

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

FORM 10-Q

- Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended: March 31, 2023
or
 Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from _____ to _____
Commission file number: 000-25426



NATIONAL INSTRUMENTS CORPORATION
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)
11500 North MoPac Expressway
Austin,
Texas
(Address of principal executive offices)

74-1871327
(I.R.S. Employer Identification No.)
78759
(Zip code)

Registrant's telephone number, including area code: (512) 683-0100
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of exchange on which registered
Common Stock, \$0.01 par value	NATI	The Nasdaq Stock Market LLC
Preferred Share Purchase Rights	N/A	The Nasdaq Stock Market LLC

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

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

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

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

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

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Outstanding at April 24, 2023
Common Stock, \$0.01 par value	131,498,380

NATIONAL INSTRUMENTS CORPORATION

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PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

NATIONAL INSTRUMENTS CORPORATION
CONSOLIDATED BALANCE SHEETS

(in thousands, except share and per share data)

	March 31, 2023	December 31, 2022
Assets	(unaudited)	
Cash and cash equivalents	\$ 137,672	\$ 139,799
Accounts receivable, net	415,744	445,279
Inventories, net	401,060	388,164
Prepaid expenses and other current assets	117,701	115,677
Total current assets	1,072,177	1,088,919
Property and equipment, net	277,706	265,380
Goodwill	630,879	615,734
Intangible assets, net	208,207	200,850
Operating lease right-of-use assets	67,153	59,176
Other long-term assets	127,737	128,479
Total assets	\$ 2,383,859	\$ 2,358,538
Liabilities and stockholders' equity		
Accounts payable	\$ 50,351	\$ 54,639
Accrued compensation	50,126	71,422
Deferred revenue - current	147,774	137,208
Operating lease liabilities - current	15,507	13,834
Other taxes payable	61,292	67,615
Debt, current	25,000	25,000
Accrued expenses and other current liabilities	169,963	153,157
Total current liabilities	520,013	522,875
Deferred income taxes	4,730	1,676
Income taxes payable - non-current	40,646	40,646
Deferred revenue - non-current	65,263	63,066
Operating lease liabilities - non-current	36,590	30,588
Debt, non-current	490,505	516,637
Other long-term liabilities	31,798	26,926
Total liabilities	1,189,545	1,202,414
Commitments and contingencies		
Stockholders' equity:		
Preferred stock: par value \$0.01; 5,000,000 shares authorized; none issued and outstanding	—	—
Common stock: par value \$0.01; 360,000,000 shares authorized; 131,498,380 shares and 131,004,965 shares issued and outstanding, respectively	1,315	1,310
Additional paid-in capital	1,231,894	1,207,420
Retained deficit	(4,627)	(14,741)
Accumulated other comprehensive loss	(34,268)	(37,865)
Total stockholders' equity	1,194,314	1,156,124
Total liabilities and stockholders' equity	\$ 2,383,859	\$ 2,358,538

The accompanying notes are an integral part of the financial statements.

NATIONAL INSTRUMENTS CORPORATION
CONSOLIDATED STATEMENTS OF INCOME
(in thousands, except per share data)
(unaudited)

	Three Months Ended	
	March 31,	
	2023	2022
Net sales:		
Product	\$ 400,399	\$ 343,685
Software maintenance	36,426	41,571
Total net sales	436,825	385,256
Cost of sales:		
Product	127,556	115,024
Software maintenance	5,151	4,203
Total cost of sales	132,707	119,227
Gross profit	304,118	266,029
Operating expenses:		
Sales and marketing	117,342	120,157
Research and development	86,637	82,161
General and administrative	43,214	33,179
Total operating expenses	247,193	235,497
Operating income	56,925	30,532
Other (expense) income	(3,020)	33
Income before income taxes	53,905	30,565
Provision for income taxes	6,976	5,329
Net income	\$ 46,929	\$ 25,236
Basic earnings per share	\$ 0.36	0.19
Weighted average shares outstanding - basic	131,326	132,105
Diluted earnings per share	\$ 0.35	\$ 0.19
Weighted average shares outstanding - diluted	133,210	133,175
Dividends declared per share	\$ 0.28	\$ 0.28

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

NATIONAL INSTRUMENTS CORPORATION
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(in thousands)
(unaudited)

	Three Months Ended	
	March 31,	
	2023	2022
Net income	\$ 46,929	\$ 25,236
Other comprehensive income, before tax and net of reclassification adjustments:		
Foreign currency translation adjustment	4,889	(3,805)
Unrealized (loss) gain on derivative instruments	(1,676)	1,867
Other comprehensive income (loss), before tax	3,213	(1,938)
Tax (benefit) expense related to items of other comprehensive income	(384)	425
Other comprehensive income (loss), net of tax	3,597	(2,363)
Comprehensive income	\$ 50,526	\$ 22,873

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

NATIONAL INSTRUMENTS CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Three Months Ended	
	March 31,	
	2023	2022
Cash flow from operating activities:		
Net income	\$ 46,929	\$ 25,236
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	22,240	21,566
Stock-based compensation	15,558	20,128
Gain from equity-method investments	(4,800)	(602)
Deferred income taxes	(1,944)	(3,615)
Changes in operating assets and liabilities, net of acquisitions	20,723	(66,561)
Net cash provided by (used in) operating activities	98,706	(3,848)
Cash flow from investing activities:		
Acquisitions, net of cash received	(22,700)	(17,510)
Capital expenditures	(21,419)	(10,182)
Capitalization of internally developed software	(925)	(187)
Additions to other intangibles	(3,125)	(1,274)
Net cash used in investing activities	(48,169)	(29,153)
Cash flow from financing activities:		
Proceeds from revolving credit	—	25,000
Payments on term loan	(6,250)	—
Payments on revolving credit	(20,000)	—
Proceeds from issuance of common stock	8,956	9,244
Repurchase of common stock	—	(31,455)
Dividends paid	(36,815)	(36,976)
Net cash used in financing activities	(54,109)	(34,187)
Effect of exchange rate changes on cash	1,445	(1,035)
Net change in cash and cash equivalents	(2,127)	(68,223)
Cash and cash equivalents at beginning of period	139,799	211,106
Cash and cash equivalents at end of period	\$ 137,672	\$ 142,883

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

NATIONAL INSTRUMENTS CORPORATION
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands, except share data and per share data)
(unaudited)

March 31, 2023

	Common Stock Shares	Common Stock Amount	Additional-Paid in Capital	Retained Deficit	Accumulated Other Comprehensive Income/(Loss)	Total Stockholders' Equity
Balance at December 31, 2022	131,004,965	\$ 1,310	\$ 1,207,420	\$ (14,741)	\$ (37,865)	\$ 1,156,124
Net income	—	—	—	46,929	—	46,929
Other comprehensive loss, net of tax	—	—	—	—	3,597	3,597
Issuance of common stock under employee plans	493,415	5	8,951	—	—	8,956
Stock-based compensation	—	—	15,523	—	—	15,523
Dividends paid (1)	—	—	—	(36,815)	—	(36,815)
Balance at March 31, 2023	<u>131,498,380</u>	<u>\$ 1,315</u>	<u>\$ 1,231,894</u>	<u>\$ (4,627)</u>	<u>\$ (34,268)</u>	<u>\$ 1,194,314</u>

March 31, 2022

	Common Stock Shares	Common Stock Amount	Additional-Paid in Capital	Retained Earnings (Deficit)	Accumulated Other Comprehensive Income/(Loss)	Total Stockholders' Equity
Balance at December 31, 2021	132,293,898	\$ 1,323	\$ 1,129,647	\$ 112,858	\$ (20,131)	\$ 1,223,697
Net income	—	—	—	25,236	—	25,236
Other comprehensive income, net of tax	—	—	—	—	(2,363)	(2,363)
Issuance of common stock under employee plans	354,618	4	9,240	—	—	9,244
Stock-based compensation	—	—	20,055	—	—	20,055
Repurchase of common stock	(772,052)	(8)	(6,593)	(24,854)	—	(31,455)
Dividends paid (1)	—	—	—	(36,976)	—	(36,976)
Balance at March 31, 2022	<u>131,876,464</u>	<u>\$ 1,319</u>	<u>\$ 1,152,349</u>	<u>\$ 76,264</u>	<u>\$ (22,494)</u>	<u>\$ 1,207,438</u>

(1) Cash dividends declared per share of common stock were \$0.28 for the three months ended March 31, 2023 and 2022.

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

NATIONAL INSTRUMENTS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1 – Basis of presentation

The accompanying unaudited consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto for the fiscal year ended December 31, 2022, included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission ("SEC") on February 21, 2023 (the "2022 Form 10-K"). In our opinion, the accompanying consolidated financial statements reflect all adjustments (consisting only of normal recurring items) considered necessary to present fairly our financial position at March 31, 2023 and December 31, 2022, the results of our operations and comprehensive income for the three months ended March 31, 2023 and 2022, our cash flows for the three months ended March 31, 2023 and 2022, and our statement of stockholders' equity for the three months ended March 31, 2023 and 2022. Our operating results for the three months ended March 31, 2023 are not necessarily indicative of the results that may be expected for the year ending December 31, 2023. These financial statements have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP").

Summary of Significant Accounting Policies

There were no material changes to our significant accounting policies during the three months ended March 31, 2023 compared to the significant accounting policies described in our 2022 Form 10-K.

Other (Expense) Income

Other (expense) income consisted of the following amounts (in thousands):

	Three Months Ended March 31,	
	(Unaudited)	
	2023	2022
Interest income	\$ 326	\$ 46
Interest expense	(8,348)	(1,292)
Gain from equity-method investments	4,800	602
Net foreign exchange loss	(302)	(1,166)
Other	504	1,843
Other (expense) income	\$ (3,020)	\$ 33

Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities on our consolidated balance sheet includes the following amounts (in thousands):

	As of March 31, 2023	As of December 31,
	(unaudited)	2022
Income taxes payable - current	\$ 85,940	\$ 87,186
Hedge payable - current	10,221	18,117
Accrued liabilities	32,409	26,851
Other	41,393	21,003
Total	\$ 169,963	\$ 153,157

Earnings Per Share

Basic earnings per share (“EPS”) is computed by dividing net income by the weighted average number of common shares outstanding during each period. Diluted EPS is computed by dividing net income by the weighted average number of common shares and common share equivalents outstanding (if dilutive) during each period. The number of common share equivalents, which includes time-based restricted stock units (“RSUs”) and performance-based restricted stock units (“PRsUs”), is computed using the treasury stock method.

The reconciliation of the denominators used to calculate basic EPS and diluted EPS for the three months ended March 31, 2023 and 2022 are as follows (in thousands):

	Three Months Ended March 31,	
	(Unaudited)	
	2023	2022
Weighted average shares outstanding-basic	131,326	132,105
<i>Plus: Common share equivalents</i>		
RSUs & PRsUs	1,884	1,070
Weighted average shares outstanding-diluted	<u>133,210</u>	<u>133,175</u>

Shares issuable upon vesting of RSU awards for the three months ended March 31, 2023 and 2022 of 69,400 shares and 442,000 shares, respectively, were excluded in the computations of diluted EPS because the effect of including the RSU awards would have been anti-dilutive.

Note 2 - Revenue

Revenue Recognition

Revenue is recognized upon transfer of control of the promised products or services to customers in an amount that reflects the consideration we expect to receive in exchange for those products or services. We enter into contracts that can include various combinations of our products or services, which are generally capable of being distinct and accounted for as separate performance obligations. Revenue is recognized net of allowances for returns and any taxes collected from customers, which are subsequently remitted to governmental authorities.

Disaggregation of Revenues

We disaggregate revenue from contracts with customers based on the timing of transfer of goods or services to customers (point-in-time or over time), geographic region based primarily on the billing location of the customer, and customer industry grouping.

Total net sales based on the timing of transfer of goods or services to customers and geographic region are as follows:

	Three Months Ended March 31,					
	(Unaudited)					
(In thousands)	2023			2022		
Net sales:	Point-in-Time ⁽¹⁾	Over Time	Total	Point-in-Time ⁽¹⁾	Over Time	Total
Americas	\$ 152,342	\$ 25,644	\$ 177,986	\$ 132,988	\$ 26,222	\$ 159,210
EMEA	94,696	17,484	112,180	79,241	21,129	100,370
APAC	135,649	11,010	146,659	114,995	10,681	125,676
Total net sales ⁽¹⁾	\$ 382,687	\$ 54,138	\$ 436,825	\$ 327,224	\$ 58,032	\$ 385,256

(1): Net sales contains hedging gains and losses, which do not represent revenues recognized from customers.

See Note 5 - Derivative instruments and hedging activities of Notes to Consolidated Financial Statements for more information on the impact of our hedging activities on our results of operations

The industry grouping used to disaggregate net sales is determined at the customer account level. Accounts assigned to one of our three industry-specific groupings are either designated as Semiconductor and Electronics, Transportation, or Aerospace, Defense, and Government. We are able to leverage the investments in these areas to also serve a broad base of diverse customers in the other industries we serve, which are included in our Portfolio grouping. Our recent acquisitions described in Note 17 - Acquisition of Notes to Consolidated Financial Statements are presented within the "Transportation" industry grouping below. We periodically review and update the groupings of customers assigned to a particular industry grouping to ensure that our revenue disaggregation aligns with the way we currently manage our business. As part of this process, we reclassified certain customer accounts between industry groups during the first quarter of 2023. The prior period presented below has been recast to conform to the current period presentation.

(In thousands)	Three Months Ended March 31,	
	(Unaudited)	
Industry Grouping	2023	2022
Portfolio	\$ 135,910	\$ 124,703
Semiconductor & Electronics	113,757	104,026
Aerospace, Defense & Government	113,114	94,503
Transportation	74,044	62,024
Total net sales	\$ 436,825	\$ 385,256

Information about Contract Balances

Amounts billed in advance of services being provided are accounted for as deferred revenue. Nearly all of our deferred revenue balance is related to extended hardware and software maintenance contracts. Payment terms and conditions vary by contract type, although payment is typically due within 30 to 90 days of contract inception. In instances where the timing of revenue recognition differs from the timing of invoicing, we have determined our contracts generally do not include a significant financing component. The primary purpose of our invoicing terms is to provide customers with simplified and predictable ways of purchasing our products and services, not to receive financing from our customers or to provide customers with financing.

Changes in deferred revenue, current and non-current, during the three months ended March 31, 2023 were as follows:

	Amount
	(In thousands)
Deferred Revenue at December 31, 2022	\$ 200,27
Deferral of revenue billed in current period, net of recognition	56,93
Recognition of revenue deferred in prior periods	(45,76)
Foreign currency translation impact	1,58
Balance as of March 31, 2023 (unaudited)	\$ 213,02

For the three months ended March 31, 2023, revenue recognized from performance obligations satisfied in prior periods (for example, due to changes in transaction price) was not material. Amounts recognized as revenue in excess of amounts billed are recorded as unbilled receivables. Unbilled receivables which are anticipated to be invoiced in the next twelve months are included in "other current assets" on the consolidated balance sheet. Based on the nature of our contracts with customers, we do not typically recognize unbilled receivables related to revenues recognized in excess of amounts billed. For the three months ended March 31, 2023 and December 31, 2022, the amounts recognized that were related to unbilled receivables were not material.

Unsatisfied Performance Obligations

Revenue expected to be recognized in any future period related to remaining performance obligations, excluding revenue pertaining to contracts that have an original expected duration of one year or less, and contracts where revenue is recognized as invoiced, was approximately \$118 million as of March 31, 2023. Because we typically invoice customers at contract inception, this amount is included in our current and non-current deferred revenue balances and primarily relates to multi-year payments for hardware service and software service offerings. As of March 31, 2023, we expect to recognize approximately 35% of the revenue related to these unsatisfied performance obligations during the remainder of 2023, 38% during 2024, and 26% thereafter.

Assets Recognized from the Costs to Obtain a Contract with a Customer

We recognize an asset for the incremental costs of obtaining a contract with a customer if we expect the benefit of those costs to be longer than one year. We have determined that certain sales incentive programs meet the requirements to be capitalized. Capitalized incremental costs related to initial contracts and renewals are amortized over the same period because the commissions paid on both the initial contract and renewals are commensurate with one another. Total capitalized costs to obtain a contract were not material during the periods presented and are included in other long-term assets on our consolidated balance sheets.

Note 3 – Investments

Equity-Method Investments

The carrying value of our equity method investments was \$28 million and \$29 million as of March 31, 2023 and December 31, 2022, respectively. During the three months ended March 31, 2023 and 2022, net sales to our equity-method investees were approximately \$0.5 million and \$1.5 million, respectively and purchases from our equity-method investees were not material.

Refer to Note 17 - Acquisitions of Notes to Consolidated Financial Statements for additional discussion on a step acquisition of one of our existing equity-method investments, SET, during the first quarter of 2023.

Note 4 – Fair value measurements

We define fair value to be the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities required or permitted to be recorded at fair value, we consider the principal or most advantageous market that market participants may use when pricing the asset or liability.

We follow a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value measurement is determined based on the lowest level input that is significant to the fair value measurement. The three values of the fair value hierarchy are the following:

Level 1 – Quoted prices in active markets for identical assets or liabilities

Level 2 – Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly

Level 3 – Inputs that are not based on observable market data

Assets and liabilities measured at fair value on a recurring basis are summarized below:

(In thousands) Description	Fair Value Measurements at Reporting Date Using (Unaudited)			
	March 31, 2023	Level 1	Level 2	Level 3
Assets				
Derivatives (interest rate swaps)	1,954		1,954	
Derivatives (foreign exchange contracts)	8,449	—	8,449	
Total Assets	\$ 10,403	\$ —	\$ 10,403	\$ —
Liabilities				
Derivatives (interest rate swaps)	\$ (2,634)		\$ (2,634)	
Derivatives (foreign exchange contracts)	\$ (10,221)	\$ —	\$ (10,221)	\$ —
Total Liabilities	\$ (12,855)	\$ —	\$ (12,855)	\$ —

(In thousands)

Description	Fair Value Measurements at Reporting Date Using			
	December 31, 2022	Level 1	Level 2	Level 3
Assets				
Derivatives (interest rate swaps)	2,299	—	2,299	—
Derivatives (foreign exchange contracts)	10,025	—	10,025	—
Total Assets	\$ 12,324	\$ —	\$ 12,324	\$ —
Liabilities				
Derivatives (interest rate swaps)	\$ (1,013)	\$ —	\$ (1,013)	\$ —
Derivatives (foreign exchange contracts)	\$ (18,313)	\$ —	\$ (18,313)	\$ —
Total Liabilities	\$ (19,326)	\$ —	\$ (19,326)	\$ —

The valuation techniques used to measure the fair value of our financial instruments having Level 2 inputs were derived from non-binding market consensus prices that are corroborated by observable market data, quoted market prices for similar instruments, or pricing models, such as discounted cash flow techniques.

Derivatives include foreign currency forward and interest rate swap contracts. Our derivatives are valued using an income approach (Level 2) based on the spot rate less the contract rate multiplied by the notional amount. We consider counterparty credit risk in the valuation of our derivatives. However, counterparty credit risk did not impact the valuation of our derivatives during the three months ended March 31, 2023. There were no transfers in or out of Level 1 or Level 2 during the three months ended March 31, 2023.

Non-financial assets such as equity-method investments, goodwill, intangible assets, and property, plant and equipment are measured at fair value when there is an indicator of impairment and recorded at fair value only when an impairment is recognized. The amounts related to all assets and liabilities required to be measured at fair value on a nonrecurring basis were not material at March 31, 2023 and December 31, 2022.

We did not have any items that were measured at fair value on a nonrecurring basis at March 31, 2023 and December 31, 2022. The carrying value of net accounts receivable, accounts payable, and long-term debt contained in the consolidated balance sheets approximates fair value.

Note 5 – Derivative instruments and hedging activities

We recognize all of our derivative instruments as either assets or liabilities in our statement of financial position at fair value. The accounting for changes in the fair value (i.e., gains or losses) of a derivative instrument depends on whether it has been designated and qualifies as part of a hedging relationship and further, on the type of hedging relationship. For those derivative instruments that are designated and qualify as hedging instruments, we designate the hedging instrument, based upon the exposure being hedged, as a fair value hedge, cash flow hedge, or a hedge of a net investment in a foreign operation.

We have direct operations in approximately 40 countries. Sales outside of the Americas accounted for approximately 59% of our net sales during the three months ended March 31, 2023 and 2022. Our activities expose us to a variety of market risks, including the effects of changes in foreign currency exchange rates. These financial risks are monitored and managed by us as an integral part of our overall risk management program.

The vast majority of our foreign sales are denominated in the customers' local currency. Movements in foreign currency exchange rates pose a risk to our operations and competitive position, in that exchange rate changes may affect our profitability and cash flow, and the business or pricing strategies of our non-U.S. based competitors. We use foreign currency forward contracts as hedges of forecasted sales and expenses that are denominated in foreign currencies and as hedges of foreign currency denominated financial assets or liabilities. These contracts are entered into to help protect against the risk that the eventual dollar-net-cash inflows or outflows resulting from these transactions will be adversely affected by changes in exchange rates. We designate foreign currency forward contracts as cash flow hedges of forecasted net sales or forecasted expenses. In addition, we hedge our foreign currency denominated balance sheet exposures using foreign currency forward contracts that are not designated as hedging instruments. None of our derivative instruments contain a credit-risk-related contingent feature.

Cash flow hedges

To help minimize the financial impact of fluctuations in foreign currency exchange rates of forecasted foreign currency cash flows resulting from international sales over the next one to three years, we have instituted a foreign currency cash flow hedging program. We hedge portions of our forecasted net sales and forecasted expenses denominated in foreign currencies with forward contracts. For forward contracts, when the value of the dollar changes significantly against the foreign currencies, the change in the present value of future foreign currency cash flows may be offset by the change in the fair value of the forward contracts designated as hedges. We use foreign currency forward contracts for up to 100% of our forecasted exposures in selected currencies (primarily in Euro, Japanese yen, Hungarian forint, British pound, Malaysian ringgit, Korean won and Chinese yuan) and limit the duration of these contracts to 40 months or less.

For foreign currency derivative instruments that are designated and qualify as a cash flow hedge, the gain or loss on the derivative is reported as a component of accumulated other comprehensive income ("OCI") and reclassified into earnings in the same line item (net sales, operating expenses, or cost of sales) associated with the forecasted transaction and in the same period or periods during which the hedged transaction affects earnings. Cash flows from derivative instruments are classified in the statement of cash flows in the same category as the cash flows from the hedged or economically hedged item, primarily in operating activities. Hedge effectiveness of foreign currency forwards designated as cash flow hedges is measured by comparing the hedging instrument's cumulative change in fair value from inception to maturity to the forecasted transaction's terminal value.

We held forward contracts designated as cash flow hedges with the following notional amounts:

(In thousands)	US Dollar Equivalent	
	As of March 31, 2023 (Unaudited)	As of December 31, 2022
Chinese yuan	\$ 109,576	\$ 73,419
Euro	136,422	109,091
Japanese yen	29,444	21,285
Hungarian forint	13,799	19,529
British pound	17,993	13,929
Malaysian ringgit	5,997	8,856
Korean won	22,076	14,048
Total forward contracts notional amount	\$ 335,307	\$ 260,157

The contracts in the foregoing table had contractual maturities of 21 months or less and 12 months or less at March 31, 2023 and December 31, 2022, respectively.

At March 31, 2023, we expect to reclassify \$0.7 million of gains on derivative instruments from accumulated OCI to net sales during the next twelve months when the hedged international sales occur, \$1.2 million of losses on derivative instruments from accumulated OCI to cost of sales during the next twelve months when the cost of sales are incurred, and \$0.9 million of losses on derivative instruments from accumulated OCI to operating expenses during the next twelve months when the hedged operating expenses occur. Expected amounts are based on derivative valuations at March 31, 2023. Actual results may vary materially as a result of changes in the corresponding exchange rates subsequent to this date.

In 2022, we entered into interest rate swap agreements with an aggregate notional value of \$300 million and a term of three years. The economic effect of the swap agreements is to mitigate the uncertainty of the cash flows associated with floating-rate interest payments due under our term loan and revolving credit facility ("Credit Facility") by fixing the underlying annual interest rate for a portion of our outstanding debt under the Credit Facility at 3.9%, plus a margin. We have designated these interest rate swap agreements as qualifying hedging instruments and are accounting for these as cash flow hedges pursuant to ASC 815, Derivatives and Hedging.

The fair values of these interest rate swap agreements are included in prepaid expenses and other current assets and other long-term liabilities in our consolidated balance sheets at March 31, 2023 and December 31, 2022. Changes in the fair values of these interest rate swap agreements are reported in accumulated other comprehensive loss in our consolidated balance sheets and an amount is reclassified out of accumulated other comprehensive loss into Other (expense) income in the same period that the corresponding interest expense is recognized.

We do not use any interest rate swap agreements for trading purposes.

Other Derivatives

Other derivatives not designated as hedging instruments consist primarily of foreign currency forward contracts that we use to hedge our foreign denominated monetary assets and liabilities to help protect against the change in value caused by a fluctuation in foreign currency exchange rates. We typically attempt to hedge up to 90% of our outstanding foreign denominated net receivables or net payables and typically limit the duration of these foreign currency forward contracts to approximately 90 days or less. The gain or loss on the derivatives as well as the offsetting gain or loss on the hedge item attributable to the hedged risk is recognized in current earnings under the line item "Other (expense) income." As of March 31, 2023 and December 31, 2022, we held foreign currency forward contracts that were not designated as hedging instruments with a notional amount of \$266 million and \$282 million, respectively.

The following tables present the fair value of derivative instruments on our Consolidated Balance Sheets at March 31, 2023 and December 31, 2022, respectively.

	Balance Sheet Location	Asset Derivatives	
		March 31, 2023 (Unaudited)	December 31, 2022
(In thousands)		Fair Value	Fair Value
Derivatives designated as hedging instruments			
Foreign exchange contracts - ST forwards	Prepaid expenses and other current assets	\$ 5,760	\$ 8,968
Interest rate contracts - ST forwards	Prepaid expenses and other current assets	1,954	2,299
Foreign exchange contracts - LT forwards	Other long-term assets	470	—
Total derivatives designated as hedging instruments		<u>\$ 8,184</u>	<u>\$ 11,267</u>
Derivatives not designated as hedging instruments			
Foreign exchange contracts - ST forwards	Prepaid expenses and other current assets	\$ 2,219	\$ 1,057
Total derivatives not designated as hedging instruments		<u>\$ 2,219</u>	<u>\$ 1,057</u>
Total derivatives		<u>\$ 10,403</u>	<u>\$ 12,324</u>

		Liability Derivatives	
		March 31, 2023	December 31, 2022
		(Unaudited)	
(In thousands)	Balance Sheet Location	Fair Value	Fair Value
Derivatives designated as hedging instruments			
Foreign exchange contracts - ST forwards	Accrued expenses and other current liabilities	\$ (7,175)	\$ (9,940)
Foreign exchange contracts - LT forwards	Other long-term liabilities	—	(196)
Interest rate contracts - LT forwards	Other long-term liabilities	(2,634)	(1,013)
Total derivatives designated as hedging instruments		\$ (9,809)	\$ (11,149)
Derivatives not designated as hedging instruments			
Foreign exchange contracts - ST forwards	Other current liabilities	\$ (3,046)	\$ (8,177)
Total derivatives not designated as hedging instruments		\$ (3,046)	\$ (8,177)
Total derivatives		\$ (12,855)	\$ (19,326)

The following tables present the effect of derivative instruments on our Consolidated Statements of Income for the three-months ended March 31, 2023 and 2022, respectively:

March 31, 2023
(In thousands)
(Unaudited)

Derivatives in Cash Flow Hedging Relationship	Gain or (Loss) Recognized in OCI on Derivative	Location of Gain or (Loss) Reclassified from Accumulated OCI into Income	Gain or (Loss) Reclassified from Accumulated OCI into Income
Foreign exchange contracts - forwards	\$ (1,729)	Net sales	\$ 2,244
Foreign exchange contracts - forwards	1,143	Cost of sales	(560)
Foreign exchange contracts - forwards	876	Operating expenses	(328)
Interest rate swap contracts - forwards	(1,966)	Other (expense) income	527
Total	\$ (1,676)		\$ 1,883

March 31, 2022
(In thousands)
(Unaudited)

Derivatives in Cash Flow Hedging Relationship	Gain or (Loss) Recognized in OCI on Derivative	Location of Gain or (Loss) Reclassified from Accumulated OCI into Income	Gain or (Loss) Reclassified from Accumulated OCI into Income
Foreign exchange contracts - forwards	\$ 1,884	Net sales	\$ 1,739
Foreign exchange contracts - forwards	(21)	Cost of sales	(327)
Foreign exchange contracts - forwards	4	Operating expenses	(239)
Total	\$ 1,867		\$ 1,173

(In thousands)

Derivatives not Designated as Hedging Instruments	Location of Gain (Loss) Recognized in Income	Amount of Gain (Loss) Recognized in Income	Amount of Gain (Loss) Recognized in Income
		March 31, 2023 (Unaudited)	March 31, 2022 (Unaudited)
Foreign exchange contracts - forwards	Other (expense) income	\$ (856)	(803)
Total		\$ (856)	\$ (803)

Note 6 – Inventories, net

Inventories, net consist of the following:

(In thousands)	March 31, 2023 (Unaudited)		December 31, 2022	
Raw materials	\$	280,246	\$	273,311
Work-in-process		13,629		14,968
Finished goods		129,606		119,302
Total	\$	423,481	\$	407,581
Less: Inventory reserve	\$	(22,421)	\$	(19,417)
Total	\$	401,060	\$	388,164

Note 7 – Intangible assets, net and goodwill

Intangible assets at March 31, 2023 and December 31, 2022 were as follows:

(In thousands)	March 31, 2023 (Unaudited)			December 31, 2022		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Capitalized software development costs	\$ 14,216	\$ (10,560)	\$ 3,656	\$ 18,810	\$ (15,321)	\$ 3,489
Acquired technology	177,521	(60,929)	116,592	167,686	(54,351)	113,335
Customer relationships	96,935	(29,150)	67,785	98,827	(33,514)	65,313
Patents	37,395	(31,756)	5,639	37,240	(31,368)	5,872
Other	29,516	(14,981)	14,535	34,078	(21,237)	12,841
Total	\$ 355,583	\$ (147,376)	\$ 208,207	\$ 356,641	\$ (155,791)	\$ 200,850

Amortization of capitalized software development costs is computed on an individual product basis for those products available for market and is recognized based on the product's estimated economic life, which generally range from three to six years. Acquired technology, customer relationships and other intangible assets are amortized over their useful lives, which generally range from five to ten years. Patents are amortized using the straight-line method over their estimated period of benefit, which generally range from ten to seventeen years. Total intangible assets amortization expenses were \$12.7 million and \$12.4 million for the three months ended March 31, 2023 and 2022, respectively.

Goodwill

The carrying amount of goodwill as of March 31, 2023 was as follows:

	Amount (In thousands)
Balance as of December 31, 2022	\$ 615,734
Acquisitions	12,050
Foreign currency translation impact	3,095
Balance as of March 31, 2023 (unaudited)	<u>\$ 630,879</u>

The excess purchase price over the fair value of assets acquired is recorded as goodwill. As businesses are acquired, we assign assets acquired (including goodwill) and liabilities assumed to either our existing reporting unit or a newly identified reporting unit as of the date of the acquisition. In the event a disposal group meets the definition of a business, goodwill is allocated to the disposal group based on the relative fair value of the disposal group to the related reporting unit. As we have one operating segment comprised of components with similar economic characteristics, we allocate goodwill to one reporting unit for goodwill impairment testing. Goodwill is tested for impairment on an annual basis, and between annual tests if indicators of potential impairment exist, using a fair-value-based approach based on the market capitalization of the reporting unit. Our annual impairment test is performed in the fourth quarter of each year.

No impairment of goodwill was identified during the three months ended March 31, 2023 or the twelve months ended December 31, 2022.

Note 8 – Leases

We have operating leases for corporate offices, automobiles, and certain equipment. Our leases have remaining terms of 1 year to 91 years, some of which may include options to extend the leases for up to 9 years, and some of which may include options to terminate the leases within 1 year. Leases with an initial term of 12 months or less are not recorded on the balance sheet. We recognize lease expense for these leases on a straight-line basis over the lease term.

Amounts related to finance lease activities and income from leasing activities were not material for the periods presented.

The components of operating lease expense were as follows (unaudited):

(In thousands)	March 31, 2023	March 31, 2022
Operating Lease Cost (1)	\$ 6,314	\$ 5,417
(1) includes variable and short-term lease costs		

Maturities of lease liabilities as of March 31, 2023 were as follows (unaudited):

(In thousands)	Operating Leases
Years ending December 31,	
2023 (Excluding the three months ended March 31, 2023)	\$ 13,616
2024	14,332
2025	10,498
2026	8,743
2027	4,582
Thereafter	6,009
Total future minimum lease payments	57,780
Less imputed interest	5,683
Total lease liabilities	\$ 52,097

As of March 31, 2023, we have additional operating leases that have not commenced, which were not material.

Note 9 – Income taxes

We account for income taxes under the asset and liability method. Deferred tax assets and liabilities are recognized for the expected tax consequences of temporary differences between the tax bases of assets and liabilities and their reported amounts. Valuation allowances are established when necessary to reduce deferred tax assets to amounts which are more likely than not to be realized. We had a valuation allowance of \$75 million and \$74 million at March 31, 2023 and December 31, 2022, respectively. A majority of the valuation allowance is related to the deferred tax assets of National Instruments Hungary Kft. (“NI Hungary”).

We account for uncertainty in income taxes recognized in our financial statements using prescribed recognition thresholds and measurement attributes for financial statement disclosure of tax positions taken or expected to be taken on our tax returns. We had \$16.0 million and \$12.6 million of gross unrecognized tax benefits at March 31, 2023 and December 31, 2022, respectively, all of which would affect our effective income tax rate if recognized. We recorded a gross increase in unrecognized tax benefits of \$3.4 million for the three months ended March 31, 2023, as a result of the tax positions taken during this period. As of March 31, 2023, it is reasonably possible that we will recognize gross tax benefits in the amount of \$0.8 million in the next twelve months due to the closing of open tax years. The nature of the uncertainty is related to positions taken on returns that have not been examined by the applicable tax authority. Our continuing policy is to recognize interest and penalties related to income tax matters in income tax expense. During the three months ended March 31, 2023, we recognized interest expense related to uncertain tax positions of approximately \$0.1 million. As of March 31, 2023, we had approximately \$0.3 million accrued for interest related to uncertain tax positions. The tax years 2016 through 2023 remain open to examination by the major taxing jurisdictions to which we are subject.

Our provision for income taxes reflected an effective tax rate of 13% and 17% for the three months ended March 31, 2023 and 2022, respectively. For the three months ended March 31, 2023, our effective tax rate was lower than the U.S. federal statutory rate of 21% primarily as a result of an enhanced deduction for certain research and development expenses, deduction for foreign-derived intangible income and the research and development tax credit, which were offset by the change in unrecognized tax benefits. For the three months ended March 31, 2022, our effective tax rate was lower than the U.S. federal statutory rate of 21% primarily as a result of deduction for foreign-derived intangible income, an enhanced deduction for certain research and development expenses and the research and development tax credit, offset by the change in unrecognized tax benefits, nondeductible officer compensation and state income taxes net of federal benefit and U.S. tax on global intangible low-taxed income.

Our earnings in Hungary are subject to a statutory tax rate of 9%. In addition, our research and development activities in Hungary benefit from a tax law in Hungary that provides for an enhanced deduction for qualified research and development expenses. The tax position of our Hungarian operations resulted in income tax benefits of \$6.1 million and \$2.0 million for the three months ended March 31, 2023, and March 31, 2022, respectively.

Earnings from our operations in Malaysia are free of tax under a tax holiday effective January 1, 2013. This tax holiday expires in 2037. If we fail to satisfy the conditions of the tax holiday, this tax benefit may be terminated early. The income tax benefits of the tax holiday for the three months ended March 31, 2023, and March 31, 2022 were approximately \$1.3 million and \$0.6 million, respectively. The impact of the tax holiday on a per share basis for each of the three months ended March 31, 2023 and March 31, 2022 was a benefit of \$0.01 per share.

No other taxing jurisdictions had a significant impact on our effective tax rate. We have not entered into any advanced pricing or other agreements with the Internal Revenue Service ("IRS") with regard to any foreign jurisdictions.

Note 10 – Comprehensive income

Our OCI is comprised of net income, foreign currency translation adjustments, and unrealized gains and losses on forward contracts. The accumulated OCI, net of tax, for the three months ended March 31, 2023 and 2022, consisted of the following:

(In thousands)	March 31, 2023			
	(Unaudited)			
	Currency translation adjustment	Investments	Derivative instruments	Accumulated other comprehensive income/(loss)
Balance as of December 31, 2022	\$ (38,250)	\$ —	385	\$ (37,865)
Current-period other comprehensive income (loss)	4,889	—	207	5,096
Reclassified from accumulated OCI into income	—	—	(1,883)	(1,883)
Income tax benefit	—	—	384	384
Balance as of March 31, 2023	<u>\$ (33,361)</u>	<u>\$ —</u>	<u>\$ (907)</u>	<u>\$ (34,268)</u>

(In thousands)	March 31, 2022			
	(Unaudited)			
	Currency translation adjustment	Investments	Derivative instruments	Accumulated other comprehensive income/(loss)
Balance as of December 31, 2021	\$ (23,179)	\$ —	3,048	\$ (20,131)
Current-period other comprehensive (loss) income	(3,805)	—	3,040	(765)
Reclassified from accumulated OCI into income	—	—	(1,173)	(1,173)
Income tax expense	—	—	(425)	(425)
Balance as of March 31, 2022	<u>\$ (26,984)</u>	<u>\$ —</u>	<u>\$ 4,490</u>	<u>\$ (22,494)</u>

Note 11 – Authorized shares of common and preferred stock and stock-based compensation plans

Authorized shares of common and preferred stock

The total number of shares which we are authorized to issue is 365,000,000 shares, consisting of (i) 5,000,000 shares of preferred stock, par value \$0.01 per share, and (ii) 360,000,000 shares of common stock, par value \$0.01 per share.

Stock-Based Compensation Plan

Our stockholders approved our 2010 Incentive Plan (the “2010 Plan”) on May 11, 2010. At the time of approval, 3,000,000 shares of our common stock were reserved for issuance under the 2010 Plan, as well as the 3,362,304 shares of common stock that were reserved but not issued under our 1994 Incentive Stock Options Plan (the “1994 Plan”) and the 2005 Incentive Plan (the “2005 Plan”) as of May 11, 2010, and any shares that are returned to the 1994 Plan and the 2005 Plan as a result of the forfeiture or termination of options or RSUs or repurchase of shares issued under those plans. The 2010 Plan provided for the granting of incentive awards in the form of restricted stock and RSUs to employees, directors and consultants of the Company and employees and consultants of any parent or subsidiary of the Company. Awards vest over a three, five or ten-year period, beginning on the date of grant. Vesting of ten-year awards may accelerate based on our previous year’s earnings and growth but ten-year awards cannot accelerate to vest over a period of less than five years. The 2010 Plan terminated on May 12, 2015, except with respect to the outstanding awards previously granted thereunder. There were 2,518,416 shares of common stock that were reserved but not issued under the 2010 Plan as of May 12, 2015.

Our stockholders approved our 2015 Equity Incentive Plan (the “2015 Plan”) on May 12, 2015. At the time of approval, 3,000,000 shares of our common stock were reserved for issuance under the 2015 Plan, as well as the 2,518,416 shares of common stock that were reserved but not issued under the 2010 Plan as of May 12, 2015, and any shares that were returned to the 1994 Plan, 2005 Plan, and 2010 Plan as a result of the forfeiture or termination of options or RSUs or repurchase of shares issued under those plans. The 2015 Plan provides for the granting of incentive awards in the form of restricted stock and RSUs, to employees, directors and consultants of the Company and employees and consultants of any parent or subsidiary of the Company and such awards may be subject to performance-based vesting conditions. Awards generally vest over a three, four, five or ten-year period, beginning on the date of grant. Vesting of ten-year awards may accelerate based on our previous year’s earnings and growth but ten-year awards cannot accelerate to vest over a period of less than five years. The 2015 Plan terminated on May 5, 2020, except with respect to the outstanding awards previously granted thereunder. There were 567,142 shares of common stock that were reserved but not issued under the 2015 Plan as of May 5, 2020.

Our stockholders approved our 2020 Equity Incentive Plan (the “2020 Plan”) on May 5, 2020. At the time of approval, 4,500,000 shares of our common stock were reserved for issuance under the 2020 Plan, as well as the 567,142 shares of common stock that were reserved but not issued under the 2015 Plan as of May 5, 2020, and any shares that were returned to the 2005 Plan, 2010 Plan, and 2015 Plan as a result of the forfeiture or termination of options or RSUs or repurchase of shares issued under those plans. The 2020 Plan provides for the granting of incentive awards in the form of restricted stock and RSUs to employees, directors and consultants of the Company and employees and consultants of any parent or subsidiary of the Company. Awards generally vest over a one, two, three or four-year period, beginning on the date of the grant and awards may be subject to performance-based vesting conditions. There were 1,568,571 shares of common stock that were reserved but not issued under the 2020 Plan as of May 10, 2022.

Our stockholders approved our 2022 Equity Incentive Plan (the “2022 Plan”) on May 10, 2022. At the time of approval, 4,500,000 shares of our common stock were reserved for issuance under the 2022 Plan, as well as the 1,568,571 shares of common stock that were reserved but not issued under the 2020 Plan as of May 10, 2022, and any shares that were returned to the 2005 Plan, 2010 Plan, 2015 Plan and 2020 Plan as a result of the forfeiture, repurchase or termination of unissued shares subject to options or RSUs issued under those plans. The 2022 Plan provides for the granting of incentive awards in the form of restricted stock and RSUs to employees, directors and consultants of the Company and employees and consultants of any parent or subsidiary of the Company. Awards generally vest over a one, two, three or four years period, beginning on the date of the grant and awards may be subject to performance-based vesting conditions. There were 6,109,748 shares available for grant under the 2022 Plan at March 31, 2023.

Performance-based stock units

During the three months ended March 31, 2023 and 2022, we granted 70,224 and 164,843 PRSUs, respectively, to executive officers pursuant to the 2022 Plan and 2020 Plan. The PRSUs may be earned based on our total shareholder return ("TSR") compared to the TSR of the Russell 2000 Index or, for awards granted on or after March 3, 2023, the NASDAQ Composite Index (the "Index") over a three-year performance period. For the PRSUs granted during the three months ended March 31, 2023, the three-year performance period commenced on January 1, 2023, and will end on December 31, 2025, and for the PRSUs granted during the three months ended March 31, 2022, the three-year performance period commenced on January 1, 2022 and will end on December 31, 2024, using the average daily closing price over a 30-day lookback in each case. The number of awards earned could range from 0% to 200% of the target number of units granted. Additionally, for awards granted on or after March 3, 2023, the number of PRSUs that may vest pursuant to an award agreement shall not exceed 100% of the target number of PRSUs subject to such award if our absolute total shareholder return is negative during the performance period for such award.

The fair values of PRSUs are estimated using a Monte Carlo simulation. The determination of fair value of the PRSUs is based on our stock price and a number of assumptions including the expected volatility, expected dividend yield and the risk-free interest rate. The expected volatility at the date of grant was based on the historical volatilities of our stock and the companies included in the Index over the performance period. The Monte Carlo model is based on random projections of stock-price paths and must be repeated numerous times to achieve a probabilistic assessment. The key assumptions used in valuing these market-based awards are as follows:

	Three Months Ended (unaudited)	
	March 31, 2023	March 31, 2022
Number of simulations	100,000	100,000
Expected volatility	32.27%	37.81%
Expected life in years	2.84 years	2.95 years
Risk-free interest rate	4.45%	1.33%
Dividend yield	2.45%	2.52%

The weighted average grant date fair value of the market-based awards, as determined by the Monte Carlo valuation model, was \$84.45 per share and \$59.65 per share in 2023 and 2022, respectively.

Employee stock purchase plan

Our employee stock purchase plan ("ESPP") permits substantially all domestic employees and employees of designated subsidiaries to acquire our common stock at a purchase price of 85% of the lower of the market price at the beginning or the end of the purchase period. The plan has quarterly purchase periods generally beginning on February 1, May 1, August 1 and November 1 of each year. Employees may designate up to 15% of their compensation for the purchase of common stock under the ESPP. Pursuant to the terms of our merger agreement with Emerson, our ESPP program will be suspended indefinitely after the May 1, 2023 purchase. Refer to Note 18 - Subsequent Events of Notes to Consolidated financials for additional information on the proposed transaction.

On May 10, 2022, our stockholders approved an additional 3,000,000 shares for issuance under our ESPP. At March 31, 2023, we had 3,797,114 shares of common stock reserved for future issuance under the ESPP. We issued 275,976 shares under this plan in the three months ended March 31, 2023 and the weighted average purchase price of the shares issued was \$32.45 per share. During the three months ended March 31, 2023, we did not make any changes in accounting principles or methods of estimates with respect to our ESPP.

Authorized Preferred Stock and Preferred Stock Purchase Rights Plan

We have 5,000,000 authorized shares of preferred stock.

On January 21, 2004, our Board of Directors designated 750,000 of these shares as Series A Participating Preferred Stock in conjunction with the adoption of a Preferred Stock Rights Agreement which expired on May 10, 2014. There were no shares of Series A Preferred Stock issued and outstanding at March 31, 2023.

On January 13, 2023, our Board of Directors designated 2,000,000 of these shares as Series B Participating Preferred Stock (“Series B Preferred Stock”) in conjunction with its adoption of a stockholder rights plan, as previously disclosed in our Current Report on Form 8-K filed on January 13, 2023. On April 12, 2023, in connection with entering into the merger agreement with Emerson, the stockholder rights plan was modified so that the rights thereunder will not be exercisable by virtue of the merger agreement or any agreement or transactions contemplated thereby, as previously disclosed in our Current Report on Form 8-K filed on April 12, 2023.

Stock repurchases and retirements

On April 21, 2010, our Board of Directors authorized a program to repurchase shares of our common stock from time to time, depending on market conditions and other factors (the “2019 Program”). The Board has amended the 2019 Program several times over the years to increase the number of shares that may be purchased under the program. On October 23, 2019, our Board amended the 2019 Program to increase the number of shares that may be repurchased by 3,000,000 shares.

On January 19, 2022, our Board of Directors approved a new stock repurchase plan for up to \$250 million of our common stock, effective immediately (the “2022 Program”). This new repurchase program is in addition to the existing 2019 Program. Under the 2022 Program, shares may be repurchased from time to time in open market transactions, in privately negotiated transactions or otherwise. The timing and the other terms of the repurchase will depend on a variety of factors, including legal requirements, economic and market conditions, and other investment opportunities. The 2022 Program may be changed, suspended or discontinued at any time and does not have a specified expiration date.

At March 31, 2023, there were 0 shares remaining available for repurchase under the 2019 Program and there was \$230 million available for repurchase under the 2022 Program. We did not repurchase any shares of our common stock during the three-months ended March 31, 2023 under the 2019 Program and 2022 Program. We repurchased 772,052 shares of our common stock at a weighted average price per share of \$40.74 during the three-months ended March 31, 2022 under the 2019 Program and 2022 Program.

Note 12 – Segment and geographic information

We operate as one operating segment. Operating segments are defined as components of an enterprise for which separate financial information is evaluated regularly by the chief operating decision maker, who is our chief executive officer, in deciding how to allocate resources and in assessing performance. Our chief operating decision maker evaluates our financial information and resources and assesses the performance of these resources on a consolidated basis. Since we operate as one operating segment, all required financial segment information can be found in the condensed consolidated financial statements and the notes thereto.

We sell our products in three geographic regions which consist of: the Americas; Europe, Middle East and Africa region (“EMEA”); and Asia-Pacific region (“APAC”). Our sales to these regions share similar economic characteristics including the nature of products and services we sell, the type and class of customers, and the methods used to distribute our products and services. Revenue from the sale of our products, which are similar in nature, and software maintenance are reflected as total net sales in our Consolidated Statements of Income. (See Note 2 –Revenue of Notes to Consolidated Financial Statements for total net sales by the major geographic regions in which we operate).

The following table presents summarized information for net sales by country. Revenues from external customers are generally attributed to countries based upon the customer's billing location. Net sales attributable to each individual foreign country outside the U.S. and China were not material.

<i>(in millions)</i>	United States	China ⁽¹⁾	Rest of the World	Total
Net sales:				
Three months ended March 31, 2023	\$ 172	82	183	\$ 437
Three months ended March 31, 2022	\$ 152	55	178	\$ 385

(1): Includes Mainland China and the Hong Kong Special Administrative Region

The following table presents summarized information for long-lived assets by country. Long-lived assets attributable to each individual country outside the U.S., Hungary and Malaysia were not material. Long-lived assets consist of property, plant, and equipment and operating lease right-of-use assets and exclude intangible assets.

(in millions)	United States	Hungary	Malaysia	Rest of the World	Total
Long-lived Assets:					
March 31, 2023	\$ 142	59	81	63 \$	345
December 31, 2022	\$ 124	58	82	61 \$	325

Note 13 - Debt

The following table presents the amounts outstanding related to our borrowing arrangements discussed below as of March 31, 2023, and December 31, 2022, respectively (in thousands):

	March 31, 2023	December 31, 2022
Secured		
Term Loan	487,500	493,750
Revolving credit facility	30,000	50,000
Total Debt	517,500	543,750
Less: Unamortized debt issuance costs	(1,995)	(2,113)
Less: Current Portion of Total Debt	(25,000)	(25,000)
Total Debt, non-current	\$ 490,505 \$	516,637

The effective interest rate for the term loan and the revolving credit facility, both drawn under our Credit Facility, was 6.3% as of March 31, 2023. The effective interest rates for the term loan and revolving credit facility as of December 31, 2022 were 5.6% and 5.7%, respectively.

Debt Issuance Costs

Debt issuance costs of approximately \$1.9 million attributable to our revolving credit are presented within "Other long-term assets" in our Consolidated Balance Sheet and debt issuance costs of approximately \$2.0 million attributable to the term loan are presented within "Debt, non-current" as of March 31, 2023. Debt issuance costs of approximately \$2.1 million attributable to our revolving credit are presented within "Other long-term assets" in our Consolidated Balance Sheet and debt issuance costs of approximately \$2.1 million attributable to the term loan are presented within "Debt, non-current" as of December 31, 2022. These amounts are amortized to interest expense ratably over the life of the revolving credit and the term loan, respectively.

Credit Facility

On August 24, 2022, we amended the terms of our Credit Facility by entering into a Third Amended and Restated Credit Agreement (the "Credit Agreement") with Wells Fargo Bank, National Association, as the administrative agent, swingline lender and issuing lender (the "Administrative Agent"), Wells Fargo Securities, LLC, BofA Securities, Inc. and Citibank, N.A., as joint lead arrangers and joint bookrunners, BofA Securities, Inc. and Citibank, N.A., as syndication agents, and the lenders party thereto. The Credit Agreement amends and restates and refinances our Second Amended and Restated Credit Agreement, dated as of June 18, 2021, by and among us, the lenders from time-to-time party thereto and Wells Fargo Bank, National Association, as the administrative agent (the "Prior Credit Agreement"). All outstanding loans under the Prior Credit Agreement were repaid in full in connection with the entry into the Credit Agreement. The replacement of the Prior Credit Agreement with the Credit Agreement was treated as a debt modification and the remaining balance of unamortized debt issuance costs were allocated to the new loan facilities, as described below.

The Credit Agreement provides for an initial \$1 billion Credit Facility consisting of (a) a secured revolving loan facility in an aggregate principal amount of up to \$500 million at any time outstanding, with a sublimit of \$25 million for the issuance of letters of credit and (b) a secured term loan facility in an aggregate principal amount of \$500 million. Subject to the terms of the Credit Agreement, including obtaining commitments from existing lenders or new lenders, we may request additional term loans and/or revolving loan commitments. The Credit Facility terminates, and all revolving loans outstanding and/or outstanding term loan amounts (together with accrued interest and fees) are payable in full, on August 24, 2027, unless terminated earlier pursuant to the terms of the Credit Agreement. The term loans amortize in quarterly payments equal to 1.25% of the original principal amount of the term loans, with the remaining outstanding balance due at maturity.

The term loans and revolving loans accrue interest, at our option, at: (i) a base rate equal to the highest of (a) the prime rate (b) the federal funds rate plus 0.50%, and (c) an adjusted term SOFR for an interest period of one month plus 1.00%, plus a margin of 0.25% to 0.75%; or (ii) an adjusted term SOFR (for an interest period of one, three or six months) plus a margin of 1.25% to 1.75%, with the margin being determined based upon our consolidated total net leverage ratio. The Credit Agreement contains financial covenants requiring us to maintain a maximum consolidated total net leverage ratio of less than or equal to 3.50 to 1.00 which increases to 4.00 to 1.00 for a specified period following material acquisitions, and a minimum consolidated interest coverage ratio of greater than or equal to 3.00 to 1.00, in each case determined in accordance with the Credit Agreement.

The Credit Agreement provides for a commitment fee of 0.150% to 0.250% per annum, determined based upon our consolidated total net leverage ratio, on the average daily unused portion of the revolving committed amount, payable quarterly in arrears.

Under the circumstances described in the Credit Agreement, certain of our wholly owned domestic subsidiaries (the "Subsidiary Guarantors") are required to enter into a guaranty agreement ("Guaranty") in favor of the Administrative Agent guarantying our obligations under the Credit Agreement, among other things. As of March 31, 2023, there were no Subsidiary Guarantors, and no Guaranty had been executed. In connection with the Credit Agreement, we entered into a Second Amended and Restated Collateral Agreement (the "Collateral Agreement") pursuant to which we granted a continuing security interest on substantially all of our assets, in favor of the Administrative Agent (for the benefit of the lenders of the Credit Facility), to secure our obligations under the Credit Agreement. Subsidiary Guarantors are required to join the Collateral Agreement and make similar grants of security interests.

The Credit Agreement contains customary affirmative and negative covenants. The affirmative covenants include, among other things, delivery of financial statements, compliance certificates and notices, payment of taxes and other obligations, maintenance of existence, maintenance of properties and insurance, maintenance of books and records, and compliance with applicable laws and regulations. The negative covenants include, among other things, limitations on indebtedness, liens, mergers, consolidations, acquisitions and sales of assets, investments, changes in the nature of the business, affiliate transactions and certain restricted payments. The Credit Agreement contains customary events of default including, among other things, payment defaults, breaches of covenants or representations and warranties, cross-defaults with certain other indebtedness, bankruptcy and insolvency events, judgment defaults and change in control events, subject to grace periods in certain instances. Upon an event of default, the Administrative Agent and the lenders may declare all or a portion of the outstanding obligations payable by us to be immediately due and payable and exercise other rights and remedies provided for under the Credit Agreement. Under certain circumstances, a default interest rate will apply on all obligations during the existence of an event of default under the Credit Agreement at a per annum interest rate equal to 2.00% above the otherwise applicable interest rate.

The proceeds of the term loans made on August 24, 2022 were used to prepay in full the revolving loans outstanding under the Prior Credit Agreement. Remaining proceeds of the term loans made on August 24, 2022 were used to pay associated costs, fees and other expenses and for other working capital and general corporate purposes. Proceeds of current and additional revolving loans under the Credit Agreement may be used for working capital and other general corporate purposes including acquisitions, share repurchases and dividend payouts. We may prepay the loans under the Credit Agreement in whole or in part at any time without premium or penalty.

Note 14 – Commitments and contingencies

We offer a standard warranty on most hardware products which is included in the terms of sale of such products. During 2022, we enhanced the service entitlements included with our standard warranty to include technical support and dependable repair and replacement coverage. Standard warranties sold with these additional entitlements are now accounted for as service-type warranties and the revenue allocated to these performance obligations is now recognized over the service duration of one or three years, and the related warranty costs are recognized as incurred. We also offer additional extensions or enhancements to the service-type warranties described above, for which the related revenue is also recognized ratably over the warranty period. The included service period for the enhanced service entitlements was three years for the vast majority of orders placed during 2022. In late 2022, we shortened the default service period for our service-type warranty entitlements to one year, with the ability to add optional, separately-priced extensions for subsequent years. Consequently, revenue deferrals related to service-type warranties are expected to decrease on a year over year basis during the remainder of 2023.

For hardware previously sold with only an assurance-type warranty, a provision is made for estimated future warranty costs at the time of the sale for the estimated costs that may be incurred. Our estimate is based on historical experience and product sales during the period. The warranty reserve as of March 31, 2023 and December 31, 2022 was \$2.4 million and \$1.5 million, respectively.

In the ordinary course of business, we enter into purchase orders with suppliers for the purchase of goods and services, including non-cancelable agreements for certain inventory components ("unconditional purchase obligations"). Our unconditional purchase obligations primarily consist of commitments to various suppliers for inventory components and the majority relate to amounts due within the next 12 months. As of March 31, 2023 and 2022, our future payments under unconditional purchase obligations with a remaining term in excess of one year were approximately \$13.2 million and \$17.7 million, respectively. As of March 31, 2023, our outstanding guarantees for payment of customs and foreign grants were not material.

Note 15 – Restructuring

2023 Restructuring

During the first quarter of 2023, we announced a workforce reduction plan (the "2023 Plan") intended to realign our investments to accelerate our growth strategy and further optimize our operations and cost structure. The 2023 Plan will result in reductions to our worldwide headcount of approximately 4% during 2023. In connection with the Plan, we incurred approximately \$15.5 million of charges consisting primarily of cash termination benefits and other employee-related costs during the first quarter of 2023.

We expect to incur an additional \$0.9 million of additional costs related to our restructuring plans during the remainder of 2023.

2022 and 2021 Restructuring

During the first quarter of 2023, we recognized approximately \$0.4 million in severance-related charges for restructuring activities that were initiated in prior years. The majority of the charges related to the 2022 and 2021 Plans had been fully recognized as of March 31, 2023.

A summary of the charges in our consolidated statement of operations resulting from our restructuring activities is shown below:

(In thousands)	Three Months Ended March 31, (Unaudited)	
	2023	2022
Cost of sales	\$ 1,520	\$ —
Research and development	3,213	400
Sales and marketing	5,981	—
General and administrative	5,256	—
Total	\$ 15,970	\$ 400

A summary of balance sheet activity during 2023 related to the restructuring activity is shown below:

	Restructuring Liability	
	(in thousands)	
Balance as of December 31, 2022	\$	10,009
Income statement expense		15,970
Cash payments		(14,570)
Balance as of March 31, 2023	\$	11,409

The restructuring liability of \$11.4 million at March 31, 2023, relating primarily to future severance payments is recorded in the “Accrued compensation” line item of the consolidated balance sheet.

Note 16 – Litigation

We are not currently a party to any material litigation. However, in the ordinary course of our business, we have in the past, are currently and may likely become involved in various legal proceedings, claims, and regulatory, tax or government inquiries and investigations, and could incur uninsured liability in any one or more of them. We also periodically receive notifications from various third parties related to alleged infringement of patents or intellectual property rights, commercial disputes or other matters. No assurances can be given with respect to the extent or outcome of any investigation, litigation or dispute.

Note 17 – Acquisitions

SET Acquisition

On March 6, 2023, we acquired the remaining 75.1% ownership interest in one of our equity-method investments, SET GmbH (“SET”), for approximately \$24.8 million in total cash consideration, subject to certain post-closing adjustments. Of the total cash consideration, approximately \$2.7 million will be held back as security for certain representations, warranties, and obligations of the sellers, payable in the first quarter of 2024. SET is a Germany-based expert in aerospace and defense test system development and an innovator in power semiconductor reliability test. This transaction was accounted for as a business combination using the acquisition method of accounting.

We recognized a gain of approximately \$3 million on the remeasurement of our existing 24.9% equity-method investment to fair value on the acquisition date. The carrying value of the investment immediately prior to the acquisition date was approximately \$3 million. The gain is presented in “Other (expense) income.”

All of the acquired assets and liabilities of SET have been recorded at their respective fair values as of the acquisition date. We recognized approximately \$12.1 million of goodwill and \$16.0 million of other intangible assets as part of our preliminary purchase price allocation. Transaction costs have been expensed as incurred and were not material to the periods presented. The acquisition was funded by cash on hand.

The preliminary purchase price allocation related to the acquisition was not finalized as of March 31, 2023, and is based upon a preliminary valuation which is subject to change as we obtain additional information with respect to certain intangible assets and income taxes. Pro-forma results of operations have not been presented as the impact of the acquired operations was not material.

The excess of the purchase price over the net assets acquired was recorded as goodwill. Goodwill generated from the acquisition is primarily attributable to expected growth in the scope of and market opportunities for our existing offerings related to vehicle electrification and other related applications. Goodwill is not deductible for tax purposes.

Kratzer Acquisition

On May 2, 2022, we completed the acquisition of certain assets of, and assumed certain liabilities of, the test systems business ("TS Business") of Germany-based Kratzer Automation AG ("Kratzer"). As part of this integrated transaction, we also purchased 100% of the shares in certain subsidiaries of Kratzer: Kratzer Automation S.a.r.l. ("Kratzer France"), Kratzer Automation Inc. ("Kratzer US") and Kratzer Automation (Shanghai) Co., Ltd. ("Kratzer China"). The acquisitions of Kratzer France, Kratzer US, and Kratzer China were completed on June 1, 2022, June 2, 2022, and August 26, 2022, respectively. This transaction was accounted for as a business combination using the acquisition method of accounting. Total cash consideration for the transaction was \$56.3 million inclusive of \$0.7 million in cash acquired. All of the acquired assets and liabilities of the TS Business have been recorded at their respective fair values as of the acquisition date. The acquisition was funded by cash on hand.

Transaction costs have been expensed as incurred. We expensed \$2.2 million of transaction costs related to the acquisition of the TS Business, which are included in selling, general and administrative expenses.

The excess of the purchase price over the net assets acquired was recorded as goodwill. The goodwill generated from the acquisition is primarily attributed to expected growth in the scope of and market opportunities for our existing offerings related to vehicle electrification test systems and other related applications. The goodwill is deductible locally and in the U.S. over 15 years for federal income tax purposes.

During the fourth quarter of 2022, we recorded measurement period adjustments to our preliminary estimate of the fair value of intangible assets acquired as a result of new information obtained on acquired customer contracts. The net decrease to the fair value of total intangible assets acquired was \$10 million, with a corresponding increase to goodwill. This change to the provisional amount did not have a material impact to the income statements in the current or previous reporting periods.

Fair value of net assets acquired and liabilities assumed

The information below represents the preliminary purchase price allocation of the TS Business (in thousands):

	May 2, 2022
Consideration Transferred	56,324
Cash and cash equivalents	672
Accounts receivable	2,616
Inventories	5,130
Prepaid expenses and other current assets	1,900
Property and equipment	1,145
Goodwill	29,223
Intangible assets	25,010
Operating lease right-of-use assets	4,820
Other long-term assets	108
Accounts payable and accrued expenses	(966)
Accrued compensation	(463)
Operating lease liabilities - current	(1,050)
Accrued expenses and other current liabilities	(8,233)
Operating lease liabilities - non-current	(3,588)
Net Assets Acquired	56,324

The preliminary purchase price allocation related to the acquisition was not finalized as of March 31, 2023. These preliminary estimates of the fair value of the assets acquired and the liabilities assumed are based on the information currently available, and we are continuing to evaluate the underlying inputs and assumptions used in our valuations. Accordingly, these preliminary estimates are subject to change during the measurement period, which is up to one year from the date of acquisition. A decrease in the fair value of assets acquired or an increase in the fair value of liabilities assumed in the acquisition would result in a corresponding increase in the amount of goodwill acquired. The primary areas of purchase price that are not yet finalized relate to intangible assets, income taxes and residual goodwill.

Acquired intangible assets will be amortized over their estimated useful lives on a straight-line basis. The following table summarizes the preliminary purchase price allocation and the preliminary average remaining useful lives for identifiable intangible assets acquired.

	Estimated Fair Value (in thousands)	Estimated Useful Lives (in years)
Customer relationships	\$ 2,470	10
Developed software	20,830	5
Trade name contractual rights	1,710	2
Total	25,010	

Customer relationships represent the fair value of future projected revenue that will be derived from sales of products to existing customers. The economic useful life was determined by examining the period of time over which the customer attrition curve falls below a target threshold.

Developed software represents the fair value of automation systems for performing test bench tasks and management systems for all resources and accruing data in the test field. The economic life of this software is estimated to be 5 years based on the expected future utilization of the software in its current form.

Results of operations of the business acquired have been included in our condensed consolidated financial statements subsequent to the dates of acquisition. Pro-forma results of operations have not been presented as the impact of the acquired operations was not material.

Heinzinger Acquisition

On February 28, 2022, we completed the acquisition of the systems business of Heinzinger Electronic GmbH (“Heinzinger”) for \$22.5 million in total cash consideration, including a holdback amount of approximately \$3.1 million that was released to Heinzinger during the first quarter of 2023. This transaction was accounted for as a business combination using the acquisition method of accounting. All of the acquired assets and liabilities of Heinzinger have been recorded at their respective fair values as of the acquisition date. We recognized approximately \$13.5 million of goodwill and \$7.2 million of other intangible assets as part of our preliminary purchase price allocation. Transaction costs have been expensed as incurred and were not material to the periods presented. The acquisition was funded by cash on hand.

The excess of the purchase price over the net assets acquired was recorded as goodwill. Goodwill generated from the acquisition is primarily attributable to expected growth in the scope of and market opportunities for our existing offerings related to vehicle electrification and other related applications. Goodwill is not deductible for tax purposes.

The purchase price allocation related to the acquisition was finalized as of February 28, 2023. Pro-forma results of operations have not been presented as the impact of the acquired operations was not material.

Note 18 – Subsequent events

Dividend

On April 26, 2023, our Board of Directors declared a quarterly cash dividend of \$0.28 per common share, payable on May 31, 2023, to stockholders of record as of the close of business on May 9, 2023.

Acquisition

On April 12, 2023 the Company entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Emerson Electric Co., a Missouri corporation (“Parent”) and Emersub CXIV, Inc., a Delaware corporation and a wholly owned subsidiary of Parent (“Merger Sub”). Pursuant to the Merger Agreement, Merger Sub will be merged with and into the Company (the “Merger”), with the Company continuing as the surviving company in the Merger.

Subject to the terms and conditions set forth in the Merger Agreement, at the effective time of the Merger, each share of common stock, par value \$0.01 per share, of the Company issued and outstanding immediately prior to the effective time of the Merger will be converted into the right to receive \$60.00 per Company share in cash, without interest.

Completion of the Merger is subject to certain conditions, including the receipt of the necessary approval from the Company’s shareholders, the satisfaction of certain regulatory approvals and other customary closing conditions. The parties expect to close the transaction during the last calendar quarter of 2023 or the first calendar quarter of 2024.

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

National Instruments Corporation and its subsidiaries (referred to as the “Company,” “we,” “us,” “our,” “National Instruments” or “NI”) has made forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that are subject to risks and uncertainties. Any statements contained herein regarding our future financial performance, operations, plans, investments, expected effects of investments, or other matters (including, without limitation, statements to the effect that we “believe,” “expect,” “plan,” “intend to,” “may,” “could,” “can,” “will,” “project,” “predict,” “anticipate,” “continue,” “strive to,” “endeavor to,” “seek to,” “are committed to,” “remaining committed to,” “are encouraged by,” “remain cautious,” “remain optimistic,” “estimate”, “focus on”; statements of “goals,” “commitments,” “strategy,” “opportunities” or “visions”; or other variations thereof or comparable terminology or the negative thereof) should be considered forward-looking statements. All forward-looking statements are based on current expectations and projections of future events. We claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 for all forward-looking statements.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, forward-looking statements are not guarantees of performance and actual results could differ materially from those projected in the forward-looking statements as a result of a number of important factors, including those set forth under the heading “Risk Factors” below and in “Part 1, Item 1A. Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 (the “2022 Form 10-K”) filed with the U.S. Securities and Exchange Commission (the “SEC”). Actual results could differ materially from those stated or implied by our forward-looking statements, due to risks and uncertainties associated with our business or under different assumptions or conditions. You should not place undue reliance on any of these forward-looking statements. Any forward-looking statement speaks only as of the date on which it is made, and we disclaim any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

The following discussion should be read in conjunction with the 2022 Form 10-K and the condensed consolidated financial statements and accompanying notes included in Part 1, Item 1 of this Form 10-Q.

Overview and Current Business Outlook

For more than 40 years, we have enabled engineers and scientists around the world to accelerate productivity, innovation and discovery. Our software-centric platform provides an advanced approach through integration of software and modular hardware to create automated test and automated measurement systems. We believe our long-term track record of innovation and our differentiated platform help support the success of our customers, employees, suppliers, community and stockholders. We have been profitable in every year since 1990. We sell to a large number of customers in a wide variety of industries.

The key strategies that we focus on in running our business are the following:

- **Expanding our available market opportunity**

We strive to increase our available market by identifying new opportunities with existing customers, attracting and serving new customers, and expanding our business to market adjacencies. Our large network of existing customers provides a broad base from which to expand.

- **Maintaining a high level of customer satisfaction**

To maintain a high level of customer satisfaction, we strive to offer innovative, modular and integrated products through a global sales and support network. We strive to maintain a high degree of backward compatibility across different platforms to preserve the customer's investment in our products. In this time of intense global competition, we believe it is crucial that we continue to offer products with high quality and reliability, and that our products provide cost-effective solutions for our customers.

- **Leveraging external and internal technology**

Our product strategy is to provide superior products by leveraging generally available technology, supporting open architectures on multiple platforms and by leveraging our core technologies across multiple products.

We sell into test and measurement and industrial/embedded applications in a broad range of industries and are subject to the economic and industry forces that drive those markets. Examples of these types of customers include semiconductor and electronics, transportation, and aerospace, defense and government.

- **Leveraging a worldwide sales, distribution and manufacturing network**

We distribute and sell our software and hardware products primarily through a direct sales organization. We also use independent distributors, original equipment manufacturers, value added resellers, system integrators and consultants to market and sell our products. We continue to focus on scale and efficiency in serving our broad base of customers. This includes ongoing investment in our website, www.ni.com, for a better digital experience and significantly expanding the usage of our distributor channels. We have sales offices in the U.S. and sales offices and distributors in key international markets. Sales outside of the Americas accounted for approximately 59% of our net sales during the three months ended March 31, 2023 and 2022. The vast majority of our foreign sales are denominated in the customers' local currency, which exposes us to the effects of changes in foreign currency exchange rates. We expect that a significant portion of our total revenues will continue to be derived from international sales (see Note 2 - Revenue and Note 12 - Segment and geographic information of Notes to Consolidated Financial Statements for details concerning the geographic breakdown of our net sales and long-lived assets, respectively).

We manufacture substantially all of our product volume at our facilities in Debrecen, Hungary and Penang, Malaysia.

- **Delivering high quality, reliable products**

We believe that our long-term growth and success depend on delivering high quality software and hardware products on a timely basis. Accordingly, we focus significant efforts on research and development. We focus our research and development efforts on enhancing existing products and developing new products that incorporate appropriate features and functionality to be competitive with respect to technology, price and performance. Our success also depends on our ability to obtain and maintain patents and other proprietary rights related to technologies used in our products. We have engaged in litigation when necessary, and will likely engage in future litigation to protect our intellectual property rights.

Our operating results fluctuate from period to period due to changes in global economic conditions and a number of other factors such as geopolitical instability, supply chain constraints, inflationary pressures and tightening monetary policies. As a result, we believe our historical results of operations should not be relied upon as indications of future performance. There can be no assurance that our net sales will grow, or not decline, or that we will remain profitable in future periods.

Backlog

Backlog is a measure of firm orders that have been received but have not yet been fulfilled. At March 31, 2023, our backlog was approximately \$427 million compared to approximately \$451 million at December 31, 2022. Our definition of backlog includes orders where the customer has specified delivery in a future period, typically within the next 12 months. We expect the majority of backlog to be recognized as revenue within 12 months. While backlog on any particular date can be an indicator of short-term revenue performance, it is not necessarily a reliable indicator of medium or long-term revenue performance.

Current business outlook

We remain optimistic about our ability to drive revenue growth and further improve operating profitability during the remainder of 2023, despite macroeconomic uncertainty and softening demand in certain end markets, particularly semiconductor and electronics. We expect our customers will continue to make investments in emerging technologies related to wireless technologies, vehicle electrification, advanced driver assistance systems (“ADAS”), new space innovation, and advanced defense technology.

We continue to focus on scale and efficiency when engaging with our large number of smaller accounts we serve (the “Broad-based customers”). Our focus to streamline the process of doing business with NI means both scaling our costs and improving the experience of our Broad-based customers. This commitment and focus includes plans to continue investing in ni.com for a better digital experience and significantly expand the customer reach of our distributor channel during 2023 and beyond. We are also simplifying our product offerings for our Broad-based customers to make our products easier-to-use. We believe these actions will allow our direct sales force to accelerate our revenue growth through proactive engagements with accounts where we can deliver enterprise-level value. During the three months ended March 31, 2023, indirect sales through our distributor channels increased to approximately 17% of our total sales, compared to 13% in the same period of 2022. As of March 31, 2023, we estimate our distributors were carrying approximately \$25 million of our products in inventory and were not eligible for any material adjustments related to their previous purchases. For the three months ended March 31, 2023, no single distributor or end customer accounted for more than 6% of our total net sales.

Additionally, we accelerated our transition to a predominantly subscription-based licensing model for the majority of our software offerings during the last 12 months. While we expect our subscription base, recurring revenue and cash flow to increase over time as a result of this licensing model transition, we anticipated and have experienced some initial headwinds to our net sales and operating profitability during the initial transition period. Revenue from software and related services declined slightly during the first quarter of 2023 compared to the same period in 2022. However, we are seeing early indications that software billings will resume positive growth on a year over year basis by the end of 2023 and we expect recent additions and enhancements to our software portfolio will continue to differentiate our products and fuel demand across our end markets.

Restructuring

Refer to Note 15 - Restructuring of Notes to Consolidated Financial Statements for additional information on restructuring activities during the period presented.

Acquisitions and divestitures

Refer to Note 17 - Acquisitions of Notes to Consolidated Financial Statements for additional information on our acquisitions and divestitures during the periods presented.

On January 13, 2023, we announced that our Board of Directors initiated a review and evaluation of strategic options, in consultation with our financial and legal advisors, with the intent to maximize shareholder value. The comprehensive review included consideration of a full range of available strategic, business and financial alternatives, including solicitation of interest from potential acquirers and other transaction partners, some of whom had already approached the Company. In connection with the review and evaluation of strategic options, our Board of Directors adopted a limited duration stockholder rights plan in order to protect the best interests of the Company and its stockholders, help ensure that all interested parties had the opportunity to participate fairly in the strategic review, and to provide our Board of Directors and stockholders time to make informed decisions. On April 12, 2023, the Company and Computershare Trust Company, N.A., as rights agent (the “Rights Agent”) executed an Amendment No. 1 to the Rights Agreement (the “Rights Agreement Amendment”) in connection with the execution and delivery of the Merger Agreement.

The Rights Agreement Amendment supplements Section 1 of the Rights Agreement by adding certain new definitions and amends the definition of “Acquiring Person” such that none of Emerson or Merger Sub, nor any of their Affiliates and Associates (in each case as defined in the Rights Agreement), shall be deemed to be an Acquiring Person to the extent that each is a Beneficial Owner (as defined in the Rights Agreement) as a result of (i) the approval, execution or delivery of the Merger Agreement, (ii) prior to the termination of the Merger Agreement, the consummation of any of the transactions provided for or entry into any agreements contemplated by the Merger Agreement (including the Merger) in accordance with their respective provisions or (iii) the public announcement of any of the foregoing.

On April 12, 2023, we entered into the Merger Agreement with Emerson, pursuant to which Emerson will acquire all of our outstanding shares. The completion of the Merger is subject to the satisfaction of certain customary conditions, such as approval by our stockholders, the expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, the receipt of certain other regulatory approvals, and the absence of any law or order by a court or other governmental entity of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Merger. Upon the closing of the Merger, each issued and outstanding share of our common stock (subject to certain exceptions) will be converted into the right to receive cash consideration of \$60 per share.

The Merger Agreement was negotiated and signed subsequent to a process that our Board of Directors undertook beginning in January 2023 to explore options to increase our value to our shareholders. As part of that process, we retained Bank of America as our financial advisor, which assisted in facilitating contact with third parties to assess the level of interest on the part of such third parties in a potential strategic corporate transaction involving us.

For more detail about the proposed transaction with Emerson, please see our Current Report on Form 8-K filed with the SEC on April 12, 2023 and Note 18 – Subsequent Events to our consolidated financial statements included in this Quarterly Report on Form 10-Q.

Critical Accounting Estimates

In preparing our consolidated financial statements, we make assumptions, judgments and estimates that can have a significant impact on our net sales, operating income and net income, as well as on the value of certain assets and liabilities on our condensed consolidated balance sheets. We base our assumptions, judgments and estimates on historical experience and various other factors that we believe to be reasonable under the circumstances. At least quarterly, we evaluate our assumptions, judgments and estimates, and make changes as deemed necessary.

These estimates may change as new events occur and additional information is obtained. Actual results could differ materially from these estimates under different assumptions or conditions. For further information about our critical accounting estimates, see the discussion in Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” under the heading “Critical Accounting Estimates” in our 2022 Form 10-K. There have been no material changes to our critical accounting policies and estimates since the 2022 Form 10-K.

Results of Operations

The following table sets forth, for the periods indicated, the percentage of net sales represented by certain items reflected in our Consolidated Statements of Income:

	Three Months Ended March 31, (Unaudited)	
	2023	2022
Net sales:		
Americas	40.7 %	41.3 %
EMEA	25.7	26.1
APAC	33.6	32.6
Total net sales	100.0	100.0
Cost of sales	30.4	30.9
Gross profit	69.6	69.1
Operating expenses:		
Sales and marketing	26.9	31.2
Research and development	19.8	21.3
General and administrative	9.9	8.6
Total operating expenses	56.6	61.1
Operating income	13.0	7.9
Other (expense) income:	(0.7)	—
Income before income taxes	12.3	7.9
Provision for income taxes	1.6	1.4
Net income	10.7 %	6.6 %

Figures may not sum due to rounding.

Results of Operations for the three months ended March 31, 2023 and 2022

Net Sales. The following table sets forth our net sales for the three months ended March 31, 2023 and 2022 along with the changes between the corresponding periods.

(In millions)	Three Months Ended March 31, (Unaudited)			
	2023	2022	Change	
			Dollars	Percentage
Product sales	\$ 400.4	\$ 343.7	56.7	17%
Software maintenance sales	36.4	41.6	(5.1)	(12)%
Total net sales	\$ 436.8	\$ 385.3	51.6	13%

Figures may not sum due to rounding.

Net Sales - Summary

Net sales for the three months ended March 31, 2023 increased 13 percent compared to the same period in 2022.

- The increase in product sales was driven by revenue growth across each of our geographic regions and end markets, particularly our Aerospace, Defense and Government, and broad-based Portfolio business in APAC and the Americas (See Note 2 - Revenue for additional information on revenue by industry grouping and geographic region). Revenue from acquisitions completed within the last 12 months increased product sales revenue by approximately 2% compared to the same period in 2022. The impact of pricing changes in the last 12 months, partially offset by changes in foreign currency exchange rates increased revenue by approximately 4% compared to the same period in 2022.
- The decrease in software maintenance sales was primarily driven by a temporary decrease related to our shift to a predominantly subscription license model during 2022 and the effect of changes in foreign currency exchange rates on the recognition of software maintenance revenues.

Net Sales by Region

The following table sets forth our net sales by geographic region for the three months ended March 31, 2023 and 2022 along with the changes between the corresponding periods and the region's percentage of total net sales.

(In millions)	Three Months Ended March 31, (Unaudited)			
	2023	2022	Change	
			Dollars	Percentage
Americas	\$ 178.0	\$ 159.2	18.8	12%
Percentage of total net sales	40.7 %	41.3 %		
EMEA	\$ 112.2	\$ 100.4	11.8	12%
Percentage of total net sales	25.7 %	26.1 %		
APAC	\$ 146.7	\$ 125.7	21.0	17%
Percentage of total net sales	33.6 %	32.6 %		

Figures may not sum due to rounding.

We expect sales outside of the Americas to continue to represent a significant portion of our net sales. We intend to continue to expand our international presence by driving growth in existing markets and continuing to increase the use of distributors to sell our products in some countries.

Almost all of the sales made by our direct sales offices in the Americas (excluding the U.S.), EMEA, and APAC are denominated in local currencies, and accordingly, the U.S. dollar equivalent of these sales is affected by changes in foreign currency exchange rates. In order to provide a framework for assessing how our underlying business performed excluding the effects of foreign currency fluctuations between periods, we compare the percentage change in our results from period to period using constant currency disclosure. To calculate the change in constant currency, current and comparative prior period results for entities reporting in currencies other than U.S. Dollars are converted into U.S. Dollars at constant exchange rates (i.e., the average rates in effect during the three months ended March 31, 2022). The impact of changes in foreign currency exchange rates on sales includes the net effect of related hedging activities described below.

The following table presents this information, along with the impact of changes in foreign currency exchange rates on sales denominated in local currencies, for the three months ended March 31, 2023.

(In millions)	Three Months Ended March 31, 2022	Change in Constant Dollars		Impact of changes in foreign currency exchange rates on net sales		Three Months Ended March 31, 2023
	GAAP Net Sales	Dollars	Percentage	Dollars	Percentage	GAAP Net Sales
Americas	\$ 159.2	19.2	12.0%	(0.4)	(0.3)%	\$ 178.0
EMEA	\$ 100.4	17.0	16.9%	(5.2)	(5.2)%	\$ 112.2
APAC	\$ 125.7	31.2	24.8%	(10.2)	(8.1)%	\$ 146.7
Total net sales	\$ 385.3	67.4	17.5%	(15.8)	(4.1)%	\$ 436.8

Figures may not sum due to rounding.

We use a foreign currency cash flow hedging program to help protect against changes in U.S. dollar equivalent value caused by fluctuations in foreign currency exchange rates of forecasted foreign currency cash flows resulting from international sales. We hedge portions of our forecasted net sales denominated in foreign currencies with average rate forward contracts. During the three months ended March 31, 2023 and 2022, these hedges had the effect of increasing our net sales by \$2.2 million and \$1.7 million, respectively. (See Note 5 - Derivative instruments and hedging activities of Notes to Consolidated Financial Statements for further discussion regarding our cash flow hedging program and its related impact on our net sales for 2023 and 2022).

Gross Profit. Our gross profit as a percentage of sales is impacted by many factors as described in the table below. We continue to focus on cost control and cost reduction measures throughout our manufacturing cycle. The following table sets forth our gross profit and gross profit as a percentage of net sales for the three months ended March 31, 2023 and 2022 along with the percentage changes in gross profit for the corresponding periods.

(In millions)	Three Months Ended March 31, (Unaudited)	
	2023	2022
Gross Profit	\$304.1	\$266.0
% change compared with prior period	14.3%	
Gross Profit as a percentage of net sales	69.6%	69.1%

The increase in gross profit as a percentage of net sales was primarily related to the following:

	Three Months Ended (Unaudited)
March 31, 2022	69.1 %
<i>Impact of decreases in component costs</i>	0.6 %
<i>Impact of decreases in outbound freight and other logistics costs</i>	0.4 %
<i>Impact of changes in foreign currency exchange rates</i>	(0.9) %
<i>Impact of changes related to recently acquired businesses</i>	(1.8) %
<i>Impact of inventory write-downs and restructuring activities</i>	(0.6) %
<i>Impact of changes in amortization of capitalized software development costs and acquired intangibles</i>	(0.4) %
<i>Impact of changes in sales mix excluding recent acquisitions</i>	0.9 %
<i>Impact of changes in our selling price</i>	2.3 %
March 31, 2023	69.6 %

Operating Expenses. The following table sets forth our operating expenses for the three months ended March 31, 2023 and 2022 along with the percentage changes between the corresponding periods and the line item as a percentage of total net sales.

(In thousands)	Three Months Ended March 31, (Unaudited)		
	2023	2022	Change
Sales and marketing	\$ 117,342	\$ 120,157	(2)%
<i>Percentage of total net sales</i>	27%	31%	
Research and development	\$ 86,637	\$ 82,161	5%
<i>Percentage of total net sales</i>	20%	21%	
General and administrative	\$ 43,214	\$ 33,179	30%
<i>Percentage of total net sales</i>	10%	9%	
Total operating expenses	\$ 247,193	\$ 235,497	5%
<i>Percentage of total net sales</i>	57%	61%	

The year over year increase in our total operating expenses of \$12 million during the three months ending March 31, 2023 was primarily related to the following:

- a \$14 million increase in severance-related costs related to our recent voluntary and involuntary headcount reduction programs (See Note 15 - Restructuring for additional details);
- a \$5 million increase primarily related to outside service costs, travel, utilities and equipment spend, partially offset by lower advertising and trade show spend;
- a \$2 million decrease in personnel costs related to lower headcount and commissions, and decreases in stock-based compensation expense (due to higher RSU forfeitures in the first quarter of 2023 related to our restructuring programs), partially offset by salary increases and accruals for 2023 attainment under our company bonus program.
- a \$1 million decrease related to the amortization of acquisition-related intangibles; and
- a \$4 million decrease resulting from changes in foreign currency exchange rates.

Sales and Marketing

The primary drivers of the decrease in sales and marketing expenses for the three months ended March 31, 2023 were a decrease in amortization of acquisition-related intangibles, lower stock-based compensation and commission expense, and a reduction in marketing and advertising spending partially offset by increased severance costs compared to the same period in 2022.

Research and Development

The primary drivers of the increase in research and development expenses for the three months ended March 31, 2023 were additional costs for salaries and benefits and severance-related costs, which were partially offset by an increase in software development costs that were eligible for capitalization, lower stock-based compensation expenses and the impact of foreign currency exchange rates, compared to the same period in 2022. The amount of software development costs eligible for capitalization has become a relatively small portion of our total research and development expenses as we have shifted to agile development methodologies for most offerings over the last few years. However, we expect the amount of these costs that are eligible for capitalization to fluctuate slightly from quarter to quarter, depending on the nature of the projects, resources assigned, and development stage of the ongoing projects.

General and administrative

The primary drivers of the increase in general and administrative expenses for the three months ended March 31, 2023 were an increase in severance costs and outside services partially offset by a decrease in stock-based compensation.

Operating Income. For the three months ended March 31, 2023 and 2022, operating income was \$57 million and \$31 million. As a percentage of net sales, operating income was 13.0% and 7.9% for the three months ended March 31, 2023 and 2022, respectively. The increase in operating income in absolute dollars for the three months ended March 31, 2023, compared to the three months ended March 31, 2022, is primarily attributable to the increases in revenue partially offset by the increases in cost of sales and operating expenses described above.

Other (Expense) Income.

- **Interest Income.** For the three months ended March 31, 2023 and 2022, interest income was \$0.3 million and less than \$0.1 million, respectively.
- **Interest Expense.** For the three months ended March 31, 2023 and 2022, interest expense was approximately \$8.3 million and \$1.3 million, respectively. The increase in interest expense compared to 2022 was due to additional borrowings under our Credit Facility and higher interest rates. Refer to Note 13 - Debt of Notes to Consolidated Financial Statements for additional information regarding the terms of our Credit Agreement and related borrowings under our Credit Facility.
- **Gain/Loss From Equity-Method Investments.** For the three months ended March 31, 2023 and 2022, gain from equity-method investments was approximately \$4.8 million and approximately \$0.6 million, respectively. The increase was primarily attributable to a \$3 million gain on the remeasurement of our existing equity-method investment in SET related to the acquisition of the remaining ownership interest in the first quarter of 2023.

- **Net Foreign Exchange Loss.** For the three months ended March 31, 2023 and 2022, net foreign exchange loss was \$0.3 million and \$1.2 million, respectively. Gains and losses on foreign currency are primarily due to the impact of re-measuring foreign currency monetary assets and liabilities into the functional currency of the corresponding entity. The amount of the gain or loss on foreign currency is driven by the volume of foreign currency transactions and the foreign currency exchange rates for the period. See "Results of Operations - Net Sales" above for additional discussion on the impact of foreign exchange rates on our net sales of operations for the three months ended March 31, 2022.
- **Other Income.** For the three months ended March 31, 2023 and 2022, other income decreased by \$1.3 million, primarily related to the settlement of an acquisition-related claim during the first quarter of 2022.

Provision for Income Taxes. For the three months ended March 31, 2023 and 2022, our provision for income taxes reflected an effective tax rate of 13% and 17%, respectively. The factors that caused our effective tax rate to change year over year are detailed in the table below:

	Three Months Ended March 31, (Unaudited)
Effective tax rate at March 31, 2022	17 %
Global intangible low-taxed income deferred	(11)
Profits in foreign jurisdictions with reduced income tax rates	(5)
Employee share-based compensation	(2)
Nondeductible officer compensation	(1)
Change in state income taxes, net of federal benefit	(1)
Change in enhanced deduction for certain research and development expenses	(1)
Nondeductible acquisition expense	(1)
Research and development tax credits	1
Other	2
Change in unrecognized tax benefits	4
Foreign-derived intangible income deduction	4
Global intangible low-taxed income inclusion ("GILTI")	7
Effective tax rate at March 31, 2023	<u>13 %</u>

Other operational metrics

We believe that the following additional unaudited operational metrics assist investors in assessing our operational performance relative to others in our industry and to our historical results. The following tables provide details with respect to the amount of GAAP charges related to certain items that were recorded in the line items indicated below (in thousands).

(In thousands)	Three Months Ended March 31,	
	(Unaudited)	
	2023	2022
Stock-based compensation		
Cost of sales	\$ 963	\$ 1,222
Sales and marketing	4,935	7,089
Research and development	5,119	6,088
General and administrative	4,543	5,729
Provision for income taxes	(1,801)	(2,655)
Total	<u>\$ 13,759</u>	<u>\$ 17,473</u>

(In thousands)	Three Months Ended March 31,	
	(Unaudited)	
	2023	2022
Amortization of acquisition-related intangibles and fair value adjustments		
Net sales	\$ —	\$ 371
Cost of sales	6,660	3,803
Sales and marketing	4,573	6,139
Research and development	—	(320)
Other (expense) income	433	516
Provision for income taxes	(1,491)	(1,355)
Total	<u>\$ 10,175</u>	<u>\$ 9,154</u>

(In thousands)	Three Months Ended March 31,	
	(Unaudited)	
	2023	2022
Acquisition-related transaction and integration costs, restructuring charges, and other		
Cost of sales	\$ 1,520	\$ 785
Sales and marketing	5,944	307
Research and development	3,238	614
General and administrative	7,937	1,771
Other (expense) income	(2,497)	(1,866)
Provision for income taxes	(4,298)	(658)
Total	<u>\$ 11,844</u>	<u>\$ 953</u>

(In thousands)	Three Months Ended March 31,	
	(Unaudited)	
	2023	2022
(Capitalization) and amortization of internally developed software costs		
Cost of sales	\$ 732	\$ 2,033
Research and development	(910)	(187)
Provision for income taxes	21	(407)
Total	<u>\$ (157)</u>	<u>\$ 1,439</u>

Liquidity and Capital Resources

Overview

At March 31, 2023, we had \$138 million in cash and cash equivalents. Our cash and cash equivalent balances are held in numerous financial institutions throughout the world, including substantial amounts held outside of the U.S. The following table presents the geographic distribution of our cash and cash equivalents as of March 31, 2023 (in millions):

(in millions)	<u>Domestic</u>	<u>International</u>	<u>Total</u>
Cash and cash equivalents	\$20.5	\$117.2	\$137.7
	15%	85%	

Figures may not sum due to rounding.

The following table presents our working capital, cash and cash equivalents and short-term investments:

(In thousands)	<u>March 31, 2023</u> <u>(unaudited)</u>	<u>December 31,</u> <u>2022</u>	<u>Increase/</u> <u>(Decrease)</u>
Working capital ⁽¹⁾	\$ 552,164	\$ 566,044	\$ (13,880)
Cash and cash equivalents	137,672	139,799	(2,127)

(1) Includes current assets and current liabilities inclusive of cash and current portion of long-term debt

Our principal sources of liquidity include existing cash and cash equivalents, balances and available borrowings under our Credit Facility, cash flows generated from our operations, and cash generated from purchases of common stock through our employee stock purchase plan. The primary drivers of the net decrease in working capital between December 31, 2022 and March 31, 2023 were:

- Cash and cash equivalents decreased by \$2 million. Additional analysis of the changes in our cash flows for the three months ended March 31, 2023 is discussed below.
- Accounts receivable decreased by \$30 million. Days sales outstanding increased to 74 days at March 31, 2023, compared to 69 days at December 31, 2022. The decrease in accounts receivable is primarily related to quarterly fluctuations in our net sales.
- Inventory increased by \$13 million. Inventory turns were 1.2 at March 31, 2023 compared to 1.4 at December 31, 2022. The increase in inventory was primarily attributable to inventory from the recent acquisition of SET.
- Accrued compensation decreased by \$21 million attributable to annual payments under our variable compensation programs related to 2022 attainment, partially offset by accruals related to expected payouts under our 2023 variable compensation programs.
- Deferred revenue, current increased by \$11 million primarily related to the timing of annual renewals for our enterprise-wide subscription licensing agreements.
- Other taxes payable decreased by \$6 million primarily related to the timing of payments related to VAT.
- Other current liabilities increased by \$17 million primarily related to deposits received, our recent SET acquisition and other liabilities accrued during the quarter.

Analysis of Cash Flow

The following table summarizes our cash flow results for the three months ended March 31, 2023 and 2022.

(In thousands)	Three Months Ended March 31, (unaudited)	
	2023	2022
Cash provided by (used by) operating activities	\$ 98,706	\$ (3,848)
Cash used in investing activities	(48,169)	(29,153)
Cash used in financing activities	(54,109)	(34,187)
Effect of exchange rate changes on cash	1,445	(1,035)
Net change in cash and cash equivalents	(2,127)	(68,223)
Cash and cash equivalents at beginning of period	139,799	211,106
Cash and cash equivalents at end of period	\$ 137,672	\$ 142,883

Operating Activities

Cash provided by operating activities is comprised of net income adjusted for certain items and changes in working capital. Cash flows from operating activities can fluctuate significantly from period to period as working capital needs and the timing of payments for income taxes, variable pay, restructuring activities, and other items impact reported cash flows.

Cash provided by operating activities for the three months ended March 31, 2023 increased by \$103 million compared to the same period in 2022. This increase was primarily due to an \$88 million increase in cash provided by changes in operating assets and liabilities during the year, further described below, and by a \$15 million increase in net income excluding the effect of non-cash items including depreciation and amortization, stock-based compensation, gain from equity-method investments, and deferred income taxes.

- The aggregate of changes in accounts receivable, inventory and accounts payable provided net cash of \$30 million during the three months ended March 31, 2023 compared to net cash provided of \$2 million in the comparable period in 2022. The amount of cash flow generated from or used by the aggregate of accounts receivable, inventory and accounts payable depends upon the cash conversion cycle, which represents the number of days that elapse from the day we pay for the purchase of raw materials and components to the collection of cash from our customers and can be significantly impacted by the timing of shipments and purchases, as well as collections and payments in a period.
- The changes in accrued compensation used cash of \$24 million during the three months ended March 31, 2023 compared to net cash used of \$58 million during the three months ended March 31, 2022. The year over year change is primarily related to a decrease in payments under our variable pay programs due to lower 2022 attainment partially offset by higher severance payments in the first quarter 2023.
- The aggregate of changes in prepaid assets, deferred revenue and other assets and liabilities provided net operating cash of \$14 million during the three months ended March 31, 2023 compared to net cash used of \$11 million in the comparable period in 2022. The year over year change is primarily related to the timing and amount of payments for prepaid goods and services, federal income taxes, payroll taxes, and other indirect taxes.

Investing Activities

Cash used in investing activities for the three months ended March 31, 2023 increased by \$19 million compared to the same period in 2022, primarily related to the following:

- \$5 million increase in cash outflows related to acquisitions;
- \$11 million increase in cash outflows primarily related to capital expenditures for building improvements; and
- \$3 million increase in cash outflows related to leasehold improvements;

Financing Activities

Cash used in financing activities increased by \$20 million for the three months ended March 31, 2023 compared to the same period in 2022. This was primarily related to a \$51 million increase in cash outflows under our Credit Facility (\$26 million in net payments during 2023 compared to \$25 million in net borrowings during 2022), partially offset by a \$31 million decrease in cash outflows related to repurchases of common stock that occurred during the first quarter of 2022. (See Note 11 – Authorized shares of common and preferred stock and stock-based compensation plans of Notes to Consolidated Financial Statements for additional discussion about our equity compensation plans and share repurchase program).

Contractual Cash Obligations. Information related to our contractual obligations as of December 31, 2022 can be found in “Management’s Discussion and Analysis of Financial Condition and Results of Operations-Contractual Obligations,” in Part II-Item 7 of our 2022 Form 10-K. At March 31, 2023, there were no material changes outside the ordinary course of business to our contractual obligations from those reported in our 2022 Form 10-K. See Note 8 - Leases of Notes to Consolidated Financial Statements for additional information regarding our non-cancellable operating lease obligations as of March 31, 2022.

During the second quarter of 2023, we expect to make approximately \$102 million of federal income tax payments which includes estimated tax payments related to 2022 and 2023 and approximately \$14 million related to the annual installment payment of our transition tax payable. This amount is currently included within "Accrued Expenses and Other Current Liabilities" on our Consolidated Balance Sheet.

Credit Agreement. See Note 13 - Debt of Notes to Consolidated Financial Statements for additional details on the terms of our Credit Facility.

Off-Balance Sheet Arrangements. We do not have any off-balance sheet debt. At March 31, 2023, we did not have any relationships with any unconsolidated entities or financial partnerships, such as entities often referred to as structured finance entities, which would have been established for the purpose of facilitating off-balance sheet arrangements. As such, we are not exposed to any financing, liquidity, market or credit risk that could arise if we were engaged in such relationships.

Prospective Capital Needs. We believe that our existing cash, cash equivalents, cash generated from operations and available borrowing capacity under our Credit Facility will be sufficient to cover our working capital needs, capital expenditures, interest expense, investment requirements, commitments, and payment of dividends to our stockholders. Our ability to seek additional financing by (i) issuing additional equity or debt securities or (ii) obtaining additional credit financing, including through an increase of our revolver and/or term loan commitments under our Credit Facility, is restricted by the Merger Agreement with Emerson. See the section “Strategic Review and Merger Agreement with Emerson Electronic” above for more information on the Merger Agreement with Emerson. If the Merger is not completed, we may also seek to pursue additional financing or to raise additional funds by seeking additional credit financing, including through an increase in revolving and/or term loan commitments under our Credit Facility or selling equity or debt to the public or in private transactions from time to time. If we elect to raise additional funds, we may not be able to obtain such funds on a timely basis or on acceptable terms, if at all. If we raise additional funds by issuing additional equity or convertible debt securities, the ownership percentages of our existing stockholders would be reduced. In addition, the equity or debt securities that we issue may have rights, preferences or privileges senior to those of our common stock.

Although we believe that we can fund our operating activities for at least the next 12 months, our future capital requirements may vary materially from those now planned. We anticipate that the amount of capital we will need in the future will depend on many factors, including:

- payment of dividends to our stockholders;
- interest expense paid on our Credit Facility;
- required levels of research and development and other operating costs;
- our business, product, capital expenditure and research and development plans, and product and technology roadmaps;
- acquisitions of other businesses, assets, products or technologies;
- our restructuring activities;
- expenses related to the strategic review process;

- the overall levels of sales of our products and gross profit margins;
- the levels of inventory and accounts receivable that we maintain;
- general economic and political uncertainty and specific conditions in the markets we address, including any volatility in the industrial economy in the various geographic regions in which we do business;
- the inability of certain of our customers who depend on credit to have access to their traditional sources of credit to finance the purchase of products from us, which may lead them to reduce their level of purchases or to seek credit or other accommodations from us;
- capital improvements for facilities;
- our relationships with suppliers and customers; and
- the amount of proceeds received as a result of our employee stock purchase plan.

Recently Issued Accounting Pronouncements

See Note 1 – Basis of presentation in Notes to Consolidated Financial Statements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Quantitative and qualitative disclosures about market risk appear in “Item 7A. Quantitative and Qualitative Disclosures About Market Risk” in Part II of our 2022 Form 10-K and there were no material changes during the three months ended March 31, 2023 to this information reported in our 2022 Form 10-K.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Based on an evaluation under the supervision and with the participation of our management, our principal executive officer and our principal financial officer have concluded that our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act were effective as of March 31, 2023, to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms and (ii) accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during the first quarter of 2023, which were identified in connection with management's evaluation required by paragraph (d) of Rules 13a-15 and 15d-15 under the Exchange Act, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

We are not currently a party to any material litigation. However, in the ordinary course of our business, we have in the past, are currently and will likely become involved in various legal proceedings, claims, and regulatory, tax or government inquiries and investigations, and could incur uninsured liability in any one or more of them. We also periodically receive notifications from various third parties related to alleged infringement of patents or intellectual property rights, commercial disputes or other matters. No assurances can be given with respect to the extent or outcome of any investigation, litigation or dispute.

Item 1A. Risk Factors

Our business, financial condition and operating results can be affected by a number of factors, whether currently known or unknown, including but not limited to those described in Part I, Item 1A of our 2022 Form 10-K under the heading “Risk Factors,” any one or more of which could, directly or indirectly, cause our actual financial condition and operating results to vary materially from past, or from anticipated future, financial condition and operating results. Any of these factors, in whole or in part, could materially and adversely affect our business, financial condition, operating results and stock price. The following risk factors are provided to update the risk factors previously disclosed under the heading “Risk Factors” in our 2022 Form 10-K.

Risks Related to the Merger

The Merger is subject to a number of conditions to closing, which may not be satisfied on a timely basis or at all.

The Merger is subject to several closing conditions outlined in the Merger Agreement, including the adoption of the Merger Agreement by our stockholders, the expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and the receipt of certain other regulatory approvals. The obligation of each party to consummate the Merger is also conditioned upon the other party’s representations and warranties being true and correct (subject to certain customary materiality exceptions) and the other party having performed in all material respects its obligations under the Merger Agreement. There can be no assurance that these conditions will be satisfied in a timely manner or at all or that the Merger will be completed.

Failure to complete the Merger could adversely affect our financial results and our future business and operations.

There is no assurance that the Merger will be completed on the terms or timeline currently contemplated, or at all. Uncertainty about the effect of the Merger on our employees, customers, and other parties may have an adverse effect on our business, financial condition and results of operation regardless of whether the Merger is completed. Additionally, if our stockholders do not approve and adopt the Merger Agreement or if the Merger is not completed for any other reason, we would be subject to a number of risks, including the following:

- The actions required to complete the Merger will require significant resources and the focus of our leadership team and employees, which may reduce our ability to prioritize and focus on other important initiatives;
- Resulting negative customer perception could adversely affect our ability to compete for, or to win, new and renewal business in the marketplace;
- Our stockholders would not realize a cash payment of approximately \$8.2 billion in the aggregate;
- We may be required to pay a termination fee of \$310 million if the Merger Agreement is terminated in the case of certain events described in the Merger Agreement, including if we completed a transaction based on an alternative proposal;
- The trading price of our common stock may experience increased volatility to the extent that the current market prices reflect a market assumption that the Merger will be completed; or
- We could be subject to litigation from stockholders related to the Merger Agreement.

The occurrence of any of these events individually or in combination could have a material adverse effect on our financial condition, operations or the trading price of our common stock.

The pendency of the Transaction could adversely affect our business.

In connection with the Merger, some of our suppliers and customers may delay or defer sales and purchasing decisions, which could negatively impact revenues, earnings and cash flows regardless of whether the Merger is completed. We have agreed to refrain from taking certain actions with respect to our business and financial affairs during the pendency of the Merger, and such restrictions could be in place for an extended period of time if completion of the Merger is delayed and could adversely impact our financial condition, liquidity, operations or cash flows. These restrictions may prevent us from pursuing otherwise attractive business opportunities and making other changes to our business before completion of the Merger or termination of the Merger Agreement. These restrictions also limit our ability to seek additional financing by issuing additional equity or debt securities or obtaining additional credit financing, including through an increase of our revolver and/or term loan commitments under our Credit Facility. The process of seeking to accomplish the Merger could also divert the focus of our management from pursuing other opportunities that could be beneficial to us.

The pursuit of the Merger and the preparation for the integration into Emerson's business have placed, and will continue to place, a significant burden on our management and internal resources. There is a significant degree of difficulty and management distraction inherent in the process of seeking to close the Merger and integrate Emerson's business, which could cause an interruption of, or loss of momentum in, the activities of our existing business, regardless of whether the Merger is eventually completed. Our management team will be required to devote considerable amounts of time to this integration process, which will decrease the time they will have to manage our existing businesses, service existing customers, attract new customers and develop new products, services or strategies. The Merger may also adversely impact productivity of employees due to the distractions caused by the Merger's uncertainty.

We may be unable to attract and retain key employees during the pendency of the Merger.

In connection with the Merger, our current employees and any prospective employees may experience uncertainty about their future roles following the Merger, which may adversely affect our ability to attract and retain personnel during the pendency of the Merger. Even though we have implemented a retention plan for key personnel, key employees may depart because of issues related to the uncertainty and difficulty of integration. The departure of existing key employees or the failure of potential key employees to accept employment, despite our recruiting efforts, could have a material adverse impact on our business, financial condition and operating results, regardless of whether the Merger is eventually completed.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**Purchases of Equity Securities by the Issuer and Affiliated Purchasers**

The following table provides information as of March 31, 2023 with respect to the shares of our common stock that we repurchased under our stock repurchase programs during the first quarter of 2023.

Period	Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced plans or programs	Maximum approximate dollar value of shares of common stock that may yet be purchased under the program
January 1, 2023 to January 31, 2023	—	\$ —	—	109,281,700
February 1, 2023 to February 28, 2023	—	\$ —	—	109,281,700
March 1, 2023 to March 31, 2023	—	\$ —	—	109,281,700
Total	—	\$ —	—	109,281,700

(1) On January 19, 2022, our Board of Directors approved a new stock repurchase plan for up to \$250 million of our common stock. The new stock repurchase plan does not have an expiration date, but we are restricted from making additional repurchases of our common stock pursuant to the Merger Agreement with Emerson.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

EXHIBITS

2.1(1)	Agreement and Plan of Merger, dated as of April 12, 2023, by and among the Company, Parent and Merger Subsidiary
3.1(2)	Certificate of Incorporation, as amended, of the Company, effective May 14, 2013
3.2(3)	Amended and Restated Bylaws of the Company, effective August 1, 2021
3.3(4)	Certificate of Designations of Series B Participating Preferred Stock of the Company, dated January 13, 2023
4.1(5)	Rights Agreement, dated as of January 13, 2023, between the Company and Computershare Trust Company, N.A., as rights agent, which includes the form of Right Certificate as Exhibit B and the summary of Rights to Purchase Preferred Shares as Exhibit C
4.2(6)	Amendment No. 1 to Rights Agreement, dated as of April 12, 2023, by and between the Company and Computershare Trust Company, N.A., as rights agent
10.1(7) †	2023 Form of Restricted Stock Unit Award Agreement (Employee – Performance-Based Vesting Award)
10.2*†	Executive Employment Agreement between the Company and Thomas Benjamin, effective as of April 25, 2023
31.1*	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1**	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101*	Inline XBRL Document Set for the condensed consolidated financial statements and accompanying notes in Part I, Item 1, "Financial Statements" of this Quarterly Report on Form 10-Q.
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)
(1)	Incorporated by reference to the same-numbered exhibit filed with the Company's Form 8-K filed on April 12, 2023 (File No. 000-25426)
(2)	Incorporated by reference to the same-numbered exhibit filed with the Company's Form 10-K for the fiscal year ended December 31, 2013 filed on February 20, 2014 (File No. 000-25426)
(3)	Incorporated by reference to the same-numbered exhibit filed with the Company's Form 10-Q on August 2, 2021 (File No. 000-25426)
(4)	Incorporated by reference to Exhibit 3.1 filed with the Company's Form 8-K filed on January 13, 2023 (File No. 000-25426)
(5)	Incorporated by reference to Exhibit 4.1 filed with the Company's Form 8-K filed on January 13, 2023 (File No. 000-25426)
(6)	Incorporated by reference to Exhibit 4.1 filed with the Company's Form 8-K filed on April 12, 2023 (File No. 000-25426)
(7)	Incorporated by reference to the same-numbered exhibit filed with the Company's Form 8-K filed on March 3, 2023 (File No. 000-25426)
†	Management Contract or Compensatory Plan or Arrangement
*	Filed herewith
**	Furnished herewith

SIGNATURE

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

Dated: April 28, 2023

NATIONAL INSTRUMENTS CORPORATION

By: /s/ Daniel Berenbaum
Daniel Berenbaum
EVP, Chief Financial Officer
(Principal Financial Officer)

NATIONAL INSTRUMENTS CORPORATION
EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (this “Agreement”) by and between Thomas Benjamin (“Executive”) and National Instruments Corporation (“Company”) (collectively referred to as the “Parties” or individually referred to as a “Party”) is dated to be effective as of April 25, 2023 (the “Effective Date”).

RECITALS

WHEREAS, the Company currently employs Executive as Executive Vice President, Chief Technology Officer & Head of Platform & Product Analytics and seeks to enter into an agreement embodying the terms of such employment; and

WHEREAS, Executive desires to accept such continuing employment and enter into such an agreement.

NOW, THEREFORE, in consideration of the mutual promises made herein, the Company and Executive hereby agree as follows:

AGREEMENT

1. **Duties and Scope of Employment.**

(a) **Positions and Duties.** As of the Effective Date, Executive will continue to serve as Executive Vice President, Chief Technology Officer & Head of Platform & Product Analytics and will continue reporting to the Company’s Chief Executive Officer and President, Eric Starkloff (“Manager”). Executive will render such business and professional services in the performance of his duties, consistent with Executive’s position within the Company, as shall reasonably be assigned to him by his Manager. The period of Executive’s employment under this Agreement is referred to herein as the “Employment Period.”

(b) **Obligations.** During the Employment Period, Executive will perform his duties faithfully and to the best of his ability and will devote his full business efforts and time to the Company. For the duration of the Employment Period, Executive agrees not to engage in any other employment, occupation, or consulting activity for any direct or indirect remuneration without his Manager’s prior written approval and subject to the approvals required by the Conflict of Interest Policy for employees of the Company.

2. **At-Will Employment.** The Parties agree that Executive’s employment with the Company will continue to be at-will employment and therefore may be terminated at any time with or without cause or notice, for any reason or no reason. However, as described in this Agreement, Executive may be entitled to severance benefits depending on the circumstances of Executive’s termination of employment with the Company. The Company requests that, in the event of Executive’s resignation, where practicable, Executive provide the Company with up to ninety (90) days’ advance notice. The Company may, in its discretion, accelerate the separation date during that period without altering the nature of Executive’s resignation. Any such requested notice period does not alter the at-will nature of Executive’s employment with the Company.

3. **Compensation.**

(a) **Base Salary.** As of the Effective Date, Executive’s annual base salary will continue to be paid at a rate of Four Hundred Twenty-Five Thousand Dollars (\$425,000) per annum payable in accordance with the Company’s normal payroll practices and subject to usual required withholdings. The term “Base Salary” means the greater of a rate of Four Hundred Twenty-Five Thousand Dollars (\$425,000) per annum or such greater, but not lower, rate of pay the Company might hereafter set for Executive. The first and last payment of Executive’s Base Salary will be adjusted, if necessary, to reflect a commencement or termination date other than the first or last working day of a pay period.

(b) Annual Bonus. As of the Effective Date, Executive is eligible to participate in the Company Executive Incentive Program (“EIP”) with an annual target of One Hundred percent (100%) of Base Salary with performance goals commensurate with Executive’s position, as specified by the Compensation Committee of the Board of Directors (the “Committee”) from time to time, as may be applicable. The actual earned EIP bonus will be determined based on achievement of performance goals and paid no later than two and one-half (2-1/2) months following the end of the performance year.

(c) Restricted Stock Units. Executive understands and agrees that, to the extent he becomes eligible for any future equity grants, such grant would be subject to any required Committee approval and subject to the relevant equity documents as then in effect at the Company and to Executive’s continued employment through the award grant date.

4. Employee Benefits. During the Employment Period, Executive and Executive’s eligible dependents will continue to be eligible to participate in Company employee benefit plans and perquisites and fringe benefit programs, including medical, dental, 401(k), and Company stock purchase plan, made available to other senior executive-level employees, as in effect from time to time.

5. Paid Time Off. During the Employment Period, Executive will be entitled to paid time off in accordance with the Company’s then-current policy for other executive-level employees.

6. Severance Benefits.

(a) Termination Without Cause or Resignation for Good Reason. If the Company terminates Executive’s employment involuntarily without Cause (excluding any termination due to death or Disability) or Executive resigns for Good Reason, then, subject to the limitations of Sections 7 and 8 below, Executive shall be entitled to receive: (i) continuing severance pay at a rate equal to one hundred percent (100%) of the Executive’s Base Salary, as then in effect (less applicable withholding), for a period of twelve (12) months from the date of such termination, paid in accordance with the Company’s normal payroll practices; (ii) to the extent not already earned and accrued, a lump sum equivalent to one hundred percent (100%) of Executive’s EIP bonus as in effect at the time of the applicable termination or resignation, less applicable withholding, which amount shall be paid at such time annual bonuses are paid to other senior executives of the Company (for avoidance of doubt in no case would Executive be entitled to more than one EIP bonus payment under the terms of this provision); (iii) accelerated vesting of Executive’s outstanding Company service-based restricted stock units that would have vested had Executive remained employed by the Company for twelve (12) months following the termination date, and subject to any required approval by the Committee, such approval not to be unreasonably withheld; and (iv) provided Executive timely elects healthcare continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”), Company reimbursement of Executive for, or direct payment of, Executive’s COBRA premiums (at the coverage level in effect immediately prior to Executive’s termination) until the earlier of twelve (12) months following the termination date or the date Executive becomes covered under similar plans. If the Company determines, in its sole discretion, that it cannot provide the foregoing benefit related to COBRA premiums without potentially violating, or being subject to an excise tax under, applicable law, the Company will instead provide a taxable monthly payment of an equivalent amount, which will be made regardless of whether Executive elects COBRA and continue until the earlier of twelve (12) months following termination or the date Executive becomes covered under similar plans.

(b) Change in Control Benefits. Notwithstanding any contrary provision in the preceding paragraph, if a termination described in Section 6(a) occurs within the period beginning three (3) months prior to a Change in Control and ending twelve (12) months following a Change in Control, then the Executive will be entitled to receive the same severance in Section 6(a) except the severance amount in Section 6(a)(i) will be paid in a lump-sum on the sixtieth (60th) day following the termination date. For avoidance of doubt, Executive’s equity awards will remain subject to the Change in Control vesting or other treatment as provided for under the terms of the Company’s equity plan and Executive’s equity award agreements, as applicable, notwithstanding Executive’s eligibility to receive vesting acceleration under Section 6(a)(iii) of this Agreement in the event of a termination described in Section 6(a).

(c) Voluntary Resignation; Termination for Cause. If Executive’s employment with the Company or its Affiliates (as defined below) terminates (i) voluntarily by Executive (other than for Good Reason) or (ii) for Cause by the Company, then Executive will not be entitled to receive severance or other benefits except for those (if any) as may then be established under the Company’s then existing severance and benefits plans and practices or pursuant to other written agreements with the Company, if applicable.

(d) Disability; Death. If the Company terminates Executive's employment as a result of Executive's Disability, or Executive's employment terminates due to Executive's death, then Executive will not be entitled to receive severance or other benefits except for those (if any) as may then be established under the Company's then existing written severance and benefits plans and practices or pursuant to other written agreements with the Company, if applicable.

(e) Accrued Compensation. For the avoidance of any doubt, in the event of a termination of Executive's employment with the Company or its Affiliates, Executive will be entitled to receive all accrued but unpaid base salary, any earned but unused vacation pay, and reimbursement for any unreimbursed expenses, in accordance with Company policies then in effect and applicable law.

(f) Transfer between the Company and Affiliates. For purposes of this Section 6, Executive will not be determined to have been terminated without Cause, where Executive continues to remain employed by the Company or one of its Affiliates (e.g., upon transfer from one Affiliate to another); provided, however, that the Parties understand and acknowledge that any such transfer could potentially result in Executive's ability to resign for Good Reason.

(g) Exclusive Remedy. Severance benefits provided to the Executive pursuant to this Section 6 are in lieu of, and not in addition to, any benefits to which Executive may otherwise be entitled under any Company severance plan, policy, or program.

7. Conditions to Receipt of Severance. Any severance payments, equity acceleration, or other payments or benefits under Section 6(a) and (b) above are conditioned on Executive's not materially breaching the Proprietary Rights Agreement (as defined below), including the restrictive covenants therein, in a manner that would be reasonably likely to result in a material injury or effect on the Company's business, operations, prospects or reputation as determined by Executive's Manager in his Manager's sole reasonable discretion, and on Executive's signing and not revoking a separation agreement and release, including a general release of claims against the Company and certain related persons and entities, in a form reasonably satisfactory to the Company (the "Release") and such Release becoming effective in accordance with its terms (such date, the "Release Effective Date") within sixty (60) days following Executive's termination date (the "Release Deadline"), which both Parties agree to take all reasonable steps to accomplish. Severance payments or benefits shall be paid or commence, as applicable, upon the first payroll date following the Release Effective Date and such payment will include the amount of any installment that would otherwise been paid prior to such payment date. All other benefits, if any, due to Executive following a termination will be determined in accordance with the plans, policies and practices of the Company as then in effect. Notwithstanding the foregoing, to the extent required to comply with Section 409A of the Internal Revenue Code and the regulations and guidance promulgated thereunder ("Section 409A"), if the sixty (60) day Release period spans two (2) calendar years, the severance payments will be delayed to the first scheduled payroll date in the second year (and will include all payments that would otherwise have been made prior to such date). Severance payments will not be paid or provided until the Release becomes effective and irrevocable.

8. Section 409A. The Parties intend that this Agreement be interpreted to comply with or be exempt from Section 409A so that none of the severance payments or benefits provided hereunder will be subject to the additional tax imposed under Section 409A. For purposes of determining severance, a termination of employment shall mean not be deemed to have occurred unless the termination is also a "separation from service" within the meaning of Section 409A. If Executive is a "specified employee" within the meaning of Section 409A, then the severance and any other separation benefits payable upon a separation from service (whether under this Agreement or otherwise) that would constitute deferred compensation under Section 409A (the "Deferred Payments"), otherwise due to Executive on or within the six (6)-month period following Executive's separation from service will accrue during such six (6)-month period and will become payable in a lump sum payment on the date six (6) months and one (1) day following the date of Executive's separation from service (such rule, the "Six Month Delay Rule") or, if earlier, the date of Executive's death. All subsequent Deferred Payments following the application of the Six Month Delay Rule, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit or, if earlier, upon the date of Executive's death. Each payment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b) (2) of the Treasury Regulations. Executive and the Company agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions that are necessary, appropriate or desirable to avoid subjecting Executive to an additional tax or income recognition under Section 409A prior to actual payment of any payments and benefits under this Agreement, as applicable. In no event will the Company reimburse Executive for any taxes that may be imposed on Executive as a result of Section 409A.

9. Limitation on Payments. In the event that the severance and other benefits provided for in this Agreement or otherwise payable to Executive (i) constitute “parachute payments” within the meaning of Section 280G of the Code and (ii) but for this Section 9, would be subject to the excise tax imposed by Section 4999 of the Code, then Executive’s severance benefits under Section 6 will be either:

(a) delivered in full, or

(b) delivered as to such lesser extent which would result in no portion of such severance benefits being subject to excise tax under Section 4999 of the Code, whichever of the foregoing amounts, taking into account the applicable federal, state, and local income taxes and the excise tax imposed by Section 4999 of the Code, results in the receipt by Executive on an after-tax basis, of the greatest amount of severance benefits, notwithstanding that all or some portion of such severance benefits may be taxable under Section 4999 of the Code. If a reduction in severance and other benefits constituting “parachute payments” is necessary so that benefits are delivered to a lesser extent, reduction will occur in the following order: (i) reduction of cash payments; (ii) cancellation of awards granted “contingent on a change in ownership or control” (within the meaning of Code Section 280G); (iii) cancellation of accelerated vesting of equity awards; or (iv) reduction of employee benefits. In the event that acceleration of vesting of equity award compensation is to be reduced, such acceleration of vesting will be cancelled in the reverse order of the date of grant of Executive’s equity awards. Unless the Company and Executive otherwise agree in writing, any determination required under this Section 9 will be made in writing by a nationally recognized accounting or valuation firm (the “Firm”) selected by the Company, whose determination will be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required by this Section 9, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and Executive will furnish to the Firm such information and documents as the Accountants may reasonably request in order to make a determination under this Section. The Company will bear all costs the Firm may reasonably incur in connection with any calculations contemplated by this Section 9.

10. Definitions. The following terms referred to in this Agreement will have the following meanings:

(a) Affiliate. “Affiliate” means Company and any other parent or subsidiary corporations of the Company, as such terms are defined in Section 424(e) of the Code.

(b) Cause. “Cause” means the occurrence of one or more of the following: (i) Executive’s indictment for the commission of any felony or a misdemeanor involving deceit, material dishonesty or fraud, or any other such conduct by Executive that would reasonably be expected to result in material injury or reputational harm to the Company if Executive were retained in his position; (ii) Executive’s material violation of this Agreement, the Proprietary Rights Agreement, or any other material agreement with the Company, including any misappropriation or disclosure of confidential and proprietary information or trade secrets of the Company and its subsidiaries or affiliates; (iii) continued failure to substantially perform Executive’s duties with the Company (other than any such failure resulting from Executive’s Disability) after a written demand for substantial performance is delivered to Executive by his Manager, which is not substantially corrected by Executive to the reasonable satisfaction of his Manager within thirty (30) days of receipt of such demand; (iv) a breach by Executive of Executive’s fiduciary duties and responsibilities to the Company that would be reasonably likely to result in a material injury or effect on the Company’s business, operations, prospects or reputation; (v) Executive’s participation in releasing financial statements known by Executive to be false or materially misleading or intentional submission of a false certification to the Securities and Exchange Commission or other governmental agency or authority; (vi) a material violation of the Company’s Code of Ethics or other policies of the Company, that would be reasonably likely to result in a material injury or effect on the Company’s business, operations, prospects or reputation as determined by Executive’s Manager in his Manager’s sole reasonable discretion; or (vii) failure to reasonably cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by his Manager to cooperate, or the destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation.

(c) Change in Control. “Change in Control” means (i) Any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act) becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company’s then outstanding voting securities; (ii) the consummation of the sale or disposition by the Company of all or substantially all of the Company’s assets; (iii) a change in the effective control of the Company which occurs on the date that a majority of the members of the Board of Directors (“Board”) is replaced during any twelve (12) month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election; or (iv) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation. Notwithstanding the foregoing definition, any payment or benefit that would be considered deferred compensation subject to, and not exempt from, Section 409A, payable or to be provided upon a Change in Control shall only be paid or provided to Executive to the extent such event also qualifies as an event described in Internal Revenue Code Section 409A(a)(2)(A)(v).

(d) Disability. “Disability” means Executive’s entitlement to benefits under Company’s long-term disability plan or if Executive does not participate in Company’s long term-disability plan, Executive’s inability, due to physical or mental incapacity, to perform Executive’s duties under this letter Agreement for a period of ninety (90) consecutive days or one-hundred twenty (120) days during any consecutive six (6)-month period.

(e) Good Reason. “Good Reason” means Executive’s resignation within thirty (30) days following the expiration of any Company cure period (discussed below) following the occurrence of one or more of the following, without Executive’s written consent: (i) a material diminution of Executive’s authority relative to Executive’s authority in effect immediately prior to such diminution; provided, however, that a reduction in the Executive’s authority, duties, or responsibilities solely by virtue of the Company being acquired and made part of a larger entity does not constitute “Good Reason” (for example, “Good Reason” does not exist if the Executive is employed by the Company with substantially the same responsibilities with respect to the Company’s business that Executive had immediately prior to the Change in Control regardless of whether Executive’s title is revised to reflect Executive’s placement within the overall corporate hierarchy or whether Executive provides services to a subsidiary, affiliate, business unit or otherwise); (ii) a material reduction by the Company in the base compensation or target bonus of the Executive as in effect immediately prior to such reduction, other than a reduction of up to 25% that is also applied to other senior executives of the Company such that Executive is not the only senior executive whose base compensation or target bonus is being reduced; or (iii) the relocation of Executive to a facility or a location more than one hundred (100) miles from Executive’s then-present location. Executive’s resignation will not be deemed to be for Good Reason unless Executive has first provided the Company with written notice of the acts or omissions constituting the grounds for “Good Reason” within ninety (90) days of the initial existence of the grounds for “Good Reason” and a reasonable cure period of not less than thirty (30) days following the date the Company receives such notice, and such condition has not been cured during such period.

11. Company Matters.

(a) Proprietary Information and Inventions. Executive acknowledges and agrees that as a condition of his continued employment with the Company under this Agreement, he will be required to sign and comply with the At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement (the “Proprietary Rights Agreement”), a copy of which is attached hereto as Exhibit A. Executive further acknowledges and agrees that he will continue to abide by the Company Values and Guidelines and the Company Code of Ethics, which remain in full force and effect, as well as other Company policies as in effect from time to time. In the event of any conflict between any pre-existing confidentiality, non-compete, or non-disclosure obligations and the terms of the restrictive covenants set forth in the Proprietary Rights Agreement, including the terms of the the At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement Executive signed on September 27, 2021, the terms of the Proprietary Rights Agreement shall control.

(b) Resignation on Termination. On termination of his employment, regardless of the reason thereof, Executive shall immediately (and with contemporaneous effect) resign any directorships, offices, or other positions he may hold in the Company unless otherwise agreed in writing by the Parties.

(c) Notification of New Employer. In the event that Executive leaves the employ of the Company, Executive grants consent to notification by the Company to Executive's new employer about his rights and obligations under this Agreement and the Proprietary Rights Agreement.

12. Arbitration. IN CONSIDERATION OF EXECUTIVE'S CONTINUED EMPLOYMENT WITH THE COMPANY, ITS PROMISE TO ARBITRATE ALL EMPLOYMENT-RELATED DISPUTES AND EXECUTIVE'S RECEIPT OF THE COMPENSATION, PAY RAISES, AND OTHER BENEFITS PAID TO EXECUTIVE BY THE COMPANY, AT PRESENT AND IN THE FUTURE, EXECUTIVE AGREES THAT ANY AND ALL CONTROVERSIES, CLAIMS, OR DISPUTES WITH ANYONE (INCLUDING THE COMPANY AND ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, OR BENEFIT PLAN, IN THEIR CAPACITY AS SUCH OR OTHERWISE) ARISING OUT OF, RELATING TO, OR RESULTING FROM EXECUTIVE'S EMPLOYMENT WITH THE COMPANY OR THE TERMINATION OF EXECUTIVE'S EMPLOYMENT WITH THE COMPANY, INCLUDING ANY DISPUTES RELATED TO OR ARISING OUT OF THIS AGREEMENT, SHALL BE SUBJECT TO BINDING ARBITRATION AS SET FORTH IN THE PROPRIETARY RIGHTS AGREEMENT, AND SUBJECT TO THE PROVISIONS THEREIN REGARDING PROTECTED ACTIVITY.

13. Assignment. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors and legal representatives of Executive upon Executive's death and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance, or other disposition of Executive's right to compensation or other benefits will be null and void.

14. Notices. All notices, requests, demands, and other communications called for under this Agreement shall be in writing and shall be delivered personally by hand or by courier, mailed by United States first-class mail, postage prepaid, or sent by email directed to the Party to be notified at the physical address or email address indicated for such Party on the signature page to this Agreement, or at such other address or email address as such Party may designate by ten (10) days' advance written notice to the other Party hereto. All such notices and other communications shall be deemed given upon personal delivery, three (3) days after the date of mailing, or upon sending the email.

15. Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement will continue in full force and effect without said provision.

16. Integration. This Agreement, together with the Proprietary Rights Agreement, any other agreements relating to equity awards between Executive and the Company, the Indemnification Agreement between Executive and the Company dated January 25, 2023, and the Company's Employee Handbook and Code of Ethics, set forth the terms of Executive's continuing employment with the Company as of the Effective Date and supersede any prior representations and agreements, whether written or oral including for purposes of clarity the At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement Executive signed on September 27, 2021.

17. Tax Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable taxes.

18. Waiver. No Party to this Agreement shall be deemed to have waived any right, power, or privilege under this Agreement or any provisions hereof unless such waiver shall have been duly executed in writing and acknowledged by the Party to be charged with such waiver. No waiver of any breach of this Agreement shall be held to be a waiver of any other subsequent breach.

19. Governing Law. This Agreement will be governed by the laws of the State of Texas (with the exception of its conflicts of law provisions). Subject to the arbitration provisions referenced above and without limiting such provisions, the Parties agree to exclusive venue in the state and federal courts in Travis County, Texas, and Executive hereby expressly consents to the personal and exclusive jurisdiction and venue of the state and federal courts in Travis County, Texas.

20. Costs. The Company agrees to reimburse Executive for the attorneys' fees incurred in connection with retaining counsel to assist in the review and preparation of this Agreement on his behalf; provided, however, that the Company will not reimburse Executive for fees incurred in excess of Five Thousand Dollars (\$5,000).

21. Acknowledgment. Executive acknowledges that he has had the opportunity to discuss this matter with and obtain advice from his legal counsel, has had sufficient time to, and has carefully read and fully understands all the provisions of this Agreement, and is knowingly and voluntarily entering into this Agreement.

22. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument.

23. Effect of Headings. The section and subsection headings contained herein are for convenience only and shall not affect the construction hereof.

[Signature Page Follows]

24. Voluntary Execution of Agreement. Executive understands and agrees that he executed this Agreement voluntarily, without any duress or undue influence on the part or behalf of the Company or any third party, with the full intent of entering into the Agreement, including the Proprietary Rights Agreement and that is incorporated as Exhibit A to the Agreement. Executive acknowledges that:

(a) Executive has read and understands this Agreement and the Proprietary Rights Agreement that is incorporated as Exhibit A to the Agreement;

(b) Executive has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of Executive's own choice;

(c) Executive understands the terms and consequences of this Agreement and the Proprietary Rights Agreement that is incorporated as Exhibit A to the Agreement, including, but not limited to, that the choice of law is the laws of the State of Texas (with the exception of its conflicts of law provisions); that subject to the Arbitration provision in Section 12 of this Agreement and the Arbitration and Equitable Relief provision in Section 9 of the Proprietary Rights Agreement and to the extent that any lawsuit is permitted, the venue or forum in which a controversy may be adjudicated is the state and federal courts in Travis County, Texas for both this Agreement and the Proprietary Rights Agreement; and that Proprietary Rights Agreement contains a covenant not to compete and no solicitation agreement in Section 7;

(d) Executive is fully aware of the legal and binding effect of this Agreement; and

(e) Executive has not relied upon any representations or statements made by the Company that are not specifically set forth in this Agreement.

IN WITNESS WHEREOF, the Company and Executive have executed this Agreement as of the day and year first above written.

"COMPANY"

NATIONAL INSTRUMENTS CORPORATION

By: /s/ Eric Starkloff
Eric Starkloff
President & Chief Executive Officer
Address:
11500 N Mopac Expwy
Austin, TX 78759-3504
Attn: General Counsel

"EXECUTIVE"

/s/ Thomas Benjamin
Thomas Benjamin
Address:
729 Tender Lane
Foster City, CA 94404

NATIONAL INSTRUMENTS CORPORATION
EXECUTIVE EMPLOYMENT AGREEMENT SIGNATURE PAGE

Exhibit A
(Proprietary Rights Agreement)

**AT-WILL EMPLOYMENT, CONFIDENTIAL INFORMATION,
INVENTION ASSIGNMENT, AND ARBITRATION AGREEMENT**

As a condition of my employment with National Instruments Corporation (the “**Company**”), and in consideration of my employment with the Company and my receipt of the compensation paid to me by the Company, I agree to the following provisions of this At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement (this “**Agreement**”):

1. **At-Will Employment.** I UNDERSTAND AND ACKNOWLEDGE THAT MY EMPLOYMENT WITH THE COMPANY IS FOR NO SPECIFIED TERM AND CONSTITUTES “AT-WILL” EMPLOYMENT. I ALSO UNDERSTAND THAT ANY REPRESENTATION TO THE CONTRARY IS NOT VALID UNLESS IN WRITING AND SIGNED BY THE CEO OF THE COMPANY. I ACKNOWLEDGE THAT MY EMPLOYMENT MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT GOOD CAUSE OR FOR ANY OR NO CAUSE, AT MY OPTION OR AT THE OPTION OF THE COMPANY, WITH OR WITHOUT NOTICE.

2. **Confidentiality.**

A. *Definition of Company Confidential Information.* “**Company Confidential Information**” means information that the Company has or will develop, acquire, create, compile, discover or own, that has value in or to the Company’s business that is not generally known and which the Company wishes to maintain as confidential. Company Confidential Information includes both information disclosed by the Company to me, and information developed or learned by me during my employment with the Company. Company Confidential Information also includes all information of which the unauthorized disclosure could be detrimental to the interests of the Company, whether or not such information is identified as Company Confidential Information. By way of example, and without limitation, Company Confidential Information includes any and all non-public information that relates to the actual or anticipated business and/or products, research or development of the Company, or to the Company’s technical data, trade secrets, or know-how, including, but not limited to, research, product plans, or other information regarding the Company’s products or services and markets therefor, customer lists and customers (including, but not limited to, customers of the Company with which I may become acquainted during the term of my employment), software, developments, inventions, discoveries, ideas, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, and other business information disclosed by the Company either directly or indirectly in writing, orally, or by drawings or inspection of premises, parts, equipment, or other Company property. Notwithstanding the foregoing, Company Confidential Information shall not include any such information that I can establish (i) was publicly known or made generally available prior to the time of disclosure by the Company to me; (ii) becomes publicly known or made generally available after disclosure by the Company to me through no wrongful action or omission by me; or (iii) is in my rightful possession, without confidentiality obligations, at the time of disclosure by the Company as shown by my then-contemporaneous written records; provided that any combination of individual items of information shall not be deemed to be within any of the foregoing exceptions merely because one or more of the individual items are within such exception, unless the combination as a whole is within such exception.

B. *Nonuse and Nondisclosure.* During and after my employment with the Company, I will hold in the strictest confidence and take all reasonable precautions to prevent any unauthorized use or disclosure of Company Confidential Information. I will not (i) use Company Confidential Information for any purpose whatsoever other than for the benefit of the Company in the course of my employment, or (ii) disclose Company Confidential Information to any third party without the prior written authorization of the CEO of the Company. Prior to disclosure, when compelled by applicable law, I shall provide prior written notice to the CEO and General Counsel of the Company (as applicable). I agree that I obtain no title to any Company Confidential Information, and that the Company retains all Confidential Information as the sole property of the Company. I understand that my unauthorized use or disclosure of Company Confidential Information during my employment may lead to disciplinary action, up to and including, termination and legal action by the Company. I understand that my obligations under this section shall continue after termination of my employment and that nothing in this Agreement prevents me from engaging in protected activity, as described below.

C. *Former Employer Confidential Information.* I agree that during my employment with the Company, I will not improperly use, disclose, or induce the Company to use any proprietary information or trade secrets of any former employer or other person or entity with which I have an obligation to keep such proprietary information or trade secrets in confidence. I further agree that I will not bring onto the Company’s premises or transfer onto the Company’s technology systems any unpublished document, proprietary information, or trade secrets belonging to any such third party unless disclosure to, and use by, the Company has been consented to, in writing, by such third party and the Company.

D. *Third Party Information.* I recognize that the Company has received, and in the future may receive, from third parties (for example, customers, suppliers, licensors, licensees, partners, and collaborators) as well as its subsidiaries and affiliates (“**Associated Third Parties**”), information that the Company is required to maintain and treat as confidential or proprietary information of such Associated Third Parties (“**Associated Third Party Confidential Information**”), and I agree to use such Associated Third Party Confidential Information only as directed by the Company and to not use or disclose such Associated Third Party Confidential Information in a manner that would violate the Company’s obligations to such Associated Third Parties. I agree at all times during my employment with the Company and thereafter, that I owe the Company and its Associated Third Parties a duty to hold all such Associated Third Party Confidential Information in the strictest confidence, and not to use it or to disclose it to any person, firm, corporation, or other third party except as necessary in carrying out my work for the Company consistent with the Company’s agreement with such Associated Third Parties.

3. **Ownership.**

A. *Assignment of Inventions.* As between the Company and myself, I agree that all right, title, and interest in and to any and all copyrightable material, notes, records, drawings, designs, logos, inventions, improvements, developments, discoveries, ideas and trade secrets conceived, discovered, authored, invented, developed, or reduced to practice by me, solely or in collaboration with others, during the period of time I am in the employ of the Company (including during my off-duty hours), or with the use of the Company’s equipment, supplies, facilities, or Company Confidential Information, and any copyrights, patents, trade secrets, mask work rights or other intellectual property rights relating to the foregoing, except as provided in Section 3.F below (collectively, “**Inventions**”), are the sole property of the Company. I also agree to promptly make full written disclosure to the Company of any Inventions, and to deliver and assign and hereby irrevocably assign fully to the Company all of my right, title and interest in and to Inventions. I agree that this assignment includes a present conveyance to the Company of ownership of Inventions that are not yet in existence. I further acknowledge that all original works of authorship that are made by me (solely or jointly with others) within the scope of and during the period of my employment with the Company and that are protectable by copyright are “works made for hire,” as that term is defined in the United States Copyright Act. I understand and agree that the decision whether or not to commercialize or market any Inventions is within the Company’s sole discretion and for the Company’s sole benefit, and that no royalty or other consideration will be due to me as a result of the Company’s efforts to commercialize or market any such Inventions.

B. *Pre-Existing Materials.* I will inform the Company, in writing, before incorporating any inventions, discoveries, ideas, original works of authorship, developments, improvements, trade secrets and other proprietary information or intellectual property rights owned by me or in which I have an interest prior to, or separate from, my employment with the Company, including, without limitation, any such inventions that are subject to California Labor Code Section 2870 (attached hereto as Exhibit B) (“**Prior Inventions**”) into any Invention or otherwise utilizing any Prior Invention in the course of my employment with the Company; and the Company is hereby granted a nonexclusive, royalty-free, perpetual, irrevocable, transferable worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such incorporated or utilized Prior Inventions, without restriction, including, without limitation, as part of, or in connection with, such Invention, and to practice any method related thereto. I will not incorporate any inventions, discoveries, ideas, original works of authorship, developments, improvements, trade secrets and other proprietary information or intellectual property rights owned by any third party into any Invention without the Company’s prior written permission. I have attached hereto, as Exhibit A, a list describing all Prior Inventions that relate to the Company’s current or anticipated business, products, or research and development or, if no such list is attached, I represent and warrant that there are no such Prior Inventions. Furthermore, I represent and warrant that if any Prior Inventions are included on Exhibit A, they will not materially affect my ability to perform all obligations under this Agreement.

C. *Moral Rights.* Any assignment to the Company of Inventions includes all rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as “moral rights,” “artist’s rights,” “droit moral,” or the like (collectively, “**Moral Rights**”). To the extent that Moral Rights cannot be assigned under applicable law, I hereby waive and agree not to enforce any and all Moral Rights, including, without limitation, any limitation on subsequent modification, to the extent permitted under applicable law.

D. *Further Assurances.* I agree to assist the Company, or its designee, at the Company’s expense, in every proper way to secure the Company’s rights in the Inventions in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution

of all applications, specifications, oaths, assignments, and all other instruments that the Company shall deem proper or necessary in order to apply for, register, obtain, maintain, defend, and enforce such rights, and in order to deliver, assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title, and interest in and to all Inventions, and testifying in a suit or other proceeding relating to such Inventions. I further agree that my obligations under this Section 3.D shall continue after the termination of this Agreement.

E. **Attorney-in-Fact.** I agree that, if the Company is unable because of my unavailability, mental or physical incapacity, or for any other reason to secure my signature with respect to any Inventions, including, without limitation, for the purpose of applying for or pursuing any application for any United States or foreign patents or mask work or copyright registrations covering the Inventions assigned to the Company in Section 3.A, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and on my behalf to execute and file any papers and oaths, and to do all other lawfully permitted acts with respect to such Inventions to further the prosecution and issuance of patents, copyright and mask work registrations with the same legal force and effect as if executed by me. This power of attorney shall be deemed coupled with an interest and shall be irrevocable.

F. **Exception to Assignments.** I UNDERSTAND THAT THE PROVISIONS OF THIS AGREEMENT REQUIRING ASSIGNMENT OF INVENTIONS (AS DEFINED UNDER SECTION 3.A ABOVE) TO THE COMPANY DO NOT APPLY TO ANY INVENTION FOR WHICH NO EQUIPMENT SUPPLIES, FACILITY, OR TRADE SECRET INFORMATION OF THE COMPANY WAS USED AND WHICH WAS DEVELOPED ENTIRELY ON MY OWN TIME (AN "OTHER INVENTION") EXCEPT FOR THOSE OTHER INVENTIONS THAT RELATE: (A) DIRECTLY TO THE BUSINESS OF THE COMPANY; (B) TO THE COMPANY'S ACTUAL OR DEMONSTRABLY ANTICIPATED RESEARCH OR DEVELOPMENT; OR (C) RESULT FROM ANY WORK I PERFORM FOR THE COMPANY. I WILL NOT INCORPORATE, OR PERMIT TO BE INCORPORATED, ANY OTHER INVENTION OWNED BY ME OR IN WHICH I HAVE AN INTEREST INTO A COMPANY PRODUCT, PROCESS OR SERVICE WITHOUT THE COMPANY'S PRIOR WRITTEN CONSENT. I WILL ADVISE THE COMPANY PROMPTLY IN WRITING OF ANY INVENTIONS THAT I BELIEVE MEET THE ABOVE CRITERIA AND ARE NOT OTHERWISE DISCLOSED ON EXHIBIT A TO PERMIT A DETERMINATION OF OWNERSHIP BY THE COMPANY. ANY SUCH DISCLOSURE WILL BE RECEIVED IN CONFIDENCE. I FURTHER UNDERSTAND THAT THE PROVISIONS OF THIS AGREEMENT REQUIRING ASSIGNMENT OF INVENTIONS TO THE COMPANY DO NOT APPLY TO ANY INVENTION THAT QUALIFIES FULLY UNDER CALIFORNIA LABOR CODE SECTION 2870 (ATTACHED AS EXHIBIT B). I WILL ADVISE THE COMPANY PROMPTLY IN WRITING OF ANY INVENTIONS THAT I BELIEVE MEET THE CRITERIA IN LABOR CODE SECTION 2870 AND ARE NOT OTHERWISE DISCLOSED ON EXHIBIT A TO PERMIT A DETERMINATION OF OWNERSHIP BY THE COMPANY. ANY SUCH DISCLOSURE WILL BE RECEIVED IN CONFIDENCE

4. **Conflicting Obligations.** I agree that during my employment with the Company, I will not engage in any other employment, occupation, consulting relationship, or commitment that is directly related to the business in which the Company is now involved or becomes involved or has plans to become involved, nor will I engage in any other activities that conflict with my obligations to the Company. I represent and warrant that I have no other agreements, relationships, or commitments to any other person or entity that conflict with the provisions of this Agreement or my ability to be employed and perform services for the Company. I further agree that if I have signed a confidentiality agreement or similar type of agreement with any former employer or other entity, I will comply with the terms of any such agreement to the extent that its terms are lawful under applicable law, as advised by counsel to the extent such advice is deemed necessary. I represent and warrant that after undertaking a careful search, I have returned all property and confidential information belonging to all prior employers (and/or other third parties I have performed services for in accordance with the terms of any such applicable agreements).

5. **Notification of New Employer.** If I leave the employ of the Company, I hereby grant consent to notification by the Company to my new employer about my obligations under this Agreement.

6. **Company Policies.** I agree to adhere to all policies of the Company, including, but not limited to, the Company's insider trading and conflict of interest policies as well as policies governing use of the

Company's documents and the Company's internet, email, telephone, and technology systems to which I will have access during my employment.

7. **Covenant Not to Compete and No Solicitation.**

A. *Covenant Not to Compete.* I agree that during the course of my employment and for a period of twelve (12) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, at the option either of the Company or myself, with or without notice, I will not, without the prior written consent of the Company: (i) serve as a partner, principal, licensor, licensee, employee, consultant, officer, director, manager, agent, affiliate, representative, advisor, promoter, associate, investor, or otherwise for (except for passive ownership of one percent (1%) or less of any entity whose securities have been registered under the Securities Act of 1933, as amended, or Section 12 of the Securities Exchange Act of 1934, as amended); (ii) directly or indirectly, own, purchase, organize or take preparatory steps for the organization of; or (iii) build, design, finance, acquire, lease, operate, manage, control, invest in, work or consult for or otherwise join, participate in or affiliate myself with, any business whose business, products or operations are in any respect involved in the Covered Business. For purposes of this Agreement, "**Covered Business**" shall mean any business in which the Company is engaged or in which the Company has plans to be engaged, or any service that the Company provides or has plans to provide. The foregoing covenant shall cover my activities in every part of the Territory. For purposes of this Agreement, "**Territory**" shall mean: (i) all counties in the State of Texas; (ii) all other states of the United States of America in which the Company provided goods or services, had customers, or otherwise conducted business at any time during the two-year period prior to the date of the termination of my relationship with the Company; and (iii) any other countries from which the Company maintains non-trivial operations or facilities, provided goods or services, had customers, or otherwise conducted business at any time during the two-year period prior to the date of the termination of my relationship with the Company. Should I obtain other employment during my employment with the Company or within twelve (12) months immediately following the termination of my relationship with the Company, I agree to provide written notification to the Company as to the name and address of my new employer, the position that I expect to hold, and a general description of my duties and responsibilities, at least three (3) business days prior to starting such employment.

B. *No Solicitation.*

(1) *Non-Solicitation of Customers.* I agree that for a period of twelve (12) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, at the option either of the Company or myself, with or without notice, I will not contact, or cause to be contacted, directly or indirectly, or engage in any form of oral, verbal, written, recorded, transcribed, or electronic communication with any Customer for the purposes of conducting business that is competitive or similar to that of the Company or for the purpose of disadvantaging the Company's business in any way. For purposes of this Agreement, "**Customer**" shall mean all persons or entities that have used or inquired of the Company's services at any time during the two-year period preceding the termination of my employment with the Company. I acknowledge and agree that the Customers did not use or inquire of the Company's services solely as a result of my efforts, and that the efforts of other Company personnel and resources are responsible for the Company's relationship with the Customers. I further acknowledge and agree that the identity of the Customers is not readily ascertainable or discoverable through public sources, and that the Company's list of Customers was cultivated with great effort and secured through the expenditure of considerable time and money by the Company.

(2) *Non-Solicitation of Employees.* I agree that for a period of twelve (12) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, at the option either of the Company or myself, with or without notice, I will not directly or indirectly hire, solicit, or recruit, or attempt to hire, solicit, or recruit, any employee of the Company to leave their employment with the Company, nor will I contact any employee of the Company, or cause an employee of the Company to be contacted, for the purpose of leaving employment with the Company.

(3) *Non-Solicitation of Others.* I agree that for a period of twelve (12) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, at the option either of the Company or myself, with or without notice, I will not solicit, encourage, or induce, or cause to be solicited, encouraged or induced, directly or indirectly, any franchisee, joint venture, supplier, vendor or contractor who conducted business with the Company at any time during the two-year period preceding the termination of my employment with the Company, to terminate or adversely modify any business relationship with the Company or not to proceed with, or enter into, any business relationship with the Company, nor shall I otherwise interfere with any business relationship between the Company and any such franchisee, joint venture, supplier, vendor or contractor.

C. *Acknowledgements.* I acknowledge that I will derive significant value from the Company's agreement to provide me with Company Confidential Information to enable me to optimize the performance of my duties to the Company. I further acknowledge that my fulfillment of the obligations contained in this Agreement, including, but not limited to, my obligation neither to disclose nor to use Company Confidential Information other than for the Company's exclusive benefit and my obligations not to compete and not to solicit contained in subsections (A) and (B) above, is necessary to protect Company Confidential Information and, consequently, to preserve the value and goodwill of the Company. I also acknowledge the time, geographic and scope limitations of my obligations under subsections (A) and (B) above are fair and reasonable in all respects, especially in light of the Company's need to protect Company Confidential Information and the scope and nature of the Company's business, and that I will not be precluded from gainful employment if I am obligated not to compete with the Company or solicit its customers, employees, or others during the period and within the Territory as described above. In the event of my breach or violation of this Section 7, or good faith allegation by the Company of my breach or violation of this Section 7, the restricted periods set forth in this Section 7 shall be tolled until such breach or violation, or dispute related to an allegation by the Company that I have breached or violated this Section 7, has been duly cured or resolved, as applicable. I agree that nothing in this Section 7 shall affect my continuing obligations under this Agreement during and after this twelve (12) month period, including, without limitation, my obligations under Section 2.

D. *Separate Covenants.* The covenants contained in subsections (A) and (B) above shall be construed as a series of separate covenants, one for each city, county and state of any geographic area in the Territory. Except for geographic coverage, each such separate covenant shall be deemed identical in terms to the covenant contained in subsections (A) and (B) above. If, in any judicial or arbitral proceeding, a court or arbitrator refuses to enforce any of such separate covenants (or any part thereof), then such unenforceable covenant (or such part) shall be revised, or if revision is not permitted it shall be eliminated from this Agreement, to the extent necessary to permit the remaining separate covenants (or portions thereof) to be enforced. In the event that the provisions of subsections (A) and (B) above are deemed to exceed the time, geographic or scope limitations permitted by applicable law, then such provisions shall be reformed to the maximum time, geographic or scope limitations, as the case may be, then permitted by such law. In the event that the applicable court or arbitrator does not exercise the power granted to it in the prior sentence, I and the Company agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

8. **Representations.** Without limiting my obligations under Section 3.D above, I agree to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. I represent and warrant that my performance of the terms of this Agreement will not breach any agreement to keep confidential information acquired by me in confidence or in trust prior to my employment by the Company. I hereby represent and warrant that I have not entered into, and I will not enter into, any oral or written agreement in conflict herewith.

9. **Arbitration and Equitable Relief.**

A. *Arbitration.* IN CONSIDERATION OF MY EMPLOYMENT WITH THE COMPANY, ITS PROMISE TO ARBITRATE ALL EMPLOYMENT-RELATED DISPUTES WITH ME, AND MY RECEIPT OF COMPENSATION, AND OTHER COMPANY BENEFITS, AT PRESENT AND IN THE FUTURE, I AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS, OR DISPUTES THAT I MAY HAVE WITH THE COMPANY (INCLUDING ANY COMPANY EMPLOYEE, OFFICER, DIRECTOR, TRUSTEE, OR BENEFIT PLAN OF THE COMPANY, IN THEIR CAPACITY AS SUCH OR OTHERWISE), ARISING OUT OF, RELATING TO, OR RESULTING FROM MY EMPLOYMENT WITH THE COMPANY OR THE TERMINATION OF MY EMPLOYMENT WITH THE COMPANY, INCLUDING ANY BREACH OF THIS AGREEMENT, SHALL BE SUBJECT TO BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT (9 U.S.C. SEC. 1 ET SEQ.) (THE "FAA"). THE FAA'S SUBSTANTIVE AND PROCEDURAL PROVISIONS SHALL EXCLUSIVELY GOVERN AND APPLY WITH FULL FORCE AND EFFECT TO THIS ARBITRATION AGREEMENT, INCLUDING ITS ENFORCEMENT, AND ANY STATE COURT OF COMPETENT JURISDICTION SHALL COMPEL ARBITRATION IN THE SAME MANNER AS A FEDERAL COURT UNDER THE FAA. I FURTHER AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, I MAY BRING ANY ARBITRATION PROCEEDING ONLY IN MY INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF, REPRESENTATIVE OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE OR REPRESENTATIVE LAWSUIT OR PROCEEDING. **TO THE FULLEST EXTENT PERMITTED BY LAW, I AGREE TO ARBITRATE ANY AND ALL COMMON LAW AND/OR STATUTORY**

CLAIMS UNDER LOCAL, STATE, OR FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AMERICANS WITH DISABILITIES ACT OF 1990, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE OLDER WORKERS BENEFIT PROTECTION ACT, THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT, THE FAIR LABOR STANDARDS ACT, THE FAMILY AND MEDICAL LEAVE ACT, THE TEXAS COMMISSION ON HUMAN RIGHTS ACT, CLAIMS RELATING TO EMPLOYMENT STATUS, COMPENSATION, CLASSIFICATION, HARASSMENT, DISCRIMINATION, WRONGFUL TERMINATION, AND BREACH OF CONTRACT. TO THE FULLEST EXTENT PERMITTED BY LAW, I ALSO AGREE TO ARBITRATE ANY AND ALL DISPUTES ARISING OUT OF OR RELATING TO THE INTERPRETATION OR APPLICATION OF THIS AGREEMENT TO ARBITRATE, BUT NOT DISPUTES ABOUT THE ENFORCEABILITY, REVOCABILITY, OR VALIDITY OF THIS AGREEMENT TO ARBITRATE OR THE CLASS, COLLECTIVE, AND REPRESENTATIVE PROCEEDING WAIVER HEREIN. WITH RESPECT TO ALL SUCH CLAIMS AND DISPUTES THAT I AGREE TO ARBITRATE, I HEREBY EXPRESSLY AGREE TO WAIVE, AND DO WAIVE, ANY RIGHT TO A TRIAL BY JURY. I FURTHER UNDERSTAND THAT THIS AGREEMENT TO ARBITRATE ALSO APPLIES TO ANY DISPUTES THAT THE COMPANY MAY HAVE WITH ME. I UNDERSTAND THAT NOTHING IN THIS AGREEMENT REQUIRES ME TO ARBITRATE CLAIMS THAT CANNOT BE ARBITRATED UNDER THE SARBANES-OXLEY ACT OR OTHER LAW THAT EXPRESSLY PROHIBITS ARBITRATION OF A CLAIM NOTWITHSTANDING THE APPLICATION OF THE FAA.

B. *Administration of Arbitration.* I AGREE THAT ANY ARBITRATION WILL BE ADMINISTERED BY JAMS, PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES (THE "JAMS RULES"), AVAILABLE AT <https://www.jamsadr.com/rules-employment-arbitration/>. IF THE JAMS RULES CANNOT BE ENFORCED AS TO THE ARBITRATION, THEN THE PARTIES AGREE THAT THEY WILL ARBITRATE THIS DISPUTE UTILIZING JAMS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES OR SUCH RULES AS THE ARBITRATOR MAY DEEM MOST APPROPRIATE FOR THE DISPUTE. I AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO DECIDE ANY MOTIONS BROUGHT BY ANY PARTY TO THE ARBITRATION, APPLYING THE STANDARDS SET FORTH FOR SUCH MOTIONS UNDER THE TEXAS RULES OF CIVIL PROCEDURE. I AGREE THAT THE ARBITRATOR SHALL ISSUE A WRITTEN DECISION ON THE MERITS. I ALSO AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO AWARD ANY REMEDIES AVAILABLE UNDER APPLICABLE LAW, AND THAT THE ARBITRATOR MAY AWARD ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY, WHERE PERMITTED BY APPLICABLE LAW. I AGREE THAT THE DECREE OR AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED AS A FINAL AND BINDING JUDGMENT IN ANY COURT HAVING JURISDICTION THEREOF. THE COMPANY AGREES THAT THE COMPANY WILL PAY FOR ANY FEES OR COSTS CHARGED BY JAMS OR THE ARBITRATOR OR COURT REPORTERS, INCLUDING ADMINISTRATIVE OR HEARING FEES CHARGED BY THE ARBITRATOR OR JAMS EXCEPT THAT I SHALL PAY ANY FILING FEES ASSOCIATED WITH ANY ARBITRATION THAT I INITIATE, BUT ONLY SO MUCH OF THE FILING FEES AS I WOULD HAVE INSTEAD PAID HAD I FILED A COMPLAINT IN A COURT THAT WOULD HAVE HAD JURISDICTION OVER SUCH COMPLAINT. I AGREE THAT THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH TEXAS LAW, INCLUDING THE TEXAS RULES OF CIVIL PROCEDURE AND THE TEXAS RULES OF EVIDENCE, AND THAT THE ARBITRATOR SHALL APPLY SUBSTANTIVE AND PROCEDURAL TEXAS LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO RULES OF CONFLICT-OF-LAW. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH TEXAS LAW, TEXAS LAW SHALL TAKE PRECEDENCE. I AGREE THAT ANY ARBITRATION UNDER THIS AGREEMENT SHALL BE CONDUCTED IN TRAVIS COUNTY, TEXAS.

C. *Remedy.* EXCEPT AS PROVIDED BY THE FAA OR THIS AGREEMENT, ARBITRATION SHALL BE THE SOLE, EXCLUSIVE, AND FINAL REMEDY FOR ANY DISPUTE BETWEEN ME AND THE COMPANY. ACCORDINGLY, EXCEPT AS PROVIDED FOR BY THE FAA OR THIS AGREEMENT, NEITHER I NOR THE COMPANY WILL BE PERMITTED TO PURSUE OR PARTICIPATE IN A COURT ACTION REGARDING CLAIMS THAT ARE SUBJECT TO ARBITRATION.

D. *Administrative Relief.* I UNDERSTAND THAT THIS AGREEMENT DOES NOT PROHIBIT ME FROM PURSUING AN ADMINISTRATIVE CLAIM WITH AN ADMINISTRATIVE BODY OR GOVERNMENT AGENCY AUTHORIZED TO ENFORCE OR ADMINISTER LAWS RELATED TO EMPLOYMENT. THIS AGREEMENT DOES PRECLUDE ME FROM PURSUING A COURT ACTION REGARDING ANY SUCH CLAIM, EXCEPT AS PERMITTED BY LAW.

E. *Voluntary Nature of Agreement.* I ACKNOWLEDGE AND AGREE THAT I AM EXECUTING THIS AGREEMENT VOLUNTARILY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE BY THE COMPANY OR ANYONE ELSE. I FURTHER ACKNOWLEDGE AND AGREE THAT I HAVE CAREFULLY READ THIS AGREEMENT AND THAT I HAVE ASKED ANY QUESTIONS NEEDED FOR ME TO UNDERSTAND THE TERMS, CONSEQUENCES, AND BINDING EFFECT OF THIS AGREEMENT AND FULLY UNDERSTAND IT, INCLUDING THAT ***I AM WAIVING MY RIGHT TO A JURY TRIAL.*** I AGREE THAT I HAVE BEEN PROVIDED AN OPPORTUNITY TO SEEK THE ADVICE OF AN ATTORNEY OF MY CHOICE BEFORE SIGNING THIS AGREEMENT.

10. **Miscellaneous.**

A. *Governing Law; Consent to Personal Jurisdiction.* This Agreement will be governed by the laws of the State of Texas without regard to Texas' conflicts-of-law, except that any dispute regarding the enforceability of the arbitration section of this Agreement shall be governed by the FAA. To the extent that any lawsuit is permitted under this Agreement, the Company and I hereby expressly consent to the personal and exclusive jurisdiction and venue of the state and federal courts located in Travis County, Texas for any lawsuit filed against me by the Company or against the Company by me.

B. *Assignability.* This Agreement will be binding upon my heirs, executors, assigns, administrators, and other legal representatives, and will be for the benefit of the Company, its successors, and its assigns. The Associated Third Parties are intended third-party beneficiaries to this Agreement with respect to my obligations in Section 2.D. Notwithstanding anything to the contrary herein, the Company may assign this Agreement and its rights and obligations under this Agreement to any successor to all, or substantially all, of the Company's relevant assets, whether by merger, consolidation, reorganization, reincorporation, sale of assets or stock, or otherwise. For the avoidance of doubt, the Company's successors and assigns are authorized to enforce the Company's rights under this Agreement.

C. *Entire Agreement.* This Agreement, together with the Exhibits herein and any executed written offer letter between me and the Company, to the extent such materials are not in conflict with this Agreement, sets forth the entire agreement and understanding between the Company and me with respect to the subject matter herein and supersedes all prior written and oral agreements, discussions, or representations between us. I represent and warrant that I am not relying on any representation not contained in this Agreement. Any subsequent change or changes in my duties, salary, compensation, conditions, or any other terms of my employment will not affect the validity or scope of this Agreement.

D. *Severability.* If a court or other body of competent jurisdiction finds, or the parties mutually believe, any provision of this Agreement, or portion thereof, to be invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

E. *Modification, Waiver.* No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in a writing signed by the CEO of the Company and me. Waiver by the Company of a breach of any provision of this Agreement will not operate as a waiver of any other or subsequent breach.

F. *Survivorship.* The rights and obligations of the parties to this Agreement will survive termination of my employment with the Company.

11. **Protected Activity Not Prohibited.** I understand that nothing in this Agreement limits or prohibits me from filing and/or pursuing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or proceeding that may be conducted by, any federal, state, or local government agency or commission, including disclosing documents or other information as permitted by law, without giving notice to, or receiving authorization from, the Company. In addition, nothing in this Agreement, including its definition of Company Confidential Information, is intended to limit employees' rights to discuss the terms, wages, and working conditions of their employment, nor to deny employees the right to disclose information pertaining to sexual harassment or any unlawful or potentially unlawful conduct, as protected by applicable law. I further understand that I am not permitted to disclose the Company's attorney-client privileged communications or attorney work product. In addition, I hereby acknowledge that the Company has provided me with notice in compliance with the Defend Trade Secrets Act of 2016 regarding immunity from liability for limited disclosures of trade secrets. The full text of the notice is attached in Exhibit B.

[Signature Page Follows]

12. **Voluntary Execution of Agreement.** I understand and agree that I have executed this Agreement voluntarily, without any duress or undue influence on the part or behalf of the Company or any third party, with the full intent of entering into the Agreement. I further acknowledge that:

(a) I have read and understanding this Agreement;

(b) I have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of my own choice;

(c) I understand the terms and consequences of this Agreement, including, but not limited to, that the choice of law is the laws of the State of Texas (with the exception of its conflicts of law provisions); that subject to the Arbitration and Equitable Relief provision in Section 9 and to the extent that any lawsuit is permitted under this Agreement, the venue or forum in which a controversy arising from the Agreement may be adjudicated is the state and federal courts in Travis County, Texas; and that this Agreement contains a covenant not to compete and no solicitation agreement in Section 7;

(d) I am fully aware of the legal and binding effect of this Agreement; and

(e) I have not relied upon any representations or statements made by the Company that are not specifically set forth in this Agreement.

Date: April 26, 2023 /s/ Thomas Benjamin

Signature

Thomas Benjamin

Name of Employee (typed or printed)

EXHIBIT A

**LIST OF PRIOR INVENTIONS
AND ORIGINAL WORKS OF AUTHORSHIP**

Title	Applicable Date	Identifying Registration Number or Brief Description
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No inventions or improvements

Additional Sheets Attached

Date: April 26, 2023 /s/ Thomas Benjamin

Signature

Thomas Benjamin

Name of Employee (typed or printed)

EXHIBIT B

**CALIFORNIA LABOR CODE SECTION 2870
INVENTION ON OWN TIME - EXEMPTION FROM AGREEMENT**

“(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer’s equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer’s business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.”

SECTION 7 OF THE DEFEND TRADE SECRETS ACT OF 2016

“ . . . An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. . . . An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.”

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Eric Starkloff, certify that:

1. I have reviewed this report on Form 10-Q of National Instruments Corporation;
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(s) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 28, 2023

By: /s/ Eric Starkloff
Eric Starkloff
Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Daniel Berenbaum, certify that:

1. I have reviewed this report on Form 10-Q of National Instruments Corporation;
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(s) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 28, 2023

By: /s/ Daniel Berenbaum

Daniel Berenbaum
Chief Financial Officer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Eric Starkloff, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of National Instruments Corporation on Form 10-Q for the fiscal quarter ended March 31, 2023 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Form 10-Q fairly presents in all material respects the financial condition and results of operations of National Instruments Corporation.

By: /s/ Eric Starkloff

Eric Starkloff

Chief Executive Officer

Date: April 28, 2023

I, Daniel Berenbaum, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of National Instruments Corporation on Form 10-Q for the fiscal quarter ended March 31, 2023 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Form 10-Q fairly presents in all material respects the financial condition and results of operations of National Instruments Corporation.

By: /s/ Daniel Berenbaum

Daniel Berenbaum

Chief Financial Officer

Date: April 28, 2023