight air courier guaranteeing next day delivery; when receipt acknowledged, if sent by facsimile or electronic transmission; *provided* that any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

(c) Any notice or communication to a Holder shall be electronically transmitted or mailed by first-class mail (certified or registered, return receipt requested) or by overnight air

courier guaranteeing next day delivery to its address shown on the Note Register or by such other delivery system as the Trustee agrees to accept. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

(d) Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

(e) Notwithstanding any other provision herein, where this Indenture provides for notice of any event to any Holder of an interest in a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee), according to the applicable procedures of such Depositary, if any, prescribed for the giving of such notice.

(f) The Trustee agrees to accept and act upon notice, instructions or directions pursuant to this Indenture sent by unsecured facsimile or electronic transmission; *provided*, *however*, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such notice, instructions or directions notwithstanding such notice, instructions or directions conflict or are inconsistent with a subsequent notice, instructions or directions.

(g) If a notice or communication is transmitted in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

(h) If the Company transmits a notice or communication to Holders, it shall transmit a copy to the Trustee and each Agent at the same time.

Section 13.03 [Reserved].

Section 13.04 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company or any Guarantor to the Trustee to take any action under this Indenture, the Company or such Guarantor, as the case may be, shall furnish to the Trustee:

(1) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 13.05 of this Indenture) stating that, in the opinion of the signer(s), all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 13.05 of this

Indenture) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been complied with.

provided that (x) no Opinion of Counsel will be required to be furnished to the Trustee in connection with the authentication and delivery of the Initial Notes on the Issue Date.

Section 13.05 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officer's Certificate or a certificate of public officials as to matters of fact); and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Section 13.06 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.07 No Personal Liability of Directors, Officers, Employees, Incorporator, Stockholder, Member, Partner or Other Holder of Equity Interests.

No director, officer, employee, incorporator, stockholder, member, manager, partner or other holder of Equity Interests of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or the Guarantors under the Notes, this Indenture, the Guarantees, the Security Documents or the Intercreditor Agreement, as applicable, or for any claim based on, in respect of, or by reason of, such Obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 13.08 Governing Law and Jurisdiction.

THIS INDENTURE, THE NOTES AND ANY NOTE GUARANTEE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company and the Trustee (i) agree that any suit, action or proceeding against it arising out of or relating to the this Indenture may be instituted in any U.S. federal or New York state court sitting in the Borough of Manhattan, New York City, New York, (ii) irrevocably submit to the non-exclusive jurisdiction of such courts in any suit, action or proceeding, (iii) waive, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, any claim that any suit, action or proceeding in such a court has been brought in an inconvenient forum and any right to the jurisdiction of any other courts to which it may be entitled on account of place of residence or domicile, and (iv) agree that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding and may be enforced in the courts of the jurisdiction of which it is subject by a suit upon judgment.

Section 13.09 Waiver of Jury Trial.

EACH OF THE COMPANY, THE GUARANTORS, HOLDERS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES, THE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.10 Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services, and pandemics or disease; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 13.11 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.12 Successors.

All agreements of the Company in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each

Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 10.05 of this Indenture.

Section 13.13 Severability.

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

Section 13.14 Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 13.15 Table of Contents, Headings, etc.

The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 13.16 Facsimile and PDF Delivery of Signature Pages.

The exchange of copies of this Indenture and of signature pages by facsimile or portable document format ("*PDF*") transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Indenture or any document to be signed in connection with this Indenture shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means.

Section 13.17 U.S.A. PATRIOT Act.

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

Section 13.18 Tax Filings.

Upon request from the Trustee, the Company and each of the Holders shall provide information reasonably necessary in order to enable the Trustee to determine whether any withholding obligations under Section 1471-1474 of the Internal Revenue Code of 1986

("*FATCA*") or applicable law apply. The Trustee shall be entitled to make any withholding or deductions from payments to the extent necessary to comply with FATCA or applicable law and neither the Trustee nor the Company shall have any liability in connection with its compliance therewith.

Section 13.19 Payments Due on Non-Business Days.

In any case where any Interest Payment Date, redemption date or repurchase date or the Stated Maturity of the Notes shall not be a Business Day, then (notwithstanding any other provision of this Indenture or of the Notes) payment of principal, premium, if any, or interest on the Notes need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date, redemption date or repurchase date, or at the Stated Maturity of the Notes; *provided* that no interest will accrue for the period from and after such Interest Payment Date, redemption date, repurchase date or Stated Maturity, as the case may be.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed all as of the date and year first written above.

Varex Imaging Corporation

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell
Title: Vice President of Finance, Treasury and Business Development

3901 Carnation Street, LLC,
by its sole member, Varex Imaging Corporation

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell
Title: Vice President of Finance, Treasury and Business Development

Varex Imaging Americas Corporation

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell
Title: Vice President and Treasurer

Varex Imaging Deutschland AG

By: /s/ Marcus Kirchhoff
Name: Marcus Kirchhoff
Title: Member of the Executive Board

Varex Imaging Holdings, Inc.

By: /s/ Kimberley E. Honeysett
Name: Kimberley E. Honeysett
Title: Vice President and Secretary

Varex Imaging Investments B.V., represented by

By: /s/ Kimberley E. Honeysett
Name: Kimberley E. Honeysett
Title: Managing Director

Varex Imaging West Holdings, Inc.

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell
Title: Treasurer and Vice President

Varex Imaging West, LLC

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell
Title: Treasurer

Virtual Media Integration, LLC,
by its sole member, Varex Imaging Corporation

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell
Title: Vice President of Finance, Treasury and Business Development

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By:	/s/ Patrick Giordano
Name:	Patrick Giordano
Title:	Vice President

APPENDIX A

PROVISIONS RELATING TO THE INITIAL NOTES AND THE ADDITIONAL NOTES

Section 1.1 Definitions.

(a) Capitalized Terms.

Capitalized terms used but not defined in this Appendix A have the meanings given to them in this Indenture. The following capitalized terms have the following meanings:

"*Applicable Procedures*" means, with respect to any transfer or transaction involving a Global Note or beneficial interest therein, the rules and procedures of the Depositary for such Global Note, Euroclear or Clearstream, in each case to the extent applicable to such transaction and as in effect from time to time.

"*Clearstream*" means Clearstream Banking, Société Anonyme, or any successor securities clearing agency.

"*Distribution Compliance Period*," with respect to any Note, means the period of 40 consecutive days beginning on and including the later of (a) the day on which such Note is first offered to persons other than distributors (as defined in Regulation S) in reliance on Regulation S, notice of which day shall be promptly given by the Company to the Trustee, and (b) the date of issuance with respect to such Note or any predecessor of such Note.

"*Euroclear*" means Euroclear Bank S.A./N.V., as operator of Euroclear systems Clearance System or any successor securities clearing agency.

"*QIB*" means a "qualified institutional buyer" as defined in Rule 144A.

"*Regulation S*" means Regulation S promulgated under the Securities Act.

"*Rule 144*" means Rule 144 promulgated under the Securities Act.

"*Rule 144A*" means Rule 144A promulgated under the Securities Act.

"*Unrestricted Global Note*" means any Note in global form that does not bear or is not required to bear the Restricted Notes Legend.

"*U.S. person*" means a "*U.S. person*" as defined in Regulation S.

(b) Other Definitions.

Term:	Defined in Section:
"*Agent Members*"	2.1(c)
"*Definitive Notes Legend*"	2.2(e)
"*ERISA Legend*"	2.2(e)
"*Global Note*"	2.1(b)
"*Global Notes Legend*"	2.2(e)
"*Regulation S Global Note*"	2.1(b)
"*Regulation S Notes*"	2.1(a)
"*Restricted Notes Legend*"	2.2(e)
"*Rule 144A Global Note*"	2.1(b)
"*Rule 144A Notes*"	2.1(a)

Section 1.2 Form and Dating.

(a) The Initial Notes issued on the date hereof shall be (i) offered and sold by the Company to the initial purchasers thereof and (ii) resold, initially only to (1) QIBs in reliance on Rule 144A ("*Rule 144A Notes*") and (2) Persons other than U.S. persons in reliance on Regulation S ("*Regulation S Notes*"). Additional Notes may also be considered to be Rule 144A Notes or Regulation S Notes, as applicable.

(b) *Global Notes*. Rule 144A Notes shall be issued initially in the form of one or more permanent Global Notes in definitive, fully registered form, numbered RA-1 upward (collectively, the "*Rule 144A Global Note*") and Regulation S Notes shall be issued initially in the form of one or more Global Notes, numbered RS-1 upward (collectively, the "*Regulation S Global Note*"), in each case without interest coupons and bearing the Global Notes Legend and Restricted Notes Legend, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the custodian, and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Company and authenticated by the Trustee as provided in the Indenture. The Rule 144A Global Note, the Regulation S Global Note and any Unrestricted Global Note are each referred to herein as a "*Global Note*" and are collectively referred to herein as "*Global Notes*." Each Global Note shall represent such of the outstanding Notes as shall be specified in the "Schedule of Exchanges of Interests in the Global Note" attached thereto and each shall provide that it shall represent the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 of this Indenture and Section 1.3 of this Appendix A.

(c) *Book-Entry Provisions*. This Section 1.2(c) shall apply only to a Global Note deposited with or on behalf of the Depositary.

The Company shall execute and the Trustee shall, in accordance with this Section 1.2(c) and Section 2.02 of this Indenture and pursuant to an Authentication Order, authenticate and deliver initially one or more Global Notes that (i) shall be registered in the name of the Depositary for such Global Note or Global Notes or the nominee of such Depositary and (ii) shall be delivered by the Trustee to such Depositary or pursuant to such Depositary's instructions or held by the Trustee as Custodian.

Members of, or participants in, the Depositary ("*Agent Members*") shall have no rights under the Indenture with respect to any Global Note held on their behalf by the Depositary or by the Trustee as Custodian or under such Global Note, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices of such Depositary governing the exercise of the rights of a Holder of a beneficial interest in any Global Note.

(d) *Definitive Notes*. Except as provided in Section 1.3 or Section 1.4 of this Appendix A, owners of beneficial interests in Global Notes shall not be entitled to receive physical delivery of Definitive Notes.

Section 1.3 Transfer and Exchange.

(a) *Transfer and Exchange of Definitive Notes for Definitive Notes*. When Definitive Notes are presented to the Registrar with a request:

(i) to register the transfer of such Definitive Notes; or

(ii) to exchange such Definitive Notes for an equal principal amount of Definitive Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; *provided*, *however*, that the Definitive Notes surrendered for transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or his or her attorney duly authorized in writing; and

(2) in the case of Transfer Restricted Notes, they are being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to Section 2.2(b) of this Appendix A or otherwise in accordance with the Restricted Notes Legend, and are accompanied by a certification from the transferor in the form provided on the reverse side of the Form of Note in *Exhibit A* for exchange or registration of transfers and, as applicable, delivery of such legal opinions, certifications and other information as may be requested pursuant thereto.

(b) *Restrictions on Transfer of a Definitive Note for a Beneficial Interest in a Global Note*. A Definitive Note may not be exchanged for a beneficial interest in a Global Note except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a Definitive Note, duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, together with:

(i) a certification from the transferor in the form provided on the reverse side of the Form of Note in *Exhibit A* for exchange or registration of transfers and, as applicable, delivery of such legal opinions, certifications and other information as may be requested pursuant thereto; and

(ii) written instructions directing the Trustee to make, or to direct the custodian to make, an adjustment on its books and records with respect to such Global Note to reflect an increase in the aggregate principal amount of the Notes represented by the Global Note, such instructions to contain information regarding the Depositary account to be credited with such increase,

(iii) the Trustee shall cancel such Definitive Note and cause, or direct the custodian to cause, in accordance with the standing instructions and procedures existing between the Depositary and the custodian, the aggregate principal amount of Notes represented by the Global Note to be increased by the aggregate principal amount of the Definitive Note to be exchanged and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Note equal to the principal amount of the Definitive Note so canceled. If the applicable Global Note is not then outstanding, the Company shall issue and the Trustee shall authenticate, upon an Authentication Order, a new applicable Global Note in the appropriate principal amount.

(c) *Transfer and Exchange of Global Notes*.

(i) The transfer and exchange of Global Notes or beneficial interests therein shall be effected through the Depositary, in accordance with the Indenture (including applicable restrictions on transfer set forth in Section 1.3(d) of this Appendix A, if any) and the procedures of the Depositary therefor. A transferor of a beneficial interest in a Global Note shall deliver to the Registrar a written order given in accordance with the Depositary's procedures containing information regarding the participant account of the Depositary to be credited with a beneficial interest in such Global Note, or another Global Note and such account shall be credited in accordance with such order with a beneficial interest in the applicable Global Note and the account of the Person making the transfer shall be debited by an amount equal to the beneficial interest in the Global Note being transferred.

(ii) If the proposed transfer is a transfer of a beneficial interest in one Global Note to a beneficial interest in another Global Note, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Note to which such interest is being transferred in an amount equal to the principal amount of the interest to be so transferred, and the Registrar shall reflect on its books and records the

date and a corresponding decrease in the principal amount of the Global Note from which such interest is being transferred.

(iii) Notwithstanding any other provisions of this Appendix A (other than the provisions set forth in Section 1.4 of this Appendix A), a Global Note may not be transferred except as a whole and not in part if the transfer is by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(d) *Restrictions on Transfer of Global Notes; Voluntary Exchange of Interests in Transfer Restricted Global Notes for Interests in Unrestricted Global Notes*.

(i) Transfers by an owner of a beneficial interest in a Rule 144A Global Note to a transferee who takes delivery of such interest through another Restricted Global Note shall be made in accordance with the Applicable Procedures and the Restricted Notes Legend and only upon receipt by the Trustee of a certification from the transferor in the form provided on the reverse side of the Form of Note in *Exhibit A* for exchange or registration of transfers and, as applicable, delivery of such legal opinions, certifications and other information as may be requested pursuant thereto.

(ii) During the Distribution Compliance Period, beneficial ownership interests in the Regulation S Global Note may only be sold, pledged or transferred through Euroclear or Clearstream in accordance with the Applicable Procedures, the Restricted Notes Legend on such Regulation S Global Note and any applicable securities laws of any state of the U.S. Prior to the expiration of the Distribution Compliance Period, transfers by an owner of a beneficial interest in the Regulation S Global Note to a transferee who takes delivery of such interest through a Rule 144A Global Note shall be made only in accordance with the Applicable Procedures and the Restricted Notes Legend and upon receipt by the Trustee of a written certification from the transferor of the beneficial interest in the form provided on the reverse side of the Form of Note in *Exhibit A* for exchange or registration of transfers. Such written certification shall no longer be required after the expiration of the Distribution Compliance Period. Upon the expiration of the Distribution Compliance Period, beneficial ownership interests in the Regulation S Global Note shall be transferable in accordance with applicable law and the other terms of the Indenture.

(iii) Upon the expiration of the Distribution Compliance Period, beneficial interests in the Regulation S Global Note may be exchanged for beneficial interests in an Unrestricted Global Note upon certification in the form provided on the reverse side of the Form of Note in *Exhibit A* for an exchange from a Regulation S Global Note to an Unrestricted Global Note.

(iv) Beneficial interests in a Transfer Restricted Note that is a Rule 144A Global Note may be exchanged for beneficial interests in an Unrestricted Global Note if the Holder certifies in writing to the Registrar that its request for such exchange is in respect of a transfer made in reliance on Rule 144 (such certification to be in the form set forth on the reverse

side of the Form of Note in *Exhibit A*) and/or upon delivery of such legal opinions, certifications and other information as the Company or the Trustee may reasonably request.

(v) If no Unrestricted Global Note is outstanding at the time of a transfer contemplated by the preceding clauses (iii) and (iv), the Company shall issue and the Trustee shall authenticate, upon an Authentication Order, a new Unrestricted Global Note in the appropriate principal amount.

(e) *Legends*.

(i) Except as permitted by Section 1.3(d) and this Section 1.3(e) of this Appendix A, each Note certificate evidencing the Global Notes and the Definitive Notes (and all Notes issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only) ("*Restricted Notes Legend*"):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "*SECURITIES ACT*"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "*RESALE RESTRICTION TERMINATION DATE*") THAT IS [*IN THE CASE OF RULE 144A NOTES:* SIX MONTHS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF, THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF ANY ADDITIONAL NOTES AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY)] [*IN THE CASE OF REGULATION S NOTES:* 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF, THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF ANY ADDITIONAL NOTES AND THE DATE ON WHICH THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) WAS FIRST OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN RULE 902 OF REGULATION S) IN RELIANCE ON REGULATION S], ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("*RULE 144A*"), TO A PERSON IT REASONABLY BELIEVES IS A "*QUALIFIED INSTITUTIONAL BUYER*" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO

OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL "*ACCREDITED INVESTOR*" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF SECURITIES OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. [*IN THE CASE OF REGULATION S NOTES:* BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.]

Each Definitive Note shall bear the following additional legend ("*Definitive Notes Legend*")*:*

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH REGISTRAR AND TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

Each Global Note shall bear the following additional legend ("*Global Notes Legend*")*:*

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("*DTC*"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO DTC, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF

PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

Each Note shall bear the following additional legend ("*ERISA Legend*"):

BY ITS ACQUISITION OF THIS SECURITY, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS SECURITY CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("*ERISA*"), OF A PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "*CODE*") OR PROVISIONS UNDER ANY OTHER U.S. OR NON-U.S. FEDERAL, STATE, LOCAL, OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE ("*SIMILAR LAWS*"), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "*PLAN ASSETS*" OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, OR (2) THE ACQUISITION, HOLDING AND SUBSEQUENT DISPOSITION OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS.

(ii) Upon any sale or transfer of a Transfer Restricted Note that is a Definitive Note, the Registrar shall permit the Holder thereof to exchange such Transfer Restricted Note for a Definitive Note that does not bear the Restricted Notes Legend and the Definitive Notes Legend and rescind any restriction on the transfer of such Transfer Restricted Note if the Holder certifies in writing to the Registrar that its request for such exchange is in respect of a transfer made in reliance on Rule 144 (such certification to be in the form set forth on the reverse side of the Form of Note in *Exhibit A*) and provides such legal opinions, certifications and other information as the Company or the Trustee may reasonably request.

(iii) Any Additional Notes sold in a registered offering shall not be required to bear the Restricted Notes Legend.

(f) *Cancellation or Adjustment of Global Note*. At such time as all beneficial interests in a Global Note have either been exchanged for Definitive Notes, transferred in exchange for an interest in another Global Note, redeemed, repurchased or canceled, such Global Note shall be returned by the Depositary to the Trustee for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for Definitive Notes, transferred in exchange for an interest in another Global Note, redeemed, repurchased or canceled, the principal amount of Notes represented by such Global Note shall be reduced and an adjustment shall be made on the books and records of the Registrar (if it is then the custodian for such Global Note) with respect to such Global Note, by the Registrar or the custodian, to reflect such reduction.

(g) *Obligations with Respect to Transfers and Exchanges of Notes*.

(i) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate, Definitive Notes and Global Notes at the Registrar's request.

(ii) No service charge shall be imposed in connection with any registration of transfer or exchange (other than pursuant to Section 2.07 of this Indenture), but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.06, 4.10, 4.15 and 9.04 of this Indenture).

(iii) Prior to the due presentation for registration of transfer of any Note, the Company, the Trustee, the Paying Agent or the Registrar may deem and treat the person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal, premium, if any, and interest on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Company, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

(iv) All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(v) In order to effect any transfer or exchange of an interest in any Transfer Restricted Note for an interest in a Note that does not bear the Restricted Notes Legend and has not been registered under the Securities Act, if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel, in form reasonably acceptable to the Registrar to the effect that no registration under the Securities Act is required in respect of such exchange or transfer or the re-sale of such interest by the beneficial Holder thereof, shall be required to be delivered to the Registrar and the Trustee.

(h) *No Obligation of the Trustee*.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in the Depositary or any other Person with respect to the accuracy of the records of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depositary) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to the registered Holders (which shall be the Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depositary subject to the applicable rules and procedures of the Depositary. The Trustee may

rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under the Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants, members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of the Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 1.4 Definitive Notes.

(a) A Global Note deposited with the Depositary or with the Trustee as custodian pursuant to Section 1.2 of this Appendix A may be transferred to the beneficial owners thereof in the form of Definitive Notes in an aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note, only if such transfer complies with Section 1.3 of this Appendix A and (i) the Depositary notifies the Company that it is unwilling or unable to continue as a Depositary for such Global Note or if at any time the Depositary ceases to be a "clearing agency" registered under the Exchange Act and, in each case, a successor depositary is not appointed by the Company within 90 days of such notice or after the Company becomes aware of such cessation or (ii) an Event of Default has occurred and is continuing and the Registrar has received a request from the Depositary. In addition, any Affiliate of the Company or any Guarantor that is a beneficial owner of all or part of a Global Note may have such Affiliate's beneficial interest transferred to such Affiliate in the form of a Definitive Note by providing a written request to the Company and the Trustee and such Opinions of Counsel, certificates or other information as may be required by this Indenture or the Company or Trustee.

(b) Any Global Note that is transferable to the beneficial owners thereof pursuant to this Section 1.4 shall be surrendered by the Depositary to the Trustee, to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Note, an equal aggregate principal amount of Definitive Notes of authorized denominations. Any portion of a Global Note transferred pursuant to this Section 1.4 shall be executed, authenticated and delivered only in denominations of $2,000 and integral multiples of $1,000 in excess thereof and registered in such names as the Depositary shall direct. Any Definitive Note delivered in exchange for an interest in a Global Note that is a Transfer Restricted Note shall, except as otherwise provided by Section 1.3(e) of this Appendix A, bear the Restricted Notes Legend.

(c) The registered Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(d) In the event of the occurrence of any of the events specified in Section 1.4(a) of this Appendix A, the Company shall promptly make available to the Trustee a reasonable supply of Definitive Notes in fully registered form without interest coupons.

Exhibit A

[FORM OF FACE OF NOTE]

[Insert the Restricted Notes Legend, if applicable, pursuant to the provisions of the Indenture]

[Insert the Global Notes Legend, if applicable, pursuant to the provisions of the Indenture]

[Insert the Definitive Notes Legend, if applicable, pursuant to the provisions of the Indenture]

[Insert the ERISA Legend, if applicable, pursuant to the provisions of the Indenture.]

CUSIP [ ]
ISIN [ ][1]

[RULE 144A][REGULATION S][IAI][GLOBAL] NOTE

7.875% Senior Secured Notes due 2027

No. [RA-__] [RS-__][RIAI-] [Up to][2] [$[ ]]

VAREX IMAGING CORPORATION

promises to pay to [CEDE & CO.][3] [ ] or registered assigns the principal sum [set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto][4] [of $[ ]([ ] Dollars)][5] on October 15, 2027.

Interest Payment Dates: April 15 and October 15

Record Dates: April 1 and October 1

---

[1] Rule144A Note CUSIP: 92214X AC0
Rule 144A Note ISIN: US92214XAC02
Regulation S Note CUSIP: U9219X AA0
Regulation S Note ISIN: USU9219XAAA01

[2] Include in Global Notes.

[3] Include in Global Notes.

[4] Include in Global Notes.

[5] Include in Definitive Notes.

IN WITNESS HEREOF, the Company has caused this instrument to be duly executed.

Dated:

VAREX IMAGING CORPORATION

By: _____

Name:

Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture:

Dated:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: _____

Authorized Signatory

[Reverse Side of Note]

7.875% Senior Secured Notes due 2027

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST. Varex Imaging Corporation, a Delaware corporation (the "*Company*"), promises to pay interest on the principal amount of this Note at 7.875% per annum until but excluding maturity. The Company shall pay interest semi-annually in arrears on April 15 and October 15 of each year (each, an "*Interest Payment Date*"). Interest on the Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from and including [ ] [ ], 20[ ]; *provided* that the first Interest Payment Date shall be [ ] [ ], 20[ ]. The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the interest rate on the Notes to the extent lawful. Interest shall be computed on the basis of a 360-day year comprised of twelve 30-day months. If any interest payment falls on a day that is not a Business Day, the required payment will be made on the succeeding Business Day and no interest on such payment will accrue in respect of the delay.

2. METHOD OF PAYMENT. The Company shall pay interest on the Notes to the Persons who are registered Holders at the close of business on April 1 and October 1 (whether or not a Business Day), as the case may be, immediately preceding the related Interest Payment Date, even if such Notes are canceled after such Record Date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. Principal, premium, if any, and interest on the Notes shall be payable at the office or agency of the Company maintained for such purpose or, at the option of the Company, payment of interest and premium, if any, may be made by check mailed to the Holders at their respective addresses set forth in the Note Register; *provided* that payment by wire transfer of immediately available funds shall be required with respect to principal, premium, if any, and interest on all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Company or the Paying Agent at least five Business Days prior to the applicable payment date. Such payment shall be in such coin or currency of the United States as at the time of payment is legal tender for payment of public and private debts.

3. PAYING AGENT AND REGISTRAR. Initially, Wells Fargo Bank, National Association, the Trustee under the Indenture, shall act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without notice to the Holders. The Company or any of its Restricted Subsidiaries may act in any such capacity.

4. INDENTURE. The Company issued the Notes under an Indenture, dated as of September 30, 2020 (as amended or supplemented from time to time, the "*Indenture*"), among Varex Imaging Corporation, the other Guarantors named therein and the Trustee and Collateral

Agent. This Note is one of a duly authorized issue of Notes of the Company designated as its 7.875% Senior Secured Notes due 2027. The Company shall be entitled to issue Additional Notes pursuant to Section 2.01 and 4.09 of the Indenture. The Notes and any Additional Notes issued under the Indenture shall be treated as a single class of securities under the Indenture. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. Any term used in this Note that is defined in the Indenture shall have the meaning assigned to it in the Indenture. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

5. GUARANTEES. From and after the Issue Date, to guarantee the due and punctual payment of the principal, premium, if any, interest (including post filing or post-petition interest in any proceeding under Bankruptcy Law) on the Notes and all other amounts payable by the Company under the Indenture and the Notes when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, each Guarantor will unconditionally guarantee (and future guarantors, jointly and severally with the Guarantors, will fully and unconditionally Guarantee) such obligations on a senior secured basis pursuant to the terms of the Indenture.

6. SECURITY. The Notes and the related Guarantees will be secured by the Collateral on the terms and subject to the conditions set forth in the Indenture and the Security Documents. The Trustee and the Notes Collateral Agent, as the case may be, hold the Collateral in trust for the benefit of the Holders of the Notes, in each case pursuant to the Security Documents and the Intercreditor Agreement. Each Holder, by accepting this Note, consents and agrees to the terms of the Security Documents (including the provisions providing for the foreclosure and release of Collateral) and the Intercreditor Agreement, each as may be in effect or may be amended from time to time in accordance with their terms and the Indenture, and authorizes and directs each of the Trustee and the Notes Collateral Agent, as applicable, to enter into the Security Documents and the Intercreditor Agreement on the Issue Date, and the Security Documents at any time after the Issue Date, if applicable, and to perform its obligations and exercise its rights thereunder in accordance therewith.

7. REDEMPTION AND REPURCHASE. The Notes are subject to optional redemption, and may be the subject of certain repurchase events, as further described in the Indenture. The Company shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

8. DENOMINATIONS, TRANSFER, EXCHANGE. The Notes are in registered form without coupons in denominations of $2,000 and integral multiples of $1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents, and Holders shall be required to pay any taxes and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption or tendered for repurchase in connection with a Change of Control Offer or Asset Sale Offer, except for the

unredeemed portion of any Note being redeemed or repurchased in part. Holders will be required to pay all taxes due on transfer or exchange. The transferor shall also provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on information provided to it and shall have no responsibility whatsoever to verify or ensure the accuracy of such information.

9. PERSONS DEEMED OWNERS. The registered Holder of each Note may be treated as its owner for all purposes.

10. AMENDMENT, SUPPLEMENT AND WAIVER. The Indenture, the Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

11. DEFAULTS AND REMEDIES. The Events of Default relating to the Notes are defined in Section 6.01 of the Indenture. Upon the occurrence of an Event of Default, the rights and obligations of the Company, the Guarantors, the Trustee and the Holders shall be as set forth in the applicable provisions of the Indenture.

12. AUTHENTICATION. This Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until authenticated by the manual or electronic signature of the Trustee.

13. GOVERNING LAW. THIS NOTE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

14. CUSIP AND ISIN NUMBERS. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP and ISIN numbers to be printed on the Notes, and the Trustee may use CUSIP and ISIN numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Company shall furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to the Company at the following address:

c/o Varex Imaging Corporation

1678 S. Pioneer Road
Salt Lake City, Utah 84104
Attention: Kim Honeysett
Email: Kim.Honeysett@vareximaging.com

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____

(Insert assignee's legal name)

_____

(Insert assignee's soc. sec. or tax I.D. no.)

_____

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____

to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your Signature _____

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR

REGISTRATION OF TRANSFERS OF TRANSFER RESTRICTED NOTES

This certificate relates to $ principal amount of Notes held in (check applicable space) ☐ bookentry or ☐ definitive form by the undersigned.

The undersigned (check one box below):

□ has requested the Trustee by written order to deliver in exchange for its beneficial interest in a Global Note held by the Depositary a Note or Notes in definitive, registered form of authorized denominations and an aggregate principal amount equal to its beneficial interest in such Global Note (or the portion thereof indicated above) in accordance with the Indenture; or

□ has requested the Trustee by written order to exchange or register the transfer of a Note or Notes.

In connection with any transfer of any of the Notes evidenced by this certificate, the undersigned confirms that such Notes are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

(1) □ to the Company or subsidiary thereof; or

(2) □ to the Registrar for registration in the name of the Holder, without transfer; or

(3) □ pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "*Securities Act*"); or

(4) □ to a Person that the undersigned reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act ("*Rule 144A*")) that purchases for its own account or for the account of a qualified institutional buyer and to whom notice is given that such transfer is being made in reliance on Rule 144A, in each case pursuant to and in compliance with Rule 144A; or

(5) □ pursuant to offers and sales to non-U.S. persons that occur outside the United States within the meaning of Regulation S under the Securities Act (and if the transfer is being made prior to the expiration of the Distribution Compliance Period, the Notes shall be held immediately thereafter through Euroclear or Clearstream); or

(6) □ to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or under the Securities Act) that has furnished to the Trustee a signed letter containing certain representations and agreements; or

(7) □ pursuant to Rule 144 under the Securities Act; or

(8) □ pursuant to another available exemption from registration under the Securities Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered Holder thereof; *provided*, *however*, that if box (5), (6), (7) or (8) is checked, the Company or the Trustee may require, prior to registering any such transfer of the Notes, such legal opinions, certifications and other information as the Company or the Trustee has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

_____
Your Signature

Date: _____

_____
Signature of Signature Guarantor

TO BE COMPLETED BY PURCHASER IF (4) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____

_____
NOTICE: To be executed by an executive officer

Name:

Title:

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

TO BE COMPLETED IF THE HOLDER REQUIRES AN EXCHANGE FROM A REGULATION S GLOBAL NOTE TO AN UNRESTRICTED GLOBAL NOTE, PURSUANT TO SECTION 1.3(d)(iii) OF APPENDIX A TO THE INDENTURE[6]

The undersigned represents and warrants that either:

□ the undersigned is not a dealer (as defined in the Securities Act) and is a non-U.S. person (within the meaning of Regulation S under the Securities Act); or

□ the undersigned is not a dealer (as defined in the Securities Act) and is a U.S. person (within the meaning of Regulation S under the Securities Act) who purchased interests in the Notes pursuant to an exemption from, or in a transaction not subject to, the registration requirements under the Securities Act; or

□ the undersigned is a dealer (as defined in the Securities Act) and the interest of the undersigned in this Note does not constitute the whole or a part of an unsold allotment to or subscription by such dealer for the Notes.

Dated: _____ _____

Your Signature

[6] Include only for Regulation S Global Notes.

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Company pursuant to Section 4.10 or Section 4.15 of the Indenture, check the appropriate box below:

[ ] Section 4.10 [ ] Section 4.15

If you want to elect to have only part of this Note purchased by the Company pursuant to Section 4.10 or Section 4.15 of the Indenture, state the amount you elect to have purchased:

$_____ (integral multiples of $1,000; *provided* that the unpurchased portion must be in a minimum principal amount of $2,000)

Date: _____

Your Signature: _____

(Sign exactly as your name appears on the face of this Note)

Tax Identification No.: _____

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The initial outstanding principal amount of this Global Note is $[ ]. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee, Depositary or Custodian

*This schedule should be included only if the Note is issued in global form.

EXHIBIT B

FORM OF
TRANSFEREE LETTER OF REPRESENTATION

Varex Imaging Corporation
1678 S. Pioneer Road
Salt Lake City, Utah 84104
Attention: Kim Honeysett

Ladies and Gentlemen:

This certificate is delivered to request a transfer of $ principal amount of the 7.875% Senior Secured Notes due 2027 (the "*Notes*") of Varex Imaging Corporation (the "*Company*").

Upon transfer, the Notes would be registered in the name of the new beneficial owner as follows:

Name: _____

Address: _____

Taxpayer ID Number: _____

The undersigned represents and warrants to you that we understand that the Notes have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Notes to offer, sell or otherwise transfer such Notes prior to the date that is one year after the later of the date of original issue and the last date on which the Company or any affiliate of the Company was the owner of such Notes (or any predecessor thereto) (the "*Resale Restriction Termination Date*") only in accordance with the Restricted Notes Legend (as such term is defined in the indenture under which the Notes were issued) on the Notes and any applicable securities laws of any state of the United States. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Notes is proposed to be made prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Company and the Trustee, which shall provide, among other things, that the transferee is an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act and that it is acquiring such Notes for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Company and the Trustee reserve the right prior to the offer, sale or other transfer prior to the Resale Restriction Termination Date of the Notes with respect to applicable transfers described in the Restricted Notes Legend to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to the Company and the Trustee.

TRANSFEREE: _____

by: _____

EXHIBIT C

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

Supplemental Indenture (this "*Supplemental Indenture*"), dated as of [ ] [ ], 20[ ], among [ ] (the "*Guaranteeing Subsidiary*"), a subsidiary of Varex Imaging Corporation (the "*Company*"), and Wells Fargo Bank, National Association, as trustee (the "*Trustee*").

W I T N E S S E T H

WHEREAS, each of the Company and the Guarantors (as defined in the Indenture referred to below) has heretofore executed and delivered to the Trustee an indenture (the "*Indenture*"), dated as of September 30, 2020, providing for the issuance of an unlimited aggregate principal amount of 7.875% Senior Secured Notes due 2027 (the "N*otes*");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally Guarantee all of the Company's Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture; and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. Guarantor. The Guaranteeing Subsidiary hereby agrees to be a Guarantor under the Indenture and to be bound by the terms of the Indenture applicable to Guarantors, including Article 11 thereof.

3. Governing Law. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

4. Waiver of Jury Trial. EACH OF THE GUARANTEEING SUBSIDIARY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE, THE INDENTURE, THE NOTES, THE NOTE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

5. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

6. Headings. The headings of the Sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part of this Supplemental Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[NAME OF GUARANTEEING SUBSIDIARY]

By: _____

Name:

Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: _____

Name:

Title:

EXHIBIT D

NORTON ROSE FULBRIGHT

CONFIDENTIAL [Agreed template]
1001136168

Date [ ] 2020

INTELLECTUAL PROPERTY RIGHTS PLEDGE AGREEMENT

(*Vereinbarung über die Verpfändung von geistigen Eigentumsrechten*)

between

Varex Imaging Deutschland AG

as Pledgor

and

[ ]

as Collateral Agent and Pledgee

Contents

THIS INTELLECTUAL PROPERTY RIGHTS PLEDGE AGREEMENT (**Agreement**) is made on [ ] .

BETWEEN:

(1) **Varex Imaging Deutschland AG**, a stock corporation (*Aktiengesellschaft*) incorporated under the laws of Germany, having its business address at Otto-Brenner-Straße 10, 47877 Willich, which is registered in the commercial register (*Handelsregister*) kept at the local court (*Amtsgericht*) of Krefeld under registration number HRB 15977 (**Pledgor** (*Pfandgeber*)); and

(2) **[ ]**, in its capacity as collateral agent under the ABL Credit Agreement (**Collateral Agent** and **Pledgee** (*Pfandnehmer*))[7],

(the Pledgor and the Pledgee together referred to as, the **Parties**, and each, a **Party**).

PREAMBLE:

(A) A senior secured indenture dated as of 30 September 2020 has been entered into between, among others, Varex Imaging Corporation as issuer (**Issuer**), certain of its direct or indirect wholly-owned subsidiaries as guarantors, Wells Fargo Bank, National Association as trustee and collateral agent (**Indenture**), providing for the issuance of the US$300,000,000 7.875 % senior secured notes due 2027 (**Notes**).

(B) Furthermore, a purchase agreement dated as of 25 September 2020 has been entered into between, among others, the Issuer and Goldman Sachs & Co. LLC, BofA Securities, Inc. and Citigroup Global Markets Inc. as representatives of the several purchasers named therein in relation to the Notes (**Purchase Agreement**).

(C) Pursuant to a revolving credit agreement dated on or about the date hereof between, among others, Varex Imaging Corporation, a Delaware corporation and certain of its direct or indirect wholly-owned domestic subsidiaries as borrowers (collectively, the **U.S. Borrowers** and each, individually, a **U.S. Borrower**), Varex Imaging Deutschland AG as German borrower (**German Borrower** and, together with the U.S. Borrowers, collectively, the **Borrowers** and each, individually, a **Borrower**), certain banks and financial institutions as lenders (**Lenders**) and Bank of America, N.A. as administrative agent and collateral agent (as amended, varied, supplemented, increased or extended from time to time, **ABL Credit Agreement**), the Lenders have agreed to make available certain facilities to the Borrowers.

(D) It is agreed that the Pledgor grants a second ranking pledge (*gewährt ein nachrangiges Pfandrecht*) over the Collateral (as defined below) as security for the Secured Parties' (as defined in the ABL Credit Agreement) respective claims against the Loan Parties under the Loan Documents (as defined below).

(E) [Pursuant to an IP pledge agreement dated on or about the date of this Agreement (**First Ranking Pledge Agreement**) the Collateral has been pledged (**First Ranking Pledges**) in favour of [ ] as first lien notes agent (**First Lien Notes Agent**) to secure the obligations under the First Lien Notes Documents (as defined in the Intercreditor Agreement (as defined below)).][8]

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[7] Reference to the respective agent shall be made, i.e. First Lien Notes Agent or ABL Agent. Global change then required.

[8] Reference in the First Ranking Pledge Agreement needs to refer to the Second Ranking Pledge Agreement.

(F) The security created by this Agreement is to be held by the Collateral Agent (in its own name and on its own behalf in its capacity as creditor of the obligations under the Parallel Debt Obligations (as defined in the Intercreditor Agreement)) and administered by the Collateral Agent (in its own name and on its own behalf) for and on behalf of the Secured Parties. This agreement shall be subject to the relevant provisions of an intercreditor agreement dated [ ] between, among others, the Collateral Agent, the First Lien Notes Agent and the other parties named therein (as amended, restated, varied, novated, supplemented, superseded or extended from time to time, the **Intercreditor Agreement**). Pursuant to the Intercreditor Agreement the parties have agreed that the First Ranking Pledges shall be deemed prior ranking to the Pledges (as defined below) created under this Agreement.

IT IS AGREED as follows:

1 Definitions and interpretation

1.1 Definitions

Unless otherwise defined herein, capitalised terms used in this Agreement shall have the same meaning as ascribed to them in the Intercreditor Agreement.

In this Agreement:

Collateral means:

(a) the Intellectual Property;

(b) all present and future claims of the Pledgor in connection with infringements of any Intellectual Property by a third party; and

(c) all present and future claims of the Pledgor in connection with the utilisation of the Intellectual Property, including, but not limited to, claims against licensees, sub-licensees and other operators of the Intellectual Property, in particular under the licences listed in Schedule 7 (*Licenses granted by the Pledgor*).

Designs (*Muster*) means all:

(a) designs (*Geschmacksmuster*), whether registered or not, owned by the Pledgor currently and in the future;

(b) design applications (*Geschmacksmusteranmeldungen*) filed by the Pledgor and currently pending and filed by the Pledgor in the future; and

(c) rights to the grant of designs (*Ansprüche auf Erteilung von Geschmacksmustern*) and remainders (*Anwartschaftsrechte*) to designs owned by the Pledgor currently and in the future,

including but not limited to those listed in Schedule 1 (*Designs*) and Design means any of them.

Event of Default means an event of default as defined in the ABL Credit Agreement.

Intellectual Property (*geistiges Eigentum*) means the Patents, the Designs, the Utility Models, the Trademarks, the Know How and the Other IP Rights.

Know-how (*Betriebserfahrungen*) means all:

(a) now-how, knowledge, trade secrets, procedures, methods, practices, formulae and other intangible property used by the Pledgor currently and in the future that is not protected by registered intellectual property rights; and

(b) physical evidence of the aforementioned including, but not limited to, written descriptions (in particular specimens, drawings and plans) and storage by electronic means (in particular CD-ROMs and DVDs),

including, but not limited to, those listed in Schedule 5 (Know How).

Loan Documents shall have the meaning ascribed to such term in the ABL Credit Agreement.[9]

Loan Parties shall have the meaning ascribed to such term in the ABL Credit Agreement.

Other IP Rights means all:

(a) registered and non-registered rights in designations and names (*Kennzeichen- und Namensrechte*) and the goodwill related thereto owned by the Pledgor currently and in the future and all applications for rights in designations and names filed by the Pledgor and currently pending and filed by the Pledgor in the future;

(b) copyrights (Urheberrechte) owned by the Pledgor currently and in the future; and

(c) domain names (Domainnamen) owned by the Pledgor currently and in the future and all applications for domain names filed by the Pledgor and currently pending and filed by the Pledgor in the future,

including but not limited to those listed in Schedule 6 (*Other IP Rights*) and Other IP Right means any of them.

Patents (*Patente*) means all:

(a) registered patents (*Patente*) owned by the Pledgor currently and in the future;

(b) patent applications (*Patentanmeldungen*) filed by the Pledgor and currently pending and filed by the Pledgor in the future; and

(c) rights to the grant of patents (*Ansprüche auf Erteilung von Patenten*) and remainders (*Anwartschaftsrechte*) to patents owned by the Pledgor currently and in the future,

including but not limited to those listed in Schedule 2 (*Patents*) and Patent means any of them.

Secured Obligations means any and all [add reference to either the ABL or the Notes Obligations (including, without limitation, any obligations owed to the Collateral Agent under the parallel debt undertaking under section 7.14 (Germany: *Parallel Undertaking*) of the Intercreditor Agreement) and any obligation or liability to pay

[9] Respective definition as regards Notes Documents to be included in relation to the IP pledge agreement which shall secure the relevant Notes Obligations (as defined in the Intercreditor Agreement).

damages) which are or may become payable or owing by any Loan Party to any Secured Party or any of them pursuant to or in connection with the Loan Documents or any of them (including, but not limited to, any obligation based on unjust enrichment (*ungerechtfertigte Bereicherung*) or tort (*Delikt*)).

Secured Parties has the meaning ascribed to such term in the ABL Credit Agreement.

Trademarks (*Schutzmarken*) means all:

(a) registered and unregistered trademarks (*Marken*) owned by the Pledgor currently and in the future;

(b) trademark applications (*Markenanmeldungen*) filed by the Pledgor and currently pending and filed by the Pledgor in the future; and

(c) rights to the grant of trademarks (*Ansprüche auf Erteilung von Marken*) and remainders (*Anwartschaftsrechte*) to trademarks owned by the Pledgor currently and in the future,

including but not limited to those listed in Schedule 3 (*Trademarks*) and Trademark means any of them.

Utility Models (*Gebrauchsmuster*) means all:

(a) registered utility models owned by the Pledgor currently and in the future;

(b) utility model applications (*Gebrauchsmusterameldungen*) filed by the Pledgor and currently pending and filed by the Pledgor in the future; and

(c) all rights to the grant of utility models (*Ansprüche auf Erteilung von Gebrauchsmustern*) and remainders (*Anwartschaftsrechte*) to utility models owned by the Pledgor currently and in the future,

including but not limited to those listed in Schedule 4 (*Utility Models*) and Utility Model means any of them.

1.2 Interpretation

(a) This Agreement is made in the English language only. For the avoidance of doubt, the English version of this Agreement shall prevail over any translation of this Agreement. However, where a German translation of a word or phrase appears in the text of this Agreement, the German translation of such word or phrase shall prevail wherever such original English word or phrase translated by such German term appears in the text of this Agreement. Wherever a German term has been used in this Agreement, such German term shall be authoritative for the construction and interpretation. Where an English legal term or concept has been used in this Agreement, the related German legal term or concept shall be authoritative for the construction and interpretation of this Agreement, unless specifically provided for otherwise in this Agreement.

(b) The headings in this Agreement do not affect its interpretation.

(c) Words importing the singular include the plural and vice versa.

(d) Any reference in this Agreement to a **Clause**, **Paragraph** or a **Schedule** shall, subject to any contrary indication, be construed as a reference to a clause, paragraph or schedule of this Agreement.

2 Purpose of the Pledge (*Sicherungszweck*)

The pledges hereunder are constituted in order to secure (*zur Besicherung*) the prompt and complete satisfaction of all Secured Obligations. The pledges shall also cover any future extension of the Secured Obligations and the Pledgor herewith expressly agrees that the provisions of section 1210 paragraph 1 sentence 2 of the German Civil Code (*Bürgerliches Gesetzbuch*) shall not apply to this Agreement.

3 Pledge

The Pledgor hereby grants to the Pledgee a [first/second] ranking pledge (*nachrangiges Pfandrec*ht) in relation to the Collateral (each, a **Pledge** and together, the **Pledges**).

3.1 The Pledgee hereby accepts its Pledge for itself.

3.2 The validity and effect of each of the Pledges shall be independent from the validity and the effect of the other Pledges created hereunder.

3.3 The Pledges shall rank ahead of any other security interest or third party right now in existence or created in the future in or over any of the Collateral other than the [First/Second] Ranking Pledges. The Pledges to the Pledgee shall be separate and individual pledges ranking *pari passu* with the other Pledges created hereunder.

3.4 Each of the Pledges is in addition, and without prejudice, to any other security the Pledgee may now or hereafter hold in respect of the Secured Obligations.

3.5 For the avoidance of doubt, the Parties agree that nothing in this Agreement shall exclude a transfer of all or part of the Pledges created hereunder by operation of law upon the transfer or assignment including by way of assumption (*Vertragsübernahme*), of all or part of the Secured Obligations by the Pledgee to a future pledgee.

3.6 Waiving section 418 of the German Civil Code, the Parties to this Agreement hereby agree that the security interest created hereunder shall not be affected by any transfer or assumption of the Secured Obligations to, or by, any third party.

3.7 Insofar as the Pledgee may require additional declarations or actions for perfecting, protecting or enforcing the Pledges intended to be created by this Agreement, the Pledgor shall, at the Pledgee's request, make such declarations or undertake such actions at its own expense.

4 Exercise of rights

4.1 Unless the Pledgee gives notice to the contrary upon the occurrence of an enforcement event pursuant to Clause 8.1, the Pledgor, acting with the care of a prudent merchant (*Sorgfalt eines ordentlichen Geschäftsmannes*), shall have the right to exercise all rights and powers in connection with the Collateral.

4.2 The Pledgor is in particular entitled to use the Collateral in its ordinary course of Business. The Pledgor shall, at the Pledgee’s reasonable request, provide the Pledgee with evidence of compliance with this Clause 4.2.

5 List of Collateral

The Pledgor shall (i) with each Borrowing Base Certificate and in accordance with section 7.04 (*Reporting Requirements*) of the ABL Credit Agreement deliver to the

Pledgee an updated list of the Collateral and (ii) if reasonably requested by the Pledgee in writing, take or cause to be taken such further actions in accordance with section 7.01 (l) (*Further Assurances*) of the ABL Credit Agreement.

The list will be in all material respects a complete and accurate list of all the Collateral owned by the Pledgor as of the date of the Borrowing Base Certificate.

6 Documentation of the Collateral

6.1 With respect to Collateral that is registered and pending applications as at the date hereof, the Pledgor shall deliver to the Pledgee copies of all certificates of registration (*Erteilungsurkunde*) and application confirmations (*Anmeldebestätigung*) or similar documents.

6.2 With respect to Collateral that will be registered and applications that will be filed after the date hereof, the Pledgor shall deliver to the Pledgee copies of the applications (*Anmeldungen*), the application confirmations and the certificates of registration or similar documents.

7 Bookkeeping and data-processing

7.1 If proof or documents which are necessary to identify the Collateral have been handed over by the Pledgor to a third party, the Pledgor hereby assigns to the Pledgee, who accepts such assignment, its right to demand from such third party the return of such proof and documents. Upon the occurrence of an Event of Default which is continuing and upon the Pledgee's reasonable request, the Pledgor shall instruct the third party to provide to the Pledgee such information and documents which are necessary to perfect or enforce the security created hereunder.

7.2 If details concerning the Collateral or any part thereof have been stored in an electronic data-processing system, then upon the occurrence of an Event of Default which is continuing, the Pledgee is authorised to access to the computer, including the peripheral equipment, and all data concerning the Collateral. If required, the Pledgor shall make available software operators and any assistance required shall be provided to the Pledgee. If a third party handles the electronic processing of data, then upon the occurrence of an Event of Default which is continuing the Pledgor hereby assigns to the Pledgee, who accepts such assignment, all rights against such third party relating to these services, and instructs such third party to handle the processing of data for the Pledgee upon its demand acting reasonably as it did for the Pledgor.

7.3 At all times prior to the occurrence of an Event of Default, the Pledgee authorises the Pledgor to exercise the rights assigned to the Pledgee under Clause 7.1.

8 Enforcement of the Pledges

8.1 If the requirements set forth in sections 1273, 1204 et seq. of the German Civil Code with regard to the enforcement of any of the Pledges are met (*Pfandreife*), then in order to enforce the Pledges, the Pledgee may at any time thereafter avail itself of all rights and remedies that a pledgee has upon default of a pledgor under German law.

8.2 Notwithstanding section 1277 of the German Civil Code, the Pledgee is entitled to exercise its rights without obtaining an enforceable judgment or other instrument (*vollstreckbarer Titel*) by way of public auction.

8.3 The Pledgor hereby expressly agrees that five Business Days' prior written notice to the Pledgor of the place and time of any such public auction shall be sufficient. However, such notification is not necessary if:

(a) the Pledgor has ceased to make payments;

(b) an application for the commencement of insolvency proceedings is filed by or against it; or

(c) there is reason to believe that observance of the notice period will adversely affect the security interest of the Secured Parties.

8.4 If the Pledgee seeks to enforce the Pledges under Clause 8.1 above, the Pledgor shall at its own expense render all necessary assistance in order to facilitate the prompt realisation of the Pledges or any part thereof, or the exercise by the Pledgee of any other right the Pledgee may have as pledgee under this Agreement or German law.

8.5 If the Pledges are enforced, no rights of the Pledgee shall pass to the Pledgor by subrogation or otherwise unless and until all of the Secured Obligations have been satisfied and discharged in full. Until then, the Pledgee shall be entitled to treat all enforcement proceeds as additional security for the Secured Obligations.

8.6 Following satisfaction of the requirements for enforcement under Clause 8.1 above, all subsequent dividend payments and all payments based on similar ancillary rights attributed to the Collateral may be applied by the Pledgee in satisfaction in whole or in part of the Secured Obligations or treated as additional security for the Secured Obligations.

8.7 The Pledgee may in its sole discretion determine which of several security interests shall be used to satisfy the Secured Obligations.

8.8 The Pledgor hereby expressly waives all defenses of revocation (*Einrede der Anfechtbarkeit*) and set-off (*Einrede der Aufrechenbarkeit*) pursuant to sections 770, 1211 of the German Civil Code,. In the case of enforcement and subject to Clause 8.4 above, section 1225 of the German Civil Code (*Forderungsübergang auf den Pfandgeber*) shall not apply.

8.9 In the case of a sale of the Collateral, the Pledgor shall promptly provide the Pledgee with all documents of title and other documents relating to the Collateral.

9 Undertakings of the Pledgor

During the term of this Agreement, the Pledgor undertakes to the Pledgee unless otherwise expressly agreed in the Loan Documents:

9.1 not to take, or as the case may be, participate in:

(a) any action which results or might result in the Pledgor's loss of ownership of all or part of the Collateral;

(b) any other transaction which would have the same effect as a sale, transfer, encumbrance, or other disposal of the Collateral;

(c) any action which would for any other reason be inconsistent with the security interest of the Pledgee or the security purpose (as described in Clause 2 (*Purpose of the Pledge (Sicherungszweck)*) above); or

d) any action which would defeat, impair or circumvent the rights of the Pledgee,

except, in each case, with the prior written consent of the Pledgee;

9.2 not to encumber, permit to subsist, create, or agree to create any other security interest or third party right in or over the Collateral other than the [First/Second] Ranking Pledges;

9.3 upon request of the Pledgee to make all statements and take all actions, and to procure that all statements are made and all actions are taken, which are required or helpful in order to obtain and maintain protection for the Collateral, in particular to maintain the registration of the Collateral (including the payment of renewal fees), and to deliver to the Pledgee without undue delay copies of the respective documents evidencing such statements and actions;

9.4 to establish for the area of the European Union a permanent surveillance for publications of applications and registrations of intellectual property rights which may infringe or otherwise collide with the Collateral;

9.5 to promptly inform the Pledgee and to deliver complete documentation related thereto, if a third party challenges the validity of the Collateral or alleges that the Collateral violates the rights of third parties, and to assert all claims and to litigate if this is required for the defence against the alleged claims;

9.6 to promptly inform the Pledgee of all events which may adversely affect the security interest of the Pledgee created by this Agreement; and

9.7 to inform the Pledgee promptly of any attachment and transfer of garnished claims (*Pfändung und Überweisung*) in respect of the Collateral or any part thereof or any other measures which may materially impair or jeopardise the Pledgee's rights relating thereto. In the event of an attachment, the Pledgor undertakes to forward to the Pledgee without undue delay a copy of the attachment order (*Pfändungsbeschluss*), the garnishee order (*Überweisungsbeschluss*) and all other documents necessary for a defence against the attachment. The Pledgor shall inform the attaching creditor immediately of the Pledgee's security interests.

10 Representations and warranties

The Pledgor represents and warrants to the Pledgee by way of an independent guarantee in the meaning of section 311 of the German Civil Code (*unabhängiges Garantieversprechen*) that:

10.1 it is the sole legal and beneficial owner of the Collateral, free from encumbrances (other than the [First/Second] Ranking Pledges);

10.2 the Collateral is validly existing and that the Pledgor has not received any notice or other information that may result in a nullification of the Collateral from the respective registers (*Löschung*);

10.3 none of the Collateral is being infringed, subject to any opposition proceedings, cancellation or actions nor are there any infringements, opposition proceedings, cancellations and actions threatening;

10.4 as at the date hereof the information and data contained in Schedule 1 to Schedule 7 are complete and accurate;

10.5 any claims of third parties with respect to the Collateral (including employees of the Pledgor as inventors) have been satisfied by the Pledgor; and

10.6 the Pledgor has received no notice of any adverse claim by or and security interests in favour of any person in respect of the ownership of the Collateral or any interest therein nor has any acknowledgement been given to any person in respect thereof.

11 Limitations

11.1 The Parties agree that no director (*Vorstand*), manager, and other person holding a similar position shall incur any personal liability resulting from the granting or enforcement of any security granted under this Agreement or any guarantee and any other liability, indemnity or other payment obligation under or in connection with this Agreement or any other Loan Document. Therefore, the Parties agree to limit the granting and/or the enforcement of such security, guarantee, other liability, indemnity or other payment obligation under or in connection with this Agreement or any other Loan Document (but only if and to the extent required) in order to protect a director (*Vorstand*), managing director, and other person holding a similar position of the Pledgor from such liability.

11.2 Therefore, to the extent the Pledgor secures, guarantees or indemnifies any obligations under this Agreement or any other provision of the Loan Documents of any of its holding companies or affiliates (other than a subsidiary of the Pledgor), the granting of such guarantees, security and/ or indemnification and the enforcement of the respective obligations of the Pledgor under this Agreement (or any other (relevant provision of the) Loan Documents) shall be limited to the amount that would not (i) constitute a repayment of the contributions (*Rückgewähr der Einlagen*) of the shareholders of the Pledgor or (ii) otherwise be in violation of Section 57 of the German Stock Corporation Act (*AktG*).

11.3 Nothing in this Clause 11 (*Limitations*) shall prevent the Pledgee or the Pledgor from claiming in court that payments under and/ or an enforcement of any of the security, guarantee, indemnity or other obligations do or do not fall within the scope of Section 57 AktG and/or any other provision that may be relevant from time to time.

11.4 Nothing in this Clause 11 (*Limitations*) shall constitute a waiver (*Verzicht*) of any right granted under this Agreement or any other Loan Document to the Pledgee or any Lender or Issuing Bank or vice versa.

The Parties agree already now that this Clause 11 (*Limitations*) shall be amended as required or advisable in case of any changes in law, jurisprudence or facts. In addition, in case of an accession by any additional party to this Agreement, the respective accession document shall, if required, also include a limitation language.

12 First Ranking Pledges and Second ranking pledges

The Parties hereto agree that (i) the entering into and performance of the [First/Second] Ranking Pledge Agreement and/ or any other pledge agreements to be created under or as permitted by the Loan Documents and/ or the First Lien Notes Documents from time to time, (ii) the creation of any pledges under such agreements and (iii) the fulfilment of any obligations under any such pledge agreement shall not constitute any breach of any representations, warranties, undertakings or any other obligations under this Agreement and shall not trigger any information obligation or other obligation of the Pledgor to take any action under this Agreement.

13 Duration and independence

This Agreement shall remain in full force and effect and shall create a continuing security which is independent from any other security or guarantee which may have been or will be given to the Pledgee.

14 Partial invalidity; waiver; amendments; miscellaneous

14. If at any time, any one or more of the provisions hereof is or becomes invalid, illegal or unenforceable in any respect under the law of any relevant jurisdiction, such provision shall as to such jurisdiction, be ineffective to the extent necessary without affecting or impairing the validity, legality and enforceability of the remaining provisions hereof or of such provisions in any other jurisdiction. The invalid or unenforceable provision shall be deemed replaced by such valid, legal or enforceable provision which comes as close as possible to the original intent of the Parties and the invalid, illegal or unenforceable provision. The aforesaid shall apply mutatis mutandis to any gap in this Agreement.

14.2 No failure to exercise, nor any delay in exercising, on the part of the Pledgee, any right or remedy hereunder shall operate as a waiver thereof or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of the Pledgee shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies provided hereunder are cumulative and not exclusive of any rights or remedies provided by law.

14.3 This Agreement may be amended, modified or waived only in writing in an agreement signed by the Pledgee. This also applies to this Clause 14.3.

14.4 This Agreement constitutes the entire agreement of the Parties hereto with regard to the Pledges and supersedes all oral, written or other type of agreements in respect thereof.

14.5 The provisions of the Intercreditor Agreement shall apply to this agreement provided that in the event of any conflict between the provisions of this Agreement and the provisions of the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall prevail, subject to any German property law provision (*Sachenrecht*).

15 Notices

All notices and communications under or in connection with this Agreement shall be in accordance with section 10.02 (*Notices, Etc.*) of the ABL Credit Agreement.

16 Indemnity

The Pledgor shall indemnify the Pledgee in accordance with section 10.04 (*Costs and Expenses*) of the ABL Credit Agreement.

17 Costs and expenses

The Pledgor shall bear all costs, charges, fees and expenses (including legal fees) incurred in connection with the preparation, execution, amendments and enforcement of this agreement in accordance with section 10.04 (*Costs and Expenses*) of the ABL Credit Agreement.

18 Conclusion of this Agreement (*Vertragsabschluss*)

18.1 This Agreement may be executed in any number of counterparts and by the different Parties hereto on separate counterparts each of which, when so executed and delivered, shall be an original but all the counterparts shall together constitute one and the same instrument.

18.2 The Parties to this Agreement may choose to conclude this Agreement by an exchange of signed execution pages, transmitted by means of telecommunication (*telekommunikative Übermittlung*) by way of fax or attached as an electronic photocopy (pdf., tif., etc.) to electronic mail.

18.3 If the Parties to this Agreement choose to conclude this Agreement in accordance with Clause 18.2 above, they will transmit the signed execution pages of this Agreement to Norton Rose Fulbright LLP for the attention of Annemary Ceselj/ Rosi Casarino (with e-mail address annemary.ceselj@nortonrosefulbright.com/ rosi.casarino@nortonrosefulbright.com) (each, a **Recipient**). The Agreement will be considered concluded once a Recipient has actually received the signed execution pages (*Zugang der Unterschriftsseiten*) from all Parties to this Agreement and at the time of the receipt of the last outstanding execution page.

18.4 For the purposes of this Clause 18 (*Conclusion of this Agreement (Vertragsabschluss)*) only, the Parties to this Agreement appoint each Recipient as agent of receipt (*Empfangsbote*) and expressly allow (*gestatten*) each Recipient to collect the signed execution pages from all and for all Parties to this Agreement. For the avoidance of doubt, no Recipient will have further duties connected with its position as Recipient. In particular, each Recipient may assume the conformity to the authentic originals of the execution pages transmitted to it by means of telecommunication, the genuineness of all signatures on the original execution pages and the signing authority of the signatories.

19 Applicable law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by German law.

20 Jurisdiction

20.1 The courts of Frankfurt am Main, Germany have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (**Dispute**).

20.2 The Parties agree that the courts of Frankfurt am Main, Germany are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

20.3 This Clause 20 (*Jurisdiction*) is for the benefit of the Pledgee only. As a result, the Pledgee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Pledgee may take concurrent proceedings in any number of jurisdictions.

Schedule 1
Designs

Design/Application	Registration/Application-No. (if applicable)	Description

Schedule 2
Patents

Patent/Application	Registration/Application-No. (if applicable)	Description and Inventor

Schedule 3
Trademarks

Trademark/Application	Registration/Application-No. (if applicable)	Description and Classes according to Nice classification

Schedule 4
Utility Models

Utility Model/Application	Registration/Application-No. (if applicable)	Description and Inventor

Schedule 5
Utility Models

Kind of Know How	Description (including physical evidence)

Schedule 6
Other IP Rights

Kind of IP Right	Description

Schedule 7
Licenses granted by the Pledgor

License	Name and Address of Licensee	Description including type of license, duration and termination

THIS INTELLECTUAL PROPERTY RIGHTS PLEDGE AGREEMENT has been entered into on the date stated at the beginning by

Varex Imaging Deutschland AG

as Pledgor

By: _____

Name: _____

Title: _____

[ ]

as Collateral Agent and Pledgee

By: _____

Name: _____

Title: _____

Exhibit 10.18

EXECUTION VERSION

U.S. $100,000,000

REVOLVING CREDIT AGREEMENT

Dated as of September 30, 2020

among

VAREX IMAGING CORPORATION,

as Parent Borrower,

THE SUBSIDIARIES OF THE PARENT BORROWER NAMED HEREIN,

as Subsidiary Borrowers,

THE BANKS AND FINANCIAL INSTITUTIONS NAMED HEREIN,

as Lenders,

BANK OF AMERICA, N.A.,

as an Issuing Bank,

BANK OF AMERICA, N.A.
and
WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Joint Lead Arrangers and Joint Bookrunners,

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Syndication Agent,

and

BANK OF AMERICA, N.A.,

as Administrative Agent and Collateral Agent

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Schedule 6.01(w) - Subsidiaries
Schedule 7.01(p) - Post-Closing Matters
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Exhibit A-2 - Form of Swing Line Advance Notice
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Exhibit H-1 - Form of United States Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships For United States Federal Income Tax Purposes)
Exhibit H-2 - Form of United States Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships For United States Federal Income Tax Purposes)
Exhibit H-3 - Form of United States Tax Compliance Certificate (For Foreign Participants That Are Partnerships For United States Federal Income Tax Purposes)
Exhibit H-4 - Form of United States Tax Compliance Certificate (For Foreign Lenders That Are Partnerships For United States Federal Income Tax Purposes)
Exhibit I - Form of Borrowing Base Certificate

REVOLVING CREDIT AGREEMENT, dated as of September 30, 2020 (this "Agreement"), 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 "U.S. Borrowers" and each, individually, a "U.S. Borrower"), Varex Imaging Deutschland AG, a German stock corporation (the "German Borrower" and, together with the U.S. Borrowers, collectively, the "Borrowers" and each, individually, a "Borrower"), the other Loan Parties (with such term and each other capitalized term used but not defined in this preamble having the meaning assigned thereto in Article I) from time to time party hereto, the Lenders from time to time party hereto, the Issuing Banks and Bank of America, N.A. (including its Affiliates and branches, "Bank of America"), as administrative agent and collateral agent (together with any permitted successor in such capacity, the "Agent") for the Lenders and the Issuing Banks hereunder.

RECITALS:

WHEREAS, Borrowers have requested that the Agent, the Lenders and Issuing Banks enter into this Agreement, in each case, on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the Borrowers and the Guarantors (other than VI Investments NL) have agreed to secure all of the Obligations by granting to Agent, for the benefit of the Secured Parties, a security interest in the Collateral and, with respect to VI Investments NL, a security interest in the Capital Stock of certain of its Subsidiaries, in each case subject to certain limitations;

WHEREAS, the Lenders and the Issuing Banks are willing to make certain loans and other extensions of credit to the Borrowers of up to such amounts upon the terms and conditions set forth herein; and

WHEREAS, all annexes, schedules, exhibits and other attachments (collectively, "Appendices") to this Agreement are incorporated herein by reference, and taken together with this Agreement, shall constitute but a single agreement. These Recitals shall be construed as part of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and for other good and valuable consideration, the parties hereto agree as follows

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"ABL Intercreditor Agreement" means the intercreditor agreement, dated as of the Closing Date, among the Agent, the Notes Collateral Agent and the Loan Parties, substantially in the form of Exhibit F, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any other intercreditor agreement among the Agent, the Notes Collateral Agent and the Loan Parties on terms that are not less favorable in any material respect to the Secured Parties than those contained in the form attached as Exhibit F.

"ABL Priority Collateral" has the meaning specified in the ABL Intercreditor Agreement.

"Account" has the meaning specified in the UCC or, with respect to the German Borrower, all *Forderungen* (as this term is used in the German Civil Code) and, in each case, also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of or (b) for services rendered or to be rendered.

"Account Debtor" shall mean any Person who may become obligated to another Person under, with respect to, or on account of, an Account.

"ACH" means automated clearing house transfers.

"Acquired Indebtedness" means, with respect to any specified Person: (1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, and (2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person. Acquired Indebtedness will be deemed to have been Incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (2) of the preceding sentence, on the date of consummation of such acquisition of such assets.

"Acquisition" means, with respect to any Person, (a) the acquisition by such Person of the Capital Stock of any other Person resulting in such other Person becoming a Subsidiary of such Person, (b) the acquisition by such Person of all or substantially all of the assets of any other Person or of a division or business line of such Person or (c) any merger, amalgamation or consolidation of such Person or a Subsidiary of such Person with any other Person so long as the surviving or continuing entity of such merger, amalgamation or consolidation is such Person or a Subsidiary of such Person.

"Additional Refinancing Amount" means, in connection with the Incurrence of any Refinancing Indebtedness, the aggregate principal amount of additional Indebtedness, Disqualified Capital Stock or Preferred Stock Incurred to pay accrued and unpaid interest, premiums (including tender premiums), expenses, defeasance costs and fees in respect thereof.

"Adjustment Date" means the last day of the Fiscal Quarter ending December 31, 2020 and the last day of each subsequent Fiscal Quarter.

"Administrative Questionnaire" means an Administrative Questionnaire in substantially the form of Exhibit E or any other form approved by the Agent.

"Advance" means an extension of credit by a Lender to a Borrower under Article II in the form of a Revolving Credit Advance or a Swing Line Advance.

"Affected Financial Institution" means (a) any EEA Financial Institution, or (b) any UK Financial Institution.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by, or is under common control with, such Person.

"Affiliate Transaction" has the meaning specified in Section 7.02(e).

"Agent" has the meaning specified in the preamble to this Agreement.

"Agent's Office" means, with respect to any currency, the Agent's address and, as appropriate, account as set forth on Schedule 10.02 with respect to such currency, or such other address or account with respect to such currency as the Agent may from time to time notify to Parent Borrower and the Lenders.

"Aggregate Commitments" means the sum of the Commitments of all the Lenders. As of the Closing Date, the Aggregate Commitments are $100.0 million.

"Aggregate German Commitments" means the sum of the German Revolving Credit Commitments of all the Lenders. As of the Closing Date, the Aggregate German Commitments are $15.0 million.

"Aggregate U.S. Commitments" means the sum of the U.S. Revolving Credit Commitments of all the Lenders. As of the Closing Date, the Aggregate U.S. Commitments are $85.0 million.

"Allocable Amount" has the meaning specified in Section 3.07(b).

"Alternative Currency" means each of Euro, Sterling and any other currencies requested by the Borrowers and approved by each of the Lenders and the Issuing Banks.

"Alternative Currency Equivalent" means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Agent or the applicable Issuing Bank, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

"Appendices" has the meaning specified in the Recitals to this Agreement.

"Applicable Currency" means Dollars or any Alternative Currency that bears interest at a rate based on an Applicable Reference Rate, as applicable.

"Applicable Margin" means:

(a) From and after the Closing Date until the first Adjustment Date, the percentages set forth in Level I of the pricing grid below; and

(b) From and after the first Adjustment Date and on each Adjustment Date thereafter, the Applicable Margin shall be determined from the following pricing grid based upon the Average Daily Excess Availability as of the Fiscal Quarter ended immediately preceding such Adjustment Date; provided, however, that, notwithstanding anything to the contrary set forth herein, upon the occurrence and during the continuance of an Event of Default, the Agent may, and at the direction of the Majority Lenders shall, upon written notice to the Parent Borrower, increase the Applicable Margin to that set forth in Level II (even if the Average Daily Excess Availability requirements for a different Level have been met) and interest shall accrue at the Default Rate; provided further that, if any Borrowing Base Certificate is at any time restated or

otherwise revised (including as a result of an audit) or if the information set forth in any Borrowing Base Certificate otherwise proves to be false or incorrect such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest due under this Agreement shall be immediately recalculated at such higher rate for any applicable periods and shall be due and payable on demand.

Level	Average Daily Excess Availability	Applicable Margin for Eurocurrency Rate Advances, Foreign Base Rate Advances and Letter of Credit Fees	Applicable Margin for Base Rate Advances
I	Greater than 50% of the Loan Cap	2.25%	1.25%
II	Less than or equal to 50% of the Loan Cap	2.50%	1.50%

"Applicable Reference Rate" means, for any Eurocurrency Rate Advance denominated in Dollars, Euros or Sterling, LIBOR.

"Applicable Time" means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Agent or the applicable Issuing Bank, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

"Appraised Value" means the appraised orderly liquidation value, net of costs and expenses to be incurred in connection with any such liquidation, which value is expressed as a percentage of Cost of Eligible Inventory as set forth in the inventory ledger of the Borrowers and which value shall be determined from time to time by the most recent appraisal undertaken by an independent appraiser engaged by the Agent.

"Appropriate Lender" means, at any time, (a) with respect to the U.S. Revolving Credit Facility and the German Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a U.S. Revolving Credit Advance or a German Revolving Credit Advance, as applicable, at such time, (b) with respect to the Letter of Credit Sublimit, (i) the Issuing Banks and (ii) if any Letters of Credit have been issued pursuant to Section 2.04(a), the Lenders and (c) with respect to the U.S. Swing Line Sublimit and the German Swing Line Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Advances are outstanding pursuant to Section 2.03(a), the Lenders that hold a U.S. Revolving Credit Advance or a German Revolving Credit Advance, as applicable, at such time.

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

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Agent (if such acceptance is required by this Agreement), in substantially the form of Exhibit C.

"Assumption Agreement" means an agreement, substantially in the form of Exhibit D, by which an Eligible Assignee agrees to become a Lender hereunder pursuant to Section 2.06(b), agreeing to be bound by all obligations of a Lender hereunder.

"Availability" means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

(a) the Loan Cap, minus

(b) the Total Revolving Credit Outstandings;

provided that, for purposes of determining Availability for the definitions of "Applicable Margin", "Cash Dominion Period", "Payment Conditions" and "Weekly Borrowing Base Delivery Event" and Sections 7.01(c)(ii) and (iii) and 7.03, U.S. Availability as a component of Availability shall be at least the greater of (x) 10.0% of the Loan Cap and (y) $7.5 million.

"Availability Period" means the period from and including the Closing Date to the Termination Date.

"Availability Reserves" means, without duplication of any other Reserves or items to the extent such items are otherwise addressed or excluded through eligibility criteria or have been deducted in the calculation of Eligible Inventory and Eligible Accounts, as applicable, as reported on the most recent Borrowing Base Certificate, such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate (with telephonic or email notice provided to the Parent Borrower): (a) to reflect the impediments to the Agent's ability to realize upon the ABL Priority Collateral, (b) to reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the ABL Priority Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect in any material respects any component of the U.S. Borrowing Base or the German Borrowing Base, (d) to reflect Bank Product Reserves or (e) to reflect that an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent's Permitted Discretion, (but are not limited to) reserves based on: (i) rent; (ii) customs duties and other costs to release Inventory included in the U.S. Borrowing Base or the German Borrowing Base which is being imported into the United States or Germany; (iii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, claims of the PBGC and other Taxes not otherwise in dispute which may have priority over the interests of the Agent in the ABL Priority Collateral; (iv) salaries, wages and benefits due to employees of any Loan Party; (v) the U.S. Dilution Reserve; (vi) the German Dilution Reserve; (vii) the German Priority Payables Reserves; (viii) reserves for reasonably anticipated changes in the Appraised Value of Eligible Inventory between appraisals; (ix) warehousemen's or bailee's charges and other Permitted Liens which may have priority over the interests of the Agent in the ABL Priority Collateral; (x) amounts due to vendors on account of consigned goods; and (xi) royalties payable in respect of licensed merchandise.

"Average Daily Excess Availability" means the average daily Availability for the immediately preceding Fiscal Quarter.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank Product Document" means any agreement or instrument providing for Bank Products.

"Bank Product Reserves" means an amount consisting of any Bank Product Obligations and/or Secured Hedging Obligations for which both the Parent Borrower and the applicable Cash Management Bank or Hedge Bank have provided written notice to the Agent that Bank Product Reserves may apply in respect of such Bank Product Obligations and/or Secured Hedging Obligations, which amount shall be determined from time to time by the applicable Cash Management Bank or Hedge Bank by written notice from such Cash Management Bank or Hedge Bank to the Agent.

"Bank Products" means any one or more of the following types of services or facilities extended to Parent Borrower or any of its Subsidiaries by a Cash Management Bank: (a) any treasury or other cash management services, including (i) deposit account, (ii) automated clearing house (ACH) origination and other funds transfer, (iii) depository (including cash vault and check deposit), (iv) zero balance accounts and sweep, and other ACH transactions, (v) return items processing, (vi) controlled disbursement, (vii) positive pay, (viii) lockbox, (ix) account reconciliation and information reporting, (x) payables outsourcing, (xi) payroll processing, and (xii) daylight overdraft facilities, (b) card services, including (i) credit card (including purchasing card and commercial card), (ii) merchant services processing and (iii) debit card services and (c) (i) letters of credit, guarantees or other credit support provided in respect of trade payables of Parent Borrower or any Subsidiary, in each case issued for the benefit of any bank, financial institution or other person that has acquired such trade payables pursuant to "supply chain" or other similar financing for vendors and suppliers of Parent Borrower or any Subsidiaries (so long as (x) other than in the case of Bank Product Obligations, such arrangement is unsecured (except as otherwise permitted herein), (y) the terms of such trade payables shall not have been extended in connection with such financing and (z) such Indebtedness represents amounts not in excess of those which Parent Borrower or any of its Subsidiaries would otherwise have been obligated to pay to its vendor or supplier in respect of the applicable trade payables), (ii) customary leasing finance arrangements or (iii) any arrangement pursuant to which a Cash Management Bank acquires payables owed by Parent Borrower or any of its Subsidiaries to its vendor or supplier.

"Bank Products Obligations" means any debts, liabilities and obligations as existing from time to time of Parent Borrower or any of its Subsidiaries arising from or in connection with any Bank Products under any Bank Product Document.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate," and (c) the Eurocurrency Rate for an Interest Period of one month plus 1.00%; provided that, if the Base Rate shall be less than 1.50%, such rate shall be deemed 1.50% for purposes of this Agreement. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Advance" means an Advance which bears interest based on the Base Rate. All Base Rate Advances shall be denominated in Dollars.

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

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

"Blocked Account" has the meaning specified in Section 7.01(i)(ii)(B).

"Blocked Account Agreement" means with respect to a DDA established by a Loan Party, an agreement (which may be by way of notice to and acknowledgment from the relevant account bank), in form and substance reasonably satisfactory to the Agent, establishing control (as defined in the UCC) of such account by the Agent and whereby the bank maintaining such account agrees, upon the occurrence and during the continuance of a Cash Dominion Period, to comply only with the instructions originated by the Agent without the further consent of any Loan Party.

"Blocked Account Bank" has the meaning specified in Section 7.01(i)(ii)(A).

"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.

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

"Borrowing" means a Revolving Credit Borrowing or a Swing Line Borrowing, as the context may require.

"Borrowing Base Certificate" means a certificate substantially in the form of Exhibit I hereto (with such changes therein as may be required by the Agent to reflect the components of

and Reserves against the U.S. Borrowing Base and the German Borrowing Base, in each case as provided for hereunder from time to time), executed and certified as accurate and complete by a Responsible Officer of the Parent Borrower which shall include appropriate exhibits, schedules, supporting documentation, and additional reports as reasonably requested by the Agent.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the jurisdiction where the Agent's Office with respect to Obligations denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Advance denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Advance, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Advance, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market;

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Advance denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Advance, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Advance, means a day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System is open;

(c) if such day relates to an Advance to the German Borrower, any day other than a day which shall be, in Germany or London, a legal holiday or a day on which banking institutions are authorized or required by Requirement of Law or other government action to close;

(d) if such day relates to any interest rate settings as to a Eurocurrency Rate Advance denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(e) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurocurrency Rate Advance denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Advance (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

"Capital Expenditures" means, for any period, the additions to property, plant and equipment, capitalized investment and development costs, and other capital expenditures (including capitalized software) of Parent Borrower and its consolidated Restricted Subsidiaries that are (or should be) set forth in a consolidated statement of cash flows of Parent Borrower for such period prepared in accordance with GAAP.

"Capital Lease" of any Person means any lease of any property (whether real, personal or mixed) by such Person as lessee, which lease should, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person.

"Capital Lease Obligations" means the obligations of any Person to pay rent or other amounts under a Capital Lease, the amount of which is required to be capitalized on the balance sheet of such Person in accordance with GAAP (with GAAP calculated, for purposes of this definition, as in effect on December 31, 2018); provided that, for the avoidance of doubt, obligations of Parent Borrower or the Restricted Subsidiaries, or of a special purpose or other entity not consolidated with Parent Borrower and the Restricted Subsidiaries that (a) initially were not included on the consolidated balance sheet of Parent Borrower as capital lease obligations and were subsequently characterized as capital lease obligations or, in the case of such a special purpose or other entity becoming consolidated with Parent Borrower and the Restricted Subsidiaries were required to be characterized as capital lease obligations upon such consolidation, in either case, due to a change in accounting treatment or otherwise, or (b) were required to be characterized as capital lease obligations but would not have been required to be treated as capital lease obligations on December 31, 2018 had they existed at that time, shall for all purposes not be treated as Capital Lease Obligations or Indebtedness.

"Capital Stock" means:

(1) in the case of a corporation, corporate stock or shares;

(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 or membership interests (whether general or limited); 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.

"Cash Collateralize" means to pledge and deposit with or deliver to the Agent, for the benefit of the Agent, an Issuing Bank or the Swing Line Lender (as applicable) and the Lenders, as collateral for L/C Obligations, Obligations in respect of Swing Line Advances, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the applicable Issuing Bank or Swing Line Lender benefiting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Agent and (b) such Issuing Bank or the Swing Line Lender (as applicable). "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Dominion Period" means (a) each period beginning on the date that Availability shall have been less than the greater of (x) $9.375 million and (y) 12.5% of the Loan Cap and ending on the date that Availability shall have exceeded such levels, at all times, for a period of thirty (30) consecutive days or (b) upon the occurrence of any Event of Default, the period that such Event of Default shall be continuing. The termination of a Cash Dominion Period as

provided herein shall in no way limit, waive or delay the occurrence of a subsequent Cash Dominion Period in the event that the conditions set forth in this definition again arise.

"Cash Equivalents" means, as at any date, (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, province, commonwealth or territory of the United States, or by any subdivision or taxing authority of any such state or territory, the securities of which state, commonwealth, political subdivision or taxing authority (as the case may be) are rated either (i) A or better by S&P or A2 or better by Moody's or (ii) SP1 or better by S&P or V-MIG 1 or better by Moody's, (c) Dollar-denominated time deposits and certificates of deposit of (i) any Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of $500.0 million or (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank being an "Approved Bank"), in each case with maturities of not more than 270 days from the date of acquisition, (d) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any United States domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within six months of the date of acquisition, (e) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of $500.0 million for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority Lien (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations and (f) Investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940 which are administered by reputable financial institutions having capital of at least $500.0 million and the portfolios of which are limited to Investments of the character described in the foregoing subdivisions (a) through (e).

"Cash Management Bank" means any Person counterparty to a Bank Product Document who is (x) Bank of America or any Affiliate or branch of Bank of America or (y) any other Lender or any Affiliate or branch of such Lender so long as, in the case of this clause (y), Parent Borrower and the applicable Lender (or its Affiliate or branch) shall have delivered notice thereof to the Agent.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), and any regulations promulgated thereunder.

"CFC" means a "controlled foreign corporation" within the meaning of Section 957(a) of the Code.

"Change in Law" has the meaning specified in Section 2.11.

"Change of Control" means the occurrence, after the date of this Agreement, of (i) any Person or two or more Persons acting in concert acquiring beneficial ownership (within the

meaning of Rule 13d-3 of the SEC under the Securities Exchange Act of 1934, as amended), directly or indirectly, of securities of the Parent Borrower (or other securities convertible into such securities) representing 50% or more of the combined voting power of all securities of the Parent Borrower entitled to vote in the election of directors; (ii) during any period of up to 24 consecutive months, commencing before or after the date of this Agreement, individuals who at the beginning of such 24-month period were directors of the Parent Borrower ceasing for any reason to constitute a majority of the Board of Directors of the Parent Borrower unless the Persons replacing such individuals were nominated or approved by the Board of Directors of the Parent Borrower; provided that the Person or group of Persons referred to in clause (i) of this definition of Change of Control shall not include any Person listed on Schedule 1.01B or any group of Persons in which one or more of the Persons listed on Schedule 1.01B are members; or (iii) a "Change of Control" (as defined in the Senior Notes Indenture or any Convertible Indebtedness) shall have occurred under the Senior Notes Indenture or any Convertible Indebtedness.

"Charges" means all federal, state, provincial, county, city, municipal, local, foreign or other governmental Taxes (including Taxes owed to the PBGC at the time due and payable), levies, assessments, duties, charges, claims or encumbrances owed by any Loan Party and upon or relating to (a) the Obligations, (b) the Collateral, (c) the employees, payroll, income, capital or gross receipts of any Loan Party, (d) any Loan Party's ownership or use of any properties or other assets, or (e) any other aspect of any Loan Party's business.

"Closing Date" means September 30, 2020.

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

"Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Loan Party in or upon which a Lien is granted by such Person in favor of the Agent under any of the Collateral Documents.

"Collateral Access Agreement" means an agreement reasonably satisfactory in form and substance to the Agent 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 Agent'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 Agent 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 Agent 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 Agent as the Agent may reasonably require related to the use and access of the Collateral.

"Collateral Documents" means the U.S. Security Agreement, the German Security Agreements, the Intellectual Property Security Agreements, any Mortgages 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.

"Commitment" means a Revolving Credit Commitment.

"Commitment Percentage" means, with respect to any Lender at any time, the percentage of the applicable Revolving Credit Facility represented by such Lender's Revolving Credit

Commitment at such time. If the Revolving Credit Commitment of each Lender to make Advances and the obligation of the Issuing Banks to make L/C Credit Extensions have been terminated pursuant to Section 8.01 or if the Revolving Credit Commitments have expired, then the Commitment Percentage of each Lender in respect of the applicable Revolving Credit Facility shall be determined based on the Commitment Percentage of such Lender in respect of such Revolving Credit Facility most recently in effect, giving effect to any subsequent assignments.

"Committed Advance Notice" means a notice of (a) a Revolving Credit Borrowing, (b) a conversion of Advances from one Type to the other or (c) a continuation of Eurocurrency Rate Advances, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A-1 or such other form as may be approved by the Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Agent), appropriately completed and signed by a Responsible Officer of the applicable Borrower.

"Committed Borrowing" means a borrowing consisting of simultaneous U.S. Revolving Credit Advances or German Revolving Credit Advances of the same Type, in the same currency and, in the case of Eurocurrency Rate Advances, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

"Compliance Period" has the meaning specified in Section 7.03(b).

"Confidential Information" means certain non-public, confidential or proprietary information and material disclosed, from time to time, either orally, in writing, electronically or in some other form by the Parent Borrower in connection with the Loan Documents. Confidential Information shall include, but not be limited to non-public, confidential or proprietary information, trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, documentation, screens, icons, schematics, software programs, source documents and other MIS related information; contracts, customer lists, financial information, financial forecasts, sales and marketing plans and information and business plans, products and product designs; textile projections and results; ideas, designs and artwork for all types of marketing, advertising, public relations and commerce (including ideas, designs and artwork related to the Internet and any website of the Parent Borrower or any Subsidiary); textile designs; advertising, strategies, plans and results; sourcing information; vendor lists, potential product labeling and marking ideas; all materials including, without limitation, documents, drawings, samples, sketches, designs, and any other information concerning, color palette and color standards furnished to a Recipient by the Parent Borrower or any Subsidiary; customer base(s); and other non-public information relating to the Parent Borrower's or any Subsidiary's business.

"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" means, when used with reference to financial statements or financial statement items of any Person, such statements or items on a consolidated basis in accordance with applicable principles of consolidation under GAAP.

"Consolidated EBITDA" means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Parent Borrower and its Restricted Subsidiaries in accordance with GAAP: (a) Consolidated Net Income for such period plus (b) the sum of the

following, without duplication, to the extent deducted in determining Consolidated Net Income for such period:

(i) income taxes and franchise Taxes,

(ii) Consolidated Interest Expense,

(iii) (x) amortization, (y) depreciation (including, without limitation, accelerated depreciation due to impairment of fixed assets) and (z) other non-cash charges, including non-cash restructuring charges (including, without limitation, impairment of intangibles) (except to the extent that such non-cash charges are reserved for cash charges to be taken in the future),

(iv) non-cash stock-based compensation expenses,

(v) cash restructuring charges relating to the closure of manufacturing operations in Santa Clara, California,

(vi) cash expenses for remediation efforts related to compliance with Reg. S-X,

(vii) with respect to any Permitted Acquisition, reasonable out of pocket costs, fees, charges or expenses incurred by the Parent Borrower or any of its Restricted Subsidiaries prior to the closing date, or within 90 days thereafter, of the applicable Permitted Acquisition and one-time restructuring charges with respect to such Permitted Acquisition,

(viii) unrealized net losses in the fair market value of any arrangements under Swap Contracts and Permitted Bond Hedge Transactions,

(ix) any extraordinary, unusual, and non-recurring non-cash losses (excluding restructuring charges recorded in clause (v) above and disregarding for this purpose FASB ASU 2015-1),

(x) cash severance expenses relating to headcount reductions, and

(xi) fees and expenses incurred in connection with the Transactions;

provided that the aggregate amount of (1) all cash costs, fees, charges and expenses added back pursuant to clauses (b)(v), (vi), (vii), (x) and (xi) and (2) any "run rate" cost-savings and operating expense reductions (net of actual amounts realized) that are reasonably identifiable and factually supportable and are expected to be realized within twelve (12) months of any Permitted Acquisition calculated on a basis consistent with GAAP) attributable to the Property or Person acquired in such Permitted Acquisition and included pursuant to the definition of "Pro Forma Basis" and "pro forma effect", collectively, shall not exceed (I) for the period from the Closing Date through the first anniversary of the Closing Date, 20.0% of Consolidated EBITDA (but not to exceed $10.0 million in the aggregate) and (II) thereafter, 10.0% of Consolidated EBITDA, in each case for such period, with such percentage caps calculated prior to giving effect to all such addbacks,

less (c) the sum of the following, without duplication, to the extent included in determining Consolidated Net Income for such period: (i) interest income, (ii) non-cash gains or non-cash items increasing Consolidated Net Income, including any write-up of assets, (iii) unrealized net

gains in the fair market value of any arrangements under Swap Contracts and Permitted Bond Hedge Transactions and (iv) any extraordinary gains.

"Consolidated Fixed Charge Coverage Ratio" means, as of any date of determination, without duplication, the ratio of (a) Consolidated EBITDA, less Capital Expenditures (except any Capital Expenditures financed with Indebtedness for borrowed money (other than any Advances)), less federal, state, local and foreign income taxes paid in cash, less Restricted Payments made in cash under Sections 7.02(b), each for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date to (b) Consolidated Fixed Charges for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date.

"Consolidated Fixed Charges" means, for any period, the sum of the following determined on a Consolidated basis for such period, without duplication, for the Parent Borrower and its Restricted Subsidiaries in accordance with GAAP: (a) Consolidated Interest Expense for such period, (b) scheduled principal payments with respect to Consolidated Total Indebtedness for such period and (c) any payment on Indebtedness Incurred pursuant to Section 7.02(a)(ii)(F) for such period.

"Consolidated Interest Expense" means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Parent Borrower and its Restricted Subsidiaries in accordance with GAAP, cash interest expense (including, without limitation, cash interest expense attributable to Capital Lease Obligations and all net payment obligations pursuant to Swap Contracts entered into for the purpose of hedging interest rates) for such period.

"Consolidated Net Income" means, for any period, the net income (or loss) of the Parent Borrower and its Restricted Subsidiaries for such period, determined on a Consolidated basis, without duplication, in accordance with GAAP; provided that, in calculating Consolidated Net Income of the Parent Borrower and its Restricted Subsidiaries for any period, there shall be excluded (a) the net income (or loss) of any Person (other than a Restricted Subsidiary which shall be subject to clause (c) below), in which the Parent Borrower or any of its Restricted Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash to the Parent Borrower or any of its Restricted Subsidiaries by dividend or other distribution during such period, (b) the net income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary of the Parent Borrower or any of its Restricted Subsidiaries or is merged into or consolidated with the Parent Borrower or any of its Restricted Subsidiaries or that Person's assets are acquired by the Parent Borrower or any of its Restricted Subsidiaries except to the extent included pursuant to the foregoing clause (a), (c) the net income (if positive), of any Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary to the Parent Borrower or any of its Restricted Subsidiaries of such net income (i) is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Restricted Subsidiary or (ii) would be subject to any Taxes payable on such dividends or distributions, but in each case only to the extent of such prohibition or Taxes and (d) any gain or loss from asset Dispositions during such period.

"Consolidated Total Indebtedness" means, as of any date of determination, an amount equal to the sum (without duplication) of (1) the aggregate principal amount of all outstanding Indebtedness of Parent Borrower and the Restricted Subsidiaries (excluding any undrawn letters

of credit) consisting of bankers' acceptances and Indebtedness for borrowed money, plus (2) the aggregate amount of all outstanding Disqualified Capital Stock of Parent Borrower and the Restricted Subsidiaries and all Preferred Stock of Restricted Subsidiaries, with the amount of such Disqualified Capital Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences, in each case determined on a consolidated basis in accordance with GAAP.

"Constitutive Documents" means, with respect to any Person, the certificate of incorporation or registration (including, if applicable, certificate of change of name), articles of incorporation or association, memorandum of association, charter, bylaws, certificate of limited partnership, partnership agreement, trust agreement, joint venture agreement, certificate of formation, articles of organization, limited liability company operating or members agreement, joint venture agreement or one or more similar agreements, instruments or documents constituting the organization or formation of such Person.

"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.

"Convert," "Conversion" and "Converted" each refers to a conversion of Advances of one Type into Advances of another Type pursuant to Section 2.02 or 2.09.

"Convertible Indebtedness" means unsecured Indebtedness of the Parent Borrower permitted to be incurred under the terms of this Agreement that is either (a) convertible into common stock of the Parent Borrower (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common stock) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common stock of the Parent Borrower and/or cash (in an amount determined by reference to the price of such common stock).

"Copyrights" has the meaning specified in the applicable Security Agreements.

"Cost" means the lower of cost or market value of Inventory, based upon the Loan Parties' accounting practices, known to the Agent, which practices are in effect on the Closing Date, with such changes as permitted by GAAP, as such calculated cost is determined from invoices received by the Loan Parties, the Loan Parties' purchase journals or the Loan Parties' ledger.

"Covenant Trigger" has the meaning specified in Section 7.03(b).

"Covenant Trigger Date" has the meaning specified in Section 7.03(b).

"Credit Extension" means each of the following: (a) an Advance made or to be made to any Borrower; and (b) with respect to any Letter of Credit, any issuance, extension of the expiry date, or increase in the amount thereof, for the account of any Borrower.

"Customs Broker Agreement" means an agreement in form and substance reasonably satisfactory to the Agent among a Loan Party, a customs broker, freight forwarder, consolidator or carrier, and the Agent, in which the customs broker, freight forwarder, consolidator or carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Agent and agrees to hold and dispose of the subject Inventory solely as directed by the Agent.

"DDA" means each checking, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

"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, Germany, the Netherlands 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 an event which would constitute an Event of Default but for the requirement that notice be given or time elapse, or both.

"Default Rate" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate or the Foreign Base Rate, as applicable, plus (ii) 2.0% per annum plus the Applicable Margin for Index Rate Loans; provided, however, that, with respect to a Eurocurrency Rate Advance, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin for Eurocurrency Rate Advances) otherwise applicable to such Advance plus 2.0% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Letter of Credit Fee plus 2.0% per annum.

"Defaulting Lender" means, subject to Section 2.14(b), any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Advances or participations in respect of Letters of Credit or Swing Line Advances, within three Business Days

of the date required to be funded by it hereunder, unless such Lender notifies the Agent in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (which conditions precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied, (b) has notified the Parent Borrower or the Agent in writing that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, unless such writing or public statement states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with the applicable default, if any, shall be specifically identified in such writing or public statement) cannot be satisfied, (c) has failed, within three Business Days after request by the Agent, to confirm in writing in a manner satisfactory to the Agent that it will comply with its funding obligations; provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation of the Agent or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a Bail-In Action or a proceeding under any Debtor Relief Law, (ii) had a receiver, interim receiver, monitor, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such governmental authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

"Designated Preferred Stock" means Preferred Stock of Parent Borrower (other than Disqualified Capital Stock), that is issued for cash (other than to Parent Borrower or any of its Subsidiaries or an employee stock ownership plan or trust established by Parent Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate, on the issuance date thereof.

"Dilution Factors" shall mean, without duplication, with respect to any period, the aggregate amount of all bad debt write-downs, discounts, credits, returns, rebates, and other dilutive items.

"Dilution Ratio" shall mean, at any date, as to the Accounts owned by any Person, the amount (expressed as a percentage) that is the result of dividing (a) the Dollar Equivalent of the applicable Dilution Factors for the twelve most recently ended fiscal months with respect to such Person's Accounts by (b) the Dollar Equivalent of such Person's total gross sales with respect to their Accounts for the twelve most recently ended fiscal months.

"Disposition" means with respect to any property, any sale, lease, license, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (including by means of a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law). The terms "Dispose" and "Disposed of" shall have correlative meanings.

"Disqualified Capital Stock" means, with respect to any Person, any Capital Stock of such Person which, by its terms (or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event:

(1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale),

(2) is convertible or exchangeable for Indebtedness or Disqualified Capital Stock of such Person or any of its Restricted Subsidiaries, or

(3) is redeemable at the option of the holder thereof, in whole or in part (other than solely as a result of a change of control or asset sale), in each case prior to 91 days after the Termination Date; provided, however, that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Capital Stock; provided further, however, that, if such Capital Stock is issued to any employee or to any plan for the benefit of employees of Parent Borrower or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by such Person in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; provided further that any class of Capital Stock of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Capital Stock shall not be deemed to be Disqualified Capital Stock.

"Documents" means all "documents," as such term is defined in the UCC now owned or hereafter acquired by any Loan Party, wherever located.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Agent or the applicable Issuing Bank, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"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.

"Dominion Account" means the U.S. Dominion Account and the German Dominion Account.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Account" shall mean, at any time, an Account created by a Borrower in the ordinary course of its business, that arises out of its sale of goods (other than promotional products not held for sale) or rendition of services, except any Account (A) that does not comply with each of the representations and warranties respecting such Account made by the Borrowers in the Loan Documents and (B) that does not meet the criteria set forth below:

(a) that is subject to a perfected (or the equivalent) first priority Lien in favor of the Agent for the benefit of the Secured Parties pursuant to the relevant Collateral Documents;

(b) that is not subject to any Lien other than (i) a Lien in favor of the Agent for the benefit of the Secured Parties pursuant to the relevant Collateral Documents and (ii) a Lien (if any) permitted by Section 7.02(g) which Permitted Lien shall (x) rank junior in priority to the Lien in favor of the Agent for the benefit of the Secured Parties pursuant to the relevant Collateral Documents and (y) be subject to an intercreditor agreement in form and substance reasonably satisfactory to the Agent;

(c) that (i) is evidenced by an invoice which has been sent to the Account Debtor (which may include electronic transmission) and (ii) does not represent a progress billing, sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis;

(d) the Account Debtor of which is not an Affiliate of any Borrower;

(e) that is not owing from an Account Debtor that is an agency, department or instrumentality of the federal government of the United States or, to the extent applicable and subject to Requirement of Law having similar effect to the Assignment of Claims Act of 1940, that is an agency, department or instrumentality of the government of any country other than the United States unless (A) the applicable Borrower shall have satisfied the requirements of (x) the Assignment of Claims Act of 1940 in the case of Accounts owing from any agency, department or instrumentality of the federal government of the United States or (y) if applicable, any similar state, provincial, territorial, or subdivision legislation or any similar foreign legislation, in the case of Accounts owing from any other applicable government agency, department or instrumentality; and, in each such case, the Agent is satisfied in its Permitted Discretion as to the absence of setoffs, counterclaims and other defenses on the part of such Account Debtor;

(f) that is not subject to any late payment for longer than 60 days according to its original terms of sale or 120 days after the date of the original invoice therefor;

(g) that is not the obligation of an Account Debtor of which 50% or more of the Dollar Equivalent amount of all Accounts owing by such Account Debtor are, based on the most recent Borrowing Base Certificate, ineligible under the immediately preceding clause (f) (without double-counting of any disputed Accounts);

(h) that is not subject to any deduction, offset, counterclaim, defense or dispute (other than sales discounts given in the ordinary course of the applicable Revolving Borrower's business and reflected in the amount of such Account as set forth in the invoice or other supporting material therefor);

(i) that is denominated and payable only in Dollars, Euros, Sterling or any other Alternative Currency approved by the Agent in its Permitted Discretion;

(j) that is a true and correct statement of bona fide indebtedness incurred in the amount of the Account for merchandise sold to or services rendered and accepted by the applicable Account Debtor;

(k) that, together with the contract evidencing such Account, does not contravene in any material respect any Requirement of Law applicable thereto (including, without limitation, any Requirement of Law relating to usury, consumer protection, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy) in a manner that would affect the enforceability of such Account and with respect to which none of the Borrowers or the Account Debtor is in violation of any such Requirement of Law in any material respect in a manner that would affect the enforceability of such Account;

(l) that does not arise under a contract which restricts in a legally enforceable manner the ability of the Agent to exercise its rights under the Credit Documents, including, without limitation, their right to review the related invoice or the payment terms of such contract;

(m) that is not subject to any extended retention of title right;

(n) that, when aggregated with all other Accounts of the same Account Debtor, is not in excess of, for an Account in which the Account Debtor is (i) Canon Medical Systems, 40% of all Eligible Accounts; and (ii) any other Account Debtor, 20% of all Eligible Accounts; provided that, in any event, the portion of the Accounts not in excess of any such concentration limit shall not be deemed ineligible due to this clause (n);

(o) that is owing by an Account Debtor in the United States, Germany or an Eligible Account Debtor Jurisdiction; provided that Eligible Accounts from Account Debtors in Japan and South Korea may not exceed $5.0 million in the U.S. Borrowing Base and German Borrowing Base combined;

(p) neither such Account nor any other Account in respect of the same Account Debtor as such Account is subject to or included as part of an accounts receivable factoring program or supply chain financing program;

(q) in respect of which, if such Account was acquired in a Permitted Acquisition, the Agent shall have completed and received results satisfactory to the Agent of its customary due diligence and audit in respect of such Account; and

(r) (i) no proceeding has been commenced by or against the Account Debtor under any Debtor Relief Laws, the Account Debtor has not failed, has not suspended or ceased doing business, is not liquidating, dissolving or winding up its affairs, is Solvent and is not the target of any Sanction or on any specially designated nationals list maintained by OFAC, (ii) the Borrowers are able to bring suit or enforce remedies against the Account Debtor through judicial

process and (iii) no petition is filed by or against the Account Debtor obligated upon such Account under any Debtor Relief Law.

"Eligible Account Debtor Jurisdiction" means each of Australia, Canada, Hong Kong, Japan, New Zealand, Norway, any member state of the European Union prior to May 2004, Singapore, South Korea, Switzerland and such other jurisdictions determined by Agent in its discretion, in each case together with any state or province thereof (as applicable); provided that the Agent may from time to time, in its Permitted Discretion, designate any of the foregoing jurisdictions, including any jurisdiction previously determined by the Agent in its discretion to be an Eligible Account Debtor Jurisdiction, to no longer be an eligible jurisdiction for Account Debtors.

"Eligible Assignee" means (a) a Lender; (b) an Affiliate or branch of a Lender; (c) an Approved Fund; and (d) any other financial institution, finance company, institutional lender or Funds approved by (i) the Agent, (ii) in the case of any assignment of a Revolving Credit Commitment, the Issuing Banks and the Swing Line Lender and (iii) unless an Event of Default under Section 8.01(a) or (e) has occurred and is continuing, the Parent Borrower (each such approval in clauses (i), (ii) and (iii) not to be unreasonably withheld or delayed). No Loan Party or any Affiliate thereof shall be an Eligible Assignee with respect to any Revolving Credit Advance or any Revolving Credit Commitment.

"Eligible Inventory" means, as of the date of determination thereof, items of Inventory of a Borrower that are finished goods or raw materials, merchantable and readily saleable to the public in the ordinary course of a Borrower's business, in each case that, except as otherwise agreed by the Agent, (A) complies with each of the representations and warranties respecting Inventory made by the Borrowers in the Loan Documents, and (B) is not excluded as ineligible by virtue of one or more of the criteria set forth below. The following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto including, with respect to the German Borrower only, pursuant to retention of title arrangements;

(b) Inventory that is leased by or is on consignment to a Borrower or which is consigned by a Borrower to a Person which is not a Borrower;

(c) Inventory that is not located in the United States of America or Germany;

(d) Inventory that is not located at a location that is owned, rented or leased by a Borrower, except Inventory located at a warehouse, distribution center, internet fulfillment company or other similar location with respect to which the Agent has obtained a Collateral Access Agreement or, if determined to be necessary by the Agent in its Permitted Discretion, established an Availability Reserve (without duplication of any Availability Reserves calculated in determining the U.S. Borrowing Base and/or the German Borrowing Base) in an aggregate amount not to exceed the sum of three (3) months' rent, Taxes and fees reasonably estimated for such location (it being understood that the Agent shall have no obligation to impose any such Reserve, even to the extent that no Collateral Access Agreement exists as to the applicable location);

(e) Inventory that is, in the Agent's Permitted Discretion, comprised of goods which (i) are slow-moving, perishable, obsolete or unmerchantable, (ii) constitute returned or repossessed goods or are to be returned to the vendor, (iii) are custom items or work in process or that constitute samples, spare parts, promotional, marketing, labels, bags and other packaging and shipping materials or supplies used or consumed in a Borrower's business, (iv) are not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory or its use or sale or (v) are bill and hold goods;

(f) Inventory that is not subject to a perfected first priority Lien in favor of the Agent;

(g) Inventory that is not insured with a third-party insurance carrier in compliance with the provisions of Section 7.01(f) hereof;

(h) Inventory that has been sold but not yet delivered or as to which a Borrower has accepted a deposit;

(i) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party from which a Borrower or any of its Subsidiaries has received written notice of termination in respect of any such agreement, or with respect to which such Borrower is in litigation in respect of such Inventory and such litigation relates to the use of such license by a Borrower, to the extent that the Agent determines, in its Permitted Discretion, that such termination or litigation would be reasonably likely to impair the Agent's ability to sell or otherwise dispose of such Inventory;

(j) Inventory acquired in a Permitted Acquisition or which is not of the type usually sold in the ordinary course of the Borrowers' business, unless and until the Agent has completed or received (A) an appraisal of such Inventory from an independent appraiser engaged by the Agent and establishes an advance rate and Inventory Reserves (if applicable) therefor, and otherwise agrees that such Inventory shall be deemed Eligible Inventory, and (B) upon the reasonable request of the Agent, a commercial field examination, all of the results of the foregoing to be reasonably satisfactory to the Agent;

(k) Inventory that is not included in a current perpetual inventory report of the U.S. Borrowers or the German Borrower, as applicable; or

(l) Inventory deemed by the Agent in its Permitted Discretion to be ineligible for inclusion in the calculation of the U.S. Borrowing Base and/or the German Borrowing Base.

"Eligible Real Property" shall mean, on any date of determination, any real property owned by a U.S. Borrower. Eligible Real Property shall exclude any real property that does not meet each of the following requirements on or before 120 days after the Closing Date:

(a) it is owned by a U.S. Borrower in fee title in the United States;

(b) an appraisal report with respect thereto has been delivered to the Agent and the Lenders, in form, scope and substance reasonably satisfactory to the Agent and each Lender;

(c) it is at all times subject to the Agent's duly perfected, first-priority security interest pursuant to Mortgages and other Related Real Estate Documents in form and substance

reasonably satisfactory to the Agent and not subject to any other Lien except Permitted Liens of the type described in clause (G) of the definition of "Permitted Liens"; and

(d) it conforms in all material respects to the representations and warranties relating to such real property set forth in this Agreement and the applicable Mortgage.

"EMU Legislation" means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

"Environmental Claims" shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims and/or notices of noncompliance or violation, relating to any Environmental Law or, any permit issued, or any approval given, under any such Environmental Law, including, without limitation, (a) by governmental or regulatory authorities for enforcement investigation, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief arising out of or relating to an alleged injury or threat of injury to human health or the environment due to any release or threat of release of any Hazardous Substance.

"Environmental Law" means any Requirement of Law relating to (a) the generation, use, handling, transportation, treatment, storage, disposal, release or discharge of any Hazardous Substance, (b) pollution or the protection of the environment, health and safety or natural resources or (c) occupational safety and health, industrial hygiene, land use or the protection of plants or animals, including, without limitation, CERCLA, in each case as amended from time to time, and including the regulations promulgated and the rulings issued from time to time thereunder.

"Equipment" means all "equipment," as such term is defined in the UCC now owned or hereafter acquired by any Loan Party, wherever located.

"Equity Interests" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any Convertible Indebtedness).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) which is a member of a controlled group of which a Loan Party is a member or which is under common control with a Loan Party within the meaning of Section 414 of the Code, and the regulations promulgated and rulings issued thereunder.

"ERISA Event" means a reportable event with respect to a Plan within the meaning of §4043 of ERISA, other than those events as to which the thirty (30)-day notice period has been waived.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Euro" and "EUR" mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

"Eurocurrency Liabilities" has the meaning assigned to that term in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Eurocurrency Rate" means:

(a) for any Interest Period with respect to a Eurocurrency Rate Advance comprising part of the same Borrowing, the rate per annum equal to the London Interbank Offered Rate ("LIBOR") or a comparable or successor rate, which rate is approved by the Agent, as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period (or, in the case of Eurocurrency Rate Advances in Sterling, approximately 11:00 a.m., London time, on the first day of such Interest Period), for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;

(b) for any interest calculation with respect to a Base Rate Advance on any date, the rate per annum equal to LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day; and

(c) for any interest calculation with respect to a Foreign Base Rate Advance on any date, the rate per annum equal to LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date (or, in the case of Foreign Base Rate Advances in Sterling, approximately 11:00 a.m., London time, on such date) for deposits in the Applicable Currency being delivered in the London interbank market for a term of one month commencing that day;

provided that (x) if the Eurocurrency Rate shall be less than 0.50%, such rate shall be deemed 0.50% for purposes of this Agreement and (y) to the extent a comparable or successor rate is approved by the Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided further that, to the extent such market practice is not administratively feasible for the Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Agent.

"Eurocurrency Rate Advance" means an Advance which bears interest based on the Eurocurrency Rate (but excluding Index Rate Loans). Eurocurrency Rate Advances may be denominated in Dollars or in an Alternative Currency.

"Eurocurrency Rate Reserve Percentage" means the reserve percentage (expressed as a decimal, rounded up to the nearest 1/8th of 1%) applicable to member banks under regulations issued by the Board of Governors of the Federal Reserve System for determining the maximum reserve requirement for Eurocurrency Liabilities.

"Events of Default" has the meaning specified in Section 8.01.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Excluded Account" means a DDA (i) which is used for the sole purpose of making payroll and withholding Tax payments related thereto and other employee wage and benefit

payments, severance, and accrued and unpaid employee compensation payments (including salaries, wages, benefits and expense reimbursements, 401(k), and other retirement plans and employee benefits), (ii) which is used solely as an escrow account or as a fiduciary or trust account held exclusively for the benefit of an unaffiliated third party, (iii) which is a zero balance account which sweeps into a Blocked Account on each Business Day, (iv) which is used for disbursements by Parent Borrower or any Loan Party and into which no proceeds of Collateral or any other collections or any Advances or Notes are received, or (v) which is not otherwise subject to the provisions of this definition and has an average weekly balance at no time of greater than $200,000 or taken together with any other DDAs that are excluded pursuant to this clause (v), have a balance at any time of no more than $2.0 million in aggregate.

"Excluded Contributions" means, at any time the cash and Cash Equivalents received by Parent Borrower after the Closing Date from:

(a) contributions to its common equity capital, and

(b) the sale (other than to a Subsidiary of Parent Borrower or to any Subsidiary management equity plan or stock option plan or any other management or employee benefit plan or agreement) of Capital Stock (other than Disqualified Capital Stock and Designated Preferred Stock) of Parent Borrower,

in each case designated as Excluded Contributions pursuant to an Officer's Certificate (but excluding any amounts distributed pursuant to Section 7.02(b)).

"Excluded Property" has the meaning specified in the U.S. Security Agreement.

"Excluded Subsidiary" means:

(a) each Immaterial Subsidiary;

(b) each Subsidiary that is prohibited by applicable Law, rule or regulation or by any Contractual Obligation existing on the Closing Date or on the date such Subsidiary becomes a Subsidiary (to the extent not incurred in connection with becoming a Subsidiary), in each case, from guaranteeing the Obligations hereunder, or which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee of the applicable Obligations hereunder unless such consent, approval, license or authorization has been received;

(c) any Subsidiary that is a special purpose entity, captive insurance company, or not-for-profit Subsidiary;

(d) any Subsidiary acquired pursuant to a Permitted Acquisition or similar Investment which (at the time of such Permitted Acquisition or Investment) been financed with secured Indebtedness permitted to be incurred under this Agreement as assumed Indebtedness (and not incurred in contemplation of such Permitted Acquisition or Investment) and any Subsidiary thereof that guarantees such secured Indebtedness, in each case to the extent, and so long as, such secured Indebtedness prohibits such Subsidiary from becoming a Loan Party;

(e) [reserved];

(f) [reserved];

(g) any Subsidiary organized in a jurisdiction other than the United States, any State thereof or the District of Columbia (including, for the avoidance of doubt, any Subsidiary organized in a territory of the United States), Germany or the Netherlands;

(h) [reserved];

(i) any Unrestricted Subsidiary;

(j) any Subsidiary with respect to which the Agent reasonably agrees in writing that the cost or other consequences of providing a guarantee is likely to be excessive in relation to the value to be afforded to the Lenders thereby and which does not guarantee any other Indebtedness of any Loan party; and

(k) any other Subsidiary if, in the reasonable good faith determination of Parent Borrower in consultation with the Agent, a guarantee by such Subsidiary would result in materially adverse Tax consequences to Parent Borrower or any of its Subsidiaries; provided that this clause (k) shall not apply to any Subsidiary incorporated or otherwise organized in Germany or the Netherlands unless the material adverse Tax consequences of such Subsidiary providing a guarantee result from a Change in Law after (and only to the extent not publicly announced in writing by the applicable Governmental Authority on or before) the date of this Agreement; provided further that this clause (k) shall not apply to any Subsidiary to the extent a guarantee by such Subsidiary can be modified to minimize such material adverse Tax consequences;

provided that, notwithstanding the foregoing, (x) no Subsidiary that is an issuer or guarantor in respect of the Senior Notes shall constitute an Excluded Subsidiary and (y) no Borrower or direct parent entity of a Borrower or any other Loan Party as of the Closing Date shall be an Excluded Subsidiary.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Hedging Obligation if, and to the extent that, all or a portion of the Obligations of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Hedging Obligation (or any Obligations thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof). If a Hedging Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Hedging Obligation that is attributable to swaps for which such Obligation or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (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 such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, with respect to an Advance or L/C Advance to a U.S. Borrower, United States federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in an Advance, L/C Advance or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires the applicable interest in the applicable Commitment or, in the case of an Advance or L/C Advance

not acquired by such Lender pursuant to a prior Commitment, the date on which such Lender acquires the applicable interest in the applicable Advance or L/C Advance (other than, in each case, pursuant to an assignment request by the Parent Borrower under Section 10.12) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 4.02(a)(iii) or Section 4.02(c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in the applicable Commitment, Advance or L/C Advance or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 4.02(e) and (d) any withholding Taxes imposed pursuant to FATCA.

"Existing Credit Agreement" means the Credit Agreement, dated as of May 1, 2017, as amended prior to the Closing Date, by and among the Parent Borrower, the lenders from time to time party thereto and Bank of America, as administrative agent for the lenders.

"Facility" means the U.S. Revolving Credit Facility, the German Revolving Credit Facility, the U.S. Swing Line Sublimit, the German Swing Line Sublimit or the Letter of Credit Sublimit, as the context may require.

"Fair Market Value" means, with respect to any asset or property, the price which could be negotiated in an arm's-length transaction, for cash, between a willing seller and a willing and able buyer.

"FATCA" means Sections 1471 through 1474 of the Code, as in effect on the date hereof (and any amended or successor version that is substantively comparable and not materially more onerous to comply with), any present 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.

"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 rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Agent; provided that, if the Federal Funds Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

"Fee Letter" means (a) the fee letter, dated as of September 17, 2020, among the Parent Borrower and Bank of America and (b) each other fee letter entered into from time to time by the Parent Borrower and the Swing Line Lender or Issuing Bank.

"Fiscal Month" means any of the monthly accounting periods of the Parent Borrower.

"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 Parent Borrower's financial statements referred to in Section 6.01(f), as set forth on a schedule delivered to the Agent.

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

"Flood Insurance Laws" shall mean, collectively, (a) National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (b) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (c) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"Foreign Base Rate" means for any day a rate per annum equal to the sum of (x) the Eurocurrency Rate for an Interest Period of one month as in effect on the first day of the current calendar month and (y) 1.00%.

"Foreign Base Rate Advance" means an Advance to the German Borrower which bears interest based on the Foreign Base Rate.

"Foreign Lender" means, with respect to any U.S. Borrower, a Lender that is not a United States Person.

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

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to any Issuing Bank, such Defaulting Lender's Commitment Percentage of the outstanding L/C Obligations in respect of Letters of Credit issued by such Issuing Bank other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender's Commitment Percentage of Swing Line Advances made by the Swing Line Lender other than Swing Line Advances as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"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 and similar extensions of credit in the ordinary course of its activities.

"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 7.04.

"German Availability" means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

(a) the German Loan Cap, minus

(b) the Total Revolving Credit Outstandings of the German Borrower in respect of the German Revolving Credit Facility.

"German Bank Account Pledge Agreement" shall mean the account pledge agreement governed by German law on or around the Closing Date, by and between the Agent and the German Borrower, as amended, restated, supplemented or otherwise modified from time to time.

"German Blocked Accounts" has the meaning specified in Section 7.01(i)(ii)(B).

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

"German Borrowing Base" means, at any time of calculation, an amount equal to:

(a) the face amount of Eligible Accounts of the German Borrower multiplied by 85%; plus

(b) the lesser of (i) the Cost of Eligible Inventory of the German Borrower multiplied by 70% and (ii) the Cost of Eligible Inventory of the German Borrower multiplied by the product of 85% multiplied by the Appraised Value of such Eligible Inventory; minus

(c) the then applicable amount of all Reserves.

"German Civil Code" means Bürgerliches Gesetzbuch (BGB).

"German Collateral" means the Collateral owned by (or, in the event such Collateral has been foreclosed upon, immediately prior to such foreclosure that was owned by) a German Loan Party.

"German Dilution Reserve" shall mean, at any date, (a) the amount by which the consolidated Dilution Ratio of Eligible Accounts of the German Borrower exceeds five percent (5%) multiplied by (b) the Eligible Accounts of the German Borrower on such date.

"German Dominion Account" means a special concentration account established by the German Borrower at an Affiliate or branch of the Agent in Germany, over which the Agent has exclusive control for withdrawal purposes pursuant to the terms and provisions of this Agreement and the other Loan Documents.

"German Global Assignment Agreement" shall mean the global assignment agreement governed by German law on or around the Closing Date, by and between the Agent and the German Borrower, as amended, restated, supplemented or otherwise modified from time to time.

"German Guarantor" means each Guarantor that is incorporated or otherwise organized under the laws of Germany.

"German Guaranty" means the guarantee of the Obligations of each Loan Party hereunder by the German Loan Parties in Article III hereunder or in a supplemental guarantee in accordance with Section 7.01(n) of this Agreement.

"German IP Pledge Agreement" shall means the IP pledge agreement governed by German law in the form approved by the Agent as of the Closing Date, by and between the Agent and the German Borrower, as amended, restated, supplemented or otherwise modified from time to time.

"German Loan Cap" means, at any time of determination, the lesser of (a) the Aggregate German Commitments and (b) the German Borrowing Base.

"German Loan Party" means the German Borrower and each German Guarantor.

"German Priority Payables Reserves" shall mean reserves in respect of (a) in relation to Accounts, any VAT invoiced to the customer but not yet paid the relevant tax authority and (b) an amount of twelve percent (12%) on the aggregate nominal amount of any Accounts and the book value of any inventory payable to a potential insolvency administrator only to the extent such amounts enjoy priority as a matter of applicable law over the claims of the Secured Parties.

"German Qualifying Lender" shall mean a Lender which is beneficially entitled to interest payable to that Lender in respect of any amounts hereunder and is:

(a) resident for Tax purposes in Germany;

(b) lending through a Lending Office (through which the Lender will perform its obligations under this Agreement) in Germany to which the relevant interest payment is effectively attributable for Tax purposes; or

(c) a German Treaty Lender.

"German Revolving Credit Advance" means an advance by a Lender to the German Borrower under Section 2.01(a).

"German Revolving Credit Commitment" means, as to each Lender, its obligation to (a) make German Revolving Credit Advances to the German Borrower pursuant to Section 2.01(a), (b) purchase participations in L/C Obligations and (c) purchase participations in German Swing Line Advances, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 1.01A under the caption "German Revolving Credit Commitment" or in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"German Revolving Credit Facility" means, at any time, the aggregate amount of the Lenders' German Revolving Credit Commitments at such time.

"German Security Agreements" shall mean the German Global Assignment Agreement, the German IP Pledge Agreement (upon execution thereof), the German Security Transfer Agreement, the German Share Pledge Agreement and the German Bank Account Pledge Agreement.

"German Security Transfer Agreement" shall means the security transfer agreement governed by German law on or around the Closing Date, by and between the Agent and the German Borrower, as amended, restated, supplemented or otherwise modified from time to time.

"German Share Pledge Agreement" shall mean the share pledge agreement governed by German law on or around the Closing Date, by and between the Agent and VI Investments NL in relation to the shares in the German Borrower, as amended, restated, supplemented or otherwise modified from time to time.

"German Swing Line" means the revolving credit facility made available to the German Borrower by the Swing Line Lender pursuant to Section 2.03.

"German Swing Line Advance" has the meaning specified in Section 2.03(a).

"German Swing Line Advance Notice" means a notice of a Swing Line Borrowing by the German Borrower pursuant to Section 2.03(b), which if in writing, shall be substantially in the form of Exhibit A-2 or such other form as approved by the Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Agent), appropriately completed and signed by a Responsible Officer of the German Borrower.

"German Swing Line Borrowing" means a borrowing of a Swing Line Advance by the German Borrower pursuant to Section 2.03.

"German Swing Line Sublimit" means an amount equal to the lesser of (a) $5.0 million (b) the Aggregate German Commitments. The German Swing Line Sublimit is part of, and not in addition to, the German Revolving Credit Facility.

"German Treaty" has the meaning specified in the definition of "German Treaty State".

"German Treaty Lender" shall mean a Lender which (a) is treated as a resident of a German Treaty State for the purposes of the German Treaty and (b) does not carry on a business in Germany through a permanent establishment with which that Lender's participation in the Advances is effectively connected and (c) is entitled to receive payments of interest without a deduction or withholding for or on account of Tax from a payment under a Loan Document imposed by Germany under the German Treaty (including the completion of any necessary procedural formalities).

"German Treaty State" shall mean a jurisdiction having a double taxation agreement with Germany (a "German Treaty") which makes provision for full exemption from Tax imposed by Germany on interest.

"Governmental Authority" means any nation or government, any state, 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.

"Guarantied Obligations" means as to any Person, any obligation of such Person guarantying or otherwise having the economic effect of guarantying any Indebtedness, lease, dividend, or other obligation ("primary obligation") of any other Person (the "primary obligor") in any manner, including any obligation or arrangement of such Person to (a) purchase or repurchase any such primary obligation, (b) advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor, (c) 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, (d) protect the beneficiary of such arrangement from loss (other than product warranties given in the ordinary course of business), or (e) indemnify the owner of such primary obligation against loss in respect thereof; provided, however, that the term Guarantied Obligations shall not include endorsements of instruments for deposit or collection in the ordinary course of business or standard contractual indemnities. The amount of any Guarantied Obligations at any time shall be deemed to be an amount equal to the lesser at such time of (x) the stated or determinable amount of the primary obligation in respect of which such Guarantied Obligations is incurred, and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guarantied Obligations, or, if not stated or determinable, the maximum reasonably anticipated liability (assuming full performance) in respect thereof.

"Guaranties" means the U.S. Guaranty, the German Guaranty and any other guaranty executed by any Guarantor in favor of Agent, for the benefit of the Secured Parties, in respect of the Obligations.

"Guarantor Payment" has the meaning specified in Section 3.07(a).

"Guarantors" means (w) each Borrower (as to the other Loan Parties' Obligations), (x) each U.S. Guarantor and each German Guarantor, (y) VI Investments NL and (z) each other Restricted Subsidiary that is a party hereto or executes a supplement hereto in accordance with Section 7.01(n), for itself and the ratable benefit of the Secured Parties, 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 U.S. 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.

"Guaranty" means the guarantee of the Obligations by the Loan Parties in Article III hereunder or in a supplemental guarantee in accordance with Section 7.01(n) of this Agreement.

"Hazardous Substance" means (i) any hazardous substance or toxic substance as such terms are presently defined or used in § 101(14) of CERCLA (42 U.S.C. § 9601(14)), in 33 U.S.C. § 1251 et. seq. (Clean Water Act), or 15 U.S.C. § 2601 et. seq. (Toxic Substances Control Act) or applicable Environmental Law in Germany; and (ii) as of any date of determination, any additional substances or materials which are hereafter incorporated in or added to the definition of "hazardous substance" or "toxic substance" or similar definitions for purposes of CERCLA, 33

U.S.C. § 1251 et. seq. (Clean Water Act), or 15 U.S.C. § 2601 et. seq. (Toxic Substances Control Act) or applicable Environmental Law in Germany.

"Hedge Bank" means any Person counterparty to a Swap Contract who is (x) Bank of America or any Affiliate or branch of Bank America or (y) any other Lender or any Affiliate or branch of such Lender so long as, in the case of this clause (y), Parent Borrower and the applicable Lender (or its Affiliate or branch) shall have delivered notice thereof to the Agent; provided that any such notice may designate any Person as a Hedge Bank with respect to all Hedging Obligations arising under a single master agreement.

"Hedging Obligations" means, with respect to any Person, the obligations of such Person under any Swap Contract.

"Immaterial Subsidiary" means any Subsidiary that (a) did not, as of last day of the Fiscal Quarter of Parent Borrower most recently ended for which financial statements have been (or were required to be be) delivered pursuant to Section 7.04(a) or (b), have assets with a value in excess of 2.5% of the Total Assets or revenues representing in excess of 2.5% of total revenues of Parent Borrower and its Subsidiaries on a consolidated basis as of such date, and (b) taken together with all such Subsidiaries as of such date that are not Loan Parties as a result of being Immaterial Subsidiaries, did not have assets with a value in excess of 5.0% of the Total Assets or revenues representing in excess of 5.0% of total revenues of Parent Borrower and its Subsidiaries on a consolidated basis as of such date. Notwithstanding the foregoing, in no event shall a Borrower or any Loan Party as of the Closing Date be designated an Immaterial Subsidiary under this Agreement.

"Impacted Loans" has the meaning specified in Section 3.03(b)(i)(A).

"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, 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 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.

"Independent Financial Advisor" means an accounting, appraisal or investment banking firm or consultant, in each case of nationally recognized standing, that is, in the good faith determination of Parent Borrower, qualified to perform the task for which it has been engaged.

"Index Rate Loan" means any Advance bearing interest at the Base Rate or the Foreign Base Rate.

"Intellectual Property" means any and all Patents, Copyrights and Trademarks.

"Intellectual Property Security Agreements" means, collectively, any and all Copyright Security Agreements, Patent Security Agreements and Trademark Security Agreements, made in favor of the Agent, on behalf of itself and the Secured Parties, by each Loan Party signatory thereto, as amended from time to time.

"Interest Expense" means, with respect to any Person for any fiscal period, interest expense of such Person determined in accordance with GAAP for the relevant period ended on such date.

"Interest Period" means, for each Eurocurrency Rate Advance comprising part of the same Borrowing, the period commencing on the date of such Type of Advance or the date of the Conversion of any Advance into such Type of an Advance and ending on the last day of the period selected by the applicable Borrower pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by such Borrower pursuant to the provisions below. The duration of each such Interest Period shall be 1, 2, 3 or 6 months**,** in each case as such Borrower may, upon notice received by the Agent not later than 12:00 noon (New York City time) on the third Business Day prior to the first day of such Interest Period, select; provided, however, that:

(i) no Borrower may select any Interest Period which ends after the Termination Date;

(ii) Interest Periods commencing on the same date for Advances comprising part of the same Borrowing shall be of the same duration;

(iii) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day; provided that, in the case of any Interest Period for a Eurocurrency Rate Advance, that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day;

(iv) a Borrower may request in a Committed Advance Notice an Interest Period of a duration other than 1, 2, 3, or 6 months (but in no event longer than 12 months) for a Eurocurrency Rate Advance and the Interest Period for such Eurocurrency Rate Advance shall be for such period, if, and only if, the Agent determines a Eurocurrency Rate for the tenor of such Interest Period and no Lenders notify the Agent pursuant to Section 2.09(b) that the Eurocurrency Rate for such Interest Period will not adequately reflect the cost to the Lenders of making, funding or maintaining their respective Eurocurrency Rate Advances for such Interest Period; if both of the preceding conditions are not satisfied with respect to such requested Interest Period, the duration of the requested Interest Period shall be the alternative specified in the Committed Advance Notice, or, if no alternative Interest Period is selected, 6 months; and

(v) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period.

"Inventory" has the meaning specified in the UCC and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

"Inventory Reserves" means, without duplication of any other Reserve, such reserves as may be established from time to time by the Agent in its Permitted Discretion with telephonic or email notice provided to the Parent Borrower with respect to the determination of the saleability of the Eligible Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in the Agent's Permitted Discretion with telephonic or email notice provided to the Parent Borrower, include (but are not limited to) reserves based on:

(a) obsolescence;

(b) seasonality;

(c) Shrink;

(d) imbalance;

(e) change in Inventory character;

(f) change in Inventory composition;

(g) change in Inventory mix;

(h) mark-downs (both permanent and point of sale);

(i) mark-ons and mark-ups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events; and

(j) out-of-date and/or expired Inventory.

"Investment Grade Securities" means:

(1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents),

(2) securities that have a rating equal to or higher than Baa3 (or equivalent) by Moody's and BBB- (or equivalent) by S&P, but excluding any debt securities or loans or advances between and among Parent Borrower and its Subsidiaries,

(3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) of this definition which fund may also hold material amounts of cash pending investment and/or distribution, and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

"Investments" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit and advances to customers and commission, travel and similar advances to officers, employees and consultants made in the ordinary course of business and any assets or securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and any prepayments and other credits to suppliers made in the ordinary course of business), repayments of intercompany Indebtedness pursuant to clauses (a) and (b) of the definition of "Junior Indebtedness", purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of such Person in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of "Unrestricted Subsidiary" and Section 7.02(b):

(1) "Investments" shall include the portion (proportionate to Parent Borrower's equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by Parent Borrower) of the net assets of such Subsidiary at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided, however, that, upon a redesignation of such Subsidiary as a Restricted Subsidiary, Parent Borrower shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary equal to an amount (if positive) equal to:

(a) its "Investment" in such Subsidiary at the time of such redesignation less

(b) the portion (proportionate to its equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by Parent Borrower) of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value (as determined in good faith by Parent Borrower) at the time of such transfer, in each case as determined in good faith by the Board of Directors of Parent Borrower.

"IRS" means the United States Internal Revenue Service.

"ISP" shall mean, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

"Issue" means, with respect to any Letter of Credit, either to issue, or to extend the expiry of, or to renew, or to increase the amount of, such Letter of Credit, and the term "Issued" or "Issuance" shall have corresponding meanings.

"Issuing Bank" means (a) in respect of Letters of Credit issued under the U.S. Revolving Credit Facility, Bank of America, Wells Fargo Bank, National Association, Citibank, N.A. and Goldman Sachs Bank USA, (b) in respect of Letters of Credit issued under the German Revolving Credit Facility, Bank of America and (c) any other Lender which agrees to become, and is designated as an Issuing Bank under Section 2.06(c) or any Affiliate or branch thereof as agreed to from time to time by Parent Borrower and such Issuing Bank, that may from time to time Issue Letters of Credit under the U.S. Revolving Credit Facility and/or the German Revolving Credit Facility for the account of Parent Borrower or any of its Subsidiaries.

"Issuing Commitment" means, as to any Issuing Bank, the amount set forth opposite such Issuing Bank's name on Schedule 1.01A under the caption "Issuing Commitment", as such amount may be reduced or increased pursuant to the terms hereof.

"Joinder Agreement" means a joinder agreement substantially in the form of Exhibit B to the U.S. Security Agreement.

"Joint Lead Arrangers" means Bank of America, N.A. and Wells Fargo Bank, National Association, as joint lead arrangers and joint bookrunners.

"Joint Venture" means any Person a portion (but not all) of the Capital Stock of which is owned directly or indirectly by a Borrower or a Subsidiary thereof but which is not a Wholly Owned Subsidiary and which is engaged in a business that is similar to or complementary with the business of Borrowers and their Subsidiaries as permitted under this Agreement.

"Judgment Currency" has the meaning specified in Section 10.20.

"Junior Indebtedness" means (a) unsecured Indebtedness for borrowed money (other than intercompany Indebtedness owing to Parent Borrower or to a Subsidiary if an Investment in such Subsidiary by the obligor of such Indebtedness in such amount would be permitted at such time; provided that any repayment of such Indebtedness will be deemed an Investment in such Subsidiary in such amount), (b) any Indebtedness which is by its terms subordinated in right of payment or lien priority to the Obligations (other than intercompany Indebtedness owing to Parent Borrower or to a Subsidiary if an Investment in such Subsidiary by the obligor of such Indebtedness in such amount would be permitted at such time; provided that any repayment of such Indebtedness will be deemed an Investment in such Subsidiary in such amount) and (c) the Senior Notes and any Indebtedness secured by the Notes Priority Collateral on a pari passu basis with the Senior Notes.

"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.

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Commitment Percentage. All L/C Advances shall be denominated in Dollars or any Alternative Currency.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing. All L/C Borrowings shall be denominated in Dollars or any Alternative Currency.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"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 Party" means any Lender and any Issuing Bank.

"Lenders" means the Lenders listed on the signature pages hereof as Lenders and as the Swing Line Lender, as the context may require, and each Eligible Assignee that shall become a party hereto pursuant to Section 10.07.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify to the Parent Borrower and the Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

"Letter of Credit" means any standby letter of credit issued hereunder. Letters of Credit may be issued in Dollars or any Alternative Currency.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by any Issuing Bank.

"Letter of Credit Expiration Date" means the day that is seven days prior to the Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in Section 2.04(h).

"Letter of Credit Sublimit" means an amount equal to $25.0 million. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

"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.

"Liquidation" means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable Law as a creditor of the Loan Parties with respect to the realization on the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Agent, of any public or private sale or other disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word "Liquidation" (such as "Liquidate") are used with like meaning in this Agreement.

"Loan Cap" means, at any time of determination, the sum of (a) the U.S. Loan Cap and (b) the German Loan Cap.

"Loan Documents" means, collectively, this Agreement, the Guaranties, the ABL Intercreditor Agreement, any note delivered pursuant to Section 4.04(d), the Collateral Documents, the Perfection Certificate, any Borrowing Base Certificate, any other intercreditor agreement and each application or agreement and other documents delivered in connection with Letters of Credit pursuant to Section 2.04 and any other agreement between or among any Loan Party and the Agent designated therein as a "Loan Document", in each case as amended, supplemented or otherwise modified hereafter from time to time in accordance with the terms thereof.

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

"Majority Lenders" means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Advances being deemed "held" by such Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; provided that there shall be excluded for purposes of making a determination of Majority Lenders the unused Revolving Credit Commitment of any Defaulting Lender.

"Margin Stock" has the meaning assigned to such term in Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Material Adverse Change" means any event which has or would reasonably be expected to have a Material Adverse Effect; provided that, solely with respect to clause (a) of the definition of Material Adverse Effect, any change in or effect upon the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Loan Parties, taken as a whole, substantially and directly relating to the impacts of the COVID-19 pandemic, and disclosed to the Agent and the Lenders prior to the Closing Date, shall not be considered to be a Material Adverse Effect during the period from and including the first day after the Closing Date

through and including December 31, 2020 (and for the avoidance of doubt, clauses (b) and (c) of the definition of Material Adverse Effect shall not be impacted in any way by the impacts of the COVID-19 pandemic).

"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 Agent or any 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.

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" shall mean a mortgage, debenture, leasehold mortgage, deed of trust, leasehold deed of trust, deed to secure debt, leasehold deed to secure debt or similar security instrument in form and substance reasonably satisfactory to the Agent, in favor of the Agent for the benefit of the Secured Parties.

"Mortgaged Property" shall mean real property (including any fixtures thereon) owned by a U.S. Borrower that is subject to a Mortgage.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which a Loan Party or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding five plan years made or accrued an obligation to make contributions.

"Net Income" means, with respect to any Person, the net income (loss) of such Person and its Restricted Subsidiaries, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"Net Proceeds" means (a) with respect to any Disposition by any Loan Party, or any extraordinary receipt received or paid to the account of 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) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Agent's Lien on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan Documents), (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); and

(b) with respect to the sale or issuance of any Equity Interest by any Loan Party, or the incurrence or issuance of any Indebtedness by any Loan Party, the excess of (i) the sum of the

cash and cash equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Loan Party in connection therewith.

"Non-Consenting Lender" has the meaning specified in Section 10.01(e).

"Note" means a promissory note made by any Borrower in favor of a Lender, in substantially the form of Exhibit B hereto, evidencing the aggregate indebtedness of such Borrower to such Lender resulting from Revolving Credit Advances or Swing Line Advances, as the case may be, made by such Lender.

"Notes Collateral Agent" means Wells Fargo Bank, National Association, as trustee, registrar, paying agent and notes collateral agent under the Senior Notes Indenture.

"Notes Priority Collateral" has the meaning ascribed to "First Lien Notes Priority Collateral" in the ABL Intercreditor Agreement.

"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 any Secured Party 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, any of the other Loan Documents, any Bank Product Documents or any Secured Hedge Agreement (other than with respect to any Loan Party's obligations that constitute Excluded Swap Obligations solely with respect to such Loan Party). This term includes all principal, L/C Obligations, 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, Secured Hedging Obligations (other than with respect to any Loan Party's Secured Hedging Obligations that constitute Excluded Swap Obligations solely with respect to such Loan Party), expenses, attorneys' fees and any other sum chargeable to any Loan Party under this Agreement, any of the other Loan Documents, any Bank Product Documents or any Secured Hedge Agreements (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).

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"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.

"Officer's Certificate" means, with respect to any Person, a certificate signed on behalf of such Person by an Officer which meets the requirements set forth in this Agreement.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient 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 Advance, L/C Advance or Loan Document).

"Other Taxes" means all present or future stamp, court, 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 (other than an assignment made pursuant to Section 10.07(h)).

"Outstanding Amount" means (i) with respect to U.S. Revolving Credit Advances and U.S. Swing Line Advances on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of U.S. Revolving Credit Advances or U.S. Swing Line Advances, as the case may be, occurring on such date; (ii) with respect to German Revolving Credit Advances and German Swing Line Advances on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of German Revolving Credit Advances or German Swing Line Advances, as the case may be, occurring on such date and (iii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Loan Parties of Unreimbursed Amounts.

"Overadvance" means a Credit Extension to the extent that, immediately after its having been made, either (i) Availability is less than zero, (ii) U.S. Availability is less than zero or (iii) German Availability is less than zero.

"Overnight Rate" means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Agent or the applicable Issuing Bank, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, the rate of interest per annum at which overnight deposits in the applicable Alternative Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America in the applicable offshore interbank market for such currency to major banks in such interbank market.

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

"Participating Member State" means each state so described in any EMU Legislation.

"Patents" has the meaning specified in the applicable Security Agreements.

"Payment Conditions" means, at the time of determination with respect to any specified transaction or payment, that:

(a) no Default or Event of Default then exists or would arise as a result of entering into such transaction or the making such payment;

(b) immediately after giving effect to such transaction or payment, one of the following tests shall be satisfied:

(i) (1) Availability for the 30 consecutive day period immediately preceding such specified transaction or payment shall not have been less than the greater of $15.0 million and 20.0% of the Loan Cap and (2) Availability on the date of such specified transaction or payment shall not be less than the greater of such amounts; or

(ii) (1) Availability for the 30 consecutive day period immediately preceding such specified transaction or payment shall not have been less than the greater of $13.125 million and 17.5% of the Loan Cap, (2) Availability on the date of such specified transaction or payment shall not be less than the greater of such amounts and (3) the Consolidated Fixed Charge Coverage Ratio, based on the most recently completed Test Period, shall not be less than 1.00 to 1.00; and

(c) for each accretive Acquisition or Investment involving at least $10.0 million and for each other Acquisition, Investment, Restricted Payment or other transaction or payment, the Agent shall have received an Officer's Certificate from a financial officer of Parent Borrower certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby.

"PBGC" means the Pension Benefit Guaranty Corporation of the United States.

"Perfection Certificate" means the perfection certificate, dated as of the Closing Date, delivered by the Loan Parties to the Agent.

"Permitted Acquisition" means any Acquisition in which the following conditions are satisfied:

(a) the Loan Parties shall be in Pro Forma Compliance with the Payment Conditions;

(b) such Acquisition shall have been approved by the governing body of the target and comply with all applicable laws

(c) after giving effect to such Acquisition, the Loan Parties, on a Consolidated basis, shall be Solvent;

(d) the target of such Acquisition shall be in the same line of business as, or a business related to the business of, the Loan Parties; and

(e) to the extent previously prepared by the Parent Borrower, the Parent Borrower shall have delivered to the Agent for distribution to the Lenders such forecasted balance sheets, profit and loss statements and cash flow statements of the Person or assets to be acquired.

"Permitted Bond Hedge Transaction" means any call or capped call option (or substantively equivalent derivative transaction) on the Parent Borrower's common stock purchased by the Parent Borrower in connection with the issuance of any Convertible Indebtedness; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Parent Borrower from the sale of any related Permitted Warrant

Transaction, does not exceed the net proceeds received by the Parent Borrower from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

"Permitted Discretion" means a determination made by the Agent in the exercise of its reasonable credit judgment, exercised in good faith in accordance with customary business practices for comparable asset-based lending transactions in the retail industry.

"Permitted Investments" means:

(1) any Investment in Parent Borrower or in any Loan Party;

(2) any Investment in Cash Equivalents or Investment Grade Securities;

(3) any Permitted Acquisition, to the extent the target becomes a Loan Party;

(4) any Investment in securities or other assets not constituting Cash Equivalents and received in connection with any disposition of assets permitted by Section 7.02(d);

(5) any Investment existing on the Closing Date or an Investment consisting of any extension, modification or renewal of any Investment existing on the Closing Date;

(6) loans or advances to and guarantees provided for the benefit of employees and other individual service providers in each case made in the ordinary course of business (including travel, entertainment and relocation expenses) of the Issuer or any of its Restricted Subsidiaries in an aggregate principal amount not to exceed $1.0 million at any one time outstanding;

(7) any Investment acquired by Parent Borrower or any Restricted Subsidiary (a) in exchange for any other Investment or accounts receivable held by Parent Borrower or such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable, or (b) as a result of a foreclosure by Parent Borrower or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default, or as a result of a Bail-In Action with respect to any contractual counterparty of Parent Borrower or any Restricted Subsidiary;

(8) Hedging Obligations permitted under Section 7.02(a)(ii)(J);

(9) any payments in connection with a Permitted Bond Hedge Transaction;

(10) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, additional Investments by Parent Borrower or any Restricted Subsidiary in any Person that is not a Loan Party having an aggregate Fair Market Value (as determined in good faith by Parent Borrower), taken together with all other Investments made pursuant to this clause (10) that are at that time outstanding, not to exceed $15.0 million;

(11) [reserved];

(12) Investments the payment for which consists of Equity Interests of Parent Borrower (other than Disqualified Capital Stock); provided, however, that such Equity Interests will not increase the amount available for Restricted Payments under 7.02(b)(ii)(H);

(13) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.02(e)(ii) (except transactions described in clauses (B), (D), (F), (H)(2) and (O) of Section 7.02(e)(ii));

(14) guarantees issued in accordance with Section 7.02(a) and Section 7.01(n) including, without limitation, any guarantee or other obligation issued or incurred under this Agreement in connection with any letter of credit issued for the account of Parent Borrower or any of its Subsidiaries (including with respect to the issuance of, or payments in respect of drawings under, such letters of credit);

(15) [reserved];

(16) [reserved];

(17) [reserved];

(18) Investments of a Restricted Subsidiary acquired after the Closing Date or of an entity merged into, amalgamated with, or consolidated with Parent Borrower or a Restricted Subsidiary in a transaction that is not prohibited by Section 7.02(h) after the Closing Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(19) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers;

(20) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of Parent Borrower or the Restricted Subsidiaries;

(21) [reserved];

(22) [reserved];

(23) Guarantied Obligations of any Loan Party or any Restricted Subsidiary of leases or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business; and

(24) any other Investments; provided that no such other Investments shall be made unless the Borrowers are in Pro Forma Compliance with the Payment Conditions.

"Permitted Liens" means, with respect to any Person:

(A) (I) Liens created pursuant to the Collateral Documents or otherwise securing the Obligations and (II) Liens on the Collateral securing the Senior Notes (and the related Guaranties) which are subject to the ABL Intercreditor Agreement;

(B) Liens securing Indebtedness permitted to be incurred pursuant to Section 7.02(a)(ii)(D); provided that such Liens secure only the property or equipment being financed by such Indebtedness;

(C) 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;

(D) 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 property or assets or materially impair operation of the business of any Borrower or Subsidiary;

(E) Liens incurred or deposits made in the ordinary course of business to secure the performance of government tenders, bids, contracts, statutory obligations and other similar obligations, as long as such Liens are at all times junior to the Agent's Liens and are required or provided by law;

(F) Liens arising by virtue of a judgment or judicial order against any Borrower or Subsidiary, or any property or assets of a Borrower or Subsidiary, 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 Agent's Liens;

(G) easements, rights-of-way, restrictions, covenants or other agreements of record, and other similar charges or encumbrances on real property, that do not secure any monetary obligation and do not interfere with the ordinary course of business;

(H) normal and customary rights of setoff upon deposits in favor of depository institutions and Liens of a collecting bank on payment items in the course of collection;

(I) Liens arising in the ordinary course of business in connection with the German Partial Retirement Act or SGB IV or any other applicable social security laws;

(J) existing Liens shown on Schedule 7.02(g); and

(K) other Liens not encumbering ABL Priority Collateral with respect to obligations that do not exceed $5.0 million at any one time outstanding.

"Permitted Overadvance" means an Overadvance made by the Agent, in its discretion, which:

(a) is made to maintain, protect or preserve the Collateral and/or the Secured Parties' rights under the Loan Documents or which is otherwise for the benefit of the Secured Parties;

(b) is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation;

(c) is made to pay any other amount chargeable to any Loan Party hereunder; and

(d) together with all other Permitted Overadvances then outstanding, shall not (i) exceed at any time ten percent (10%) of the sum of (x) the U.S. Borrowing Base and (y) the German Borrowing Base and (ii) unless a Liquidation is occurring, remain outstanding for more than forty-five (45) consecutive Business Days, unless in each case, the Majority Lenders otherwise agree;

provided, however, that the foregoing shall not (i) modify or abrogate any of the provisions of Section 2.04 regarding the Lenders' obligations with respect to Letters of Credit or Section 2.04 regarding the Lenders' obligations with respect to Swing Line Advances, or (ii) result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder; provided further that in no event shall the Agent make an Overadvance, if after giving effect thereto, the principal amount of the Credit Extensions would exceed the Aggregate Commitments (as in effect prior to any termination of the Commitments pursuant to Section 2.06(b)).

"Permitted Warrant Transaction" means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Parent Borrower's common stock sold by the Parent Borrower substantially concurrently with any purchase by the Parent Borrower of a related Permitted Bond Hedge Transaction.

"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 an 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.

"Preferred Stock" means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution, or winding up.

"Pro Forma Basis" or "pro forma effect" means, for purposes of calculating Consolidated EBITDA for any period during which one or more Specified Transactions occur, that (a) such Specified Transaction (and all other Specified Transactions that have been consummated during the applicable period) shall be deemed to have occurred as of the first day of the applicable period of measurement and (b) subject in any event to the proviso in the definition of "Consolidated EBITDA", all income statement items (whether positive or negative as estimated by a Responsible Officer of the Borrower in good faith and which may include, for the avoidance of doubt, in case of a Permitted Acquisition, the amount of "run rate" cost-savings and operating expense reductions (net of actual amounts realized) that are reasonably identifiable and factually supportable and are expected to be realized within twelve (12) months of such Permitted Acquisition calculated on a basis consistent with GAAP) attributable to the Property or Person acquired in a Permitted Acquisition shall be included (provided that such income statement items to be included are reflected in financial statements or other financial data reasonably acceptable to the Agent and based upon reasonable assumptions and calculations which are expected to have a continuous impact).

"Pro Forma Compliance" means, with respect to any determination for any period and any transaction, that such determination shall be made by giving pro forma effect to each such transaction (including for purposes of determining Availability), and, if applicable, as if each such transaction had been consummated on the first day of such period, based on, in the case of determinations made in reliance on pro-forma financial statement calculations only, historical results accounted for in accordance with GAAP and, to the extent applicable, reasonable assumptions that are specified in detail in the relevant compliance certificate, financial statement or other document provided to Agent or any Lender in connection herewith (which shall be prepared by Parent Borrower in good faith (subject to the approval of the Agent, not to be unreasonably withheld)) and for such purposes historical financial statements shall be recalculated as if such transaction had been consummated at the beginning of the applicable period, and any Indebtedness or other liabilities to be incurred, assumed or repaid had been incurred, assumed or repaid at the beginning of such period (and assuming that such Indebtedness to be incurred bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to such Indebtedness incurred during such period) and, to the extent pro forma financial statements are required to be prepared by Parent Borrower under Reg. S-X reflecting such transaction for any period, all pro forma calculations made hereunder with respect to such transaction and for such period shall be in conformity with Reg. S-X at all times after such pro-forma financial statements reflecting such transactions are required to be filed by Parent Borrower under Reg. S-X.

"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.

"Recipient" has the meaning specified in Section 10.11.

"Refinancing Indebtedness" has the meaning specified in Section 7.02(a)(ii)(O).

"Reg. S-X" means Regulation S-X promulgated by the SEC (or any successor provisions).

"Register" has the meaning specified in Section 10.07(c).

"Regulation" means Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates.

"Related Real Estate Documents" shall mean (a) a Mortgage, an environmental indemnity agreement in respect thereof and, if applicable, fixture filings; (b) a mortgagee title insurance policy (or unconditional commitment to issue such policy), insuring the Agent's interest under the Mortgage, in a form and by an insurer reasonably acceptable to the Agent in an amount not to exceed the fair market value of the Mortgaged Property under the Mortgage, which must be fully paid on such effective date; (c) (i) a new ALTA survey or (ii) an existing as-built survey of the Mortgaged Property (together with a no change affidavit) sufficient for the title company to remove the standard survey exceptions and issue the survey-related endorsements (to

the extent such endorsements are available at commercially reasonable rates); (d) a life-of-loan flood hazard determination and, if the Mortgaged Property is located in a flood plain, an acknowledged notice to the applicable U.S. Borrower and evidence of flood insurance that satisfies the requirements of Section 7.01(f)(iv); (e) a mortgage opinion addressed to the Agent and the Lenders as of the date of the delivery of such opinion covering the due authorization, execution, delivery, and enforceability of the applicable Mortgage and such other customary matters incident to the transactions contemplated herein as the Agent may reasonably request (if not covered by title insurance), and shall otherwise be in form and substance reasonably satisfactory to the Agent; (f) evidence reasonably satisfactory to the Agent that the applicable U.S. Borrower has delivered to the title company such standard and customary affidavits, certificates, information, instruments of indemnification (including so-called "gap" indemnification) and other documents as may be reasonable necessary to cause the title company to issue the title insurance policies as contemplated by clause (b) above; and (g) evidence reasonably satisfactory to the Agent of payment by the Parent Borrower or other applicable U.S. Borrower of all title policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages, fixture filings and other real estate documents and the issuance of the title policies contemplated by clause (b) above.

"Request for Credit Extension" means (a) with respect to a Borrowing, conversion or continuation of U.S. Revolving Credit Advances or German Revolving Credit Advances, a Committed Advance Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application and (c) with respect to a U.S. Swing Line Advance or a German Swing Line Advance, a Swing Line Advance Notice.

"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.

"Reserves" means, without duplication, all Bank Product Reserves, Inventory Reserves and Availability Reserves.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"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 Agent 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 Agent.

"Restricted Cash" means cash and Cash Equivalents held by Parent Borrower and the Restricted Subsidiaries that would appear as "restricted" on a consolidated balance sheet of Parent Borrower or any of the Restricted Subsidiaries.

"Restricted Investment" means any Investment that is not a Permitted Investment.

"Restricted Payments" has the meaning specified in Section 7.02(b)(i).

"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 shall constitute a Restricted Subsidiary.

"Retired Capital Stock" has the meaning specified in Section 7.02(b)(ii)(B).

"Revaluation Date" means (a) with respect to any Revolving Credit Advance, each of the following: (i) each date of a Revolving Credit Borrowing of a Eurocurrency Rate Advance denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Rate Advance denominated in an Alternative Currency pursuant to Section 2.02, and (iii) such additional dates as the Agent shall reasonably determine or the Majority Lenders shall reasonably require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit denominated in an Alternative Currency having the effect of increasing the amount thereof (solely with respect to the increased amount), (iii) each date of any payment by an Issuing Bank under any Letter of Credit denominated in an Alternative Currency, and (iv) to the extent warranted by circumstances, such additional dates as the Agent or the Issuing Banks shall reasonably determine or the Majority Lenders shall reasonably require.

"Revolving Credit Advance" means a U.S. Revolving Credit Advance and/or a German Revolving Credit Advance.

"Revolving Credit Borrowing" means a borrowing consisting of simultaneous U.S. Revolving Credit Advances or German Revolving Credit Advances of the same Type and, in the case of Eurocurrency Rate Advances, having the same Interest Period.

"Revolving Credit Commitment" means the U.S. Revolving Credit Commitment and/or the German Revolving Credit Commitment.

"Revolving Credit Facility" means the U.S. Revolving Credit Facility and/or the German Revolving Credit Facility, as applicable.

"S&P" means S&P Global Ratings, a Standard & Poor's Financial Services LLC business, and any successor thereto.

"Sale/Leaseback Transaction" means an arrangement relating to property now owned or hereafter acquired by Parent Borrower or a Restricted Subsidiary whereby Parent Borrower or such Restricted Subsidiary transfers such property to a Person and Parent Borrower or such Restricted Subsidiary leases it from such Person, other than leases between any of Parent Borrower and a Restricted Subsidiary or between Restricted Subsidiaries.

"Same Day Funds" means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Agent or the applicable Issuing Bank, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

"Sanctioned Jurisdiction" means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

"Sanction(s)" means any sanction administered or enforced by the United States Government (including without limitation, OFAC), the federal government of Canada, the United Nations Security Council, the European Union, Her Majesty's Treasury ("HMT") or other relevant sanctions authority.

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

"Secured Hedge Agreement" means any Swap Contract by and between Parent Borrower or any of its Subsidiaries and any Hedge Bank.

"Secured Hedging Obligations" means the obligations of Parent Borrower or any of its Subsidiaries arising under any Secured Hedge Agreement.

"Secured Indebtedness" means any Consolidated Total Indebtedness secured by a Lien.

"Secured Parties" means, collectively, the Agent, the Lenders, the Issuing Banks, the Swing Line Lender, any Cash Management Bank that is party to a Bank Product Document and any Hedge Bank that is a party to a Secured Hedge Agreement.

"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.

"Senior Representative" means, with respect to any Indebtedness, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

"Shrink" means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

"Similar Business" has the meaning specified in Section 7.02(f).

"Solvent" means, with respect to any Person organized under the laws of the United States, or any state thereof, or Germany, 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.

"Specified Transactions" means (a) any Permitted Acquisition, (b) the Transactions and (c) any other event that by the terms of the Loan Documents requires pro forma compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a pro forma basis.

"Spot Rate" for a currency means the rate determined by the Agent or an Issuing Bank, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Agent or such Issuing Bank may obtain such spot rate from another financial institution designated by the Agent or such Issuing Bank if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; provided further that such Issuing Bank may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

"Sterling" and "£" mean the lawful currency of the United Kingdom.

"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 Person. Unless the context otherwise requires, the term "Subsidiary" shall mean a Subsidiary of Parent Borrower.

"Supermajority Lenders" means, as of any date of determination, Lenders having more than 66-2/3% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Advances being deemed "held" by such Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; provided that there shall be excluded for purposes of making a determination of Majority Lenders the unused Revolving Credit Commitment of any Defaulting Lender.

"Swap Contract" means (a) any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, cross-currency hedges, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing

risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Borrowers or any of their respective Subsidiaries shall be a "Swap Contract" and (b) any agreement with respect to any transactions (together with any related confirmations) which are subject to the terms and conditions of, or are governed by, any master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other similar master agreement.

"Swap Obligation" means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1(a)(47) of the Commodity Exchange Act.

"Swing Line" means the U.S. Swing Line and the German Swing Line.

"Swing Line Advance" means any U.S. Swing Line Advance or German Swing Line Advance.

"Swing Line Advance Notice" means any U.S. Swing Line Advance Notice or German Swing Line Advance Notice.

"Swing Line Borrowing" means any U.S. Swing Line Borrowing or German Swing Line Borrowing.

"Swing Line Lender" means Bank of America, including any of its Affiliates and branches, in its capacity as provider of Swing Line Advances.

"Tax Distributions" means has the meaning specified in Section 7.02(b)(ii)(K).

"Tax Group" has the meaning specified in Section 7.02(b)(ii)(K).

"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.

"Termination Date" means the earlier of (x) September 30, 2025 (the "Original Maturity Date") and (y) the date that is 91 days prior to the earliest stated maturity date of (i) any Indebtedness Incurred under Section 7.02(a)(ii)(M) and/or (ii) any refinancing debt in respect of the foregoing with a maturity date prior to the date that is 91 days after September 30, 2025.

"Test Period" means, as of any date of determination, the most recently completed four Fiscal Quarters of the Loan Parties ended on or prior to such time (taken as one accounting period) for which financial statements (and the related compliance certificate) have been delivered (or are required to have been delivered) to the Agent.

"Total Assets" means, as of any date of determination, the consolidated assets of the Parent Borrower and its Subsidiaries at the end of the Fiscal Quarter immediately preceding such date, determined in accordance with GAAP.

"Total Revolving Credit Outstandings" means the aggregate Outstanding Amount of all Advances, Swing Line Advances and L/C Obligations.

"Trademarks" has the meaning specified in the applicable Security Agreements.

"Transactions" means (A) the issuance and sale of the Senior Notes, (B) the payment in full of all obligations under the Existing Credit Agreement and the termination of the liens thereunder, (C) the entry into and incurrence of indebtedness pursuant to this Agreement and (D) the payment of fees and expenses in connection with the foregoing.

"Type" refers to the distinction among Advances bearing interest at the Base Rate, the Foreign Base Rate and the Eurocurrency Rate.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of New York; 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 of the UCC, the definition of such term contained in Article or Division 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, Agent's or any 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 New York, the term "UCC" means the Uniform Commercial Code in such other State.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution

"Unfinanced Capital Expenditures" means for any period, Capital Expenditures of Parent Borrower and its Restricted Subsidiaries made in cash during such period, except to the extent financed with the proceeds of Capital Lease Obligations or other Indebtedness (other than Advances incurred hereunder), common Capital Stock or Disqualified Capital Stock, casualty proceeds, condemnation proceeds or other proceeds that would not be included in EBITDA, less cash received from the sale of any fixed assets of Parent Borrower and its Restricted Subsidiaries (including, without limitation, assets of the type that may constitute Equipment hereunder) during such period; provided that the aggregate amount of Unfinanced Capital Expenditures during such period may not be less than zero.

"Unintentional Overadvance" means an Overadvance which, to the Agent's knowledge, did not constitute an Overadvance when made but which has become an Overadvance resulting from changed circumstances beyond the control of the Lenders, including, without limitation, a reduction in the Appraised Value of property or assets included in the U.S. Borrowing Base or the German Borrowing Base or misrepresentation by the Loan Parties.

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

"United States Tax Compliance Certificate" has the meaning specified in Section 4.02(e)(ii)(B)(III).

"Unreimbursed Amount" has the meaning specified in Section 2.04(c)(i).

"Unrestricted" means, when referring to cash or Cash Equivalents, that the foregoing: (a) do not appear (or would be required to appear) as "restricted" on the consolidated balance sheet of the Parent Borrower (unless such appearance is related to the Liens granted to secure the obligations due under this Agreement), (b) are not subject to, and are not on deposit in a deposit account or securities account that is subject to, any Lien held by, and, with respect to deposit accounts only, under the control (as defined in the UCC) of, any Person (other than the Agent for the ratable benefit of the Secured Parties, pursuant to the Loan Documents) that secures Indebtedness and (c) are not subject to any restriction on the use of such cash or Cash Equivalents to pay Indebtedness.

"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 7.02(b), (y) immediately after giving effect to such designation, Parent Borrower shall be in Pro Forma Compliance with the Payment Conditions 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 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 7.02(b).

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 Senior Notes Indenture be designated an Unrestricted Subsidiary. As of the Closing Date, no entity is an Unrestricted Subsidiary.

"Unused Commitment Fee Rate" means (a) 0.500% per annum if the average of the outstanding Advances (other than Swing Line Advances) and Letters of Credit during the immediately preceding Fiscal Quarter is less than 50% of the Aggregate Commitments, and (b) 0.375% per annum if the average of the outstanding Advances (other than Swing Line Advances) and Letters of Credit during the immediately preceding Fiscal Quarter is equal to or greater than 50% of the Aggregate Commitments.

"U.S. Availability" means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

(a) the U.S. Loan Cap, minus

(b) the Total Revolving Credit Outstandings of the U.S. Borrowers in respect of the U.S. Revolving Credit Facility.

"U.S. Blocked Accounts" has the meaning specified in Section 7.01(i)(ii)(1).

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

"U.S. Borrowing Base" means, at any time of calculation, an amount equal to:

(a) the face amount of Eligible Accounts of the U.S. Borrowers multiplied by 85%; plus

(b) the lesser of (i) the Cost of Eligible Inventory of the U.S. Borrowers multiplied by 70% and (ii) the Cost of Eligible Inventory of the U.S. Borrowers multiplied by the product of 85% multiplied by the Appraised Value of such Eligible Inventory; plus

(c) the lesser of (i) $15.0 million and (ii) the fair market value of Eligible Real Property of the U.S. Borrowers, determined based on the most recent real property appraisal completed by the Agent in accordance with Section 7.01(c)(iii), multiplied by 50.0% (provided that, commencing on September 30, 2021 and on the first day of each fiscal quarter thereafter, the percentage in this clause (c)(ii) shall reduce on a 15-year straight-line schedule); minus

(d) the then applicable amount of all Reserves.

"U.S. Collateral" means the Collateral owned by (or, in the event such Collateral has been foreclosed upon, immediately prior to such foreclosure that was owned by) a U.S. Loan Party.

"U.S. Dilution Reserve" shall mean, at any date, (a) the amount by which the consolidated Dilution Ratio of Eligible Accounts of the U.S. Borrowers exceeds five percent (5%) multiplied by (b) the Eligible Accounts of the U.S. Borrowers on such date.

"U.S. Dominion Account" means a special concentration account established by Parent Borrower at an Affiliate or branch of the Agent in the United States, over which the Agent has exclusive control for withdrawal purposes pursuant to the terms and provisions of this Agreement and the other Loan Documents.

"U.S. Guarantor" means each Guarantor that is a Domestic Subsidiary.

"U.S. Guaranty" means the guarantee of the Obligations of each Loan Party hereunder by the U.S. Loan Parties in Article III hereunder or in a supplemental guarantee in accordance with Section 7.01(n) of this Agreement.

"U.S. Loan Cap" means, at any time of determination, the lesser of (a) the Aggregate U.S. Commitments and (b) the U.S. Borrowing Base.

"U.S. Loan Party" means each U.S. Borrower and each U.S. Guarantor.

"U.S. Notes Priority Collateral" means all U.S. Collateral that is Notes Priority Collateral.

"U.S. Revolving Credit Advance" means an advance by a Lender to any U.S. Borrower under Section 2.01(a).

"U.S. Revolving Credit Commitment" means, as to each Lender, its obligation to (a) make U.S. Revolving Credit Advances to the U.S. Borrowers pursuant to Section 2.01(a), (b) purchase participations in L/C Obligations and (c) purchase participations in U.S. Swing Line Advances, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 1.01A under the caption "U.S. Revolving Credit Commitment" or in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"U.S. Revolving Credit Facility" means, at any time, the aggregate amount of the Lenders' U.S. Revolving Credit Commitments at such time.

"U.S. Security Agreement" means that certain Security Agreement, dated as of the Closing Date, made by the Loan Parties party thereto in favor of the Agent, on behalf of the Agent, and the Secured Parties, as amended, restated, supplemented or otherwise modified from time to time.

"U.S. Swing Line" means the revolving credit facility made available to the U.S. Borrowers by the Swing Line Lender pursuant to Section 2.03.

"U.S. Swing Line Advance" has the meaning specified in Section 2.03(a).

"U.S. Swing Line Advance Notice" means a notice of a Swing Line Borrowing by the applicable U.S. Borrower pursuant to Section 2.03(b), which if in writing, shall be substantially in the form of Exhibit A-2 or such other form as approved by the Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Agent), appropriately completed and signed by a Responsible Officer of the applicable U.S. Borrower.

"U.S. Swing Line Borrowing" means a borrowing of a Swing Line Advance by any U.S. Borrower pursuant to Section 2.03.

"U.S. Swing Line Sublimit" means an amount equal to the lesser of (a) $10.0 million and (b) the Aggregate U.S. Commitments. The U.S. Swing Line Sublimit is part of, and not in addition to, the U.S. Revolving Credit Facility.

"VAT" shall mean (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112) and (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

"VI Investments NL" means Varex Imaging Investments B.V., having its official seat (*statutaire zetel*) in Dinxperlo, the Netherlands, registered with the Dutch trade register under number 09198892.

"Weekly Borrowing Base Delivery Event" means either (i) the occurrence and continuance of any Event of Default or (ii) the failure of Parent Borrower to maintain Availability at least equal to the greater of (a) 12.5% of the Loan Cap and (b) $9.375 million. For purposes of this Agreement, the occurrence of a Weekly Borrowing Base Delivery Event shall be deemed continuing (i) so long as such Event of Default exists and/or (ii) if the Weekly Borrowing Base Delivery Event arises as a result of the Borrowers' failure to achieve Availability as required hereunder, until Availability has exceeded the greater of (x) 12.5% of the Loan Cap and (y) $9.375 million for thirty (30) consecutive calendar days, in which case a Weekly Borrowing Base Delivery Event shall no longer be deemed to be continuing for purposes of this Agreement. The termination of a Weekly Borrowing Base Delivery Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Weekly Borrowing Base Delivery Event in the event that the conditions set forth in this definition again arise.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness or Disqualified Capital Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Capital Stock or Preferred Stock multiplied by the amount of such payment, by (2) the sum of all such payments.

"Wholly Owned Restricted Subsidiary" means any Wholly Owned Subsidiary that is a Restricted Subsidiary.

"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.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to

time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02 Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding".

SECTION 1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP as in effect from time to time, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. Notwithstanding any change in GAAP occurring after the Closing Date, the computations of all financial ratios and requirements set forth in any Loan Document shall continue to be computed in accordance with GAAP prior to such change therein.

SECTION 1.04 Exchange Rates; Currency Equivalents. The Agent, the Issuing Banks or the Swing Line Lender, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of the U.S. Borrowing Base, the German Borrowing Base and Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating the financial covenant hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Agent, an Issuing Bank or the Swing Line Lender, as applicable, absent manifest error.

(b) Wherever in this Agreement in connection with a Committed Borrowing, conversion, continuation or prepayment of an Advance or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Committed Borrowing, Advance or Letter of Credit is denominated in an Alternative Currency, unless otherwise expressed in this Agreement, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Agent or the applicable Issuing Bank, as the case may be.

(c) For purposes of determining the U.S. Borrowing Base and the German Borrowing Base (and, in each case, each component thereof), the Borrowers shall report (i) asset

values with respect to any asset included in the U.S. Borrowing Base and the German Borrowing Base in the currency shown in the Borrowers' financial records or invoiced by the Borrowers, as applicable, for such asset, (ii) any Inventory Reserves with respect to any item of Inventory in the currency in which the asset value for such item of Inventory is reported pursuant to clause (i) above, and (iii) any Availability Reserve in the currency of the underlying claims, liabilities or obligations giving rise to such Availability Reserve.

SECTION 1.05 Change of Currency. Each obligation of the Loan Parties to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that, if any Committed Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Committed Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

SECTION 1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable) or, with respect to the German Borrower, London time.

SECTION 1.07 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the Dollar Equivalent of the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Issuer Documents related thereto, whether or not such maximum face amount is in effect at such time.

SECTION 1.08 [Reserved].

SECTION 1.09 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 1.10 Borrower Representative.

Each Loan Party hereby designates Parent Borrower as its representative and agent for all purposes under the Loan Documents, including requests for Advances and Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base Certificates and financial 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 Agent, any Issuing Bank or any Lender, and Parent Borrower hereby accepts such appointment. The German Borrower exempts the Parent Borrower or all purposes under the Loan Documents from the restrictions of multiple representations pursuant to Section 181 of the German Civil Code. The Agent and the Lenders 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 Agent and the Lenders may give any notice or communication with a Loan Party hereunder to Parent Borrower on behalf of such Loan Party. Each of the Agent, the Issuing Banks and the Lenders 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.

SECTION 1.11 Interest Rates. The Agent does not warrant, nor accept responsibility, nor shall the Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurocurrency Rate" with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any Successor Rate) or the effect of any of the foregoing, or of any Successor Rate Conforming Changes.

ARTICLE II

AMOUNTS AND TERMS OF THE ADVANCES

SECTION 2.01 The Revolving Credit Advances; Reserves.

(a) Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make (x) U.S. Revolving Credit Advances to any U.S. Borrower from time to time on any Business Day during the Availability Period in Dollars or in one or more Alternative Currencies, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's U.S. Revolving Credit Commitment and (y) German Revolving Credit Advances to the German Borrower from time to time on any Business Day during the Availability Period in Dollars or in one or more Alternative Currencies, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's German Revolving Credit Commitment; provided, however, that, after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings at such time shall not exceed the Loan Cap at such time, (ii) the aggregate Outstanding Amount of the Revolving Credit Advances of any Lender, plus such Lender's Commitment Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Commitment Percentage of the Outstanding Amount of all Swing Line Advances shall not exceed such Lender's Revolving Credit Commitment, (iii) the Total Revolving Credit Outstandings in respect of the U.S. Revolving Credit Facility at such time shall not exceed the U.S. Loan Cap at such time; (iv) the Total Revolving Credit Outstandings in respect of the German Revolving Credit Facility at such time shall not exceed the German Loan Cap at such time; and (v) no more than 25.0% of the Total Revolving Credit Outstandings shall be in Alternative Currencies. Within the limits of each Lender's U.S. Revolving Credit Commitment and German Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01(a), prepay under Section 2.10, and reborrow under this Section

2.01(a). Revolving Credit Advances may be Index Rate Loans or Eurocurrency Rate Advances, as further provided herein; provided that (1) Revolving Credit Advances to any U.S. Borrower denominated in Euros or Sterling shall be Eurocurrency Rate Advances, (2) Revolving Credit Advances to the U.S. Borrowers denominated in Dollars shall be either Eurocurrency Rate Advances or Base Rate Advances and (3) Revolving Credit Advances to the German Borrower shall be either Eurocurrency Rate Advances or Foreign Base Rate Advances.

(b) The Inventory Reserves and Availability Reserves as of the Closing Date are set forth in the Borrowing Base Certificate delivered pursuant to Section 5.01(i) hereof.

(c) The Agent shall have the right, at any time and from time to time after the Closing Date in its Permitted Discretion, to establish or modify Reserves or to eliminate then existing Reserves, and the Agent shall provide the Parent Borrower with prompt written notice of the same.

SECTION 2.02 Making the Advances.

(a) Each Revolving Credit Borrowing, each conversion of Revolving Credit Advances from one Type to the other and each continuation of Eurocurrency Rate Advances shall be made upon the applicable Borrower's irrevocable notice to the Agent, which may be given by (x) solely if in respect of a Borrowing by a U.S. Borrower, telephone or (y) a Committed Advance Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Agent of a Committed Advance Notice. Each such Committed Advance Notice must be received by the Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Advances denominated in Dollars or any Borrowing of Foreign Base Rate Advances, (ii) four Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Advances denominated in Alternative Currencies and (iii) on the requested date of any Borrowing of Base Rate Advances denominated in Dollars. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Advances (x) under the U.S. Revolving Credit Facility shall be in a minimum principal amount of $5.0 million or an integral multiple of $1.0 million in excess thereof and (y) under the German Revolving Credit Facility shall be in a minimum principal amount of $2.0 million or an integral multiple of $500,000 in excess thereof. Each Committed Advance Notice (whether telephonic or written) shall specify (i) whether the applicable Borrower is requesting a Revolving Credit Borrowing, a conversion of Revolving Credit Advances from one Type to the other or a continuation of Eurocurrency Rate Advances, (ii) whether such Revolving Credit Borrowing, conversion or continuation is in respect of the U.S. Revolving Credit Facility or the German Revolving Credit Facility, (iii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iv) the principal amount of Advances to be borrowed, converted or continued, (v) the Type of Advances to be borrowed or to which existing Revolving Credit Advances are to be converted (provided that any Advances to the U.S. Borrower denominated or to be denominated in Euros or Sterling shall be Eurocurrency Rate Advances), (vi) if applicable, the duration of the Interest Period with respect thereto and (vii) the currency of the Revolving Credit Advances to be borrowed. If a Borrower fails to specify a currency in a Committed Advance Notice requesting a Revolving Credit Borrowing, then the Revolving Credit Advances so requested shall be made in Dollars. If a Borrower fails to specify a Type of Advance in a Committed Advance Notice or if a Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Revolving Credit Advances shall be (i) if to a U.S. Borrower and denominated in Dollars, Base Rate Advances, (ii) if to a U.S.

Borrower and denominated in Euros or Sterling, Eurocurrency Rate Advances and (iii) if to the German Borrower, Foreign Base Rate Advances. Any such automatic conversion to Index Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Advances. If a Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Advances in any such Committed Advance Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. No Revolving Credit Advance may be converted into or continued as a Revolving Credit Advance denominated in a different currency, but instead must be prepaid in the original currency of such Revolving Credit Advance and reborrowed in the other currency.

(b) Following receipt of a Committed Advance Notice, the Agent shall promptly notify each Lender of the amount (and currency) of its Commitment Percentage of the applicable Revolving Credit Advances and, if no timely notice of a conversion or continuation is provided by the applicable Borrower, the Agent shall notify each Lender of the details of any automatic conversion to Index Rate Loans or continuation of Revolving Credit Advances denominated in a currency other than Dollars, in each case as described in Section 2.02(a). In the case of a Revolving Credit Borrowing, each appropriate Lender shall make the amount of its Advance available to the Agent in Same Day Funds at the Agent's Office for the applicable currency not later than 2:00 p.m., in the case of any Advance denominated in Dollars, and not later than the Applicable Time specified by the Agent in the case of any Revolving Credit Advance in an Alternative Currency, in each case on the Business Day specified in the applicable Committed Advance Notice. Upon satisfaction of the applicable conditions set forth in Section 5.02 (and, if such Borrowing is the initial Credit Extension hereunder, Section 5.01), the Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Agent either by (i) crediting the account of such Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by such Borrower; provided, however, that, if, on the date the Committed Advance Notice with respect to such Borrowing denominated in Dollars is given by the Parent Borrower, there are L/C Borrowings outstanding (and the Parent Borrower shall have been notified of such L/C Borrowings), then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and, second, shall be made available to the Parent Borrower as provided above.

(c) During the existence of an Event of Default, no Revolving Credit Advances may be requested as, converted to or continued as Eurocurrency Rate Advances (whether in Dollars or any Alternative Currency) without the consent of the Majority Lenders, and the Majority Lenders may demand that any or all of the then outstanding Revolving Credit Advances that are Eurocurrency Rate Advances denominated in an Alternative Currency be prepaid, or redenominated into Dollars in the amount of the Dollar Equivalent thereof, on the last day of the then current Interest Period with respect thereto.

(d) The Agent shall promptly notify the applicable Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Advances upon determination of such interest rate. At any time that Index Rate Loans are outstanding, the Agent shall notify the applicable Borrower(s) and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Revolving Credit Borrowings, all conversions of Revolving Credit Advances from one Type to the other and all continuations of Revolving Credit Advances as the same Type, there shall not be more than eight Interest Periods in effect.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all of the portion of its Advances 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, the Agent, and such Lender.

(g) The Agent, the Lenders, the Swing Line Lender and the Issuing Banks shall have no obligation to make any Advance or to provide any Letter of Credit if an Overadvance would result. The Agent may, in its discretion, make Permitted Overadvances without the consent of the Borrowers, the Lenders, the Swing Line Lender and the Issuing Banks and the Borrowers and each Lender and Issuing Bank shall be bound thereby. Any Permitted Overadvance may constitute a Swing Line Advance. A Permitted Overadvance is for the account of the Borrower designated by the Agent and shall constitute an Index Rate Loan and an Obligation and shall be repaid by such Borrower in accordance with the provisions of Section 2.07. The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The making by the Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Section 2.04 regarding the Lenders' obligations to purchase participations with respect to Letter of Credits or of Section 2.03 regarding the Lenders' obligations to purchase participations with respect to Swing Line Advance. The Agent shall have no liability for, and no Loan Party or Lender shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvance(s).

SECTION 2.03 Swing Line Advances.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.03, may in its sole discretion make (i) loans (each such loan, a "U.S. Swing Line Advance") to the U.S. Borrowers on such terms (subject to Section 2.07(b)) as may be agreed between the Swing Line Lender and the Parent Borrower from time to time, on any Business Day during Availability Period in Dollars in an aggregate amount not to exceed at any time outstanding the amount of the U.S. Swing Line Sublimit and (ii) loans (each such loan, a "German Swing Line Advance") to the German Borrower on such terms (subject to Section 2.07(b)) as may be agreed between the Swing Line Lender and the Parent Borrower from time to time, on any Business Day during Availability Period in Dollars or Euros in an aggregate amount not to exceed at any time outstanding the amount of the German Swing Line Sublimit, in each case notwithstanding the fact that such Swing Line Advances, when aggregated with the Commitment Percentage of the Outstanding Amount of Revolving Credit Advances and L/C Obligations of a Lender acting as the Swing Line Lender, may exceed the amount of such Lender's Commitment; provided, however, that, after giving effect to any Swing Line Advance, (i) the Total Revolving Credit Outstandings shall not exceed the Loan Cap, (ii) the Total Revolving Credit Outstandings in respect of the U.S. Revolving Credit Facility shall not exceed the U.S. Loan Cap, (iii) the Total Revolving Credit Outstandings in respect of the German Revolving Credit Facility shall not exceed the German Loan Cap, (iv) the aggregate Outstanding Amount of the Revolving Credit

Advances of any Lender, plus such Lender's Commitment Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Commitment Percentage of the Outstanding Amount of all Swing Line Advances shall not exceed such Lender's Commitment and (v) no more than 25.0% of the Total Revolving Credit Outstandings shall be in Alternative Currencies. No Borrower shall use the proceeds of any Swing Line Advance to refinance any outstanding Swing Line Advance. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.03, prepay under Section 2.10 and reborrow under this Section 2.03. Immediately upon the request of the Swing Line Lender, each Lender with Revolving Credit Commitments under the applicable Revolving Credit Facility under which the Swing Line Advance was made shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Advance in an amount equal to the product of such Lender's applicable Commitment Percentage times the amount of such Swing Line Advance.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the irrevocable notice by a Borrower to the Swing Line Lender and the Agent, which may be given by (x) solely if in respect of a Swing Line Borrowing by a U.S. Borrower, telephone or (y) by a Swing Line Advance Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Agent of a Swing Line Advance Notice. Each such Swing Line Advance Notice must be received by the Swing Line Lender and the Agent not later than, in the case of Swing Line Advances, 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $1.0 million, (ii) whether such Swing Line Advance is a U.S. Swing Line Advance or a German Swing Line Advance and (iii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Advance Notice, the Swing Line Lender will confirm with the Agent (by telephone or in writing) that the Agent has also received such Swing Line Advance Notice and, if not, the Swing Line Lender will notify the Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (in writing or, solely if in respect of a Swing Line Borrowing by a U.S. Borrower, by telephone) from the Agent (including at the request of any Lender) prior to 3:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Advance as a result of the limitations set forth in the first proviso to the first sentence of Section 2.03(a), or (B) that one or more of the applicable conditions specified in Article V is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender may, not later than 4:00 p.m. on the borrowing date specified in such Swing Line Advance Notice, make the amount of its Swing Line Advance available to the applicable Borrower at its office by crediting the account of such Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Advances.

(i) The Swing Line Lender at any time in its sole discretion may request, on behalf of the applicable Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Appropriate Lender make (i) with respect to U.S. Swing Line Advances, a Base Rate Advance in an amount equal to such Lender's Commitment Percentage of the amount of U.S. Swing Line Advances then outstanding and (ii) with respect to German Swing Line Advances, a Foreign Base Rate Advance in an amount equal to such Lender's Commitment Percentage of the amount of German Swing Line Advances then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Advance Notice for purposes hereof)

and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Index Rate Loans, but subject to the unutilized portion of the U.S. Revolving Credit Commitment or the German Revolving Credit Commitment, as applicable, and the conditions set forth in Section 5.02. The Swing Line Lender shall furnish Parent Borrower and the applicable Borrower with a copy of the applicable Committed Advance Notice promptly after delivering such notice to the Agent. Each Appropriate Lender shall make an amount equal to its Commitment Percentage of the amount specified in such Committed Advance Notice available to the Agent in immediately available funds (and the Agent may apply Cash Collateral available with respect to the applicable Swing Line Advance) for the account of the Swing Line Lender at the Agent's Office not later than 1:00 p.m. on the day specified in such Committed Advance Notice, whereupon, subject to Section 2.03(c)(ii), each Lender that so makes funds available shall be deemed to have made an Index Rate Loan to the applicable Borrower in such amount. The Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Advance cannot be refinanced by such a Committed Borrowing in accordance with Section 2.03(c)(i), the request for Base Rate Advances or Foreign Base Rate Advances, as applicable, submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Appropriate Lenders fund its risk participation in the relevant Swing Line Advance and each such Lender's payment to the Agent for the account of the Swing Line Lender pursuant to Section 2.03(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Advance included in the relevant Committed Borrowing or funded participation in the relevant Swing Line Advance, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Credit Advances or to purchase and fund risk participations in Swing Line Advances pursuant to this Section 2.03(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, any Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Credit Advances pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 5.02. No such funding

of risk participations shall relieve or otherwise impair the obligation of any Borrower to repay Swing Line Advances, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Advance, if the Swing Line Lender receives any payment on account of such Swing Line Advance, the Swing Line Lender will distribute to such Lender its Commitment Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Advance is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.09 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Appropriate Lender shall pay to the Swing Line Lender its Commitment Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Overnight Rate. The Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing Parent Borrower for interest on the Swing Line Advances. Until each Lender funds its Base Rate Advance or Foreign Base Rate Advance, as applicable, or risk participation pursuant to this Section 2.03 to refinance such Lender's Commitment Percentage of any Swing Line Advance, interest in respect of such Commitment Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Advances directly to the Swing Line Lender.

SECTION 2.04 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) each Issuing Bank agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.04 and within the limits of its Issuing Commitment, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars, any Alternative Currency or such other currency as maybe agreed by such Issuing Bank in its sole discretion and the Agent that is a lawful currency readily available and freely transferable and convertible into Dollars (which additional currency, solely for purposes of the applicable Letter of Credit, the drawings thereunder and the reimbursement thereof, shall be deemed to be an Alternative Currency) for the account of Parent Borrower and its Subsidiaries, and to amend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Appropriate Lenders severally agree to participate in Letters of Credit issued for the account of Parent Borrower and its

Subsidiaries and any drawings thereunder; provided that, after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (1) the Total Revolving Credit Outstandings shall not exceed the Loan Cap, (2) the aggregate Outstanding Amount of the Revolving Credit Advances of any Lender, plus such Lender's Commitment Percentage of the Outstanding Amount of all Swing Line Advances, plus such Lender's Commitment Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Lender's Revolving Credit Commitment, (3) the Total Revolving Credit Outstandings in respect of the U.S. Revolving Credit Facility shall not exceed the U.S. Loan Cap, (4) the Total Revolving Credit Outstandings in respect of the German Revolving Credit Facility shall not exceed the German Loan Cap, (5) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit, (6) the Outstanding Amount of the L/C Obligations under the German Revolving Credit Facility shall not exceed $2.5 million and (7) no more than 25.0% of the Total Revolving Credit Outstandings shall be in Alternative Currencies. Each request by a Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by such Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the ability of the Borrowers to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates or branches or advising banks or confirming banks of such Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate or branch or advising bank or confirming bank with respect to Letters of Credit issued by such Affiliate or branch or advising bank or confirming bank. Letters of Credit issued hereunder shall be issued either under the U.S. Revolving Credit Facility or the German Revolving Credit Facility as designated by the applicable Borrower pursuant to Section 2.04(b)(i). Any request for the issuance of a Letter of Credit hereunder shall be irrevocable and made in writing by an authorized person of the applicable Borrower and, if requested by the applicable Issuing Bank, authenticated through such Issuing Bank's electronic platform or portal in accordance with its procedures for such authentication by such Issuing Bank.

(ii) No Issuing Bank shall issue any Letter of Credit, if:

(A) subject to Section 2.04(b)(iii), the expiry date of the requested Letter of Credit would occur more than twelve months after the date of issuance, unless the Majority Lenders have approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date.

(iii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing the Letter of Credit, or any Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any

Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Bank in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally;

(C) except as otherwise agreed by the Agent and such Issuing Bank, such Letter of Credit is in an initial stated amount less than $20,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(E) any Lender is at that time a Defaulting Lender, unless such Issuing Bank has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such Issuing Bank (in its sole discretion) with the applicable Borrower or such Lender to eliminate such Issuing Bank's actual or potential Fronting Exposure (after giving effect to Section 2.14(a)(iv)) with respect to the Defaulting Lender arising from such Letter of Credit**;** or

(F) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iv) The applicable Issuing Bank shall not amend any Letter of Credit if such Issuing Bank would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The applicable Issuing Bank shall be under no obligation to amend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The applicable Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and such Issuing Bank shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by such Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article IX included such Issuing Bank with respect to such acts or omissions, and (B) as additionally provided herein with respect to such Issuing Bank.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of any Borrower delivered to an Issuing Bank (with a copy to the Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of such Borrower. Such Letter of Credit Application must be received by the applicable Issuing Bank and the Agent (x) not later than 11:00 a.m. at least three (3) Business Days prior to the proposed issuance date or date of amendment, as the case may be, of any Letter of Credit denominated in Dollars, and (y) not later than 11:00 a.m. at least five Business Days prior to the proposed issuance date or date of amendment, as the case may be, of any Letter of Credit denominated in an Alternative Currency; or in each case such later date and time as such Issuing Bank may agree in a particular instance in its sole discretion, prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to such Issuing Bank: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; (H) whether such Letter of Credit will be issued under the U.S. Revolving Credit Facility or the German Revolving Credit Facility; and (I) such other matters as such Issuing Bank may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to such Issuing Bank (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as such Issuing Bank may reasonably require. Additionally, Parent Borrower and/or the applicable Subsidiary shall furnish to the applicable Issuing Bank and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as such Issuing Bank or the Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable Issuing Bank will confirm with the Agent (in writing or, solely if in respect of a Letter of Credit for a U.S. Borrower, by telephone) that the Agent has received a copy of such Letter of Credit Application from a Borrower and, if not, such Issuing Bank will provide the Agent with a copy thereof. Unless such Issuing Bank has received written notice from any Lender, the Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article V shall not then be satisfied, then, subject to the terms and conditions hereof, such Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of such Borrower as applicant (provided that any applicable Subsidiary may be named as an account party in any Letter of Credit subject to Section 2.04(l)) or enter into the applicable amendment, as the case may be, in each case in accordance with such Issuing Bank's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Appropriate Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from such Issuing Bank a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Commitment Percentage times the amount of such Letter of Credit.

(iii) If the applicable Borrower so requests in any applicable Letter of Credit Application, the applicable Issuing Bank may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit such Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable Issuing Bank, neither Parent Borrower nor any Subsidiary shall be required to make a specific request to such Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the applicable Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that such Issuing Bank shall not permit any such extension if (A) such Issuing Bank has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.04(a) or otherwise), or (B) it has received written notice on or before the day that is thirty (30) days before the Non-Extension Notice Date (1) from the Agent that the Majority Lenders have elected not to permit such extension or (2) from the Agent, any Lender, Parent Borrower or the applicable Subsidiary that one or more of the applicable conditions specified in Section 5.02 is not then satisfied, and in each such case directing such Issuing Bank not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Bank will also deliver to the applicable Borrower or Subsidiary and the Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) After payment of any drawing by any beneficiary under any Letter of Credit, the applicable Issuing Bank shall notify the applicable Borrower and the Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the applicable Borrower shall reimburse such Issuing Bank in such Alternative Currency, unless the applicable Issuing Bank (at its option) shall have specified in such notice that it will require reimbursement in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, such Issuing Bank shall notify the applicable Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. If an Issuing Bank shall make any payment under a Letter of Credit, the applicable Borrower shall reimburse such Issuing Bank through the Agent in an amount equal to the amount of such drawing and in the applicable currency not later than 2:00 p.m. (or the Applicable Time in the case of reimbursement in an Alternative Currency) on the date the applicable Borrower receives notice of such payment from the Agent (which notice shall be delivered to such Borrower promptly following the Agent's receipt of such notice from the Issuing Bank) (each such date, an "Honor Date"), the applicable Borrower shall reimburse such Issuing Bank through the Agent in an amount equal to the amount of such drawing. If the applicable Borrower fails to so reimburse such Issuing Bank by such time, the Agent shall promptly

notify each Appropriate Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the "Unreimbursed Amount"), and the amount of such Lender's Commitment Percentage thereof. In such event, the applicable Borrower shall be deemed to have requested a Revolving Credit Borrowing of Index Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Index Rate Loans, but subject to the amount of the unutilized portion of the U.S. Revolving Credit Commitment or the German Revolving Credit Commitment, as applicable, and the conditions set forth in Section 5.02 (other than the delivery of a Committed Advance Notice). Any notice given by such Issuing Bank or the Agent pursuant to this Section 2.04(c)(i) (x) solely in respect of a Letter of Credit for a U.S. Borrower, may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice and (y) otherwise, shall be in writing.

(ii) Each Lender shall, upon any notice pursuant to Section 2.04(c)(i) make funds available (and the Agent may apply Cash Collateral provided for this purpose) for the account of the applicable Issuing Bank, in Dollars, at the Agent's Office in an amount equal to its Commitment Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Agent, whereupon, subject to the provisions of Section 2.04(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Advance to the applicable U.S. Borrower or a Foreign Base Rate Advance to the German Borrower, as applicable, in such amount. The Agent shall remit the funds so received to such Issuing Bank in Dollars or the applicable Alternative Currency, as applicable.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Advances or Foreign Base Rate Advances because the conditions set forth in Section 5.02 cannot be satisfied or for any other reason, the applicable Borrower shall be deemed to have incurred from the applicable Issuing Bank an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on written demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Agent for the account of such Issuing Bank pursuant to Section 2.04(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.04.

(iv) Until each Lender funds its Revolving Credit Advance or L/C Advance pursuant to this Section 2.04(c) to reimburse the applicable Issuing Bank for any amount drawn under any Letter of Credit, interest in respect of such Lender's Commitment Percentage of such amount shall be solely for the account of such Issuing Bank.

(v) Each Lender's obligation to make Revolving Credit Advances or L/C Advances to reimburse the applicable Issuing Bank for amounts drawn under Letters of Credit, as contemplated by this Section 2.04(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim,

recoupment, defense or other right which such Lender may have against such Issuing Bank, any Borrower, any other Subsidiary or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Credit Advances pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 5.02 (other than delivery by a Borrower of a Committed Advance Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the applicable Borrower and/or Subsidiary to reimburse such Issuing Bank for the amount of any payment made by such Issuing Bank under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Agent for the account of the applicable Issuing Bank any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(ii), then, without limiting the other provisions of this Agreement, such Issuing Bank shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by such Issuing Bank in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Advance included in the relevant Revolving Credit Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of such Issuing Bank submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after an Issuing Bank has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.04(c), if the Agent receives for the account of such Issuing Bank any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from any Borrower, any Subsidiary or otherwise, including proceeds of Cash Collateral applied thereto by the Agent), the Agent will distribute to such Lender its Commitment Percentage thereof in the same funds as those received by the Agent.

(ii) If any payment received by the Agent for the account of an Issuing Bank pursuant to Section 2.04(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by such Issuing Bank in its discretion), each Appropriate Lender shall pay to the Agent for the account of such Issuing Bank its Commitment Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrowers and the applicable Subsidiaries to reimburse an Issuing Bank for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower or any other Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), an Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by an Issuing Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by an Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver, interim receiver, monitor, or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to any Borrower or any other Subsidiary or in the relevant currency markets generally; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Borrower or any other Subsidiary.

The applicable Borrower and/or Subsidiary shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the instructions of such Borrower or Subsidiary or other irregularity, the applicable Borrower and/or Subsidiary will immediately notify the applicable Issuing Bank. The Borrowers and their Subsidiaries shall be conclusively deemed to have waived any such claim against the applicable Issuing Bank and its correspondents unless such notice is given as aforesaid.

(f) Role of Issuing Banks. Each Lender and each Borrower agrees, on behalf of itself and its Subsidiaries, that, in paying any drawing under a Letter of Credit, an Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates

and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Issuing Banks, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of an Issuing Bank shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Majority Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Parent Borrower and its Subsidiaries hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit issued at its request; provided, however, that this assumption is not intended to, and shall not, preclude Parent Borrower or any Subsidiary pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Issuing Banks, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of an Issuing Bank shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.04(e); provided, however, that, anything in such clauses to the contrary notwithstanding, Parent Borrower or its Subsidiaries may have a claim against an Issuing Bank, and such Issuing Bank may be liable to Parent Borrower or its Subsidiaries, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Parent Borrower or any Subsidiary which Parent Borrower or such Subsidiary proves were caused by such Issuing Bank's willful misconduct or gross negligence or such Issuing Bank's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, an Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP. Unless otherwise expressly agreed by the applicable Issuing Bank and the applicable Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(h) Letter of Credit Fees. The applicable Borrower and/or Subsidiary shall pay to the Agent for the account of each Lender in accordance with its Commitment Percentage a Letter of Credit fee (the "Letter of Credit Fee") equal to the Applicable Margin for Eurocurrency Rate Advances times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit; provided, however, that any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the applicable Issuing Bank pursuant to this Section 2.04 shall be payable, to the maximum extent permitted by applicable Requirement of Law, to the other Lenders in accordance with the upward adjustments in their respective Commitment Percentages allocable to such Letter of Credit pursuant to Section 2.14(a)(iv), with the balance of such fee, if any, payable to such Issuing Bank for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. Letter of Credit Fees shall be (i) due and payable in arrears on the first day of each January, April, July and October, commencing with the first such date to occur after the issuance of such Letter of Credit, on the

Letter of Credit Expiration Date and thereafter on written demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Letter of Credit Fee during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Letter of Credit Fee separately for each period during such quarter that such Letter of Credit Fee was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Majority Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to Issuing Banks. The applicable Borrower shall pay directly to the applicable Issuing Bank for its own account a fronting fee at the rate per annum equal to 0.25%, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears Such fronting fee shall be due and payable on the first day of each January, April, July and October in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on written demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. In addition, the applicable Borrower shall pay directly to each Issuing Bank for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such Issuing Bank relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Monthly Report. Each Issuing Bank, on the last Business Day of each month until the Termination Date, shall calculate the L/C Obligations on such date in respect of Letters of Credit issued by it and shall promptly send notice of such L/C Obligations to the Agent, the Parent Borrower and each Lender, and the Agent shall then determine the excess amount, if any, referred to in the first sentence of Section 2.10(b)(i) or (ii) and shall promptly inform the Parent Borrower of such amount and the Parent Borrower shall promptly upon receipt thereof make the payments provided for in Section 2.10(b)(i) or (ii) above if applicable.

(l) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrowers under the Revolving Credit Facility under which such Letter of Credit is issued shall be obligated to reimburse the Agent, for the benefit of the applicable Issuing Bank, for any and all drawings under such Letter of Credit. The Borrowers hereby acknowledge that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of Borrowers, and that the Borrowers' business derives substantial benefits from the businesses of such Subsidiaries.

SECTION 2.05 Fees.

(a) Commitment Fee. The Borrowers agree to pay to the Agent for the account of each Lender in accordance with its Commitment Percentage, a commitment fee equal to (x) for the period from the Closing Date until the last day of the first Fiscal Quarter ending after the Closing Date, 0.500% per annum and (y) thereafter, the Unused Commitment Fee Rate, in each

case multiplied by the actual daily amount by which the Aggregate Commitments exceed the Total Revolving Credit Outstandings (excluding Swing Line Advances). The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the first day of each January, April, July and October, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period.

(b) Closing Fee. The Borrowers agree to pay to the Agent, for the account of each Lender, a closing fee equal to 0.50% of the Commitments of each Lender provided to the Borrowers on the Closing Date, which fee shall be earned in full and paid on the Closing Date.

(c) Other Fees. The Borrowers hereby agree to pay the fees and charges referred to in the Fee Letter.

SECTION 2.06 Reduction and Increase of the Revolving Credit Commitments; Additional Issuing Banks.

(a) Parent Borrower may, upon notice to the Agent, terminate the unused portions of the Letter of Credit Sublimit, the U.S. Swing Line Sublimit, the German Swing Line Sublimit, the unused U.S. Revolving Credit Commitments or the unused German Revolving Credit Commitments, or from time to time permanently reduce the unused portions of the Letter of Credit Sublimit, the U.S. Swing Line Sublimit, the German Swing Line Sublimit, the unused U.S. Revolving Credit Commitments or the unused German Revolving Credit Commitments; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. four Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $5.0 million or any whole multiple of $1.0 million in excess thereof, (iii) Parent Borrower shall not terminate or reduce the unused portions of the Letter of Credit Sublimit, the U.S. Swing Line Sublimit, the German Swing Line Sublimit, the unused U.S. Revolving Credit Commitments or the unused German Revolving Credit Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, (x) the Total Revolving Credit Outstandings would exceed the Loan Cap, (y) the Total Revolving Credit Outstandings in respect of the U.S. Revolving Credit Facility would exceed the U.S. Loan Cap and/or (z) the Total Revolving Credit Outstandings in respect of the German Revolving Credit Facility would exceed the German Loan Cap and (iv) if, after giving effect to any reduction of the unused U.S. Revolving Credit Commitments, the unused German Revolving Credit Commitments, the Letter of Credit Sublimit, the U.S. Swing Line Sublimit or the German Swing Line Sublimit exceeds the amount of the Revolving Credit Commitments, such Sublimit shall be automatically reduced by the amount of such excess. The Agent will promptly notify the Lenders of any such notice of termination or reduction of Commitments. A notice provided by Parent Borrower under this clause (a) may state that such notice is conditioned upon the availability of other financing, in which case such notice may be revoked by Parent Borrower (by notice to the Agent prior to the specified date of such termination or reduction) if such condition is not satisfied. The amount of any such U.S. Revolving Credit Commitment reduction or German Revolving Credit Commitment reduction shall not be applied to the Letter of Credit Sublimit, the U.S. Swing Line Sublimit or the German Swing Line Sublimit unless otherwise specified by Parent Borrower. Any reduction of any Commitments shall be applied to the Commitment of each Appropriate Lender according to its Commitment Percentage. All fees accrued until the effective date of any termination of any Commitments shall be paid on the effective date of such termination.

(b) Parent Borrower shall have the right, at any time and from time to time after the Closing Date and prior to the Termination Date to (i) increase the amount of the U.S. Revolving Credit Commitments and/or the German Revolving Credit Commitments, which increased Revolving Credit Commitments shall be provided by one or more Lenders (subject to the consent of such Lenders in their sole and absolute discretion) or Assuming Lenders (provided that any such Assuming Lender shall be subject to the consent of the Agent and the Issuing Banks in their sole and absolute discretion) (any such increase, "Additional Revolving Commitments") and (ii) increase the Issuing Commitment of an Issuing Bank (subject to the consent of such Issuing Bank in its sole and absolute discretion) (each such increase or incurrence under clause (i) or (ii) being a "Commitment Increase"), on and subject to the following terms:

(i) (x) The aggregate amount of Commitment Increases in the form of Additional Revolving Commitments shall not exceed $75.0 million, (y) Commitment Increases in respect of the German Revolving Credit Commitments shall not exceed 20.0% of the aggregate Commitment Increases and (z) the aggregate Commitment Increases shall not result in Revolving Credit Commitments exceeding the maximum amount of Indebtedness permitted under this Agreement pursuant to the Senior Notes or Senior Notes Indenture or which could result in the ABL Cap Amount (as defined in the ABL Intercreditor Agreement) being exceeded.

(ii) The amount of each Commitment Increase by any Lender or any Assuming Lender shall be in a minimum amount of $10.0 million or an integral multiple of $1.0 million in excess thereof.

(iii) Any such Commitment Increase in the form of Additional Revolving Commitments above shall be on the same terms as the Revolving Credit Commitments, except with respect to (x) any commitment, arrangement, upfront, or similar fees payable in connection therewith and (y) subject to the immediately succeeding clause (iv), interest rates or unused fees.

(iv) In no event shall the interest rates or unused fees to be payable in connection with any Additional Revolving Commitments be higher than the amounts paid to the then existing Lenders in respect of their applicable Revolving Credit Commitments, unless such increased interest rates or unused fees, as applicable, are also to be paid to all then existing Lenders in respect of their applicable Revolving Credit Commitments.

(v) No proposed Commitment Increase in the form of Additional Revolving Commitments shall occur unless each of the following requirements in respect thereof shall have been satisfied:

(A) The Agent shall have received from Parent Borrower an irrevocable written notice (a "Commitment Increase Notice"), dated not later than 10 days (or such shorter period agreed to by the Agent) before such proposed Commitment Increase Effective Date, that (1) specifies (w) (if applicable) the proposed Issuing Commitment increase of each Issuing Bank and/or of the Lenders which are to become Issuing Banks and the amount of each Issuing Bank's Issuing Commitment after giving effect thereto, (x) the aggregate amount of the proposed Commitment Increase, (y) the Lenders whose U.S. Revolving Credit Commitments and/or German Revolving Credit Commitments are

to be increased by the proposed Commitment Increase and/or the Assuming Lenders which are to become Lenders and the amount by which each such Lender's U.S. Revolving Credit Commitment and/or German Revolving Credit Commitment is to be so increased and/or the amount of each such Assuming Lender's U.S. Revolving Credit Commitment and/or German Revolving Credit Commitment and (z) the date (the "Commitment Increase Effective Date") on which the proposed Commitment Increase shall become effective, and (2) has been signed by each Lender whose U.S. Revolving Credit Commitment and/or German Revolving Credit Commitment is to be increased, evidencing the consent of such Lender to the proposed Commitment Increase and Issuing Bank whose Issuing Commitment is to be increased evidencing the consent of such Issuing Bank thereto and/or by each such Assuming Lender; and

(B) On and as of the Commitment Increase Effective Date of the proposed Commitment Increase (1) the following statements shall be true (and the giving of the applicable Commitment Increase Notice shall constitute a representation and warranty by Parent Borrower that on such Commitment Increase Effective Date such statements are true):

(x) The representations and warranties contained in Section 6.01 are correct on and as of such Commitment Increase Effective Date before and after giving effect to the proposed Commitment Increase, as though made on and as of such date, except to the extent that any such representation or warranty is stated to relate to an earlier date, in which case such representation or warranty shall be correct on and as of such earlier date; and

(y) No event has occurred and is continuing, or would result from such Commitment Increase, which constitutes an Event of Default or Default; and

(z) The Agent shall have received such other approvals, opinions or documents as the Agent may reasonably request.

(vi) [Reserved].

(vii) Promptly following its receipt of a Commitment Increase Notice in proper form, the Agent shall deliver copies thereof to each Lender and Issuing Bank. If, and only if, all of the terms, conditions and requirements specified in paragraphs (i) through (iii) are satisfied in respect of any proposed Commitment Increase on and as of the proposed Commitment Increase Effective Date thereof and in the case of each such Assuming Lender, an Assumption Agreement, duly executed by such Assuming Lender, the Agent and the Parent Borrower, has been received by the Agent, then, as of such Commitment Increase Effective Date and from and after such date, (1) the U.S. Revolving Credit Commitments and/or the German Revolving Credit Commitments of the Lenders consenting to such Commitment Increase shall be increased by the respective amounts specified in the Commitment Increase Notice pertaining thereto, (2) references herein to the amounts of the Lenders' respective U.S. Revolving Credit Commitments and/or German Revolving Credit Commitments shall refer to respective amounts giving effect to such Commitment Increase and (3) each such Assuming Lender shall be a Lender and an Issuing Bank, if applicable, for all purposes hereof, and the Agent shall

record all relevant information with respect to such Assuming Lender and its U.S. Revolving Credit Commitment and/or German Revolving Credit Commitment and, if applicable, with respect to the increased Issuing Commitment of an Issuing Bank in the Register;

(viii) It is understood that no Lender shall have any obligation whatsoever to agree to any request made by Parent Borrower for a Commitment Increase;

(ix) As part of such Commitment Increase in the form of Additional Revolving Commitments, such Lender or Assuming Lender shall purchase assignments in the U.S. Revolving Credit Advances and/or German Revolving Credit Advances, as applicable, and the U.S. Revolving Credit Commitments and/or German Revolving Credit Commitments, as applicable, of the other Lenders so that after giving effect thereto, the percentage held by each Lender of the Aggregate Commitments is the same as prior to such Commitment Increase and such Lender or Assuming Lender shall have acquired a ratable participation in all U.S. Swing Line Advances and German Swing Line Advances as contemplated by Section 2.03(c)). In connection therewith, on each Commitment Increase Effective Date, (A) each Lender whose U.S. Revolving Credit Commitment and/or German Revolving Credit Commitment has been increased (each such Lender being an "Increasing Lender") shall, before 2:00 p.m. (New York City time) on such Commitment Increase Effective Date, make available for the account of its Lending Office to the Agent at the address specified in Section 10.02, in same day funds, an amount equal to the excess of (1) such Increasing Lender's ratable portion of the U.S. Revolving Credit Advances or German Revolving Credit Advances, as applicable, then outstanding (calculated based on its U.S. Revolving Credit Commitment or German Revolving Credit Commitment, as applicable, as a percentage of the Aggregate U.S. Commitments or Aggregate German Commitments, as applicable, of the Lenders (including each such Assuming Lender) outstanding after giving effect to the relevant Commitment Increase) over (2) the aggregate principal amount of then outstanding Revolving Credit Advances made by such Increasing Lender and (B) each such Assuming Lender shall before 2:00 p.m. (New York City time) on such Commitment Increase Effective Date, make available for the account of its Lending Office to the Agent at the address specified in Section 10.02 in same day funds, an amount equal to such Assuming Lender's ratable portion of the U.S. Revolving Credit Advances or German Revolving Credit Advances, as applicable, then outstanding (calculated based on its U.S. Revolving Credit Commitment or German Revolving Credit Commitment, as applicable, as a percentage of the Aggregate U.S. Commitments or Aggregate German Commitments, as applicable, of the Lenders (including each such Assuming Lender) outstanding after giving effect to the relevant Commitment Increase); and

(x) After the Agent's receipt of such funds from each such Increasing Lender and such Assuming Lender, the Agent will promptly thereafter cause to be distributed like funds to the other Lenders for the account of their respective Lending Offices in an amount to each other Lender such that the aggregate amount of the outstanding U.S. Revolving Credit Advances or German Revolving Credit Advances owing to each Lender (including each such Assuming Lender) after giving effect to such distribution equals such Lender's ratable portion of the U.S. Revolving Credit Advances or German Revolving Credit Advances, as applicable, then outstanding (calculated based on its U.S. Revolving Credit Commitment or German Revolving Credit Commitment, as applicable,

as a percentage of the Aggregate U.S. Commitments or Aggregate German Commitments, as applicable, of the Lenders outstanding after giving effect to the relevant Commitment Increase).

(c) Parent Borrower may at any time, upon at least five Business Days' prior written notice to the Agent and the Lenders or as part of a proposed Commitment Increase pursuant to this Section 2.06, designate (i) as an Issuing Bank any Lender that has agreed in writing to act as an Issuing Bank and (ii) the Issuing Commitment of such Lender. Thereupon, any Lender so designated as an Issuing Bank shall thenceforth issue Letters of Credit on the terms and subject to the conditions herein, and the Agent shall record all relevant information with respect to such Lender as such Issuing Bank in the Register.

(d) Notwithstanding anything to the contrary in this Agreement, each of the parties hereto hereby agrees that this Agreement shall be amended to the extent necessary to reflect the existence and terms of any Commitment Increases incurred pursuant to this Section 2.06. Any such amendment may be effected in writing by the Agent and the Loan Parties and furnished to the other parties hereto.

SECTION 2.07 Repayment of Advances.

(a) Each Borrower shall repay in full the principal amount of each Revolving Credit Advance made to it owing to each Lender, together with accrued interest and fees thereon, on the Termination Date.

(b) Swing Line Advances. The applicable Borrower shall repay the Swing Line Lender and each Lender that has made a Swing Line Advance for the account of such Borrower, on the earlier of (i) the date that is ten (10) days after the date of such Advance and (ii) the Termination Date, the principal amount of each such Swing Line Advance made to such Borrower by the Swing Line Lender and each such Lender and outstanding on such date.

SECTION 2.08 Interest on Advances. Each Borrower shall pay interest on the unpaid principal amount of each Advance made to it by each Lender from the date of such Advance until such principal amount shall be paid in full, at the following rates per annum:

(a) Index Rate Loans. If such Advance is an Index Rate Loan, a rate per annum equal at all times to the sum of (x) the Base Rate or the Foreign Base Rate, as applicable, in effect from time to time plus (y) the respective Applicable Margin in effect from time to time, payable quarterly on the first day of each January, April, July and October.

(b) Eurocurrency Rate Advances. If such Advance is a Eurocurrency Rate Advance, a rate per annum equal at all times during each Interest Period for such Advance to the sum of (x) the Eurocurrency Rate for such Interest Period plus (y) the respective Applicable Margin in effect from time to time, payable on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on each day which occurs during such Interest Period every three months from the first day of such Interest Period.

(c) Swing Line Advances. If such Advance is a U.S. Swing Line Advance, the rate per annum for Base Rate Advances. If such Advance is a German Swing Line Advance, the rate per annum for Foreign Base Rate Advances.

(d) Default Interest. (i) If any amount of principal of any Advance is not paid when due, whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Requirement of Law.

(i) If any amount (other than principal of any Advance) payable by any Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Majority Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Requirement of Law.

(ii) Upon the request of the Majority Lenders or the Agent (or, in the case of any Event of Default under Section 8.01(e), automatically), while any Event of Default exists, the Parent Borrower or the applicable Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Requirement of Law.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon written demand.

(e) The applicable Borrower shall pay to each Lender, so long as such Lender shall be required under regulations of the Board of Governors of the Federal Reserve System to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency Liabilities, additional interest on the unpaid principal amount of each Eurocurrency Rate Advance of such Lender, from the date of such Advance until such principal amount is paid in full, at an interest rate per annum equal at all times to the remainder obtained by subtracting (i) the Eurocurrency Rate for the Interest Period for such Advance from (ii) the rate obtained by dividing such Eurocurrency Rate by a percentage equal to 100% minus the Eurocurrency Rate Reserve Percentage of such Lender for such Interest Period, payable on each date on which interest is payable on such Advance. Such additional interest shall be determined by such Lender and notified to the Parent Borrower and the applicable Borrower through the Agent.

SECTION 2.09 Interest Rate Determination.

(a) The Agent shall give prompt notice to the Parent Borrower, the applicable Borrower and the Lenders of the applicable interest rate determined by the Agent for purposes of Section 2.08(a) or (b).

(b) (i) If, in connection with any request for a Eurocurrency Rate Advance or Foreign Base Rate Advance or a conversion to or continuation thereof, (A) the Agent determines that (x) deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in the applicable offshore interbank eurodollar market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Advance or for the applicable amount of such Foreign Base Rate Advance, (y) (I) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Advance (whether in Dollars or an Alternative Currency) or in connection with an existing or proposed Base Rate Advance or Foreign Base Rate Advance and (II) the circumstances

described in Section 2.09(b)(iii)(A) do not apply or (z) a fundamental change has occurred in the foreign exchange or interbank markets with respect to such Alternative Currency (including, without limitation, changes in national or international financial, political or economic conditions or currency exchange rates or exchange controls) (in each case with respect to this clause (A), "Impacted Loans") or (B) the Agent or the Majority Lenders determine that for any reason the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Advance or for any proposed Foreign Base Rate Advance (whether denominated in Dollars or an Alternative Currency) does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate Advance or Foreign Base Rate Advance, the Agent will promptly so notify the Parent Borrower, each applicable Borrower and each Lender. Thereafter, (1) the obligation of the Lenders to make or maintain Eurocurrency Rate Advances and Foreign Base Rate Advances in the affected currency or currencies shall be suspended (to the extent of the affected Eurocurrency Rate Advances, Foreign Base Rate Advances or Interest Periods) and (2) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Agent (or, in the case of a determination by the Majority Lenders described in clause (B) of Section 2.09(b)(i), until the Agent upon instruction of the Majority Lenders) revokes such notice. Upon receipt of such notice, (x) any Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Advances or Foreign Base Rate Advances in the affected currency or currencies (to the extent of the affected Eurocurrency Rate Advances, Foreign Base Rate Advances or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Advances denominated in Dollars in the Dollar Equivalent of the amount specified therein and (y) (A) any outstanding affected Eurocurrency Rate Advances or Foreign Base Rate Advances denominated in Dollars will be deemed to have been converted into Base Rate Advances at the end of the applicable Interest Period and (B) any outstanding affected Eurocurrency Rate Advances or Foreign Base Rate Advances denominated in an Alternative Currency, at the Parent Borrower's election, shall either (1) be converted into a Committed Borrowing of Base Rate Advances denominated in Dollars in the Dollar Equivalent of the amount of such outstanding Eurocurrency Rate Advances at the end of the applicable Interest Period or such outstanding Foreign Base Rate Advances on such date or (2) be prepaid, with respect to Eurocurrency Rate Advances, at the end of the applicable Interest Period in full or, with respect to Foreign Base Rate Advances, on such date in full; provided that, if no election is made by the Parent Borrower by, with respect to Foreign Base Rate Advances, the date that is three Business Days after receipt by the Parent Borrower of such notice and, with respect to Eurocurrency Rate Advances, the earlier of (i) the date that is three Business Days after receipt by the Parent Borrower of such notice and (ii) the last day of the current Interest Period for the applicable Eurocurrency Rate Advance, the Parent Borrower shall be deemed to have elected clause (1) above.

(ii) Notwithstanding the foregoing, if the Agent has made the determination described in clause (A) of Section 2.09(b)(i), the Agent, in consultation with the Parent Borrower and the Majority Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (A) the Agent revokes the notice delivered with respect to the Impacted Loans under clause (A) of the first sentence of Section 2.09(b)(i), (B) the Agent or the Majority Lenders notify the Agent and the Parent Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans or (C) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for

such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Agent and the Parent Borrower written notice thereof.

(iii) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Agent determines (which determination shall be conclusive absent manifest error), or the Parent Borrower or Majority Lenders notify the Agent (with, in the case of the Majority Lenders, a copy to the Parent Borrower) that the Parent Borrower or Majority Lenders (as applicable) have determined, that:

(A) adequate and reasonable means do not exist for ascertaining the Applicable Reference Rate for an Applicable Currency for any requested Interest Period, including, without limitation, because the Screen Rate (as defined below) for such Applicable Currency is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(B) the administrator of the Screen Rate for an Applicable Currency or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which the Applicable Reference Rate for an Applicable Currency or the Screen Rate for an Applicable Currency shall no longer be made available, or used for determining the interest rate of loans denominated in such Applicable Currency; provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Agent that will continue to provide the Applicable Reference Rate for such Applicable Currency after such specific date (such specific date, the "Scheduled Unavailability Date"), or

(C) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Applicable Reference Rate for an Applicable Currency,

then, reasonably promptly after such determination by the Agent or receipt by the Agent of such notice, as applicable, the Agent and Parent Borrower may amend this Agreement solely for the purpose of replacing the Applicable Reference Rate for the Applicable Currency in accordance with this Section 2.09(b) with (x) in the case of Dollars, one or more SOFR-Based Rates (as defined below) or (y) another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar syndicated credit facilities syndicated in the U.S. and denominated in the Applicable Currency for such alternative benchmarks and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar syndicated credit facilities syndicated in the U.S. and denominated in the Applicable Currency for such benchmarks, each of which adjustments or methods for calculating such adjustments shall be published on one or more information services as selected by the Agent from time to time in its reasonable discretion and may be periodically updated (each, an "Adjustment"; and any such proposed rate, a "Successor Rate"), and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Agent shall have posted such proposed amendment to all Lenders and Parent Borrower unless, prior to such time, Lenders comprising the Majority Lenders have delivered to the Agent

written notice that such Majority Lenders (A) in the case of an amendment to replace the Applicable Reference Rate with respect to Eurocurrency Rate Advances denominated in Dollars with a rate described in clause (x), object to any Adjustment; or (B) in the case of an amendment to replace the Applicable Reference Rate with respect to Eurocurrency Rate Advances denominated in the Applicable Currency with a rate described in clause (y), object to such amendment; provided that, for the avoidance of doubt, in the case of clause (A), the Majority Lenders shall not be entitled to object to any SOFR-Based Rate contained in any such amendment. Such Successor Rate for the Applicable Currency shall be applied in a manner consistent with market practice; provided that, to the extent such market practice is not administratively feasible for the Agent, such Successor Rate for such Applicable Currency shall be applied in a manner as otherwise reasonably determined by the Agent.

If no Successor Rate for the Applicable Currency has been determined and the circumstances under clause (A) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Agent will promptly so notify the Parent Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Advances or Foreign Base Rate Advances in each such Applicable Currency shall be suspended (to the extent of the affected Eurocurrency Rate Advances, Foreign Base Rate Advances or Interest Periods) and (y) the Eurocurrency Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, (I) the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Advances and Foreign Base Rate Advances in each such affected Applicable Currency (to the extent of the affected Eurocurrency Rate Advances, Foreign Base Rate Advances or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Advances denominated in Dollars in the Dollar Equivalent of the amount specified therein and (II) (A) any outstanding affected Eurocurrency Rate Advances or Foreign Base Rate Advances denominated in Dollars will be deemed to have been converted into Base Rate Advances at the end of the applicable Interest Period and (B) any outstanding affected Eurocurrency Rate Advances or Foreign Base Rate Advances denominated in an Alternative Currency, at the Parent Borrower's election, shall either (1) be converted into a Committed Borrowing of Base Rate Advances denominated in Dollars in the Dollar Equivalent of the amount of such outstanding Eurocurrency Rate Advance at the end of the applicable Interest Period or such outstanding Foreign Base Rate Advance on such date or (2) be prepaid, with respect to Eurocurrency Rate Advances, at the end of the applicable Interest Period in full or, with respect to Foreign Base Rate Advances, on such date in full; provided that, if no election is made by the Parent Borrower by, with respect to Foreign Base Rate Advances, the date that is three Business Days after receipt by the Parent Borrower of such notice and, with respect to Eurocurrency Rate Advances, the earlier of (i) the date that is three Business Days after receipt by the Parent Borrower of such notice and (ii) the last day of the current Interest Period for the applicable Eurocurrency Rate Advance, the Parent Borrower shall be deemed to have elected clause (1) above.

Notwithstanding anything else herein, any definition of a Successor Rate for any currency shall provide that in no event shall such Successor Rate be less than 0.50% for purposes of this Agreement.

In connection with the implementation of a Successor Rate for any currency, the Agent will have the right to make Successor Rate Conforming Changes (as defined below) with respect to such currency from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Successor Rate Conforming Changes will

become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Agent shall post each such amendment implementing such Successor Rate Conforming Changes for the Applicable Currency to the Lenders reasonably promptly after such amendment becomes effective.

As used above:

"Relevant Governmental Body" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York for the purpose of recommending a benchmark rate to replace LIBOR in loan agreements similar to this Agreement.

"Screen Rate" means the Applicable Reference Rate quote for an Applicable Currency on the applicable screen page the Agent designates to determine such Applicable Reference Rate for such Applicable Currency (or such other commercially available source providing such quotations for such Applicable Currency as may be designated by the Agent from time to time).

"SOFR" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York's website (or any successor source) and, in each case, that has been selected or recommended by the Relevant Governmental Body.

"SOFR-Based Rate" means SOFR or Term SOFR.

"Successor Rate Conforming Changes" means, with respect to any Successor Rate for an Applicable Currency, any conforming changes to the definition of Base Rate, Foreign Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters as may be appropriate, in the discretion of the Agent, to reflect the adoption and implementation of such Successor Rate and to permit the administration thereof by the Agent in a manner substantially consistent with market practice for such Applicable Currency (or, if the Agent determines that adoption of any portion of such market practice for such Applicable Currency is not administratively feasible or that no market practice for the administration of such Successor Rate for such Applicable Currency exists, in such other manner of administration as the Agent determines is reasonably necessary in connection with the administration of this Agreement).

"Term SOFR" means the forward-looking term rate for any period that is approximately (as determined by the Agent) as long as any of the Interest Period options set forth in the definition of "Interest Period" and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Agent from time to time in its reasonable discretion.

(c) On the date on which the aggregate unpaid principal amount of Advances comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than $5.0 million, such Advances shall, if they are Advances of a Type other than Base Rate Advances or Foreign Base Rate Advances, automatically Convert on the last day of the Interest Period with respect to such Advance into Base Rate Advances or Foreign Base Rate Advances, as applicable, and on and after such date the right of any Borrower to Convert such Advances into Advances of a Type other than Base Rate Advances or Foreign Base Rate Advances shall terminate.

(d) Upon the occurrence and during the continuance of any Event of Default, (i) each Eurocurrency Rate Advance will automatically, on the last day of the then existing Interest Period therefor, convert into a Base Rate Advance or a Foreign Base Rate Advance, as applicable, (ii) [reserved] and (iii) the obligations of the Lenders to make, or to convert Advances into, Eurocurrency Rate Advances will be suspended.

(e) All computations of interest for Index Rate Loans (including Index Rate Loans determined by reference to the Eurocurrency Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year) (or, in each case of Advances denominated in Alternative Currencies where market practice differs, in accordance with market practice). Interest shall accrue on each Advance for the day on which the Advance is made, and shall not accrue on an Advance, or any portion thereof, for the day on which the Advance or such portion is paid; provided that any Advance that is repaid on the same day on which it is made shall, subject to Section 4.01(a), bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.10 Prepayments of Advances.

(a) Optional. (i) Any Borrower may, upon notice to the Agent, at any time or from time to time voluntarily prepay Advances made to it in whole or in part without premium or penalty; provided that (A) such notice must be in a form acceptable to the Agent and received by the Agent not later than 11:00 a.m. (x) three Business Days prior to any date of prepayment of Eurocurrency Rate Advances denominated in Dollars, (y) four Business Days prior to any date of prepayment of Eurocurrency Rate Advances denominated in Alternative Currencies and (z) on the date of prepayment of Index Rate Loans. Each such notice shall specify the date and amount of such prepayment, the Facility being prepaid and the Type(s) of Advances to be prepaid and, if Eurocurrency Rate Advances are to be prepaid, the Interest Period(s) of such Advances. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Commitment Percentage of the relevant Facility). If such notice is given by any Borrower, such Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that such notice of prepayment may state that such prepayment is conditioned upon the availability of other financing, in which case such notice may be revoked by the applicable Borrower (by notice to the Agent prior to the specified date of such prepayment) if such condition is not satisfied (it being understood that any revocation by a Borrower of a notice of prepayment shall entitle the Lenders to any amounts as set forth in Section 10.04(b)). Any prepayment of a Eurocurrency Rate Advance shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 10.04(b). Each such prepayment shall be paid to the Lenders in accordance with their respective Commitment Percentages.

(ii) Any Borrower may, upon notice to the Swing Line Lender (with a copy to the Agent), at any time or from time to time, voluntarily prepay Swing Line Advances made to it in whole or in part without premium or penalty; provided that (A) such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of $500,000 or, if less, the

entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. If such notice is given by a Borrower, such Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory.

(i) If for any reason the Total Revolving Credit Outstandings exceed the Loan Cap then in effect, the Total Revolving Credit Outstandings in respect of the U.S. Revolving Credit Facility exceed the U.S. Loan Cap then in effect or the Total Revolving Credit Outstandings in respect of the German Revolving Credit Facility exceed the German Loan Cap then in effect, then the Borrowers shall promptly (and in any event, within one (1) Business Day) prepay, or cause to be repaid, Revolving Credit Advances, Swing Line Advances and/or Unreimbursed Amounts and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Parent Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.10(b) unless, after the prepayment in full of the Revolving Credit Advances, Swing Line Advances and Unreimbursed Amounts, the Total Revolving Credit Outstandings exceed the Loan Cap then in effect, the Total Revolving Credit Outstandings in respect of the U.S. Revolving Credit Facility exceed the U.S. Loan Cap then in effect or the Total Revolving Credit Outstandings in respect of the German Revolving Credit Facility exceed the German Loan Cap then in effect. Upon notice by Parent Borrower to the Agent, the Agent shall release any Cash Collateral to the Parent Borrower to the extent that, after such a release, (x) the Total Revolving Credit Outstandings at such time shall not exceed the Loan Cap, (y) the Total Revolving Credit Outstandings in respect of the U.S. Revolving Credit Facility at such time shall not exceed the U.S. Loan Cap and (z) the Total Revolving Credit Outstandings in respect of the German Revolving Credit Facility at such time shall not exceed the German Loan Cap.

(ii) [Reserved].

(iii) Prepayments of the U.S. Revolving Credit Facility by any U.S. Borrower made pursuant to this Section 2.10(b), first, shall be applied ratably to the Unreimbursed Amounts and the U.S. Swing Line Advances owing by such U.S. Borrower, second, shall be applied ratably to the outstanding U.S. Revolving Credit Advances owing by such U.S. Borrower, and, third, shall be used to Cash Collateralize the remaining L/C Obligations of such U.S. Borrower. Prepayments of the German Revolving Credit Facility by the German Borrower made pursuant to this Section 2.10(b), first, shall be applied ratably to the Unreimbursed Amounts and the German Swing Line Advances owing by the German Borrower, second, shall be applied ratably to the outstanding German Revolving Credit Advances owing by the German Borrower, and, third, shall be used to Cash Collateralize the remaining L/C Obligations of the German Borrower. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Parent Borrower or any other Loan Party) to reimburse the applicable Issuing Bank or the Lenders, as applicable

SECTION 2.11 Increased Costs.

(a) If, at any time after the date of this Agreement, any change in any Laws (a "Change in Law") shall:

(i) impose, modify or deem applicable any reserve, 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, any Lender Party (except any reserve requirement included in the Eurocurrency Rate Reserve Percentage);

(ii) subject any Lender Party to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurocurrency Rate Advance made by it, or change the basis of taxation of payments to such Lender Party in respect thereof (except for (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes); or

(iii) impose on any Lender Party or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurocurrency Rate Advances made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Advance (or of maintaining its obligation to make any such Advance), or to increase the cost to such Lender Party of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender Party hereunder (whether of principal, interest or any other amount) then, the Parent Borrower shall from time to time, upon written demand by such Lender Party (with a copy of such written demand to the Agent), pay to the Agent for the account of such Lender Party additional amounts sufficient to compensate such Lender Party for such increased cost. A certificate as to the amount of such increased cost setting forth the basis for the calculation of such increased costs, submitted to the Parent Borrower and the Agent by such Lender Party, shall be conclusive and binding for all purposes, absent manifest error.

(b) If, at any time after the date of this Agreement, any Lender Party determines that compliance with any law or regulation or any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) affects or would affect the amount of capital or liquidity required or expected to be maintained by such Lender Party or any corporation controlling such Lender Party and that the amount of such capital or liquidity is increased by or based upon the existence of such Lender Party's commitment to lend hereunder and other commitments of this type or the issuance of (or commitment to purchase of participations in) the Letters of Credit (or similar contingent obligations), then, upon written demand by such Lender Party (with a copy of such written demand to the Agent), the Parent Borrower shall immediately pay to the Agent for the account of such Lender Party, from time to time as specified by such Lender Party, additional amounts sufficient to compensate such Lender Party or such corporation in the light of such circumstances, to the extent that such Lender Party reasonably determines such increase in capital or liquidity to be allocable to the existence of such Lender Party's commitment hereunder. A certificate as to such amounts submitted to the Parent Borrower and the Agent by such Lender Party and setting forth the basis for the calculation of such amount shall be conclusive and binding for all purposes, absent manifest error.

(c) 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 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 regulatory authorities, in each case pursuant to

Basel III and including (i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and (ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

(d) Without affecting its rights under Sections 2.11(a) or 2.10(b) or any other provision of this Agreement, each Lender Party agrees that, if there is any increase in any cost to or reduction in any amount receivable by such Lender Party with respect to which the Parent Borrower would be obligated to compensate such Lender Party pursuant to Sections 2.11(a) or 2.11(b), such Lender Party shall use reasonable efforts to select an alternative issuing office or Lending Office which would not result in any such increase in any cost to or reduction in any amount receivable by such Lender Party; provided, however, that no Lender Party shall be obligated to select an alternative issuing office or Lending Office if such Lender Party determines that (i) as a result of such selection such Lender Party would be in violation of any applicable Law, regulation, treaty, or guideline, or would incur additional costs or expenses or (ii) such selection would be inadvisable for regulatory reasons or inconsistent with the interests of such Lender Party.

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

(f) Without prejudice to the survival of any other agreement of the Parent Borrower hereunder, the agreements and obligations of the Parent Borrower contained in this Section 2.11 shall survive the payment in full (after the Termination Date) of all Obligations.

SECTION 2.12 Illegality.

(a) Notwithstanding any other provision of this Agreement, if any Lender shall notify the Agent that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful or impossible, or any central bank or other Governmental Authority asserts that it is unlawful, for any Lender or its Lending Office to perform any of its obligations hereunder or make, maintain or fund or change interest with respect to any Credit Extension or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or any Alternative Currency or bankers' acceptances in the applicable interbank market, then, on notice thereof by such Lender to the Parent Borrower through the Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Credit Extension or to make or continue Eurocurrency Rate Advances in the affected currency or currencies or, in the case of Eurocurrency Rate Advances in Dollars, to

convert Base Rate Advances to Eurocurrency Rate Advances or to convert Foreign Base Rate Advances to Eurocurrency Rate Advances shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Advances or Foreign Base Rate Advances the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate or Foreign Base Rate, the interest rate on which Base Rate Advances or Foreign Base Rate Advances of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Eurocurrency Rate component of the Base Rate or Foreign Base Rate, in each case until such Lender notifies the Agent and the Parent Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, within five (5) Business Days after written demand from such Lender (with a copy to the Agent), prepay such Advances or, if applicable, (1) if such Advances are denominated in Dollars, convert all Eurocurrency Rate Advances of such Lender to Base Rate Advances or Foreign Base Rate Advances (the interest rate on which Base Rate Advances of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Eurocurrency Rate component of the Base Rate or the Foreign Base Rate) or (2) if such Advances are denominated in any Alternative Currency, convert all Eurocurrency Rate Advances to Foreign Base Rate Advances, in each case either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Advances to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Advances, and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Agent shall during the period of such suspension compute the Base Rate or Foreign Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

(b) Without affecting its rights under Section 2.11(a) or under any other provision of this Agreement, each Lender agrees that, if it becomes unlawful or impossible for such Lender to make, maintain or fund its Eurocurrency Rate Advances as contemplated by this Agreement, such Lender shall use reasonable efforts to select an alternative Lending Office from which such Lender may maintain and give effect to its obligations under this Agreement with respect to making, funding and maintaining such Eurocurrency Rate Advances; provided, however, that no Lender shall be obligated to select an alternative Lending Office if such Lender determines that (i) as a result of such selection such Lender would be in violation of any applicable Law, regulation, or treaty, or would incur additional costs or expenses or (ii) such selection would be inadvisable for regulatory reasons or inconsistent with the interests of such Lender.

SECTION 2.13 Cash Collateral.

(a) Certain Credit Support Events. Upon the request of the Agent or any Issuing Bank if, as of the Letter of Credit Expiration Date, any L/C Obligation in respect of Letters of Credit issued by such Issuing Bank for any reason remains outstanding, the Parent Borrower shall immediately Cash Collateralize, or cause to be Cash Collateralized, the then Outstanding Amount of all such L/C Obligations. At any time that there shall exist a Defaulting Lender and the aggregate unused Revolving Credit Commitments of the non-defaulting Lenders after taking into account the aggregate Outstanding Amount of the Revolving Credit Advances is insufficient to cover all Fronting Exposure, immediately upon the request of the Agent, any Issuing Bank or the Swing Line Lender, the Parent Borrower shall deliver, or cause to be delivered, to the Agent Cash

Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.14(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America (which Cash Collateral may, at the direction and sole risk of the Parent Borrower, be invested in Cash Equivalents that are pledged to the Agent). Each Loan Party, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the Agent, for the benefit of the Agent and the Lender Parties (including the Swing Line Lender), and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.13(c). If at any time the Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Parent Borrower or the relevant Defaulting Lender will, promptly upon demand by the Agent, pay or provide or, in the case of the Parent Borrower, cause to be paid or provided, to the Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.13 or Sections 2.03, 2.04, 2.10, 2.17 or 8.01 in respect of Letters of Credit or Swing Line Advances shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Advances, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.07(b)(vi))) or (ii) the Agent's good faith determination that there exists excess Cash Collateral; provided, however, that (x) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default under Section 8.01(a) or (e) or an Event of Default (and following application as provided in this Section 2.13 may be otherwise applied in accordance with Section 8.01), and (y) the Person providing Cash Collateral and the applicable Issuing Bank or Swing Line Lender may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

SECTION 2.14 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Requirement of Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Majority Lenders.

(i) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Agent by that Defaulting Lender pursuant to Section 10.08), shall be applied at such time or times as may be determined by the Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to any Issuing Bank or Swing Line Lender hereunder; *third*, if so determined by the Agent or requested by any Issuing Bank or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Advance or Letter of Credit; *fourth*, as the Parent Borrower may request (so long as no Default or Event of Default exists), to the funding of any Advance in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; *fifth*, if so determined by the Agent and the Parent Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Advances under this Agreement; *sixth*, to the payment of any amounts owing to the Lender Parties as a result of any judgment of a court of competent jurisdiction obtained by any Lender Party against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to any Loan Party as a result of any judgment of a court of competent jurisdiction obtained by such Loan Party against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that, if (x) such payment is a payment of the principal amount of any Advances or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Advances or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Advances of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Advances of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.14(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(ii) Certain Fees. That Defaulting Lender (x) shall be entitled to receive any facility fee pursuant to Section 2.05(a) for any period during which that Lender is a Defaulting Lender only to extent allocable to the sum of (1) the Outstanding Amount of the Advances funded by it and (2) its Commitment Percentage of the stated amount of Letters of Credit and Swing Line Advances for which it has provided Cash Collateral pursuant to Section 2.03, Section 2.04, Section 2.13, or Section 2.14(a)(ii), as applicable (and Borrowers shall (A) be required to pay to each of the Issuing Banks and the Swing Line Lender, as applicable, the amount of such fee allocable to its Fronting Exposure arising from that Defaulting Lender and (B) not be required to pay the remaining amount of such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.04(h).

(iii) Reallocation of Commitment Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Advances pursuant to Sections 2.03 and 2.04, the "Commitment Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Commitment of that Defaulting Lender; provided that the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Advances shall not exceed the positive difference, if any, of (1) the Commitment of that non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Revolving Credit Advances of that Lender. Subject to Section 10.22, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation.

(iv) Cash Collateral, Repayment of Swing Line Advances. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Parent Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (x) first, prepay Swing Line Advances in an amount equal to the Swing Line Lender's Fronting Exposure and (y) second, Cash Collateralize the Issuing Banks' Fronting Exposure in accordance with the procedures set forth in Section 2.13.

(b) Defaulting Lender Cure. If the Parent Borrower, the Agent, the Swing Line Lender and the Issuing Banks agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Advances of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Revolving Credit Advances and funded and unfunded participations in Letters of Credit and Swing Line Advances to be held on a pro rata basis by the Lenders in accordance with their Commitment Percentages (without giving effect to Section 2.14(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of any Loan Party while that Lender was a Defaulting Lender; provided further that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III

GUARANTY

SECTION 3.01 Guaranty.

(a) Each Loan Party hereby agrees, subject to the limitations set out in Section 3.06(c), that such Loan Party is jointly and severally liable for, and hereby absolutely and unconditionally guarantees to the Agent, Lenders, Hedge Banks or Cash Management Banks and their respective successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all Obligations owed or hereafter owing to the Agent and Secured Parties by each other Loan Party. Each Loan Party agrees that its guaranty

obligation hereunder is a continuing guaranty of payment and performance and not of collection, that its obligations under this Article III shall not be discharged until the Termination Date, and that its obligations under this Article III shall be absolute and unconditional, irrespective of, and unaffected by,

(i) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this Agreement, any other Loan Document, Secured Hedge Agreement or Bank Product Document or any other agreement, document or instrument to which any Loan Party is or may become a party;

(ii) the absence of any action to enforce this Agreement (including this Article III) or any other Loan Document, Secured Hedge Agreement or Bank Product Document or the waiver or consent by the Agent and Lenders, Hedge Banks or Cash Management Banks, as applicable, with respect to any of the provisions thereof;

(iii) the existence, value or condition of, or failure to perfect its Lien against, any security for the Obligations or any action, or the absence of any action, by the Agent and Lenders, Hedge Banks or Cash Management Banks in respect thereof (including the release of any such security);

(iv) the insolvency of any Loan Party;

(v) any amendment, alteration, novation or variation in any manner and to any extent (and irrespective of the effect of the same on any Guarantor) of any of the Obligations, any liabilities and obligations of any surety, and any security of any one or more of the Secured Parties' arrangements with the Loan Parties or any other Person; or

(vi) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.

The guaranty provided in this Article III shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Swing Line Lender, any Issuing Bank or any Lender, respectively, upon the insolvency, bankruptcy or reorganization of a Loan Party or otherwise, all as though such payment had not been made.

(b) Each Loan Party shall be regarded, and shall be in the same position, as principal debtor with respect to the Obligations guarantied hereunder. Each Loan Party expressly represents and acknowledges that it is part of a common enterprise with the other Loan Parties and that any financial accommodations by Lenders, Hedge Banks or Cash Management Banks or any of them, to any other Loan Party hereunder and under the other Loan Documents, Secured Hedge Agreements or Bank Product Documents are and will be of direct and indirect interest, benefit and advantage to all Loan Parties.

SECTION 3.02 Waivers by Loan Parties. Each Loan Party expressly waives, to the extent permitted by law, all rights it may have now or in the future under any statute, or at common law, or at law or in equity, or otherwise, to compel the Agent or any other Secured Party to marshal assets or to proceed in respect of the Obligations guarantied hereunder against any other Loan Party, any other party

or against any security for the payment and performance of the Obligations before proceeding against, or as a condition to proceeding against, such Loan Party. It is agreed among each Loan Party, the Agent, the Issuing Banks, Lenders and other Secured Parties that the foregoing waivers are of the essence of the transaction contemplated by this Agreement and the other Loan Documents and that, but for the provisions of this Article III and such waivers, the Agent, the Issuing Banks, Lenders and other Secured Parties would decline to enter into this Agreement. Each Loan Party expressly waives diligence, presentment and demand (whether for non-payment or protest or of acceptance, maturity, extension of time, change in nature or form of the Obligations, acceptance of further security, release of further security, composition or agreement arrived at as to the amount of, or the terms of, the Obligations, notice of adverse change in any Loan Party's financial condition or any other fact which might increase the risk to another Loan Party).

SECTION 3.03 Benefit of Guaranty; Stay of Acceleration. Each Loan Party agrees that the provisions of this Article III are for the benefit of the Secured Parties and their respective successors, transferees, endorsees and assigns, and nothing herein contained shall impair, as between any other Loan Party and the Agent or any other Secured Party, the obligations of such other Loan Party under the Loan Documents, Secured Hedge Agreements or Bank Product Documents.

SECTION 3.04 Subordination of Subrogation, Etc. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, and except as set forth in Section 3.07, each Loan Party hereby expressly and irrevocably subordinates to payment of the Obligations any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor until the Termination Date. Each Loan Party acknowledges and agrees that this subordination is intended to benefit the Agent and the other Secured Parties and shall not limit or otherwise affect such Loan Party's liability hereunder or the enforceability of this Article III, and that the Agent, the other Secured Parties and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 3.04.

SECTION 3.05 [Reserved].

SECTION 3.06 Limitation.

(a) Notwithstanding any provision herein contained to the contrary, each Loan Party's liability under this Article III 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 Agent and the other Secured Parties from such Loan Party under this Article III 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 Loan Party under Section 3.07.

(b) On the basis of the judgements LG Darmstadt, 25.4.2013 − 16 O 195/12, OLG Frankfurt a. M., 8.11.2013 − 24 U 80/13 A, BGH, 10.1.2017 – II ZR 94/15 and BGH, 21.3.2017 –

II ZR 93/16, the respective directors (*Geschäftsführer*) of the German Borrower and/or each German Guarantor have assessed the financing concept provided for in connection with the Loan Documents and are satisfied by its robustness. In the case, however, that during the lifetime of this Agreement the directors of the German Borrower and/or a German Guarantor will suffer a personal liability in the case of a demand under the guarantee and indemnity, the Lenders hereby agree to limit the guarantee and indemnity in order to avoid a personal liability of the directors of that German Guarantor.

(c) Guarantee Limitations Germany.

(i) The parties hereto agree that no director (*Vorstand*), manager, and other person holding a similar position shall incur any personal liability resulting from the granting or enforcement of any security granted under this Agreement or any guarantee and any other liability, indemnity or other payment obligation under or in connection with this Agreement or any other Loan Document. Therefore, the parties hereto agree to limit the granting and/or the enforcement of such security, guarantee, other liability, indemnity or other payment obligation under or in connection with this Agreement or any other Loan Document (but only if and to the extent required) in order to protect a director (*Vorstand*), managing director, and other person holding a similar position of the German Borrower and/ or a German Guarantor from such liability.

(ii) Therefore, to the extent the German Borrower secures, guarantees or indemnifies any obligations under this Agreement or any other provision of the Loan Documents of any of its holding companies or affiliates (other than a subsidiary of the German Borrower), the granting of such guarantees, security and/or indemnification and the enforcement of the respective obligations of that German Borrower and/ or of that German Guarantor under this Agreement (or any other (relevant provision of the) Loan Documents) shall be limited to the amount that would not (i) constitute a repayment of the contributions (*Rückgewähr der Einlagen*) of the shareholders of that German Guarantor or (ii) otherwise be in violation of Section 57 of the German Stock Corporation Act ("AktG").

(iii) Nothing in this Section 3.06(c) shall prevent the Agent or the German Borrower from claiming in court that payments under and/or an enforcement of any of the security, guarantee, indemnity or other obligations do or do not fall within the scope of Section 57 AktG and/or any other provision that may be relevant from time to time.

(iv) Nothing in this Section 3.06(c) shall constitute a waiver (*Verzicht*) of any right granted under this Agreement or any other Loan Document to the Agent or any Lender or Issuing Bank or vice versa.

(v) The parties hereto agree already now that this Section 3.06(c) shall be amended as required or advisable in case of any changes in law, jurisprudence or facts. In addition, in case of an accession by any additional party to this Agreement, the respective accession document will, if required, include a limitation language.

(vi) Notwithstanding anything to the contrary in this Agreement, this Section 3.06(c) and any rights and/or obligations arising out of it shall be governed by, and construed in accordance with, German law.

SECTION 3.07 Contribution with Respect to Guaranty Obligations.

(a) To the extent that any Loan Party shall make a payment under this Article III of all or any of the Obligations (other than Advances made to that Borrower for which it is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Party, exceeds the amount that such Loan Party would otherwise have paid if each Loan Party had paid the aggregate Obligations satisfied by such Guarantor Payment in the same proportion that such Loan Party's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each Loan Party as determined immediately prior to the making of such Guarantor Payment, then, following the Termination Date and the indefeasible payment in full in cash of all Obligations and termination of all Commitments, such Loan Party shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Party for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "Allocable Amount" of any Loan Party shall be equal to the maximum amount of the claim that could then be recovered from such Loan Party under this Article III 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 statute or common law.

(c) This Section 3.07 is intended only to define the relative rights of the Loan Parties and nothing set forth in this Section 3.07 is intended to or shall impair the obligations of the Loan Parties, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of, and subject to the limitations contained in, this Agreement, including Section 3.01. Nothing contained in this Section 3.07 shall limit the liability of any Borrower to pay the Advances made directly or indirectly to that Borrower and accrued interest, fees and expenses with respect thereto for which such Borrower shall be primarily liable.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Loan Parties to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Loan Parties against other Loan Parties under this Section 3.07 shall be exercisable upon the full and indefeasible payment of the Obligations and the termination of the Commitments.

SECTION 3.08 Liability Cumulative. The liability of each Loan Party under this Section 3.08 is in addition to and shall be cumulative with all liabilities of such Loan Party to the Agent and Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any Obligations or obligation of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

SECTION 3.09 Release of Borrowers and Guarantors. The Obligations of any Loan Party (other than 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 Guaranty;

(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 (as evidenced by a notice in writing from an Officer of Parent Borrower); or

(d) repayment of all of the Obligations hereunder and termination of all of the Commitments hereunder and termination or cash collateralization on terms acceptable to the applicable Issuing Bank of all Letters of Credit.

ARTICLE IV

PAYMENTS, TAXES, EXTENSIONS, ETC.

SECTION 4.01 Payments Generally; Agent's Clawback.

(a) General. All payments to be made by any Loan Party shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Advances denominated in an Alternative Currency, all payments by any Loan Party hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by any Loan Party hereunder with respect to principal and interest on Advances denominated in an Alternative Currency shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Agent on the dates specified herein. Without limiting the generality of the foregoing, the Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, any Loan Party is prohibited by any Requirement of Law from making any required payment hereunder in an Alternative Currency, such Loan Party shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. The Agent will promptly distribute to each Lender its Commitment Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent (i) after 2:00 p.m., in the case of payments in Dollars, or (ii) after the Applicable Time specified by the Agent in the case of payments in an Alternative Currency, shall in each case be deemed received on the next

succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by any Loan Party shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be included in computing interest or fees, as the case may be.

(b) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Agent such Lender's share of such Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the applicable Loan Party a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Agent, then the applicable Lender and the applicable Loan Party severally agree to pay to the Agent forthwith on written demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to such Loan Party to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate and (B) in the case of a payment to be made by a Loan Party, the interest rate applicable to Base Rate Advances. If the applicable Loan Party and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to such Loan Party the amount of such interest paid by such Loan Party for such period. If such Lender pays its share of the applicable Borrowing to the Agent, then the amount so paid shall constitute such Lender's Advance included in such Borrowing. Any payment by a Loan Party shall be without prejudice to any claim such Loan Party may have against a Lender that shall have failed to make such payment to the Agent.

(c) Payments by Borrowers; Presumptions by Agent. Unless the Agent shall have received notice from the applicable Loan Party prior to the time at which any payment is due to the Agent for the account of the Lender Parties hereunder that such Loan Party will not make such payment, the Agent may assume that such Loan Party has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the Issuing Banks, as the case may be, the amount due. In such event, if the applicable Loan Party has not in fact made such payment, then each of the Appropriate Lenders or Issuing Banks, as the case may be, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender Party, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the Overnight Rate.

A notice of the Agent to any Lender or the applicable Loan Party with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(d) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Advance to be made by such Lender to any Loan Party as provided in the foregoing provisions of this Article II, and such funds are not made available to such Loan Party by the Agent because the conditions to the applicable Credit Extension set forth in Article V are not satisfied or waived in accordance with the terms hereof, the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Advances, to fund participations in Letters of Credit and Swing Line Advances and to make payments pursuant to Section 10.04(d) are several and not joint. The failure of any Lender to

make any Advance, to fund any such participation or to make any payment under Section 10.04(d) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Advance, to purchase its participation or to make its payment under Section 10.04(d).

(f) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Advance in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Advance in any particular place or manner. If any Foreign Subsidiary shall request any Borrowing hereunder, any Lender may, with notice to the Agent and the Parent Borrower, fulfill its Commitment by causing an Affiliate or branch of such Lender to act as the Lender in respect of such Foreign Subsidiary (and such Lender shall, to the extent of Advances made to and participations in Letters of Credit issued for the account of such Foreign Subsidiary, be deemed for all purposes hereof to have *pro tanto* assigned such Advances and participations to such Affiliate or branch in compliance with the provisions of Section 10.07).

SECTION 4.02 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) For purposes of this Section 4.02, the term "Lender" includes the Swing Line Lender and any Issuing Bank and the term "applicable Laws" includes FATCA.

(ii) 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 Laws.

(iii) If any applicable withholding agent shall be required (as determined in the good faith discretion of such applicable withholding agent) by any applicable Laws to withhold or deduct any Taxes in respect of any payment, then (A) the applicable withholding agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required, (B) the applicable withholding agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including any withholding or deductions applicable to additional sums payable under this Section 4.02) the applicable Lender (or, in the case of any payment made to the Agent for its own account, the Agent) receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Parent Borrower. Without limiting the provisions of subsection (a) above, the Parent Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnification. (i) Each of the Loan Parties shall, and does hereby agree to, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 Business Days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable by such Loan Party under this Section 4.02) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, regardless of whether such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Parent Borrower by a Lender Party (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall, and does hereby agree to, severally indemnify, and shall make payment in respect thereof within 10 Business Days after demand therefor, (x) the Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Agent against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.07(c) relating to the maintenance of a Participant Register and (z) the Agent against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in respect of any payment to such Lender by or on account of any obligation of any Loan Party under any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender Party hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender Party under this Agreement or any other Loan Document against any amount due to the Agent under this clause (ii).

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority as provided in this Section 4.02, the Parent Borrower shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) Status of Lenders; Tax Documentation.

(i) In addition to the requirement set forth in subsection (iii) below, any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to any payments made under any Loan Document shall deliver to the Parent Borrower and the Agent, at the time or times reasonably requested by the Parent Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Parent Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition to the requirements set forth in the preceding sentence and subsection (iii) below, any Lender, if reasonably requested by the Parent Borrower or the Agent, shall deliver such other documentation prescribed by applicable Laws or reasonably requested by the Parent Borrower or the Agent as will enable the Parent Borrower or the Agent to determine whether or not such Lender is

subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (e)(ii)(A), (ii)(B) and (ii)(D) of this Section) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a United States Person shall deliver to the Parent Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Parent Borrower or the Agent), two properly completed and duly executed copies of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally eligible to do so, deliver to the Parent Borrower and the Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Parent Borrower or the Agent), two properly completed and duly executed copies of whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a properly completed and duly executed certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Parent Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" related to any U.S. Borrower as described in Section 881(c)(3)(C) of the Code (a "United States Tax Compliance Certificate"), and that no payments to be made to such Foreign Lender will be effectively connected with its conduct of a U.S. trade or business and (y) IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner (e.g., where the Foreign Lender is a partnership or a participating Lender), IRS Form W-8IMY, accompanied by copies of IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a properly completed and duly executed United States Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that, if the Foreign Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a United States Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of such direct and indirect partner(s);

(C) any Foreign Lender shall, to the extent it is legally eligible to do so, deliver to the Parent Borrower and the Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Parent Borrower or the Agent), two properly completed and duly executed copies of any other documentation prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Laws to permit the Parent Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Parent Borrower and the Agent at the time or times prescribed by applicable Laws and at such time or times reasonably requested by the Parent Borrower or the Agent such documentation prescribed by applicable Laws (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Parent Borrower or the Agent as may be necessary for the Parent Borrower and the Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that, if any documentation it previously delivered pursuant to this Section 4.02 expires or becomes obsolete or inaccurate in any respect, it shall update such documentation or promptly notify the Parent Borrower and the Agent in writing of its legal ineligibility to do so.

(iv) Each Lender hereby authorizes the Agent to deliver to the Parent Borrower and to any successor Agent any documentation provided by such Lender to the Agent pursuant to this Section 4.02(e).

(f) Treatment of Certain Tax Benefits. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient 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 by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 4.02, it shall pay to the applicable Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 4.02 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the applicable Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the applicable Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient 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 subsection shall not be construed to require any Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(g) German Tax Matters.

(i) A payment by a German Loan Party shall not be increased pursuant to this Section 4.02 by reason of a withholding or deduction for, or on account of, Taxes imposed by Germany if on the date on which the payment falls due (i) the payment could have been made to the Lender without a withholding or deduction if the Lender had been a German Qualifying Lender, but on that date that Lender is not or has ceased to be a German Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any Law or German Treaty, or any published practice or published concession of any relevant taxing authority or (ii) the relevant Lender is a German Treaty Lender and a Loan Party making the payment is able to demonstrate that the payment could have been made to the Lender, without the withholding or deduction had that Lender complied with its obligations under this Section 4.02.

(ii) Each Lender shall indicate, and any additional Lender shall indicate in the Assignment and Acceptance which it executes on becoming a party, and for the benefit of the Agent and without liability to any German Loan Party, which of the following categories it falls within:

(A) not a German Qualifying Lender;

(B) a German Qualifying Lender (other than a German Treaty Lender); or

(C) a German Treaty Lender.

If any additional Lender fails to indicate its status in accordance with this Section 4.02(g)(ii), then such Lender shall be treated for the purposes of this Agreement (including by each German Loan Party) as if it is not a German Qualifying Lender until such time as it notifies the Agent which category of German Qualifying Lender applies (and the Agent, upon receipt of such notification, shall inform the German Loan Party). For the avoidance of doubt, an Assignment and Acceptance shall not be invalidated by any failure of an additional Lender to comply with this Section 4.02(g)(ii).

(h) Survival. Each party's obligations under this Section 4.02 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender Party, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

SECTION 4.03 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Revolving Credit Advances made by it, or the participations in L/C Obligations or in Swing Line Advances held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Revolving Credit Advances or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Revolving Credit Advances and subparticipations in L/C Obligations and Swing Line Advances of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Credit Advances and other amounts owing them; provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of any Loan Party pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.13, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Credit Advances or subparticipations in L/C Obligations or Swing Line Advances to any assignee or participant, other than an assignment to the Parent Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

For purposes of clause (b) of the definition of Excluded Taxes, any participation acquired pursuant to this Section 4.03 shall be treated as having been acquired on the earlier date(s) in which such Lender acquired the applicable interest(s) in the Commitment(s) to which such participation relates.

SECTION 4.04 Evidence of Debt/Borrowings.

(a) Each Lender Party shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of any Loan Party to such Lender Party resulting from each Advance owing to such Lender Party from time to time, including the amounts of principal and interest payable and paid to such Lender Party from time to time hereunder.

(b) The Register maintained by the Agent pursuant to Section 10.07(c) shall include a control account, and a subsidiary account for each Lender Party, in which accounts (taken together) shall be recorded (i) the date and amount of each Borrowing made hereunder, the Type of Advances comprising such Borrowing and the Interest Period applicable thereto, (ii) the terms of each Assignment and Acceptance delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from each Loan Party to each Lender Party hereunder, and (iv) the amount of any sum received by the Agent from any Loan Party hereunder and each Lender Party's share thereof.

(c) The entries made in the Register shall be conclusive and binding for all purposes, absent manifest error.

(d) Upon the request of any Lender to the Parent Borrower made through the Agent, the Parent Borrower shall execute and deliver, or cause to be executed and delivered, to such Lender (through the Agent) a Note, which shall evidence such Lender's Advances to the Loan Parties in addition to such accounts or records. Each Lender may attach schedules to a Note and endorse thereon the date, Type (if applicable), amount, currency and maturity of its Advances and payments with respect thereto.

ARTICLE V

CONDITIONS OF LENDING

SECTION 5.01 Conditions Precedent to Effectiveness of this Agreement. This Agreement shall become effective on and as of the first date on which the following conditions precedent have been satisfied or waived:

(a) The Agent shall have received the following in form and substance satisfactory to the Agent:

(i) Executed counterparts of this Agreement, sufficient in number for distribution by the Agent to each of the Lenders and the Parent Borrower.

(ii) The notes to the Lenders to the extent requested by any Lender pursuant to Section 4.04(d).

(iii) Duly executed copies of (A) the U.S. Security Agreement, dated the Closing Date, and all exhibits and schedules thereto, (B) the German Security Agreements and all exhibits and schedules thereto, (C) the Intellectual Property Security Agreements, dated the Closing Date in form and substance reasonably satisfactory to Agent (it being understood that the forms attached to the U.S. Security Agreement are

reasonably satisfactory to Agent), and all exhibits and schedules thereto, and (D) the ABL Intercreditor Agreement.

(iv) Certified copies of the resolutions of the board of directors (or persons performing similar functions) or of the relevant shareholders of each Loan Party approving transactions of the type contemplated by this Agreement and each of the Loan Documents to which it is or is to be a party.

(v) A copy of a certificate of the Secretary of State (or equivalent Governmental Authority) of the jurisdiction of organization of each U.S. Loan Party listing the certificate or articles of incorporation (or similar Constitutive Document of each such Loan Party (other than any German Loan Party) and each amendment thereto on file in the office of such Secretary of State (or such Governmental Authority) and (A) certifying that such amendments are the only amendments to such Person's certificate or articles of incorporation (or similar constitutive document) on file in such office, (B) certifying if customarily available in such jurisdiction, that such Person has paid all franchise taxes (or the equivalent thereof) to the date of such certificate and (C) as regards U.S. Loan Parties, certifying that such Person is duly organized and is in good standing under the laws of the jurisdiction of its organization. The German Loan Parties shall deliver a certificate of an authorised signatory (A) certifying that the *Gesellschaftsvertrag* (articles of incorporation) and a copy of a *Handelsregisterauszug* (online commercial registry excerpt) of less than fifteen (15) days from the Closing Date) and if applicable, a current *Gesellschaftsliste* (shareholder's list)) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement; (B) including the relevant resolutions approving the terms of, and the transactions contemplated by, the Loan Documents to which the German Loan Party is a party and certifying that such resolution has not been amended or superseded prior to the date hereof; (C) including a specimen of the signatures of each person authorised to execute any Loan Document and other documents and notices; (D) certifying that each copy document to which it is party is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

(vi) A certificate of the Secretary or an Assistant Secretary (or equivalent) of each Loan Party, other than any German Loan Party, certifying the names and true signatures of the officers of such Loan Party authorized to sign each Loan Document to which it is a party and the other documents to be delivered hereunder.

(vii) Favorable opinions of Orrick, Herrington & Sutcliffe, LLP and Loyens & Loeff, special counsel to the Loan Parties, and Norton Rose Fulbright LLP, special German and Dutch counsel to the Agent, in each case in a form reasonably acceptable to the Agent and addressed to the Agent, the Issuing Banks and each of the Lenders.

(viii) Except to the extent that the Agent reasonably agrees that such conditions may be satisfied within a post-closing period to be set forth on Schedule 7.01(p), (1) the Perfection Certificate and all agreements, documents, filings, recordations and lien searches reasonably necessary or requested by the Agent in connection with the creation, perfection and priority of the Liens in favor of the Agent, for the benefit of the Secured Parties, securing the Obligations shall have been duly executed, and/or made; (2)

all filing and recording fees and taxes shall have been duly paid; and (3) the Agent shall be satisfied with the amount, types and terms and conditions of all insurance maintained by Parent Borrower and its Subsidiaries, and the Agent shall have received evidence of such insurance, together with endorsements naming the Agent, on behalf of the Secured Parties, as an additional insured or lender's loss payee, as the case may be, under all insurance policies.

(ix) All governmental, shareholder and third party consents necessary (if any) in connection with the Transactions.

(x) A certificate of a Responsible Officer of Parent Borrower to the effect set forth in Section 5.01(b), 5.02(a) and 5.02(b) below.

(xi) A certificate of the chief financial officer of the Parent Borrower as to the solvency of the Parent Borrower and its Subsidiaries (after giving effect to the Transactions and the incurrence of Revolving Credit Advances and Letters of Credit on the Closing Date).

(xii) The Agent shall have received forecasts prepared by management of the Parent Borrower and its Subsidiaries, taken as a whole, of (x) balance sheets, income statements and cash flow statements on an annual basis through the end of the Fiscal Year ending on September 30, 2025 and (y) projected U.S. Borrowing Bases, German Borrowing Bases and Availability forecasts on an annual basis through the end of the Fiscal Year ending on September 30, 2021, in each case in form and substance reasonably satisfactory to the Agent.

(xiii) At least three days prior to the Closing Date, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(xiv) Such other documents as the Agent may reasonably request and, upon the reasonable request of any Lender made at least ten (10) days prior to the Closing Date, such 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 the Beneficial Ownership Regulation, in each case (A) at least five (5) Business Days prior to the Closing Date and (B) with results satisfactory to the Joint Lead Arrangers.

(b) There shall not have occurred since September 30, 2019, any event or condition that has had or could be reasonably expected, either individually or in the aggregate, to have a Material Adverse Effect; provided that, solely with respect to clause (a) of the definition of Material Adverse Effect, any change in or effect upon the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Loan Parties, taken as a whole, substantially and directly relating to the impacts of the COVID-19 pandemic, and disclosed to the Agent and the Lenders prior to September 17, 2020, shall not be considered to be a Material Adverse Effect solely for purposes of this Section 5.01(b).

(c) 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.

(d) The Lenders shall have completed a due diligence investigation of Parent Borrower and its Subsidiaries in scope, and with results, satisfactory to the Lenders, including with respect to U.S. Department of Treasury Office of Foreign Assets Control, Foreign Corrupt Practices Act and any other anti-money laundering laws, rules and regulations (including applicable foreign laws, rules and regulations).

(e) Parent Borrower shall have paid all documented accrued fees and expenses of the Agent and the Lenders (including the documented accrued fees and expenses of counsel to the Agent and such other counsel agreed by the Parent Borrower).

(f) All amounts owing by Parent Borrower or any of its Subsidiaries to the lenders and agents under the Existing Credit Agreement (except for the Letters of Credit issued thereunder) shall have been, or concurrently with the initial extension of credit made on the Closing Date under the Senior Notes Indenture shall be, paid in full.

(g) After giving effect to (i) any Revolving Credit Advance funded on the Closing Date and (ii) all Letters of Credit to be issued at, or immediately subsequent to, the Closing Date, (x) Availability shall be not less than $50.0 million and (y) U.S. Availability shall not be less than $40.0 million.

(h) The Lenders shall be satisfied that the Parent Borrower has issued, or will issue simultaneously with the Closing Date, not less than $275.0 million of high yield secured notes pursuant to the Senior Notes Indenture.

(i) The Agent shall have received a Borrowing Base Certificate setting forth the U.S. Borrowing Base and the German Borrowing Base dated the Closing Date, relating to the Fiscal Month ended on August 31, 2020, and executed by a Responsible Officer of the applicable Borrowers.

SECTION 5.02 Conditions Precedent to Credit Extension. The obligation of each Lender to make an Advance (including a Swing Line Advance), including on the occasion of each Borrowing (including the initial Borrowing), and the obligation of each Issuing Bank to Issue each Letter of Credit (including the initial Letter of Credit) shall be subject to the further conditions precedent that on the date of such Credit Extension the following statements shall be true (and each of the giving of the applicable Request for Credit Extension and the acceptance by any Borrower shall constitute a representation and warranty by such Borrower that on the date of such Credit Extension such statements are true):

(a) The representations and warranties contained in Section 6.01 are true and correct on and as of the date of such Borrowing or Issuance, before and after giving effect to such Credit Extension, and to the application of the proceeds therefrom, as though made on and as of such date, except to the extent that any such representation or warranty is stated to relate to an earlier date, in which case such representation or warranty shall be true and correct on and as of such earlier date;

(b) No event has occurred and is continuing, or would result from such Credit Extension or from the application of the proceeds therefrom, which constitutes an Event of Default or Default;

(c) In the case of a Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the Agent, the Majority Lenders (in the case of any Advances to be denominated in an Alternative Currency) or the Issuing Banks (in the case of any Letter of Credit to be denominated in an Alternative Currency) would make it impracticable for such Credit Extension to be denominated in the relevant Alternative Currency;

(d) Immediately after giving effect to the Credit Extension requested to be made on any such date and the use of proceeds thereof, Availability, U.S. Availability and German Availability shall in each case be greater than zero; and

(e) Such Credit Extension shall be permitted to be made under the Senior Notes and the Senior Notes Indenture at the time of such Borrowing or Issuance.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

SECTION 6.01 Representations and Warranties of the Loan Parties. Each Loan Party represents and warrants as follows:

(a) Corporate Status. Each Loan Party is duly organized or formed, validly existing and in good standing, if applicable, under the laws of its jurisdiction of incorporation or organization and possesses all powers (corporate or otherwise) and all other authorizations and licenses necessary to carry on its business, except where the failure to so possess would not have a Material Adverse Effect.

(b) Corporate Authority; Non-Contravention. The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby are within such Loan Party's respective powers (corporate or otherwise), have been duly authorized by all necessary action (corporate or otherwise), and do not (i) contravene such Loan Party's Constitutive Documents, (ii) violate any Requirements of Law in any material respect, (iii) conflict with or result in the breach of, or constitute a default or require any payment to be made under, any material contract, loan agreement, indenture, mortgage, deed of trust, lease or other material instrument binding on or affecting any Loan Party or any of its properties or (iv) result in or require the creation or imposition of any Lien upon or with respect to any of the properties of any Loan Party. No Loan Party is in violation of any such Requirements of Law or in breach of any such contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument, the violation or breach of which would be reasonably likely to have a Material Adverse Effect.

(c) Authorization. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by any Loan Party of the Loan Documents to which it is a party.

(d) Binding Effect. Each Loan Document is the legal, valid and binding obligation of the Loan Party thereto enforceable against such Loan Party in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(e) Litigation. There is no pending or, to the Parent Borrower's knowledge, threatened action or proceeding affecting the Parent Borrower or any of its Subsidiaries before any court, governmental agency or arbitrator, (i) which has a reasonable probability (taking into account the exhaustion of all appeals and the assertion of all defenses) of having a Material Adverse Effect or (ii) which purports to affect the legality, validity or enforceability of any Loan Document.

(f) Financial Statements; Financial Condition.

(i) The Consolidated balance sheets of the Parent Borrower and its Subsidiaries as of September 30, 2019, and the related Consolidated statements of income and retained earnings of the Parent Borrower and its Subsidiaries for the Fiscal Year then ended, certified by PricewaterhouseCoopers LLP, copies of which have been furnished to each Lender Party, fairly present in all material respects the Consolidated financial condition of the Parent Borrower and its Subsidiaries taken as a whole as at such date and the results of the operations of the Parent Borrower and its Subsidiaries for the period ended on such date, all in accordance with GAAP consistently applied.

(ii) The Parent Borrower and its Subsidiaries, taken as a whole, are Solvent.

(g) Material Adverse Change. Since September 30, 2019, there has been no Material Adverse Change.

(h) Compliance With Laws.

(i) The Parent Borrower and each of its Subsidiaries is in compliance with all Requirements of Law (including, without limitation, all applicable Environmental Laws and laws and regulations of the U.S. Food and Drug Administration) applicable to their respective properties, assets and business other than (i) where the failure to so comply would (as to all such failures to comply in the aggregate) not have a Material Adverse Effect or (ii) as described on Schedule 6.01(h).

(ii) 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 6.01(h) 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).

(i) ERISA. Except as provided in Schedule 6.01(i):

(i) Neither a Loan Party nor any ERISA Affiliate is a party or subject to, or has any obligation to make payments, or incur any material Withdrawal Liability, to, any Multiemployer Plan.

(ii) Schedule SB (Actuarial Information) to the most recently completed annual report (Form 5500 Series) for each Plan, copies of which have been or will be filed with the Internal Revenue Service, is complete and accurate in all material respects and fairly presents the funding status of such Plan, and since the date of such Schedule SB there has been no material adverse change in such funding status which would reasonably be likely to result in a Material Adverse Effect.

(iii) No ERISA Event has occurred with respect to any Plan that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be likely to result in a Material Adverse Effect.

(iv) Neither a Loan Party nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization, insolvent or has been 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 or ERISA and no Multiemployer Plan is reasonably expected to be in reorganization or to be terminated, within the meaning of Title IV of ERISA.

(j) Federal Reserve Regulations. No Loan Party is engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Advance or drawing under any Letter of Credit will be used to purchase any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock.

(k) Investment Company. Neither the Parent Borrower nor any of its Subsidiaries is an "investment company," or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

(l) Disclosure. As of the Closing Date, no information, exhibit or report furnished by any Loan Party to the Agent or any Lender Party in connection with the negotiation and syndication of the Loan Documents or pursuant to the terms of the Loan Documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements made therein not misleading; provided that all financial projections, if any, that have been or will be prepared by the Parent Borrower and made available to the Joint Lead Arrangers, the Agent, any Lender or any potential Lender, or any other party hereto, have been or will be prepared in good faith based upon reasonable assumptions, it being understood by the Lenders and all the other parties hereto that such projections are subject to significant uncertainties and contingencies, many of which are beyond the Parent Borrower's control, and that no assurances can be given that the projections will be realized.

(m) OFAC. Neither the Parent Borrower, nor any of its Subsidiaries, nor, to the knowledge of the Parent Borrower and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by

one or more individuals or entities that are (i) currently the subject or target of any 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 Sanctioned Jurisdiction (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, directors and agents, 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 6.01(m) 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.

(n) Anti-Corruption Laws. The Parent Borrower and its Subsidiaries have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions and have instituted and maintain policies and procedures designed to promote and achieve compliance by the Parent Borrower, its Subsidiaries and their respective directors, officers, employees and agents with such laws.

(o) Centre of Main Interests. For the purposes of the Regulation, the centre of main interest (as that term is used in Article 3(1) of the Regulation) of each Loan Party to which the Regulation applies is situated in its jurisdiction of incorporation and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

(p) Affected Financial Institution. Neither the Parent Borrower nor any other Loan Party is an Affected Financial Institution.

(q) Beneficial Ownership Certification. As of the Closing Date, the information included in each Beneficial Ownership Certification is true and correct in all respects.

(r) Deposit Accounts. Annexed hereto as Schedule 6.01(r) is a list of all DDAs maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each DDA (a) the name and address of the depository; (b) the account number(s) maintained with such depository; (c) a contact person at such depository, (d) whether such DDA is required to be a Blocked Account (and an explanation of any exclusions); and (e) the identification of each Blocked Account Bank.

(s) Borrowing Base Certificate. The information set forth in each Borrowing Base Certificate is true and correct in all material respects.

(t) Ownership of Properties. Each Loan Party has good and indefeasible title to (or valid leasehold interests in) all of its property (including all real property), free of Liens except Permitted Liens or any immaterial defects in title which do not constitute Liens or that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect.

(u) Tax Matters. The Parent Borrower and each of its Subsidiaries has filed all material Tax returns required to have been filed by it and has timely paid all material Taxes payable by it (whether or not shown on a Tax return and including in its capacity as withholding agent) that have become due, other than those being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP. The Parent Borrower and each of its Subsidiaries has paid, or has provided adequate accruals or reserves in accordance with GAAP for the payment of, all material Taxes not yet due and payable. There is no current or proposed material Tax assessment, deficiency or other claim against the Parent Borrower or any of its Subsidiaries.

(v) Labor Relations. Except as would not reasonably be expected to have a Material Adverse Effect, (x) there are no strikes, lockouts, slowdowns or other labor disputes pending against the Parent Borrower or any Restricted Subsidiaries or, to the knowledge of any Responsible Officer of each Loan Party, threatened against the Parent Borrower or any Restricted Subsidiaries, (y) the hours worked by and payments made to employees of the Parent Borrower or any Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act of 1938, as amended, or any other applicable federal, state, provincial, municipal, local or foreign Requirement of Law dealing with such matters, as the case may be, and (z) to the knowledge of any Responsible Officer of each Loan Party, no wage and hour department investigation has been made of the Parent Borrower or any Restricted Subsidiaries.

(w) Subsidiaries. On and as of the Closing Date, the Parent Borrower has no Subsidiaries other than those Subsidiaries listed on Schedule 6.01(w). Schedule 6.01(w) correctly sets forth, as of the Closing Date, the percentage ownership (direct and indirect) of the Parent Borrower in each of its Subsidiaries and also identifies the direct owner of each of its Subsidiaries.

(x) Environmental Matters. The Parent Borrower and each Restricted Subsidiary and their respective operations and facilities are in compliance with all Environmental Laws and have obtained, maintained and are in compliance with the requirements of all applicable permits, licenses and other approvals required to be issued under such Environmental Laws, except where the failure to comply with Environmental Laws or to obtain, maintain or comply with such permits, licenses or approvals would not reasonably be expected to have a Material Adverse Effect. There are no pending or, to the knowledge of any Responsible Officer of the Parent Borrower, threatened Environmental Claims which are reasonably likely to be adversely determined and, if adversely determined, would reasonably be expected to result in liability to the Parent Borrower or any Restricted Subsidiaries or with respect to any Real Estate currently or to the knowledge of any Responsible Officer of any Loan Party, formerly owned, leased or operated by the Parent Borrower or any Restricted Subsidiaries, which would in each case be reasonably expected to have a Material Adverse Effect. To the knowledge of any Responsible Officer of any Loan Party, there are no facts, activities, circumstances, conditions or occurrences that would be reasonably expected (i) to form the basis of an Environmental Claim against or result in liability to the Parent Borrower or any Restricted Subsidiaries or (ii) to cause any Real Estate owned, leased or operated by the Parent Borrower or any Restricted Subsidiaries to be subject to any restrictions on the ownership, lease, occupancy or transferability of such Real Estate by the Parent Borrower or any Restricted Subsidiaries under any Environmental Law and that in any such case which would reasonably be expected to have a Material Adverse Effect.

(y) Intellectual Property. Except as would not reasonably be expected to have a Material Adverse Effect, the Parent Borrower and each other Restricted Subsidiary owns or has the right to use all Intellectual Property used in, held for use in and otherwise necessary for the present conduct of their respective businesses. To the knowledge of any Responsible Officer of each Loan Party, the operation of their respective businesses by the Parent Borrower and each other Restricted Subsidiary does not infringe upon, misappropriate, violate or otherwise conflict with the Intellectual Property of any third party, except as such would not reasonably expected to have a Material Adverse Effect.

(z) Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Agent for the benefit of the Secured Parties legal, valid, enforceable and, if applicable, 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 (i) in the case of the U.S. Security Agreement and the U.S. Collateral described therein, upon the timely and proper filing of UCC financing statements listing each applicable U.S. Loan Party, as a debtor, and the Agent, as secured party, in the secretary of state's office (or other similar governmental entity) in the location of such Loan Party, the Agent, for the benefit of the Secured Parties, has a fully perfected security interest in and Lien on all right, title and interest in all of the U.S. Collateral, subject to no other 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, (ii) in the case of the German Security Agreements and the German Collateral described therein, upon entering into the German Security Documents and the respective notifications of the creation of German Collateral over certain assets to the relevant account banks and to the entity whose shares have been pledged, (iii) upon execution of each Blocked Account Agreement, the Agent for the benefit of the Secured Parties will have a first priority perfected security interest and Lien in each deposit account subject to any such Blocked Account Agreement and (iv) in the case of any Mortgages, each Mortgage will create, as security for the obligations purported to be secured thereby, upon recordation in the appropriate recording office, a perfected security interest in and mortgage Lien on the respective Mortgaged Property in favor of the Agent (or such other trustee as may be required or desired under local Requirement of Law) for the benefit of the Secured Parties, superior and prior to the rights of all third Persons and subject to no other Liens (other than Permitted Liens related thereto).

ARTICLE VII

COVENANTS OF THE LOAN PARTIES

SECTION 7.01 Affirmative Covenants. So long as any Lender shall have any Commitment hereunder, any Advance or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which a claim has not been asserted), or any Letter of Credit shall remain outstanding, the Loan Parties shall, and shall cause each Restricted Subsidiary to:

(a) Preservation of Existence, Etc. Preserve and maintain, and cause each of its Subsidiaries to preserve and maintain, its existence (corporate or otherwise), rights (charter and statutory), and franchises except if, in the reasonable business judgment of the Parent Borrower or

such Subsidiary, as the case may be, it is in its best economic interest not to preserve and maintain such rights or franchises and such failure to preserve and maintain such rights or franchises would not materially adversely affect the rights of the Lenders or the Issuing Banks hereunder or the ability of any Loan Party to perform its obligations under the respective Loan Documents (it being understood that the foregoing shall not prohibit, or be violated as a result of, any transactions by or involving any Loan Party or other Subsidiary otherwise permitted under Section 7.02); and maintain in effect and enforce policies and procedures designed to promote and achieve compliance by the Parent Borrower, its Subsidiaries and their respective directors, officers, employees and agents with applicable Sanctions.

(b) Compliance with Laws, Etc. Comply, and cause each of its Subsidiaries to comply, in all material respects with all applicable Laws (including, without limitation, ERISA, all Environmental Laws and all laws and regulations of the U.S. Food and Drug Administration), rules, regulations and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent contested in good faith or where the failure to comply would not have a Material Adverse Effect.

(c) Visitation Rights.

(i) Permit representatives and, subject to the provisions of Section 10.11 hereof, independent contractors of the Agent, to visit and inspect any of its properties and to discuss its affairs, finances and accounts with its directors, officers, and accountants (at which representative of the Loan Parties have the right to be present), all at the expense of the Loan Parties and at such reasonable times during normal business hours, upon reasonable advance notice to Parent Borrower, and permit any Lender (at the sole cost and expense of such Lender) to participate in any such visit, inspection or discussion; provided, however, that, when an Event of Default exists the Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice.

(ii) Upon the request of the Agent after reasonable prior notice and subject to the following sentence of this Section 7.01(c)(ii), permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations of (i) Parent Borrower's practices in the computation of the U.S. Borrowing Base and the German Borrowing Base and (ii) the assets included in the U.S. Borrowing Base and the German Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves. The Agent (A) shall conduct one (1) commercial finance examination in any twelve month period, at the Borrowers' expense; provided that, in the event that (x) Availability is at any time less than the greater of (x) $11.25 million and (y) 15.0% of the Loan Cap, the Agent may conduct up to two (2) commercial finance examinations in any 12 month period, at the Borrowers' expense, (B) may conduct one (1) additional commercial finance examination at the expense of the Lenders in any 12 month period; provided, however, that, notwithstanding anything in the foregoing clauses (A) or (B), in no event shall there be more than two (2) commercial finance examinations in any 12 month period unless the provisions of clause (C) are then applicable, and (C) may conduct additional commercial finance examinations as frequently as determined by the

Agent in its Permitted Discretion if an Event of Default has occurred and is continuing, at the expense of the Borrowers.

(iii) Upon the request of the Agent after reasonable prior notice and subject to the following sentence of this Section 7.01(c)(iii), permit the Agent or professionals (including appraisers) retained by the Agent to conduct appraisals of inventory and real property constituting Collateral, including, without limitation, the assets included in the U.S. Borrowing Base and the German Borrowing Base. The Agent (A) shall conduct one (1) appraisal of each of inventory and real property in any twelve month period, at the Borrowers' expense; provided that, in the event that (x) Availability is at any time less than the greater of $11.25 million and 15.0% of the Loan Cap, the Agent may conduct up to two (2) appraisals of each of inventory and real property in any 12 month period, at the Borrowers' expense, (B) may conduct one (1) additional appraisal of each of inventory and real property at the expense of the Lenders in any 12 month period; provided, however, that, notwithstanding anything in the foregoing clauses (A) or (B), in no event shall there be more than two (2) appraisals of each of inventory and real property in any 12 month period unless the provisions of clause (C) are then applicable, and (C) the Agent may conduct additional appraisals of inventory and/or real property as frequently as determined by the Agent in its Permitted Discretion if an Event of Default has occurred and is continuing, at the expense of the Borrowers.

(d) Maintenance of Books and Records. Keep, and cause each of its Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Parent Borrower and each of its Subsidiaries in accordance with sound business practice.

(e) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted, consistent with sound business practice, except where the failure to so maintain and preserve would not have a Material Adverse Effect.

(f) Maintenance of Insurance.

(i) Maintain, and cause each of its Subsidiaries to maintain, insurance (other than earthquake or terrorism insurance) in amounts, from responsible and reputable insurance companies or associations, with limitations, of types and on terms as is customary for the industry.

(ii) Cause commercial general liability policies to be endorsed to name the Agent as an additional insured or transferred to the Agent.

(iii) Cause All Risk and Business Interruption policies to name the Agent as a lender loss payee and to be endorsed or amended to include (i) a provision that, from and after the Closing Date, after the occurrence and during the continuance of a Cash Dominion Period, in the event of an insurable loss, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the All Risk and Business Interruption policies directly to the Agent, (ii) no provision of coinsurance applicable to the Loan Parties, the Secured Parties or any other Person and (iii) such other provisions as the

Agent may reasonably require from time to time to protect the interests of the Secured Parties.

(iv) If the improvements on a Mortgaged Property are at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws (including as a result of re-zoning), (x) maintain, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable Requirements of Law promulgated pursuant to the Flood Insurance Laws and (y) deliver to the Administrative Agent, upon its reasonable request therefor, evidence of such insurance, including, without limitation, evidence of annual renewals of such insurance.

(v) Cause each such policy referred to in this Section 7.01(f) to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.

(vi) Deliver to the Agent a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder or certificate of insurance) together with evidence reasonably satisfactory to the Agent of either payment of the premium therefor or that such premium is being financed reasonably promptly following each such renewal, replacement or modification.

None of the Secured Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 7.01(f). Each Loan Party shall look solely to its insurance companies or any other parties other than the Secured Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Secured Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Secured Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Secured Party under this Section 7.01(f) shall in no event be deemed a representation, warranty or advice by such Secured Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

(g) Use of Proceeds. Use the proceeds of the Advances and issuances of Letters of Credit solely for working capital, capital expenditures and other general corporate purposes of the Parent Borrower and its Subsidiaries not prohibited by this Agreement or the Senior Notes Indenture.

(h) Anti-Corruption Laws. Conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and maintain policies and procedures designed to promote and achieve compliance by the Parent Borrower, its Subsidiaries and their respective directors, officers, employees and agents with such laws.

(i) Cash Management.

(i) [Reserved].

(ii) Creation of Dominion Accounts and Maintenance of Blocked Accounts. (1) With respect to each U.S. Loan Party's DDAs (other than Excluded Accounts) and the U.S. Dominion Account (collectively, the "U.S. Blocked Accounts"), within sixty (60) days (or such later date as Agent may agree in its reasonable discretion) of the Closing Date or, for DDAs opened or acquired following the Closing Date, within sixty (60) days (or such later date as the Agent may agree in its reasonable discretion), of the opening or establishment or acquisition of such DDA or the date any Person that owns such DDA becomes a U.S. Loan Party hereunder, each U.S. Loan Party shall cause each bank or other depository institution at which any DDA is maintained (each, a "Blocked Account Bank"), to enter into a Blocked Account Agreement in form and substance reasonably satisfactory to the Agent that provides for such bank or other depository institution to transfer to the U.S. Dominion Account (in the case of other DDAs), on each Business Day, all balances in each such Blocked Account maintained by any U.S. Loan Party with such depository institution for application to the Obligations then outstanding following the receipt by such bank or other depository institution of a notice from the Agent. Each U.S. Loan Party irrevocably appoints the Agent as such U.S. Loan Party's attorney-in-fact to collect such balances during a Cash Dominion Period to the extent any such delivery is not so made.

(B) With respect to each German Loan Party's DDAs (other than Excluded Accounts) and the German Dominion Account (collectively, the "German Blocked Accounts" and, together with the U.S. Blocked Accounts, the "Blocked Accounts"), within sixty (60) days (or such later date as Agent may agree in its reasonable discretion) of the Closing Date or, for DDAs opened or acquired following the Closing Date, within sixty (60) days (or such later date as the Agent may agree in its reasonable discretion), of the opening or establishment or acquisition of such DDA or the date any Person that owns such DDA becomes a German Loan Party hereunder, each German Loan Party shall cause each Blocked Account Bank to enter into a Blocked Account Agreement in form and substance reasonably satisfactory to the Agent that provides for such bank or other depository institution to transfer to the German Dominion Account (in the case of other DDAs), on each Business Day, all balances in each such German Blocked Account maintained by any German Loan Party with such depository institution for application to the Obligations then outstanding following the receipt by such bank or other depository institution of a notice from the Agent. Each German Loan Party irrevocably appoints the Agent as such German Loan Party's attorney-in-fact to collect such balances during a Cash Dominion Period to the extent any such delivery is not so made.

(iii) [Reserved].

(iv) Cash Receipts. The Borrowers shall ACH or wire transfer no less frequently than once every Business Day (and whether or not there are then any outstanding Obligations) to a Blocked Account all cash receipts of the company (including without limitation all insurance proceeds, all Net Proceeds, all proceeds from sales of Inventory, all proceeds of Accounts and all other proceeds of ABL Priority Collateral). If any such Borrower receives cash or any check, draft or other item of

payment payable to such Borrower, it shall hold the same in trust for the Agent and promptly deposit the same into any such Blocked Account or Dominion Account. Each U.S. Loan Party and German Loan Party shall instruct any persons making payments on Accounts or other Collateral to make such payments into Blocked Accounts.

(v) Dominion Account. The Dominion Account shall at all times be under the sole dominion and control of the Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Dominion Account, (ii) the funds on deposit in the Dominion Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in the Dominion Account shall be applied pursuant to Section 8.02 on a daily basis after the occurrence and during the continuation of a Cash Dominion Period. In the event that, notwithstanding the provisions of this Section 7.01(i)(v), any U.S. Loan Party and German Loan Party receives or otherwise has dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Dominion Account or dealt with in such other fashion as such Loan Party may be instructed by the Agent. Upon the request of the Agent after the occurrence and during the continuance of a Cash Dominion Period, the Loan Parties shall cause bank statements and/or other reports to be delivered to the Agent not less often than weekly, accurately setting forth all amounts deposited in each Blocked Account to ensure the proper transfer of funds as set forth above.

(j) Information Regarding the Collateral. Furnish to the Agent at least five (5) days prior written notice of any change in: (i) any Loan Party's name; or (ii) 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 Agent 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 for its own benefit and the benefit of the other Secured Parties.

(k) Payment of Taxes. The Parent Borrower will pay and discharge or cause to be paid and discharged, and will cause each of its Subsidiaries to pay and discharge, all Taxes imposed upon it (including in its capacity as a withholding agent) or upon its income or profits, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all claims in respect of any Taxes imposed, assessed or levied that, if unpaid, would reasonably be expected to become a Lien (other than a Permitted Lien) upon any properties of the Parent Borrower or any of its Subsidiaries; provided that neither the Parent Borrower nor any of its Subsidiaries shall be required to pay any such Tax that is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP or the failure to pay would not reasonably be expected, individually or in the aggregate to result in a Material Adverse Effect.

(l) Further Assurances.

(i) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of

financing statements and other documents), that may be required under any applicable Law, or which the Agent may reasonably request, 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 (including, without limitation, to the extent that the German Borrower at any time acquires or otherwise becomes the owner or holder of any Intellectual Property, the German IP Pledge Agreement). The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence reasonably satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Collateral Documents.

(ii) Upon request, cause each Subsidiary which is not a Loan Party hereunder to deliver agreements reasonably satisfactory to the Agent granting the Agent the right and license to use the assets and properties of such Subsidiary, including all Intellectual Property, equipment and fixtures owned by such Subsidiary, in connection with any Liquidation of the Collateral.

(iii) Notwithstanding anything contained in this Agreement to the contrary, no real property shall be taken as Collateral (and no Mortgages shall be entered into) unless and until (x) the Agent and all Lenders have received at least 30 days' prior written notice thereof, together with a draft of such proposed Mortgage and any other Related Real Estate Documents (each of which may be provided via email or via posting on any datasite to which the Lenders have access), and (y) each Lender has notified the Agent in writing (which notice may be provided via email) that such Lender has completed its flood insurance due diligence and compliance procedures with respect thereto.

(m) 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 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 Agent 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 Agent, upon the Agent'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.

(n) New Subsidiaries.

(i) Within thirty (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 Agent of such event and, promptly thereafter (and in any event within 30 days or such longer period as Agent may agree) (x) cause each such new Restricted Subsidiary that is not an Excluded Subsidiary to deliver to Agent (A) a Joinder Agreement or other security document in form and substance reasonably acceptable to the Agent and (B) a supplemental Guaranty in the form attached hereto as Exhibit G, and to deliver to Agent such security documents, together with appropriate financing statements, reasonably requested by Agent, all in form and substance reasonably satisfactory to Agent, (y) with respect to all new Restricted Subsidiaries that are directly owned in whole or in part by a Loan Party, cause such Loan Party to provide to Agent a supplement to the U.S. Security Agreement or the German Security Agreements or a new pledge or security document, as applicable, providing for the pledge of the Capital Stock in such new Restricted Subsidiary owned by it as shall be requested by Agent together with appropriate certificates and powers or 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 Agent, and (z) provide or cause to be provided to Agent all other customary and reasonable documentation requested thereby, including, to the extent requested by Agent, one or more opinions of counsel reasonably satisfactory to Agent, 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, 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 U.S. Borrower, a German Borrower or a Borrower hereunder after the Closing Date unless (1) all of the foregoing requirements have been completed to the reasonable satisfaction of each Lender, (2) such Person is organized under the laws of the United States (or any state thereof) or Germany, (3) if such Person qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, such Person shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Person, (4) each Lender shall have completed its diligence, with results satisfactory to such 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 each Lender and (6) the Parent Borrower has provided at least 30 days' prior written notice of such joinder to each Lender.

(ii) 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 Capital Stock or other property held by it if (A) the Parent Borrower has given the Agent at least ten (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 Lenders of such Borrower's or such Subsidiary's guaranty or security and the Agent has agreed in its reasonable determination or (B) 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.

(o) 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". With respect to the assets of Unrestricted Subsidiaries and Restricted Subsidiaries that are Loan Parties being included in the calculation of the U.S. Borrowing Base or the German Borrowing Base, (a) if a Restricted Subsidiary is designated by Borrowers as an Unrestricted Subsidiary, the assets of such Subsidiary shall immediately be excluded from the U.S. Borrowing Base and the German Borrowing Base, as applicable, and (b) if an Unrestricted Subsidiary is designated by Borrowers as a Restricted Subsidiary after the Closing Date, then the assets of such Subsidiary shall not be included in the calculation of the U.S. Borrowing Base or the German Borrowing Base until (i) Agent consents (such consent not to be unreasonably withheld) to such inclusion (except to the extent such Subsidiary's assets were previously included in the U.S. Borrowing Base or the German Borrowing Base, as applicable) and (ii) Agent has received satisfactory appraisals and field exams with respect to the assets of such Subsidiary, if applicable, as reasonably required by Agent and (iii) the Loan Parties have complied with Section 7.01(n) with respect to such Subsidiary. As of the Closing Date, there are no Unrestricted Subsidiaries.

(p) Post-Closing Matters. Execute and deliver the documents and complete the tasks set forth on Schedule 7.01(p), in each case within the time limits specified on such schedule, as such time limits may be extended from time to time by Agent in its reasonable discretion.

(q) Centre of Main Interests. Each Loan Party incorporated in a jurisdiction to which the Regulation applies shall maintain its "centre of main interests" in its jurisdiction of incorporation for the purposes of the Regulation.

(r) Compliance with Environmental Laws. The Parent Borrower and any Restricted Subsidiary will comply with all Environmental Laws and permits applicable to, or required by, the ownership, lease or use of Real Estate by the Parent Borrower or any Restricted Subsidiary, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, and will keep or cause to be kept all such Real Estate 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), except, in each case, where the failure to do so would not reasonably be expected to have a Material Adverse Effect. 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 Substance at, on or under any Real Estate by the Parent Borrower or any Restricted Subsidiary, or transport or permit the transportation of any Hazardous Substance 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.

(s) 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 of 1933, as amended.

SECTION 7.02 Negative Covenants. So long as any Lender shall have any Commitment hereunder, any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (other than contingent indemnification obligations for which a claim has not been asserted), no Loan Party shall, nor shall it permit any Restricted Subsidiary to, directly or indirectly:

(a) Indebtedness.

(i) (x) Parent Borrower shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Capital Stock; and (y) Parent Borrower shall not permit any of the Restricted Subsidiaries (other than any Loan Party) to issue any shares of Preferred Stock.

(ii) The limitations set forth in Section 7.02(a)(i) shall not apply to:

(A) the Incurrence by Parent Borrower or any Restricted Subsidiary of Indebtedness pursuant to any Loan Document;

(B) the Senior Notes in an aggregate amount not to exceed the "First Lien Notes Cap Amount" as such term is defined in the Intercreditor Agreement;

(C) Indebtedness, Preferred Stock and Disqualified Capital Stock of Parent Borrower and the Restricted Subsidiaries existing on the Closing Date (other than Indebtedness described in clauses (A) and (B) of this Section 7.02(a)(ii)) and listed on Schedule 7.02(a);

(D) Indebtedness (including Capital Lease Obligations) Incurred by Parent Borrower or any Restricted Subsidiary, Disqualified Capital Stock issued by Parent Borrower or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary to finance (whether prior to or within 365 days after) the acquisition, lease, construction, repair, replacement or improvement of property (real or personal) or equipment (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets) that, when aggregated with the principal amount or liquidation preference of all other Indebtedness, Disqualified Capital Stock or Preferred Stock then outstanding and Incurred pursuant to this clause (D), together with any Refinancing Indebtedness in respect thereof Incurred pursuant to clause (O) below, does not exceed at any one time outstanding $30.0 million (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(E) Indebtedness Incurred by Parent Borrower or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or

pursuant to the requirements of, Environmental Law, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims;

(F) Indebtedness arising from agreements of Parent Borrower or any Restricted Subsidiary providing for indemnification, adjustment of acquisition or purchase price or similar obligations (including earn-outs), in each case, Incurred and owing to the selling party of such acquisition or assumed in connection with the Transactions, any Investments or any acquisition or disposition of any business, assets or a Subsidiary not prohibited by this Agreement, other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition; provided that no payments shall be made on such Indebtedness unless the Borrowers are in Pro Forma Compliance with the Payment Conditions;

(G) Indebtedness of Parent Borrower to a Restricted Subsidiary; provided that (except in respect of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of Parent Borrower and its Subsidiaries) any such Indebtedness owed to a Restricted Subsidiary that is not a Loan Party is subordinated in right of payment to the Obligations; provided further that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except any pledge of such Indebtedness constituting a Permitted Lien but not the transfer thereof upon foreclosure) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (G);

(H) Bank Product Obligations;

(I) Indebtedness of a Restricted Subsidiary to Parent Borrower or another Restricted Subsidiary; provided that (x) if such Indebtedness is owing by a Restricted Subsidiary that is not a Loan Party to a Loan Party, such Indebtedness must constitute a Permitted Investment pursuant to clause (10) of the definition of such term and (y) if a Loan Party incurs such Indebtedness to a Restricted Subsidiary that is not a Loan Party (except in respect of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of Parent Borrower and its Subsidiaries), such Indebtedness is subordinated in right of payment to the Obligations; provided further that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary holding such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to Parent Borrower or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien but not the transfer thereof upon foreclosure) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (I);

(J) Hedging Obligations (x) that are not incurred for speculative purposes but (A) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Agreement to be outstanding; (B) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (C) for the purpose of fixing or hedging commodity price risk with respect

to any commodity purchases or sales and, in each case, extensions or replacements thereof and (y) entered into in connection with a Permitted Bond Hedge Transaction or a Permitted Warrant Transaction;

(K) obligations (including reimbursement obligations with respect to letters of credit, bank guarantees, warehouse receipts and similar instruments) in respect of performance, bid, appeal and surety bonds, completion guarantees and similar obligations provided by Parent Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with past practice or industry practice;

(L) Indebtedness or Disqualified Capital Stock of Parent Borrower or Indebtedness, Disqualified Capital Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Capital Stock and Preferred Stock then outstanding and Incurred pursuant to this clause (L), together with any Refinancing Indebtedness in respect thereof incurred pursuant to clause (O) below, does not exceed at any one time outstanding $5.0 million (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(M) Convertible Indebtedness of the Parent Borrower in an aggregate principal amount not to exceed $200.0 million outstanding at any time;

(N) any guarantee by Parent Borrower or any Restricted Subsidiary of Indebtedness or other obligations of Parent Borrower or any Restricted Subsidiary so long as the Incurrence of such Indebtedness Incurred by Parent Borrower or such Restricted Subsidiary is permitted under the terms of this Agreement; provided that (A) if such Indebtedness is by its express terms subordinated in right of payment to the Obligations by such Restricted Subsidiary, as applicable, any such guarantee with respect to such Indebtedness shall be subordinated in right of payment to the Obligations, substantially to the same extent as such Indebtedness is subordinated to the Obligations, (B) if such guarantee is of Indebtedness of Parent Borrower, such guarantee is Incurred in accordance with, or not in contravention of, Section 7.01(n) solely to the extent Section 7.01(n) is applicable and (C) the aggregate principal amount of Indebtedness or other obligations of a Subsidiary that is not a Loan Party guaranteed by a Loan Party in reliance on this clause (N) shall not exceed $5.0 million at any time outstanding;

(O) the Incurrence by Parent Borrower or any of the Restricted Subsidiaries of Indebtedness or Disqualified Capital Stock, or by any Restricted Subsidiary of Preferred Stock of a Restricted Subsidiary, that serves to refund, refinance or defease any Indebtedness Incurred or Disqualified Capital Stock or Preferred Stock issued as permitted under clauses (B), (C), (D) (L) and (O) of this Section 7.02(a)(ii) up to the outstanding principal amount (or, if applicable, the liquidation preference, face amount, or the like) or, if greater, committed amount (only to the extent the committed amount could have been Incurred on the date of initial Incurrence and was deemed Incurred at such time for the purposes of this Section 7.02(b)) of such Indebtedness or Disqualified Capital Stock or Preferred Stock, in each case at the time such Indebtedness was Incurred or Disqualified Capital Stock or Preferred Stock was issued pursuant to clauses (B), (C), (D), (L) and (O) of this Section 7.02(a)(ii), or any Indebtedness, Disqualified Capital Stock or Preferred Stock Incurred to so refund or refinance such Indebtedness,

Disqualified Capital Stock or Preferred Stock, plus any additional Indebtedness, Disqualified Capital Stock or Preferred Stock Incurred to pay premiums (including tender premiums), accrued and unpaid interest, expenses, defeasance costs and fees in connection therewith (subject to the following proviso, "Refinancing Indebtedness") prior to its respective maturity; provided, however, that such Refinancing Indebtedness:

1. has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Capital Stock or Preferred Stock being refunded, refinanced or defeased and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness, Disqualified Capital Stock and Preferred Stock being refunded or refinanced that were due on or after the date that is one year following the Termination Date were instead due on such date;

2.to the extent such Refinancing Indebtedness refinances (a) Indebtedness junior in right of payment to the Obligations, such Refinancing Indebtedness is junior in right of payment to the Obligations, (b) Disqualified Capital Stock or Preferred Stock, such Refinancing Indebtedness is Disqualified Capital Stock or Preferred Stock, (c) Indebtedness secured by a Lien on the Collateral that is *pari passu* or junior to the Lien on the Collateral securing the Obligations, such Refinancing Indebtedness is secured by a Lien on the Collateral that is *pari passu* with or junior to the Lien on the Collateral securing the Obligations to the same extent as such Indebtedness, and a Senior Representative of such Refinancing Indebtedness acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of ABL Intercreditor Agreement and (d) obligations under the Senior Notes Indenture, the Lien on the Collateral securing such Indebtedness shall have the priorities contemplated by the ABL Intercreditor Agreement (or priorities junior thereto), and a Senior Representative of such Refinancing Indebtedness acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of the ABL Intercreditor Agreement; and

3. shall not include (x) Indebtedness of a Restricted Subsidiary that is not a Loan Party that refinances Indebtedness of Parent Borrower or another Loan Party, or (y) Indebtedness of Parent Borrower or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary;

(P) [reserved];

(Q) [reserved];

(R) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided that such Indebtedness is extinguished within five Business Days of its Incurrence;

(S) Indebtedness of Parent Borrower or any Restricted Subsidiary supported by a Letter of Credit, in a principal amount not in excess of the stated amount of such Letter of Credit;

(T) [reserved];

(U) Indebtedness of Parent Borrower or any Restricted Subsidiary consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(V) unsecured Indebtedness of Parent Borrower or a Restricted Subsidiary to current or former officers, directors and employees thereof, their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of Parent Borrower to the extent described in Section 7.02(b)(ii)(D); provided that no payments shall be made on such Indebtedness unless the Borrowers are in Pro Forma Compliance with the Payment Conditions; and

(W) Indebtedness in respect of Obligations of Parent Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money or any Hedging Obligations.

(iii) For purposes of determining compliance with this Section 7.02(a) at the time of incurrence, the Parent Borrower will be entitled to divide and classify an item of Indebtedness in more than one of the categories of Indebtedness described (A) through (DD) of Section 7.02(a)(ii) (or any portion thereof) without giving pro forma effect to the Indebtedness Incurred pursuant to any other clause or paragraph of Section 7.02(a)(ii) (or any portion thereof) when calculating the amount of Indebtedness that may be Incurred pursuant to any such clause or paragraph (or any portion thereof).

Accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, Disqualified Capital Stock or Preferred Stock, as applicable, amortization of original issue discount, the accretion of liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an Incurrence of Indebtedness, Disqualified Capital Stock or Preferred Stock for purposes of this Section 7.02(a). In addition, Guaranties of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; provided that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 7.02(a).

For purposes of determining compliance with any Dollar-denominated restriction on the Incurrence of Indebtedness, the Dollar Equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt. However, if the Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and the refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of the refinancing, the Dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of the refinancing Indebtedness does not exceed the principal amount of the Indebtedness being refinanced.

Notwithstanding any other provision of this Section 7.02(a), the maximum amount of Indebtedness that Parent Borrower and the Restricted Subsidiaries may Incur pursuant to this Section 7.02(a) shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which the respective Indebtedness is denominated that is in effect on the date of the refinancing.

(b) Limitation on Restricted Payments.

(i) Parent Borrower shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly:

(A) declare or pay any dividend or make any distribution on account of any of Parent Borrower's or any of the Restricted Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving Parent Borrower (other than (A) dividends or distributions payable solely in Equity Interests (other than Disqualified Capital Stock) of Parent Borrower; or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary, Parent Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(B) purchase or otherwise acquire or retire for value any Equity Interests of Parent Borrower;

(C) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment or scheduled maturity, any Junior Indebtedness of Parent Borrower or any Restricted Subsidiary (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Junior Indebtedness in anticipation of satisfying a sinking fund obligation in respect of a principal installment or a principal installment and (B) Indebtedness permitted under clauses (G) and (I) of Section 7.02(a)(ii) to the extent not required to be subordinated to the Obligations); or

(D) make any Restricted Investment.

(all such payments and other actions set forth in subclauses (A) through (D) above being collectively referred to as "Restricted Payments").

(ii) The provisions of Section 7.02(b)(i) shall not prohibit:

(A) [reserved];

(B) [reserved];

(C) the redemption, repurchase, defeasance, or other acquisition or retirement of Junior Indebtedness of Parent Borrower or any Loan Party made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of Parent

Borrower or a Loan Party, which is Incurred in accordance with Section 7.02(a) so long as:

1. the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the principal amount (or accreted value, if applicable), *plus* any accrued and unpaid interest, of the Junior Indebtedness being so redeemed, repurchased, defeased, acquired or retired for value (*plus* the amount of any premium required to be paid under the terms of the instrument governing the Junior Indebtedness being so redeemed, repurchased, acquired or retired, *plus* any tender premiums, *plus* any defeasance costs, fees and expenses incurred in connection therewith);

2. such Indebtedness is subordinated as to right of payment and lien priority to the Obligations or the related Guaranty of such Loan Party, as the case may be, at least to the same extent as such Junior Indebtedness so purchased, exchanged, redeemed, repurchased, defeased, acquired or retired for value (it being understood that, if the Junior Indebtedness so purchased, exchanged, redeemed, repurchased, defeased, acquired or retired for value is unsecured, such Indebtedness shall be unsecured);

3. such Indebtedness has a final scheduled maturity date equal to or later than the earlier of (x) the final scheduled maturity date of the Junior Indebtedness being so redeemed, repurchased, acquired or retired and (y) 91 days following the Termination Date; and

4. such Indebtedness has a Weighted Average Life to Maturity at the time Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Junior Indebtedness being so redeemed, repurchased, defeased, acquired or retired and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Junior Indebtedness being redeemed, repurchased, defeased, acquired or retired that were due on or after the date that is one year following the Termination Date;

(D) a Restricted Payment to pay for the repurchase, retirement or other acquisition for value of Equity Interests of Parent Borrower held by any future, present or former employee, director, officer or consultant of Parent Borrower or any Subsidiary of Parent Borrower pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; provided that no such Restricted Payments shall be made unless the Borrowers are in Pro Forma Compliance with the Payment Conditions;

(E) the making of cash payments by Mevis Medical Solutions AG ("MeVis") pursuant to that certain Domination and Profit and Loss Transfer Agreement dated 10 August 2015 between VMS Deutschland Holdings GmbH and MeVis in an annual amount not to exceed both (1) €0.95 per MeVis share and (2) in the aggregate, €1,300,000;

(F) [reserved];

(G) the making of cash payments in connection with any conversion of Convertible Indebtedness in an aggregate amount since the date of the indenture not to exceed the sum of (a) the principal amount of such Convertible Indebtedness plus (b) any payments received by the Parent Borrower or any of its Restricted Subsidiaries pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction; provided that no such payments shall be made unless the Borrowers are in Pro Forma Compliance with the Payment Conditions;

(H) so long as no Default or Event of Default then exists or would arise as a result thereof, Restricted Payments that are made with (or in an aggregate amount that does not exceed the aggregate amount of) Excluded Contributions that are received concurrently therewith;

(I) [reserved];

(J) the distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to Parent Borrower or a Restricted Subsidiary by, Unrestricted Subsidiaries;

(K) [reserved];

(L) [reserved];

(M) [reserved];

(N) (a) any payments in connection with a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Parent Borrower's common stock upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common stock upon any early termination thereof;

(O) Restricted Payments by Parent Borrower or any Restricted Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Capital Stock of any such Person in an aggregate amount not to exceed $50,000 during the term of this Agreement;

(P) [reserved];

(Q) [reserved]; and

(R) any Loan Party or their Restricted Subsidiaries may make Restricted Payments so long as Borrowers are in Pro Forma Compliance with the Payment Conditions;

provided, however, that, at the time of, and after giving effect to, any Restricted Payment permitted under clauses (H), (I) and (J) of this Section 7.02(b)(ii), no Default shall have occurred and be continuing or would occur as a consequence thereof; provided further that any Restricted Payments made

with property other than cash shall be calculated using the Fair Market Value (as determined in good faith by Parent Borrower) of such property.

(iii) As of the Closing Date, all of the Subsidiaries of Parent Borrower will be Restricted Subsidiaries. For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by Parent Borrower and the Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of "Investments." Such designation will only be permitted if a Restricted Payment or Permitted Investment in such amount would be permitted at such time and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

(iv) Notwithstanding anything else set forth in this Section 7.02(b) or the definition of "Permitted Investments" to the contrary, no Restricted Payment or Investment (other than an Investment in Parent Borrower or another Loan Party) of material intellectual property owned by Parent Borrower or another Loan Party shall be permitted under this Agreement.

(c) Limitations on Restrictions Affecting Subsidiaries. No Loan Party shall, or shall permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist any consensual encumbrance or consensual restriction which prohibits or limits the ability of any Loan Party or Restricted Subsidiary to:

(i) pay dividends or make any other distributions to Parent Borrower or any Restricted Subsidiary (1) on its Capital Stock; or (2) with respect to any other interest or participation in, or measured by, its profits; or

(ii) make loans or advances to Parent Borrower or any Restricted Subsidiary that is a direct or indirect parent of such Restricted Subsidiary;

except in each case for such encumbrances or restrictions existing under or by reason of:

(A) (1) contractual encumbrances or restrictions in effect on the Closing Date and (2) contractual encumbrances or restrictions pursuant to this Agreement, the other Loan Documents, and, in each case, similar contractual encumbrances effected by any amendments, modifications, restatements, renewals, supplements, refundings, replacements or refinancings of such agreements or instruments;

(B) (1) the Senior Notes Indenture, the Senior Notes or the guarantees thereunder or (2) the ABL Intercreditor Agreement;

(C) applicable Law or any applicable rule, regulation or order;

(D) any agreement or other instrument of a Person acquired by Parent Borrower or any Restricted Subsidiary which was in existence at the time of such acquisition (but not created in contemplation thereof or to provide all or any portion of the funds or credit support utilized to consummate such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;

(E) contracts or agreements for the sale of assets, including any restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Capital Stock or assets of such Restricted Subsidiary;

(F) Secured Indebtedness otherwise permitted to be Incurred pursuant to Section 7.02(a) and Section 7.02(g) that limits the right of the debtor to dispose of the assets securing such Indebtedness;

(G) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(H) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(I) purchase money obligations for property acquired and Capital Lease Obligations in the ordinary course of business;

(J) customary provisions contained in leases, licenses and other similar agreements entered into in the ordinary course of business;

(K) any encumbrance or restriction that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any such lease, license (including without limitation, licenses of intellectual property) or other contracts;

(L) other Indebtedness, Disqualified Capital Stock or Preferred Stock (A) of Parent Borrower or any Restricted Subsidiary that is a Loan Party or a Foreign Subsidiary or (B) of any Restricted Subsidiary that is not a Loan Party or a Foreign Subsidiary so long as such encumbrances and restrictions contained in any agreement or instrument will not materially affect Parent Borrower's or any Loan Party's ability to make anticipated principal or interest payments on the Advances (as determined in good faith by Parent Borrower); provided that, in the case of each of clauses (A) and (B), such Indebtedness, Disqualified Capital Stock or Preferred Stock is permitted to be Incurred subsequent to the Closing Date pursuant to Section 7.02(a);

(M) any Restricted Investment not prohibited by Section 7.02(b) and any Permitted Investment; or

(N) any encumbrances or restrictions of the type referred to in Section 7.02(c)(i) or (ii) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (14) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of Parent Borrower, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

For purposes of determining compliance with this Section 7.02(c), (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to Parent Borrower or a Restricted Subsidiary to other Indebtedness Incurred by Parent Borrower or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

(d) Sale of Capital Stock and Assets. Except as set forth herein, no Loan Party shall, or shall permit any of its Restricted Subsidiaries to, sell, transfer, convey, assign or otherwise Dispose of any of its properties or other assets, including the Capital Stock of any of its Subsidiaries (whether in a public or a private offering or otherwise), other than:

(i) the Disposition (including the abandonment of any immaterial Copyright, Patent, Trademark or other intellectual property or surrender or transfer for no consideration) of obsolete, no longer used or useful, surplus, uneconomic, negligible or worn out property in the ordinary course of business or otherwise as may be required pursuant to the terms of any lease, sublease, license or sublicense;

(ii) the sale of inventory or other assets in the ordinary course of business;

(iii) Dispositions permitted by Sections 7.02(b), 7.02(g) and 7.02(h);

(iv) (1) the sale or issuance of any Subsidiary's Capital Stock to Parent Borrower or any Restricted Subsidiary within the same country of such Subsidiary and only so long as the Agent retains a Lien on such Capital Stock to the same extent as prior to such sale or issuance and (2) the sale or issuance of Capital Stock of Parent Borrower to any employee (and, where required by law, to any officer or director) under any employment or compensation plans or to qualify such officers and directors;

(v) the sale of assets that do not constitute ABL Priority Collateral, so long as (1) no Default or Event of Default then exists or would result therefrom, (2) each such sale or other disposition is in an arm's-length transaction and the respective Borrower or Subsidiary receives at least fair market value, and (3) the consideration received by such Borrower or such Subsidiary consists of at least 75% cash and is paid at the time of the closing of such sale; provided, however, that the following shall be deemed to be cash in respect of assets that are not ABL Priority Collateral: (A) the assumption by the transferee of Indebtedness or other liabilities contingent or otherwise of Parent Borrower or any of its Restricted Subsidiaries (other than Junior Indebtedness) and the valid release of Parent Borrower or such Restricted Subsidiary, by all applicable creditors in writing, from all liability on such Indebtedness or other liability in connection with such Disposition and (B) Indebtedness (other than Junior Indebtedness) of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Disposition, to the extent that Parent Borrower and each other Restricted Subsidiary are released from any guarantee of payment of such Indebtedness in connection with such Disposition;

(vi) [reserved];

(vii) Dispositions of cash and Cash Equivalents;

(viii) Dispositions of Accounts in connection with compromise, write down or collection thereof in the ordinary course of business and consistent with past practice;

(ix) leases, subleases, licenses or sublicenses of property which do not materially interfere with the business of Borrowers and their Restricted Subsidiaries;

(x) Dispositions of Capital Stock to directors where required by applicable Law or to satisfy other requirements of applicable Law with respect to the ownership of Capital Stock of Foreign Subsidiaries;

(xi) Dispositions of the Capital Stock of any Joint Venture to the extent required by the terms of customary buy/sell type arrangements entered into in connection with the formation of such Joint Venture;

(xii) transfer or disposition of property subject to or as a result of a casualty or condemnation (or agreement in lieu of condemnation) (1) upon receipt of net cash proceeds of such casualty or (2) to a Governmental Authority as a result of condemnation (or agreement in lieu of condemnation);

(xiii) [reserved];

(xiv) except with respect to ABL Priority Collateral, (1) any Loan Party may Dispose of its property to another Loan Party, (2) any Restricted Subsidiary that is not a Loan Party may Dispose of its property to another Restricted Subsidiary that is not a Loan Party and (3) asset Dispositions among Loan Parties and their Restricted Subsidiaries in the ordinary course of business;

(xv) Dispositions of any property (other than ABL Priority Collateral) to the extent that (1) (x) such property is exchanged for credit against the purchase price of similar replacement property or (y) such Disposition represents an exchange of assets (including a combination of Cash Equivalents and assets) for assets related to a Similar Business of comparable or greater market value or usefulness to the business of Parent Borrower and the Restricted Subsidiaries as a whole, as determined in good faith by Parent Borrower or (z) such Disposition represents a swap of assets or lease, assignment or sublease of any real of personal property in exchange for services (including in connection with any outsourcing arrangements) or comparable or greater value or usefulness to the business of Parent Borrower and its Restricted Subsidiaries as a whole, as determined in good faith by Parent Borrower, or (2) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(xvi) Dispositions of assets which constitute Investments permitted under Section 7.02(b);

(xvii) Dispositions of property (other than ABL Priority Collateral) in connection with (i) Sale/Leaseback Transactions for fair value (as determined at the time of the consummation thereof in good faith by the applicable Loan Party or Restricted Subsidiary) so long as (x) 75% of the consideration received by such Loan Party or Restricted Subsidiary from such Sale/Leaseback Transaction is in the form of cash and (ii) any Sale/Leaseback Transactions between Excluded Subsidiaries;

(xviii) [reserved];

(xix) so long as no Default or Event of Default then exists or would result therefrom, Dispositions of assets or issuances of Parent Borrower or any Restricted Subsidiary or sale of Capital Stock of Parent Borrower or any Restricted Subsidiary, in each case which assets or Capital Stock do not constitute, and would not result in the disposition of, ABL Priority Collateral, which assets or Capital Stock so Disposed or issued, in any single transaction or related series of transactions, have a fair market value (as determined in good faith by Parent Borrower) (A) of less than $15,000,000 (if there is not a pro rata reduction in the Commitments) and (B) of a greater amount so long as there is a pro rata reduction in the Commitments for the portion of the Disposition in excess of $15,000,000; provided, however, that in no event shall such Disposition result in an Overadvance that is not immediately remedied;

(xx) [reserved];

(xxi) any Disposition of Capital Stock in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(xxii) any Disposition of Capital Stock of a Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than Parent Borrower or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), in each case following the Closing Date, made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(xxiii) Dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;

(xxiv) any surrender, expiration or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind;

(xxv) Dispositions of real property for the purpose of (x) resolving minor title disputes or defects, including encroachments and lot line adjustments or, or (y) granting easements, rights of way or access and egress agreements, or (z) to any Governmental Authority in consideration of the grant, issuance, consent or approval of or to any development agreement, change of zoning or zoning variance, permit or authorization in connection with the conduct of any Loan Party's business, in each case which does not materially interfere with the business conducted on such real property;

(xxvi) [reserved]; and

(xxvii) any transfer of accounts receivable and related assets in connection with any factoring or similar arrangements entered into by Foreign Subsidiaries (other than any Foreign Subsidiary organized in Germany) on arms' length terms;

provided that any Disposition of Intellectual Property of the Loan Parties, which Intellectual Property is necessary or useful in connection with the exercise of any rights or remedies with

respect to the ABL Priority Collateral, pursuant to any of the foregoing clauses to any Person that is not a Loan Party shall be made expressly subject to a non-exclusive, irrevocable (until the Obligations have been paid in full) royalty-free license in favor of the Agent to use such Intellectual Property in connection with the exercise of any such rights or remedies.

(e) Affiliate Transactions.

(i) Parent Borrower shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of Parent Borrower (each of the foregoing, an "Affiliate Transaction") involving aggregate consideration in excess of $1.5 million, unless:

(A) such Affiliate Transaction is on terms that are not materially less favorable to Parent Borrower or the relevant Restricted Subsidiary than those that could have been obtained in a comparable transaction by Parent Borrower or such Restricted Subsidiary with an unrelated Person; and

(B) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $4.0 million, Parent Borrower delivers to Agent a resolution adopted in good faith by the majority of the Board of Directors of Parent Borrower, approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (A) above.

(ii) The provisions of Section 7.02(e)(i) shall not apply to the following:

(A) transactions between or among Parent Borrower and/or any of the Restricted Subsidiaries (or an entity that becomes a Restricted Subsidiary as a result of such transaction) to the extent not otherwise prohibited by this Agreement;

(B) Restricted Payments permitted by Section 7.02(b) and Permitted Investments;

(C) the payment of reasonable and customary fees and reimbursement of expenses paid to, and indemnity provided on behalf of, officers, directors, employees or consultants of Parent Borrower or any Restricted Subsidiary;

(D) transactions not otherwise prohibited by this Agreement in which Parent Borrower or any Restricted Subsidiary, as the case may be, delivers to Agent a letter from an Independent Financial Advisor stating that such transaction is fair to Parent Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (A) of Section 7.02(e)(i);

(E) payments or loans (or cancellation of loans) to officers, directors, employees or consultants which are approved by a majority of the Board of Directors of Parent Borrower in good faith;

(F) any agreement as in effect as of the Closing Date set forth on Schedule 7.02(e) or any amendment thereto (so long as any such agreement together with all amendments thereto, taken as a whole, is not more disadvantageous to the Lenders in any material respect than the original agreement as in effect on the Closing Date) or any transaction contemplated thereby as determined in good faith by Parent Borrower;

(G) the existence of, or the performance by Parent Borrower or any Restricted Subsidiary of its obligations under the terms of any stockholders or limited liability company agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date, any transaction, agreement or arrangement described in the offering memorandum relating to the Senior Notes and, in each case, any amendment thereto or similar transactions, agreements or arrangements which it may enter into thereafter; provided, however, that the existence of, or the performance by Parent Borrower or any Restricted Subsidiary of its obligations under, any future amendment to any such existing transaction, agreement or arrangement or under any similar transaction, agreement or arrangement entered into after the Closing Date shall only be permitted by this clause (G) to the extent that the terms of any such existing transaction, agreement or arrangement together with all amendments thereto, taken as a whole, or new transaction, agreement or arrangement are not otherwise more disadvantageous to the Lenders in any material respect than the original transaction, agreement or arrangement as in effect on the Closing Date;

(H) (A) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement, which are fair to Parent Borrower and the Restricted Subsidiaries in the reasonable determination of the Board of Directors or the senior management of Parent Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party or (B) transactions with Joint Ventures or Unrestricted Subsidiaries entered into in the ordinary course of business and consistent with past practice or industry norm;

(I) [reserved];

(J) the issuance of Equity Interests (other than Disqualified Capital Stock) of Parent Borrower to any Person;

(K) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, management equity plans, stock option and stock ownership plans or similar employee benefit plans approved by the Board of Directors of Parent Borrower or the Board of Directors of a Restricted Subsidiary, as applicable, in good faith;

(L) [reserved];

(M) any contribution to the capital of Parent Borrower;

(N) transactions permitted by, and complying with, Section 7.02(h);

(O) transactions between Parent Borrower or any Restricted Subsidiary and any Person, a director of which is also a director of Parent Borrower; provided, however, that such director abstains from voting as a director of Parent Borrower on any matter involving such other Person;

(P) pledges of Equity Interests of Unrestricted Subsidiaries to the extent permitted by this Agreement;

(Q) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business;

(R) any employment agreements entered into by Parent Borrower or any Restricted Subsidiary and their respective officers and employees in the ordinary course of business;

(S) transactions not otherwise prohibited by this Agreement undertaken in good faith (as certified by a responsible financial or accounting officer of Parent Borrower in an Officer's Certificate) for the purpose of improving the consolidated tax efficiency of Parent Borrower and its Subsidiaries and not for the purpose of circumventing any covenant set forth in this Agreement; and

(T) non-exclusive licenses of Intellectual Property to or among Borrowers, their respective Restricted Subsidiaries and their Affiliates.

(f) Modifications of Debt Documents; Certificate of Incorporation, By-Laws and Certain Other Agreements, etc.; Line of Business; Fiscal Year.

(i) Each of the Parent Borrower and any Restricted Subsidiary shall not (A) amend or modify any provision of the Senior Notes Indenture or any other document relating to the Senior Notes or the terms of any Junior Indebtedness, to the extent such amendment or modification, taken as a whole, would be materially adverse to the interests of the Agent or the Lenders, or (B) 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 Agent or the Lenders.

(ii) No Loan Party shall engage in any business other than the businesses currently engaged in by it on the Closing Date or businesses that are similar, reasonably related, incidental or ancillary thereto or is a reasonable extension, development or expansion thereof (a "Similar Business").

(iii) The Parent Borrower shall not change its Fiscal Year; provided that the Parent Borrower may, upon written notice to, and consent by, the Agent, change the financial reporting convention specified above to any other financial reporting convention reasonably acceptable to the Agent, in which case the Parent Borrower and the Agent

will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary in order to reflect such change in financial reporting.

(g) 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 asset or property of Borrower or such Restricted Subsidiary.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or in the form of common stock of Parent Borrower, the payment of dividends on Preferred Stock in the form of additional shares of Preferred Stock of the same class, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness described in clause (3) of the definition of "Indebtedness."

(h) 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:

(i) 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;

(ii) 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);

(iii) 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;

(iv) 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, (1) a Borrower or any Guarantor (upon voluntary liquidation or otherwise), (2) 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 (3) pursuant to a Disposition otherwise permitted by Section 7.02(d);

(v) any Investment expressly permitted by Section 7.02(b) may be structured as a merger, consolidation or amalgamation;

(vi) 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;

(vii) any Subsidiary (that is not a Borrower) may enter into any merger, amalgamation or consolidation in connection with a Disposition otherwise permitted by Section 7.02(d).

(i) Sanctions. Parent Borrower shall not, directly or indirectly, or permit any Subsidiary to directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund, finance or facilitate any activities of or business with any individual or entity, or in any Sanctioned Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, Joint Lead Arranger, Agent, Issuing Bank, Swing Line Lender, or otherwise) of Sanctions. The covenant in this Section 7.02(i) 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.

(j) Anti-Corruption Laws. Parent Borrower shall not, directly or indirectly, or permit any Subsidiary to directly or indirectly, use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions (including Germany) and the PATRIOT Act, the Beneficial Ownership Regulation or other applicable anti-money laundering laws.

(k) Deposit Accounts. Parent Borrower shall not, and shall not permit any Restricted Subsidiary, to open new bank accounts that are collection accounts unless the applicable Loan Parties shall have delivered to the Agent appropriate Blocked Account Agreements consistent with the provisions of Section 7.01(i) and otherwise reasonably satisfactory to the Agent.

SECTION 7.03 Financial Covenant. So long as any Advance or any other Obligation of any Loan Party under any Loan Document shall remain unpaid, any Letter of Credit shall be outstanding or any Lender shall have any Commitment hereunder, Parent Borrower will, unless it has the written consent of the Majority Lenders to do otherwise, if at any time Availability shall be less than the greater of (x) $7.5 million and (y) 10.0% of the Loan Cap (such greater amount, the "Covenant Trigger" and the date on which the Covenant Trigger occurs, the "Covenant Trigger Date"), until the date that Availability shall have been greater than or equal to the Covenant Trigger for 30 consecutive days thereafter (such period, a "Compliance Period"), maintain a Consolidated Fixed Charge Coverage Ratio as of (x) the Covenant Trigger Date and (y) last day of each subsequently completed Test Period ending during a Compliance Period, in each case determined on the basis of the most recently completed Test Period, of not less than 1.00:1.00.

SECTION 7.04 Reporting Requirements. Parent Borrower will furnish to the Agent for distribution to the Lenders:

(a) As soon as available and in any event within 45 days after the end of each of the first three Fiscal Quarters, Consolidated balance sheets of the Parent Borrower and its Subsidiaries as of the end of such Fiscal Quarters and Consolidated statements of income and retained earnings of the Parent Borrower and its Subsidiaries for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter, setting forth in each case in comparative form the figures for (i) such period set forth in the projections delivered pursuant to Section 7.04(j) hereof, (ii) the corresponding Fiscal Quarter of the previous Fiscal Year and (iii) the corresponding portion of the previous Fiscal Year, certified by the chief financial officer or treasurer of the Parent Borrower and accompanied by a certificate of said officer stating that such have been prepared in accordance with GAAP.

(b) As soon as available and in any event within 75 days after the end of each Fiscal Year, a copy of the annual report for such year for the Parent Borrower and its Subsidiaries, containing Consolidated financial statements of the Parent Borrower and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year and certified by PricewaterhouseCoopers LLP or other independent public accountants reasonably acceptable to the Majority Lenders, 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 or exception or any qualification or exception as to the scope of such audit.

(c) (i) if Availability is at any time less than the greater of (x) $9.375 million and (y) 12.5% of the Loan Cap, then within 30 days after the end of each Fiscal Month of each Fiscal Year of Parent Borrower, a Consolidated balance sheet of Parent Borrower and its Subsidiaries as at the end of such Fiscal Month, and the related Consolidated statements of income and retained earnings for such Fiscal Month, and for the portion of the Parent Borrower's Fiscal Year then ended, certified by the chief financial officer or treasurer of Parent Borrower and accompanied by a certificate of said officer stating that such have been prepared in accordance with GAAP, and (ii) within 30 days after the end of each Fiscal Month of each Fiscal Year of Parent Borrower, a customary management report for such Fiscal Month;

(d) Together with the financial statements required by Sections 7.04(a), (b) and(c), a compliance certificate signed by the chief financial officer, treasurer or assistant treasurer of the Parent Borrower stating (i) whether or not he or she has knowledge of the occurrence of any Event of Default or Default and, if so, stating in reasonable detail the facts with respect thereto and (ii) whether or not the Parent Borrower is in compliance with the requirements set forth in Section 7.03 and showing the computations used in determining such compliance or non-compliance (whether or not such covenant is in effect).

(e) As soon as possible and in any event within five Business Days after a Responsible Officer becomes aware of any of the following events or occurrences, a statement of a Responsible Officer of the Parent Borrower setting forth details of such event or occurrence and the action which the Parent Borrower has taken and proposes to take with respect thereto:

(i) any Default or Event of Default;

(ii) any Material Adverse Change;

(iii) any ERISA Event; or

(iv) any material change in the Parent Borrower's or any Subsidiary's accounting or financial reporting practices.

(f) Promptly after the sending or filing thereof, copies of all reports which the Parent Borrower sends to any of its security holders, and copies of all reports and registration statements which the Parent Borrower or any Subsidiary files with the SEC or any national securities exchange.

(g) Promptly following any request therefor, information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable anti-money laundering laws.

(h) Such other information respecting the condition or operations, financial or otherwise, of the Parent Borrower or any of its Subsidiaries as any Lender Party, through the Agent, may from time to time reasonably request.

(i) On the 20th day of each Fiscal Month (or, if such day is not a Business Day, on the next succeeding Business Day), commencing with the Fiscal Month ending September 30, 2020, (1) a Borrowing Base Certificate showing the U.S. Borrowing Base and the German Borrowing Base as of the close of business as of the last day of the immediately preceding Fiscal Month (provided that the Appraised Value percentage applied to the Eligible Inventory set forth in each Borrowing Base Certificate shall be the percentage set forth in the most recent appraisal obtained by the Agent pursuant to Section 7.01(c) for the applicable monthly period in which such Borrowing Base Certificate is delivered), each Borrowing Base Certificate to be certified as complete and correct in all material respects by a Responsible Officer of Parent Borrower; provided that (I) at any time that a Weekly Borrowing Base Delivery Event has occurred and is continuing, such Borrowing Base Certificate shall be delivered on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Friday and (II) Parent Borrower shall be required to compute the U.S. Borrowing Base and the German Borrowing Base and deliver an updated Borrowing Base Certificate in connection with (A) any bulk sale or other Disposition of ABL Priority Collateral outside of the ordinary course of business or (B) the designation of any Unrestricted Subsidiary, in each case, constituting greater than 5% of the sum of (x) the U.S. Borrowing Base and (y) the German Borrowing Base, (2) an accounts payable aging report and an accounts receivable aging report, in each case as of the close of business as of the last day of the immediately preceding Fiscal Month, (3) an perpetual inventory report as of the close of business as of the last day of the immediately preceding Fiscal Month and (4) such other reports and deliverables as the Agent may reasonably request from time to time;

(j) Within 90 days after the end of each Fiscal Year of Parent Borrower, forecasts prepared by management of Parent Borrower, in form reasonably satisfactory to the Agent, of Consolidated balance sheets and statements of income or operations and cash flows of Parent Borrower and its Subsidiaries, and an Availability analysis, in each case on a quarterly basis for the immediately following Fiscal Year (including the Fiscal Year in which the Termination Date

occurs), and as soon as available, any significant revisions to such forecast with respect to such Fiscal Year; and

(k) Simultaneously with the delivery of each set of consolidated financial statements referred to in clauses (a), (b) and (c) above, 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 7.04(a), (b) or (c)(i) or Section 7.04(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 the Parent Borrower posts such documents, or provides a link thereto on the Parent Borrower's website on the Internet at the website address "www.vareximaging.com" (or any successor page notified to the Lenders); or (ii) on which such documents are posted on the Parent Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent). The Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Parent Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Parent Borrower hereby acknowledges that (a) the Agent will make available to the Lender Parties materials and/or information provided by or on behalf of the Parent Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or a substantially similar electronic transmission system (the "Platform") and (b) certain of the Lender Parties (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Parent Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Parent Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Parent Borrower shall be deemed to have authorized the Agent and the Lender Parties to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Parent Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that, to the extent such Borrower Materials constitute Confidential Information, they shall be treated as set forth in Section 10.11); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Parent Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC".

ARTICLE VIII

EVENTS OF DEFAULT

SECTION 8.01 Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) Non-Payment. Any Loan Party shall fail to pay any principal of any Advance or any reimbursement obligation under any Letter of Credit when the same becomes due and payable, and in the currency required hereunder; or shall fail to pay any interest on any Advance, fees or any other amounts hereunder or under any other Loan Document within five days after the same become due and payable by it; or

(b) Representations and Warranties. Any representation or warranty made by any Loan Party in any Loan Document (whether made on behalf of itself or otherwise) or by any Loan Party (or any of its officers) in connection with any Loan Document (including, without limitation, any representation made in any Borrowing Base Certificate) shall prove to have been incorrect in any material respect when made; or

(c) Specific Covenants and Other Defaults. (i) Any Loan Party shall fail to perform or observe any covenant contained in Section 7.01(a) (as to the existence of each Borrower), 7.01(g), 7.01(i), 7.01(p), 7.02, 7.03 or 7.04(e); (ii) any Loan Party shall fail to perform or observe any covenant contained in Section 7.04 (other than Section 7.04(e)) if the failure to perform or observe such covenant shall continue unremedied for five (5) Business Days (or, in the case of Section 7.04(i), two (2) Business Days if Borrowing Base Certificates are being delivered weekly); and (iii) any Loan Party shall fail to perform or observe such other term, covenant 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 or agreement shall remain unremedied for 30 days after written notice thereof shall have been given to such Loan Party by any Lender Party; or

(d) Cross-Default. A default or breach shall occur under any other agreement, document or instrument to which any Loan Party or any Restricted Subsidiary is a party that is not cured within any applicable grace period therefor, and such default or breach (i) involves the failure to make any payment when due in respect of any Indebtedness (other than the Obligations) of any Loan Party or any Restricted Subsidiary in an aggregate amount of not less than $15.0 million or (ii) causes or permits any holder of such Indebtedness or a trustee, with the giving of notice, if required, to cause Indebtedness or a portion thereof in excess of $15.0 million in the aggregate outstanding principal amount to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, or cash collateral in respect thereof (in excess of $15.0 million) is demanded as a result of any such breach or default, in each case, regardless of whether such right is exercised, by such holder or trustee; provided that this clause (d)(ii) shall not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness or (y) any event which triggers any conversion right of holders of Convertible Indebtedness; 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 subsection (e); or

(f) Judgments. One or more judgments or orders for the payment of money in excess of $10.0 million 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 forty-five (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 8.01(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 subsection (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 in reorganization, 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 reorganization, insolvency, termination or determination, the aggregate annual contributions of the Loan Parties and the ERISA Affiliates to all of the Multiemployer Plans that are in reorganization, 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 reorganization, 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 provision of any Loan Document, 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 Agent 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 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 Agent); or

(j) Invalidity of Subordination Provisions. Any provision of the ABL Intercreditor Agreement or any other 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 $1.0 million, 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 Agent 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 the ABL Intercreditor Agreement or any other 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 $1.0 million; or any Loan Party denies that it has any or further liability or obligation under any provision of the ABL Intercreditor Agreement or any other 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 $1.0 million, or purports to revoke, terminate or rescind any provision of the ABL Intercreditor Agreement or any other 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 $1.0 million;

then, and in any such event, the Agent shall at the request, or may with the consent, of the Majority Lenders, by notice to the Parent Borrower, (A) declare the obligation of each Lender to make Advances to be terminated, whereupon the same shall forthwith terminate, (B) declare the Advances, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Advances, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Loan Party, (C) declare the obligation of the Issuing Banks to issue further Letters of Credit to be terminated, whereupon the same shall forthwith terminate, and/or (D) demand from time to time that the Parent Borrower, and if such demand is made the Parent Borrower shall, pay or cause to be paid to the Agent for the benefit of the Issuing Banks, an amount in immediately available funds equal to the then outstanding L/C Obligations which shall be held by the Agent (or the applicable Issuing Bank) as Cash Collateral and applied to the reduction of such L/C Obligations as drawings are made on outstanding Letters of Credit; provided, however, that, upon the occurrence of an Event of Default pursuant to clauses (ii) or (iii) of Section 8.01(e), the obligation of each Lender to make Advances shall automatically be terminated, the Cash Collateral obligations under subsection (D) above shall be automatically due and payable without demand, the then outstanding Advances, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest

or any notice of any kind, all of which are hereby expressly waived by each Loan Party and the obligation of the Issuing Banks to Issue Letters of Credit shall automatically be terminated.

SECTION 8.02 Application of Funds. After the exercise of remedies provided for in Section 8.01 (or after the Advances have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.01):

(a) any amounts received on account of the Obligations in respect of the U.S. Revolving Credit Facility or from proceeds of U.S. Collateral or from U.S. Loan Parties shall be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article II) payable to the Agent;

Second, to payment of that portion of the Obligations constituting indemnities, expenses, and other amounts (other than principal, interest and fees) payable to the Lenders and Issuing Banks (including amounts payable under Article II), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances in respect of the U.S. Revolving Credit Facility;

Fourth, to the extent that U.S. Swing Line Advances have not been refinanced by a U.S. Revolving Credit Advance, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the U.S. Swing Line Advances;

Fifth, to the extent that U.S. Swing Line Advances have not been refinanced by a U.S. Revolving Credit Advance, to payment to the Swing Line Lender of that portion of the Obligations constituting unpaid principal of the U.S. Swing Line Advances;

Sixth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the U.S. Revolving Credit Advances and fees (including Letter of Credit Fees) in respect of the U.S. Revolving Credit Facility, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause Sixth payable to them;

Seventh, to payment of that portion of the Obligations constituting unpaid principal of the U.S. Revolving Credit Advances and, to the extent of any Bank Product Reserves, the unpaid amount of any Bank Product Obligations and/or Secured Hedging Obligations to the U.S. Loan Parties, ratably among the Secured Parties in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to the Agent for the account of the Issuing Banks, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit issued under the U.S. Revolving Credit Facility;

Ninth, to payment of that portion of the Obligations arising from Bank Products and Secured Hedging Obligations provided to the U.S. Loan Parties and for which no Bank Product Reserve

has been established, ratably among the Secured Parties in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to payment of all other Obligations in respect of the U.S. Revolving Credit Facility, ratably among the Secured Parties in proportion to the respective amounts described in this clause Tenth held by them;

Eleventh, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances in respect of the German Revolving Credit Facility;

Twelfth, to the extent that German Swing Line Advances have not been refinanced by a German Revolving Credit Advance, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the German Swing Line Advances;

Thirteenth, to the extent that German Swing Line Advances have not been refinanced by a German Revolving Credit Advance, to payment to the Swing Line Lender of that portion of the Obligations constituting unpaid principal of the German Swing Line Advances;

Fourteenth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the German Revolving Credit Advances and fees (including Letter of Credit Fees) in respect of the German Revolving Credit Facility, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause Fourteenth payable to them;

Fifteenth, to payment of that portion of the Obligations constituting unpaid principal of the German Revolving Credit Advances, ratably among the Lenders in proportion to the respective amounts described in this clause Fifteenth held by them;

Sixteenth, to the Agent for the account of the Issuing Banks, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit issued under the German Revolving Credit Facility;

Seventeenth, to payment of that portion of the Obligations arising from Bank Products and Secured Hedging Obligations in respect of the German Revolving Credit Facility, ratably among the Secured Parties in proportion to the respective amounts described in this clause Seventeenth held by them;

Eighteenth, to payment of all other Obligations in respect of the German Revolving Credit Facility, ratably among the Secured Parties in proportion to the respective amounts described in this clause Eighteenth held by them;

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

(b) any amounts received on account of the Obligations in respect of the German Revolving Credit Facility or from proceeds of German Collateral or from German Loan Parties shall be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article II) payable to the Agent;

Second, to payment of that portion of the Obligations constituting indemnities, expenses, and other amounts (other than principal, interest and fees) payable to the Lenders and Issuing Banks (including amounts payable under Article II), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances in respect of the German Revolving Credit Facility;

Fourth, to the extent that German Swing Line Advances have not been refinanced by a German Revolving Credit Advance, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the German Swing Line Advances;

Fifth, to the extent that German Swing Line Advances have not been refinanced by a German Revolving Credit Advance, to payment to the Swing Line Lender of that portion of the Obligations constituting unpaid principal of the German Swing Line Advances;

Sixth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the German Revolving Credit Advances and fees (including Letter of Credit Fees) in respect of the German Revolving Credit Facility, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause Sixth payable to them;

Seventh, to payment of that portion of the Obligations constituting unpaid principal of the German Revolving Credit Advances and, to the extent of any Bank Product Reserves, the unpaid amount of any Bank Product Obligations and/or Secured Hedging Obligations to the German Loan Parties, ratably among the Secured in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to the Agent for the account of the Issuing Banks, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit issued under the German Revolving Credit Facility;

Ninth, to payment of that portion of the Obligations arising from Bank Products and Secured Hedging Obligations provided to the German Loan Parties and for which no Bank Product Reserve has been established, ratably among the Secured Parties in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to payment of all other Obligations in respect of the German Revolving Credit Facility, ratably among the Secured Parties in proportion to the respective amounts described in this clause Tenth held by them;

Eleventh, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances in respect of the U.S. Revolving Credit Facility;

Twelfth, to the extent that U.S. Swing Line Advances have not been refinanced by a U.S. Revolving Credit Advance, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the U.S. Swing Line Advances;

Thirteenth, to the extent that U.S. Swing Line Advances have not been refinanced by a U.S. Revolving Credit Advance, to payment to the Swing Line Lender of that portion of the Obligations constituting unpaid principal of the U.S. Swing Line Advances;

Fourteenth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the U.S. Revolving Credit Advances and fees (including Letter of Credit Fees) in respect of the U.S. Revolving Credit Facility, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause Fourteenth payable to them;

Fifteenth, to payment of that portion of the Obligations constituting unpaid principal of the U.S. Revolving Credit Advances, ratably among the Lenders in proportion to the respective amounts described in this clause Fifteenth held by them;

Sixteenth, to the Agent for the account of the Issuing Banks, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit issued under the U.S. Revolving Credit Facility;

Seventeenth, to payment of that portion of the Obligations arising from Bank Products and Secured Hedging Obligations in respect of the U.S. Revolving Credit Facility, ratably among the Secured Parties in proportion to the respective amounts described in this clause Seventeenth held by them;

Eighteenth, to payment of all other Obligations in respect of the U.S. Revolving Credit Facility, ratably among the Secured Parties in proportion to the respective amounts described in this clause Eighteenth held by them;

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

(c) any other amounts or proceeds of Collateral not otherwise specified above shall be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article II) payable to the Agent;

Second, to payment of that portion of the Obligations constituting indemnities, expenses, and other amounts (other than principal, interest and fees) payable to the Lenders and Issuing Banks (including amounts payable under Article II), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances;

Fourth, to the extent that Swing Line Advances have not been refinanced by a Revolving Credit Advance, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the Swing Line Advances;

Fifth, to the extent that Swing Line Advances have not been refinanced by a Revolving Credit Advance, to payment to the Swing Line Lender of that portion of the Obligations constituting unpaid principal of the Swing Line Advances;

Sixth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Revolving Credit Advances and fees (including Letter of Credit Fees), ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause Sixth payable to them;

Seventh, to payment of that portion of the Obligations constituting unpaid principal of the Revolving Credit Advances and, to the extent of any Bank Product Reserves, the unpaid amount of any Bank Product Obligations and/or Secured Hedging Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to the Agent for the account of the Issuing Banks, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

Ninth, to payment of that portion of the Obligations arising from Bank Products and Secured Hedging Obligations for which no Bank Product Reserve has been established, ratably among the Secured Parties in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to payment of all other Obligations, ratably among the Secured Parties in proportion to the respective amounts described in this clause Tenth held by them;

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

Subject to Section 2.13, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Eighth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE IX

THE AGENT

SECTION 9.01 Appointment and Authority. Each of the Lenders and Issuing Banks hereby irrevocably appoints Bank of America to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent, the Lenders and the Issuing Banks, and neither the Parent Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

Each Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit Issued by it and the documents associated therewith until such time and except for so long as the Agent may elect to act for each Issuing Bank with respect thereto; provided, however, that such Issuing Bank shall have all of the benefits and immunities (i) provided to the Agent in this Article IX with respect to any acts taken or omissions suffered by such Issuing Bank in connection with Letters of Credit Issued by it or proposed to be Issued by it and the applications and agreements for letters of credit pertaining to the Letters of Credit as fully as if the term "Agent," as used in this Article IX, included such Issuing Bank with respect to such acts or omissions, and (ii) as additionally provided in this Agreement with respect to such Issuing Bank.

SECTION 9.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Parent Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 9.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates, that is communicated to, obtained or in the possession of, the Agent, any Joint Lead Arranger or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Agent herein.

The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.01) or (ii) in the absence of its own gross negligence or willful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Agent by the Parent Borrower, a Lender or an Issuing Bank.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

SECTION 9.04 Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of an Advance, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the Agent may presume that such condition is satisfactory to such Lender Party unless the Agent shall have received notice to the contrary from such Lender Party prior to the making of such Advance or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for the Parent Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 9.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

SECTION 9.06 Resignation of Agent.

(a) The Agent may at any time give notice of its resignation to the Lenders, the Issuing Banks and the Parent Borrower. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right, in consultation with the Parent Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Majority Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to) on behalf of the Lenders and the Issuing Banks, appoint a successor Agent meeting the qualifications set forth above; provided that in no event shall any such successor Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Majority Lenders may, to the extent permitted by applicable Law, by notice in writing to the Parent Borrower and such Person remove such Person as Agent and, in consultation with the Parent Borrower, appoint a successor. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Majority Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that, in the case of any collateral security held by the Agent on behalf of the Lenders or the Issuing Banks under any of the Loan Documents, the retiring or removed Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender and each Issuing Bank directly, until such time, if any, as the Majority Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Agent (other than as provided in Section 4.02(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Parent Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Parent Borrower and such successor. After the retiring or removed Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Agent was acting as Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including in respect of any actions taken in connection with transferring the agency to any successor Agent.

(d) Any resignation by Bank of America as Agent pursuant to this Section shall also constitute its resignation as an Issuing Bank and the Swing Line Lender. If Bank of America resigns as an Issuing Bank, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Bank and all L/C Obligations with respect thereto, including the right to require the Lenders to make Index Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.04(c). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Advances made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Index Rate Loans or fund risk participations in outstanding Swing Line Advances pursuant to Section 2.03(c). Upon the acceptance of a successor's appointment as Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and Swing Line Lender,

(b) the retiring Issuing Bank and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit issued by Bank of America, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

SECTION 9.07 Non-Reliance on Agent and Other Lenders. Each Lender and each Issuing Bank expressly acknowledges that none of the Agent nor any Joint Lead Arranger has made any representation or warranty to it, and that no act by the Agent or any Joint Lead Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Agent or any Joint Lead Arranger to any Lender or Issuing Bank as to any matter, including whether the Agent or the Joint Lead Arrangers have disclosed material information in their (or their Related Parties') possession. Each Lender and each Issuing Bank represents to the Agent and each Joint Lead Arranger that it has, independently and without reliance upon the Agent, any Joint Lead Arranger, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrowers hereunder. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Agent, the Joint Lead Arrangers, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or Issuing Bank for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and Issuing Bank agrees not to assert a claim in contravention of the foregoing. Each Lender and Issuing Bank represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

SECTION 9.08 No Other Duties, Etc.. Anything herein to the contrary notwithstanding, none of the Joint Lead Arrangers or the Syndication Agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent, a Lender or an Issuing Bank hereunder.

SECTION 9.09 Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Advance or L/C Obligation shall then

be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on any Loan Party) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(A) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Advances, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Agent under Sections 2.04(h) and (i), 2.06 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, interim receiver, monitor, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Agent and, in the event that the Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.06 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any Issuing Bank to authorize the Agent to vote in respect of the claim of any Lender or any Issuing Bank in any such proceeding.

The Secured Parties hereby irrevocably authorize the Agent, at the direction of the Majority Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Debtor Relief Laws or other applicable Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Majority Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Majority

Lenders contained in Section 10.01 of this Agreement), (iii) the Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

SECTION 9.10 Lender ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and each Joint Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Parent Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Advances, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of Parent Borrower or any other Loan Party, that the Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

As used in this Section, the following terms shall have the following meanings:

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

SECTION 9.11 Collateral and Guaranty Matters. Without limiting the provisions of Section 9.09, each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and the Issuing Banks irrevocably authorize the Agent, at its option and in its discretion:

(a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Bank Product Documents and Hedging Obligations that are, in each case, not due and payable at such time) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Agent and the applicable Issuing Banks shall have been made), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document to a Person that is not a Loan Party, (iii) that constitutes Excluded Property, or (iv) if approved, authorized or ratified in writing in accordance with Section 10.01; and

(b) to release any Guarantor from its obligations hereunder if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Agent at any time, the Majority Lenders will confirm in writing the Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under its Guaranty pursuant to this Section 9.11. In each case as specified in this Section

9.11, the Agent will, at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.11.

The Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

SECTION 9.12 Bank Product Documents and Hedging Obligations. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.02, any Guaranty or any Collateral by virtue of the provisions hereof or any other Loan Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Bank Product Documents or Hedging Obligations unless the Agent has received written notice of such Obligations, together with such supporting documentation as the Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

ARTICLE X

MISCELLANEOUS

SECTION 10.01 Amendments, Etc.

(a) Lenders. Except as is otherwise expressly provided in this Section 10.01, no amendment or waiver of any provision of this Agreement, nor consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Majority Lenders and acknowledged by the Agent; provided, however, that (i) no amendment, waiver or consent shall, unless in writing and signed by all the Lenders, do any of the following: (A) waive any of the conditions specified in Section 5.01, (B) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Advances, or the number of Lenders, which shall be required for the Lenders or any of them to take any action hereunder, or the definition of "Majority Lenders" or "Supermajority Lenders" hereunder, (C) amend this Section 10.01, (D) release (or subordinate the Lien securing the Obligations on) all or substantially all of the Collateral, (E) release all or substantially all of the value of the Guaranties provided by the Loan Parties and (F) modify Section 4.03; (ii) no amendment, waiver or consent shall, unless in writing and signed by each Lender directly affected thereby, do any of the following: (A) increase or extend the Commitment of such Lender, (B) reduce the principal of, or rate of interest (other than default interest) on, the Advances made pursuant to Section 2.01 or any reimbursement obligation in respect of any Letter of Credit or any fees or other amounts payable hereunder to such Lender, (C) postpone any date fixed for any payment of principal of, or interest on, the Advances made pursuant to Section 2.01 or any reimbursement obligation in respect of any Letter of Credit or any fees or other amounts payable hereunder to such Lender, (D) change

Section 4.03 or Section 8.02 and (E) modify the definition of "Permitted Overadvance" so as to increase the amount thereof, or, except as provided in such definition, the time period for which a Permitted Overadvance may remain outstanding and (iii) no amendment, waiver or consent shall, unless in writing and signed by the Supermajority Lenders, do any of the following: (A) increase the advance rate percentages applied to eligible assets included in the U.S. Borrowing Base or the German Borrowing Base and (B) modify the definition of "U.S. Borrowing Base" or "German Borrowing Base" or any component thereof in a manner that would result in an increase in the amount of the U.S. Borrowing Base or the German Borrowing Base; provided that this clause (B) shall not limit the Agent's right to add, increase, eliminate or reduce the amount of Reserves or exercise its Permitted Discretion with respect to such matters as otherwise provided herein); provided further that any Loan Document may be amended and waived with the consent of the Agent at the request of the Parent Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (x) to comply with local Law or advice of local counsel, (y) to cure ambiguities or defects or (z) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

(b) Agent, Issuing Banks and Swing Line Lender. No amendment, waiver or consent given or effected pursuant to this Section 10.01 shall, unless in writing and signed by the Agent, each Issuing Bank or the Swing Line Lender, as the case may be, in addition to the Lenders required above to take such action, affect the rights, obligations or duties of the Agent, such Issuing Bank or Swing Line Lender, as the case may be, under this Agreement.

(c) Limitation of Scope. All waivers and consents granted under this Section 10.01 shall be effective only in the specific instance and for the specific purpose for which given.

(d) Secured Obligations. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Products Obligations or Hedging Obligations shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Loan Party.

(e) Non-Consenting Lender. If any Lender does not consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Majority Lenders, Parent Borrower may replace such Non-Consenting Lender in accordance with Section 10.12; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by Parent Borrower to be made pursuant to this paragraph).

SECTION 10.02 Notices, Etc.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (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 telecopier

as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Parent Borrower, the Agent, an Issuing Bank or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Parent Borrower).

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 telecopier 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 subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lender Parties hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the Agent; provided that the foregoing shall not apply to notices to any Lender Party pursuant to Article II if such Lender Party has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Parent Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent 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); provided that, if such notice 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, 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.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. 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 ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender Party or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Parent Borrower's or the Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Loan Party, any Lender Party or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Parent Borrower, the Agent, the Issuing Banks and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Parent Borrower, the Agent, the Issuing Banks and the Swing Line Lender. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Requirement of Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Parent Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Agent and Lender Parties. The Agent and the Lender Parties shall be entitled to rely and act upon any notices (including telephonic notices, Committed Advance Notices and Swing Line Advance Notices) purportedly given by or on behalf of the Borrowers even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify the Agent, each Lender Party and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reasonable reliance by such Person on each notice purportedly given by or on behalf of any Loan Party. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

SECTION 10.03 Waiver; Remedies. No failure on the part of any Lender Party or the Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 10.04 Costs and Expenses.

(a) Expenses. The Borrowers agree to pay on demand all reasonable and documented costs and expenses of the Agent incurred in connection with the preparation, execution, delivery, modification and amendment of this Agreement and the other documents to be delivered hereunder, including, without limitation, the reasonable and documented fees and out-of-pocket expenses of counsel for the Agent (and appropriate local counsel (including without limitation counsel in Germany) with respect thereto and with respect to advising the Agent as to its rights and responsibilities under this Agreement. The Borrowers further agree to pay on demand all costs and expenses of the Agent, each Issuing Bank, the Swing Line Lender and each other Lender Party (including, without limitation, reasonable and documented fees and expenses of counsel), incurred in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of the Loan Documents, the Letters of Credit, the documents delivered in connection with the Swing Line Advances and the other documents to be delivered hereunder and thereunder.

(b) Breakage. If any payment of principal of, or Conversion of, any Eurocurrency Rate Advance is made other than on the last day of the Interest Period for such Advance, as a result of a payment or Conversion pursuant to Sections 2.09(d), 2.10, 2.12, acceleration of the maturity of the Advances pursuant to Section 8.01 or for any other reason, or by an Eligible Assignee to a Lender other than on the last day of an Interest Period for such Advance upon an assignment of rights and obligations under this Agreement pursuant to Section 10.07 as a result of a demand by the Parent Borrower pursuant to Section 10.07(a), or if any Loan Party fails for any reason to make any payment or prepayment of an Advance for which a notice of prepayment was given or that is otherwise required to be made, whether pursuant to Sections 2.06, 2.10, 8.01 or otherwise, or if any Loan Party fails to make payment of any Advance or drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency, or upon any failure by any Loan Party (for a reason other than the failure of such Lender to make an Advance) to borrow, continue or convert any Advance other than an Index Rate Loan on the date or in the amount notified by such Loan Party , the applicable Loan Party shall, upon written demand by any Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses which it may reasonably incur as a result of such payment or Conversion or such failure to pay or prepay, as the case may be, including, without limitation, any loss (including loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Advance.

(c) Indemnification by the Parent Borrower. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each Lender Party, 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 fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by 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, or, in the case of the Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Advance or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any

Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Substance on or from any property owned or operated by the Parent Borrower or any of its Subsidiaries, or any liability under Environmental Laws 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) resulted from the gross negligence or willful misconduct of such Indemnitee or (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, in each case, if the Parent Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 10.04(c) shall not apply with respect to Taxes other than any Taxes that represent losses, damages, liabilities, or expenses arising from any non-Tax claim.

(d) Reimbursement by Lenders. To the extent that the Parent Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (c) of this Section to be paid by it to the Agent (or any sub-agent thereof), any Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent), such Issuing Bank or such Related Party, as the case may be, such Lender's Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or such Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) or such Issuing Bank in connection with such capacity. The obligations of the Lenders under this subsection (d) are several, and the failure of any Lender to fund its obligations hereunder shall not relieve any other Lender of its obligation, but no Lender shall be responsible for the failure of any other Lender to fund its obligations hereunder.

(e) 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 any Indemnitee, 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 Advance or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee 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.

(f) The Borrowers hereby acknowledge that the funding method by each Lender of its Advances hereunder shall be in the sole discretion of such Lender. The Borrowers agree that

for purposes of any determination to be made under Sections 2.08, 2.11(a), 2.12 or 10.04(b) each Lender shall be deemed to have funded its Eurocurrency Rate Advances with proceeds of Dollar deposits in the London interbank market.

(g) Without prejudice to the survival of any other obligation of the Loan Parties hereunder, the indemnities and obligations contained in this Section 10.04 shall survive the payment in full of all the Obligations.

SECTION 10.05 Right of Set-off. Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by Section 8.01 to authorize the Agent to declare the Advances due and payable pursuant to the provisions of Section 8.01 or to demand payment of (or cash collateralization of) all then outstanding L/C Obligations, each Lender, each Issuing Bank and each of their respective 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 such Lender, such Issuing Bank or any such 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 such Lender Party, irrespective of whether or not such Lender Party 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 or office of such Lender Party different from the branch or office holding such deposit or obligated on such indebtedness (it being understood and agreed that, notwithstanding anything in this Agreement or any of the other Loan Documents to the contrary, accounts, deposits, sums, securities or other property of any Foreign Subsidiary or of any Subsidiary of a Foreign Subsidiary (including any Foreign Subsidiary that is a Loan Party) will not serve at any time, directly or indirectly, to collateralize or otherwise offset the Obligations of the Parent Borrower or any Domestic Subsidiary, and, in addition, unless otherwise agreed to by the Parent Borrower, the accounts, deposits, sums, securities or other property of a Foreign Subsidiary or Subsidiary of a Foreign Subsidiary will only serve to collateralize or offset the Obligations of another Foreign Subsidiary or Subsidiary of a Foreign Subsidiary that is a Borrower and is not a United States Person for U.S. federal income tax purposes if such former Foreign Subsidiary or Subsidiary of a Foreign Subsidiary is owned by such latter Foreign Subsidiary or Subsidiary of a Foreign Subsidiary that is a Borrower). The rights of each Lender, each Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Bank or their respective Affiliates may have. Each Lender and each Issuing Bank agrees to notify the Parent Borrower and the Agent 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 10.06 Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party to be a party hereto on the date hereof, each Issuing Bank to be a party hereto on the date hereof, and the Agent and when the Agent shall have been notified by each Lender that such Lender has executed it and thereafter shall be binding upon and inure to the benefit of each Loan Party, each Issuing Bank, the Agent and each Lender and their respective successors and assigns, except that no Loan Party shall have the right to assign its respective rights hereunder or any interest herein without the prior written consent of the Lenders.

SECTION 10.07 Assignments and Participations.

(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 Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.07(b), (ii) by way of participation in accordance with the provisions of Section 10.07(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). 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 subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lender Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Advances (including for purposes of this Section 10.07(b), participations in L/C Obligations and in Swing Line Advances) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Advances at the time owing to it under such Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Advances outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Advances of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Acceptance, as of the Trade Date, shall not be less than $10.0 million unless each of the Agent and, so long as no Event of Default has occurred and is continuing, Parent Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed);

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's (and any of its Affiliates or Approved Funds, if applicable) rights and obligations under this Agreement with respect to the Advances or the Commitment assigned (which shall include ratable assignments of all or a portion of its (and its Affiliates' and Approved Funds', if applicable) rights and obligations among separate Facilities), except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Advances;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Parent Borrower (such consent not to be, in the case of assignments to major banks, unreasonably withheld or delayed) shall be required unless (1) an Event of Default under Section 8.01(a) or (e) has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a 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 Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of each Issuing Bank (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Acceptance. The parties to each assignment shall execute and deliver to the Agent an Assignment and Acceptance, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Borrower. Except as otherwise permitted pursuant to the definition of Eligible Assignee, no such assignment shall be made to Parent Borrower or any of the Parent Borrower's Affiliates or Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be made to (A) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (A), or (B) a natural person (or to a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person).

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party

hereto) but shall continue to be entitled to the benefits of Sections 2.11, 4.02 and 10.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the applicable Loan Party (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) Register. The Agent, acting solely for this purpose as a non-fiduciary agent of the Parent Borrower (and such agency being solely for tax purposes), shall maintain at the Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal and interest amounts of the Advances and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Parent Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Parent Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Parent Borrower or the Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender or the Parent Borrower or any of the Parent Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Advances (including such Lender's participations in L/C Obligations and/or Swing Line Advances) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Parent Borrower, the Agent, the Lender Parties shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such 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 such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clause (i) of the proviso to Section 10.01 that affects such Participant. The Parent Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.11 and 4.02 subject to the requirements and limitations therein, including the requirements under Section 4.02(e) (it being understood that the documentation required under Section 4.02(e) shall be delivered solely to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(b); provided that such Participant (A) shall be subject to the provisions of Section 10.12 as if it were a Lender, and (B) shall not be entitled to receive any greater payment under Sections 2.11 or 4.02 with respect to any participation than its participating Lender would have been entitled to receive, except to the extent that such entitlement to receive greater payment results from a Change in Law after the participant acquired the participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.05 as though it were a Lender; provided that such Participant shall be subject to Section 4.03 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Parent Borrower (and such agency being solely for tax purposes), maintain a register on which it enters the name and address of each Participant and the principal amounts (and related interest amounts) of each Participant's interest in the Advances or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall 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, letters of credit 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, letter of credit 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 such 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. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) [Reserved].

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as Issuing Bank or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time a Lender that is, or has an Affiliate or branch that is, an Issuing Bank or the Swing Line Lender (a "Fronting Bank") assigns all of its Revolving Credit Commitment and Revolving Credit Advances pursuant to Section 10.07(b), such Fronting Bank may, (i) upon 30 days' notice to the Parent Borrower and the Lenders, resign as Issuing Bank and/or (ii) upon 30 days' notice to the Parent Borrower, resign as Swing Line Lender. In the event of any such resignation as Issuing Bank or Swing Line Lender, the Parent Borrower shall be entitled to appoint from among the Lenders a successor Issuing Bank or Swing Line Lender hereunder; provided, however, that no failure by the Parent Borrower to appoint any such successor shall affect the resignation of the applicable Fronting Bank as Issuing Bank or Swing Line Lender, as the case may be. If a Fronting Bank resigns as Issuing Bank, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Bank and all L/C Obligations with respect thereto (including the right to require the Lenders to make Index Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.04(c)). If a Fronting Bank resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Advances made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Index Rate Loans or fund risk participations in outstanding Swing Line Advances pursuant to Section 2.03(c). Upon the appointment and acceptance of such appointment of a successor Issuing Bank and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank or Swing Line Lender, as the case may be, and (b) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of

such succession or make other arrangements satisfactory to the applicable Fronting Bank to effectively assume the obligations of such Fronting Bank with respect to such Letters of Credit.

(h) If any Lender requests any payment from any Loan Party under Section 2.08(d), 2.11 or 4.02 or if any Lender is a Defaulting Lender, then, subject to Section 10.07(a), so long as no Default or Event of Default shall have occurred and be continuing, the Parent Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Parent Borrower shall have paid to the Agent the assignment fee specified in Section 10.07(b);

(ii) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Advances and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 10.04(b)) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Parent Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.11 or payments required to be made pursuant to Section 4.02, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable Requirements of Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Parent Borrower to require such assignment and delegation cease to apply.

SECTION 10.08 Payments Set Aside. To the extent that any payment by or on behalf of the Parent Borrower is made to the Agent or any Lender Party, or the Agent, any Issuing Bank or any 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 or a transfer at undervalue, set aside or required (including pursuant to any settlement entered into by the Agent or such Lender Party 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 (a) 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, and (b) each Lender and each Issuing Bank severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lender Parties under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 10.09 Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 10.10 Independence of Provisions. All agreements and covenants hereunder shall be given independent effect such that, if a particular action or condition is prohibited by the terms of any such agreement or covenant, the fact that such action or condition would be permitted within the limitations of another agreement or covenant shall not be construed as allowing such action to be taken or condition to exist.

SECTION 10.11 Confidentiality. Each Lender, each Issuing Bank and the Agent (each a "Recipient") agrees that it will not disclose to any third party any Confidential Information provided to it by the Parent Borrower; except that Confidential Information may be disclosed (a) to its 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 Confidential Information and instructed to keep such Confidential 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 regulations 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 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 credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Parent Borrower or (i) to the extent such Confidential Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Agent, any Lender, any Issuing Bank or any of their respective Affiliates on a nonconfidential basis from a source other than the Parent Borrower. In addition, the Agent and the Lenders 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 Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

SECTION 10.12 Replacement of Lenders. If any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Parent Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) Parent Borrower shall have paid to the Agent the assignment fee specified in Section 10.07;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.11) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts); and

(c) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Parent Borrower to require such assignment and delegation cease to apply.

SECTION 10.13 Headings. Article and Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

SECTION 10.14 Entire Agreement. This Agreement sets forth the entire agreement of the parties with respect to its subject matter and, except for the letter agreements referred to in Sections 2.04(i) and 2.05(b), supersedes all previous understandings, written or oral, in respect thereof.

SECTION 10.15 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 10.16 Consent to Jurisdiction.

(a) Each of the parties hereto hereby 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 New York sitting in New York County, and of the United States District Court of the Southern District of New York, 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 New York State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereby irrevocably agrees, to the fullest extent each may effectively do so, that each will not assert any defense that such courts do not have subject matter or personal jurisdiction of such action or proceeding or over any party hereto. Each of the parties hereby irrevocably consents to the service of copies of the summons and complaint and any other process which may be served in any such action or proceeding by certified mail, return receipt requested, or by delivering of a copy of such process to such party at its address specified in Section 10.02 or by any other method permitted by law. Each of the parties hereby agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or by any other manner provided by law. Each Loan Party (other than the Parent Borrower) hereby agrees that service of process may be made upon the Parent Borrower and each other Loan Party hereby irrevocably appoints the Parent Borrower its authorized agent to accept such service of process, and agrees that the failure of the Parent Borrower to give any notice of

any such service shall not impair or affect the validity of such service or of any judgment rendered in any action or proceeding based thereon. To the extent that any Loan Party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, each Loan Party hereby irrevocably waives such immunity in respect of its obligations under this Agreement.

(b) Nothing in this Section 10.16 shall affect the right of any of the parties hereto to serve legal process in any other manner permitted by law or affect the right of any of the parties to bring any action or proceeding against any of the parties or their property in the courts of other jurisdictions.

SECTION 10.17 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3.06(C).

SECTION 10.18 USA PATRIOT Act. Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Parent Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is 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 such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the Act. The Borrowers shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" an anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

SECTION 10.19 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 Parent Borrower and each other Loan Party acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Agent, the Joint Lead Arrangers and the Lenders are arm's-length commercial transactions between the Parent Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Agent, the Joint Lead Arrangers and the Lenders, on the other hand, (B) each of the Parent Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Parent Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agent, each Joint Lead Arranger and each Lender each 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 the Parent Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) none of the Agent, any Joint Lead Arranger or any Lender has any obligation to the Parent Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent, the Joint Lead Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Parent Borrower, the other Loan Parties and their respective Affiliates, and none of the Agent, any Joint Lead Arranger or any Lender has any obligation to disclose any of such interests to the Parent Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Parent Borrower and the other

Loan Parties hereby waives and releases any claims that it may have against the Agent, the Joint Lead Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.20 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to the Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Agent of any sum adjudged to be so due in the Judgment Currency, the Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Agent from any Loan Party in the Agreement Currency, the Parent Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Agent in such currency, the Agent agrees to return the amount of any excess to the Parent Borrower (or to any other Person who may be entitled thereto under applicable Law).

SECTION 10.21 Electronic Execution of Assignments and Certain Other Documents. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Acceptances, amendments or other modifications, Committed Advance Notices, Swing Line Advance Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act or other similar applicable Laws; provided that, notwithstanding anything contained herein to the contrary the Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Agent pursuant to procedures approved by it.

SECTION 10.22 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Solely to the extent any Lender or Issuing Bank that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or Issuing Bank that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or Issuing Bank that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

SECTION 10.23 WAIVER OF JURY TRIAL. EACH OF THE LOAN PARTIES, THE AGENT, THE LENDERS AND EACH ISSUING BANK HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ADVANCES OR THE LETTERS OF CREDIT, OR THE ACTIONS OF THE AGENT OR ANY LENDER PARTY IN CONNECTION WITH THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

SECTION 10.24 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent

than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.24, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

VAREX IMAGING CORPORATION, as Parent Borrower

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell
Title: Vice President, Finance, Treasury and Business Development

VAREX IMAGING WEST, LLC, as a U.S. Borrower

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell
Title: Treasurer

VAREX IMAGING DEUTSCHLAND AG, as the German Borrower

By: /s/ Marcus Kirchhoff
Name: Marcus Kirchhoff
Title: Member of the Executive Board

VAREX IMAGING INVESTMENTS B.V., as a Guarantor, represented by

By: /s/ Kimberley E. Honeysett
Name: Kimberley E. Honeysett
Title: Managing Director

3901 CARNATION STREET LLC, as a Guarantor
By: VAREX IMAGING CORPORATION, its sole member

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell
Title: Vice President, Finance, Treasury and Business Development

VAREX IMAGING AMERICAS CORPORATION , as a Guarantor

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell
Title: Vice President and Treasurer

VAREX IMAGING HOLDINGS, INC., as a Guarantor

By: /s/Kimberley E. Honeysett
Name: Kimberley E. Honeysett
Title: Vice President and Secretary

VAREX IMAGING WEST HOLDINGS, INC., as a Guarantor

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell
Title: Vice President and Treasurer

VIRTUAL MEDIA INTEGRATION, LLC, as a Guarantor
By: VAREX IMAGING CORPORATION, its sole member

By: /s/ Matthew C. Lowell
Name: Matthew C. Lowell

Title: Vice President, Finance, Treasury and Business Development

[Signature Page to Credit Agreement]

THE AGENT:

BANK OF AMERICA, N.A.

By: : /s/ Matthew R. Van Steenhuyse
Name: Matthew R. Van Steenhuyse
Title: Senior Vice President

THE LENDERS:

BANK OF AMERICA, N.A.

By: /s/ Matthew R. Van Steenhuyse
Name: Matthew R. Van Steenhuyse
Title: Senior Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ Salvatore Tulumello
Name: Salvatore Tulumello
Title: Authorized Signatory

WELLS FARGO BANK, N.A. LONDON BRANCH

By: /s/ Patricia Del Busto
Name: Patricia Del Busto
Title: Authorized Signatory

CITIBANK, N.A.

By: /s/ Jeff Royston
Name: Jeff Royston
Title: SVP

GOLDMAN SACHS BANK USA

By: /s/ Thomas Manning
Name: Thomas Manning
Title: Authorized Signatory

THE ISSUING BANKS:

BANK OF AMERICA, N.A.

By: /s/ Matthew R. Van Steenhuyse
Name: Matthew R. Van Steenhuyse
Title: Senior Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ Salvatore Tulumello
Name: Salvatore Tulumello
Title: Authorized Signatory

CITIBANK, N.A.

By: /s/ Jeff Royston
Name: Jeff Royston
Title: SVP

GOLDMAN SACHS BANK USA

By: /s/ Thomas Manning
Name: Thomas Manning
Title: Authorized Signatory

THE SWING LINE LENDER:

BANK OF AMERICA, N.A.

By: /s/ Matthew R. Van Steenhuyse
Name: Matthew R. Van Steenhuyse
Title: Senior Vice President:

SCHEDULE 1.01A

COMMITMENT AMOUNTS

U.S. Revolving Credit Commitments:

Lender	U.S. Revolving Credit Commitment
Bank of America, N.A.	$34,000,000.00
Wells Fargo Bank, National Association	$22,666,666.67
Citibank, N.A.	$17,000,000.00
Goldman Sachs Bank USA	$11,333,333.33
Total:	$85,000,000.00

German Revolving Credit Commitments:

Lender	German Revolving Credit Commitment
Bank of America, N.A.	$6,000,000.00
Wells Fargo Bank, N.A. London Branch	$4,000,000.00
Citibank, N.A.	$3,000,000.00
Goldman Sachs Bank USA	$2,000,000.00
Total:	$15,000,000.00

Issuing Commitments:

Issuing Bank	Issuing Commitment	Issuing Sub-Commitment under German Revolving Credit Facility
Bank of America, N.A.	$10,000,000.00	$2,500,000.00
Wells Fargo Bank, National Association	$6,666,666.75	$0.00
Citibank, N.A.	$5,000,000.00	$0.00
Goldman Sachs Bank USA	$3,333,333.25	$0.00
Total:	$25,000,000.00	$2,500,000.00

SCHEDULE 1.01B

CHANGE OF CONTROL

[__]

SCHEDULE 6.01(h)

ENVIRONMENTAL MATTERS

[__]

SCHEDULE 6.01(i)

ERISA MATTERS

[__]

SCHEDULE 6.01(r)

DDAs

[__]

SCHEDULE 6.01(w)

Subsidiaries

[__]

SCHEDULE 7.01(p)

POST-CLOSING MATTERS

[__]

SCHEDULE 7.02(a)

EXISTING DEBT

[__]

SCHEDULE 7.02(e)

AFFILIATE TRANSACTIONS

[__]

SCHEDULE 7.02(g)

EXISTING LIENS

[__]

SCHEDULE 10.02

AGENT'S OFFICE;

CERTAIN ADDRESSES FOR NOTICES

LOAN PARTIES:
c/o Varex Imaging Corporation
1678 S. Pioneer Road
Salt Lake City, UT 84104
Attn: [__]
Telephone: [__]
Telecopier: [__]
Electronic Mail: [__]
Website Address: www.vareximaging.com
U.S. Taxpayer Identification Number: [__]

[With a copy to:
[__]]

AGENT:

Agent's Office
(for payments and Requests for Credit Extensions):
Bank of America, N.A.
Attn: [__]
Mail Code: [__]
[__]
Phone: [__]
Fax: [__]
E-mail: [__]

(for administrative/operations matters related to Germany):
Bank of America, N.A.
Attn: [__]
Phone: [__]
Fax: [__]
E-mail: [__]

Domestic Instructions

Bank of America
Bank Address: [__]
ABA#: [__]
Account Name: [__]
Acct #: [__]
Ref: Varex Imaging Corporation

German Payment Instructions

[__]
[__]
Swift Code: [__]
ABA# [__]
For the Account of: [__]
Account #: [__]
Ref: Varex Imaging Corporation

Other Notices as Agent:
Bank of America, N.A.
Attn: [__]
Mail Code: [__]
[__]
Phone: [__]
Fax: [__]
E-mail: [__]

ISSUING BANK:

Bank of America, N.A.
Attn: [__]
Mail Code: [__]
[__]
Phone: [__]
Fax: [__]
E-mail: [__]

SWING LINE LENDER:

Bank of America, N.A.
Attn: [__]
Mail Code: [__]
[__]
Phone: [__]
Fax: [__]
E-mail: [__]

Domestic Instructions
Bank of America
Bank Address: [__]
ABA#: [__]
Account Name: [__]
Acct #: [__]
Ref: Varex Imaging Corporation

German Instructions

[__]
[__]
Swift Code: [__]
ABA# [__]
For the Account of: [__]
Account #: [__]
Ref: Varex Imaging Corporation

Exhibit 10.25

June 10, 2020

Shubham Maheshwari
[address omitted]

Dear Sam,

We are pleased to confirm our offer of employment with Varex Imaging Corporation for the position of Chief Financial Officer reporting to Sunny Sanyal, Chief Executive Officer, with an estimated start date of July 20, 2020. Your work location will be Salt Lake City, UT and will require relocation to the area by July 20, 2021. During the period between your start date and your family's relocation to the Salt Lake area and unless otherwise agreed with Sunny Sanyal, you are expected to work out of the Salt Lake City office during the work week. In this exempt status role, your rate of pay will be $460,000 per year ($8,846 weekly), to be paid in accordance with the company's payroll schedule.

Management Incentive Plan (MIP)

You will be eligible to participate in the Varex Management Incentive Plan (MIP) on a pro-rata basis beginning on your hire date. Your target award percentage is 65% of base salary (at 100% achievement). Under the terms of the MIP, awards are based on a combination of Varex Imaging Corporation financial achievements and individual performance goals. The award is typically payable in December for the prior fiscal year's performance. For FY20 (which ends at the end of September) you would be eligible to receive the target Management Incentive (prorated based on the number of days you were employed during FY20). More information regarding the MIP will be available to you shortly after the commencement of your employment. Participation in the MIP is subject to the discretion of the Plan Administrator.

Equity

We will recommend to Varex's Compensation and Management Development Committee ("Varex CC") that it grant you, at the first regularly scheduled meeting of Varex CC that occurs after your hire date, a one-time equity award having a grant date value of $1,500,000. The award is expected to consist of 50% premium-priced, performance-based stock options and 50% restricted stock units, as determined by the Varex CC. Such award will be subject to the terms and conditions of the Varex plan and award agreement which you will receive once approved. This equity grant is expected to vest over four years based on performance and/or time (for restricted stock units, 50% after two years of employment and 50% after four years of employment and for performance stock options, 25% after one year of employment and then ratably thereafter), as determined by the Varex CC. For this purpose, the methodology used to calculate the grant date value of your award shall be determined by Varex CC in its sole

discretion in a manner that is consistent with the methodology utilized for other Varex Imaging employees. In addition to this one-time award you will be eligible to participate in our annual equity program at a threshold consistent with your position (currently expected to be 165% of your base salary). Typically, annual equity awards are approved by the Varex CC in February. You will be eligible for annual equity grant recommendations for the fiscal year 2022 cycle.

In addition, in the quarter following the permanent relocation of you, your spouse and any other immediate family members to Salt Lake City, Utah (no later than 24 months from your start date) you would be eligible to receive a one-time equity award having an aggregate grant date value of $375,000, with the award split equally between restricted stock units and premium-priced, performance-based stock options and each award vesting over a period of four (4) years of continued employment with the Company, in each case subject to approval by the Varex CC.

Relocation Assistance

Varex Imaging's relocation program provides custom core relocation benefits (see below). Upon acceptance of this offer, a representative from Varex Imaging's relocation service provider, Cornerstone Relocation, will contact you to discuss the policy components and reimbursable expenses in detail.

Core Benefits

- One home-finding trip (airfare for two and up to six nights' accommodations)
- Transportation of household goods: Packing, loading, standard insurance and movement of household goods from one former residence to new residence in Salt Lake City, UT
- Vehicle shipment: Transport of up to two cars/motorcycle from one former residence to new residence in Salt Lake City, UT
- Temporary housing (three months)
- Final move: Transportation and meals for the employee and household members during the final move
- $5K Gross relocation bonus
- Home Sale (BVO program)
- Reimbursement of home purchase closing costs

Should you voluntarily leave Varex Imaging or if your employment is terminated for misconduct or other cause in the first 24 months from the date of your relocation, you will be required to repay the relocation expenses paid to you or on your behalf. The repayment amount will be reduced by 50% after one full year of employment.

Benefits

As a regular employee of the Company, you will be eligible on date of hire to participate in those Company-sponsored benefits that are available to all Company employees.

Paid Time Off and Holidays

You are eligible for paid time off (PTO) for any days that you need, subject to your manager's approval. These days are not accrued for and will not be paid out when you leave the company. In addition, Varex Imaging has ten paid company holidays per year based on the annually published list.

Additional Terms

Please make sure not to bring with you to Varex Imaging any materials that contain the trade secrets or proprietary information of third parties. Varex Imaging respects the trade secret rights of other companies and expects all employees to do the same. All newly hired employees are subject to an initial 90-day evaluation period that may be extended upon recommendation of the supervisor and approval of the human resources office.

Your employment at Varex Imaging is an at-will employment relationship, meaning that either Varex Imaging, or you, has the right to terminate the employment relationship at any time with or without cause or notice. Upon your acceptance of this agreement you acknowledge Varex Imaging's at-will employment relationship and it supersedes all other agreements on this subject. The at-will nature of the employment relationship can only be modified by a written agreement signed by Varex Imaging's Chief Executive Officer.

This offer is contingent upon your ability to perform the essential functions of the position with reasonable accommodation as well as successful completion of the required background verification and drug screening. In addition, you are required to demonstrate and maintain legal work authorization in the United States. On the first day of employment, you will be required to provide documentary evidence of your identity and eligibility for employment in the United States to satisfy the requirements of Form I-9. Please do not take any action in reliance upon this offer letter, such as resigning from your current employment, until you have been notified that you have successfully passed the screening process described in this paragraph.

Sam we sincerely believe Varex Imaging Corporation will provide the challenges and opportunities you seek, and we look forward to your contributions. Should you have any questions in the meantime, please feel free to contact Chad Holman, VP, Chief Human Resources Officer at O: [omitted], or C: [omitted].

Sincerely,

Sunny Sanyal
Chief Executive Officer

By signing this offer letter, I wish to accept this offer from Varex Imaging Corporation.

Signature: /s/ Shubham Maheshwari

Date: July 27, 2020

Exhibit 21.1

VAREX IMAGING CORPORATION
LIST OF SUBSIDIARIES

Name	Jurisdiction of Incorporation
3901 Carnation Street, LLC	Illinois, USA
Claymount Switzerland AG	Switzerland
Dexela Limited	United Kingdom
Direct Conversion AB (publ) (~98%)	Sweden
Direct Conversion GmbH	Germany
Direct Conversion Ltd	United Kingdom
MeVis Medical Solutions AG (73.7%)	Germany
Oy Direct Conversion Ltd.	Finland
Varex Imaging Americas Corporation	Illinois, USA
Varex Imaging Arabia, LLC (75%)	Saudi Arabia
Varex Imagens Brasil, Ltda.	Brazil
Varex Imaging Deutschland AG	Germany
Varex Imaging Equipment (China) Co., Ltd.	China
Varex Imaging France SARL	France
Varex Imaging Group Nederland B.V.	Netherlands
Varex Imaging Holdings, Inc.	Delaware, USA
Varex Imaging India Private Limited	India
Varex Imaging International AG	Switzerland
Varex Imaging International Holdings B.V.	Netherlands
Varex Imaging Investments B.V.	Netherlands
Varex Imaging Italia Srl	Italy
Varex Imaging Japan, K.K.	Japan
Varex Imaging Mexico, S. de R.L. de C.V.	Mexico
Varex Imaging Nederland B.V.	Netherlands
Varex Imaging Philippines, Inc.	Philippines
Varex Imaging Technologies (Beijing) Co. Ltd.	China
Varex Imaging UK Limited	United Kingdom
Varex Imaging West Holdings, Inc.	Delaware, USA
Varex Imaging West, LLC	Delaware, USA
Virtual Media Integration, LLC	Delaware, USA

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-215770 and 333-236487) of Varex Imaging Corporation of our report dated November 30, 2020, relating to the consolidated financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP
Salt Lake City, Utah
November 30, 2020

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 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 Annual Report on Form 10-K 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: November 30, 2020

By: /s/ Sunny S. Sanyal
Sunny S. Sanyal
President, Chief Executive Officer

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 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 Annual Report on Form 10-K 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: November 30, 2020

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 Annual Report of Varex Imaging Corporation (the "Company"), on Form 10-K for the fiscal year ended October 2, 2020 (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:

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: November 30, 2020

By: /s/ Sunny S. Sanyal
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 Annual Report of Varex Imaging Corporation (the "Company"), on Form 10-K for the fiscal year ended October 2, 2020 (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:

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: November 30, 2020

By: /s/ Shubham Maheshwari
Shubham Maheshwari
Chief Financial Officer