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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2022

OR

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

For the transition period from _____ to _____

Commission file number: 0-20852

ULTRALIFE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**16-1387013**
(State or other jurisdiction of incorporation of organization)	(I.R.S. Employer Identification No.)
2000 Technology Parkway Newark, New York 14513	**(315) 332-7100**
(Address of principal executive offices) (Zip Code)	(Registrant's telephone number, including area code:)

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

Common Stock, $0.10 par value per share	**ULBI**	**NASDAQ**
(Title of each class)	(Trading Symbol)	(Name of each exchange on which registered)

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

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

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

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

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

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

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

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

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

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. Yes ☐ No ☒

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). Yes ☐ No ☒

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

On June 30, 2022, the aggregate market value of the common stock held by non-affiliates as defined in Rule 405 under the Securities Act of 1933) of the registrant was approximately $44,418,638 (in whole dollars) based upon the closing price for such common stock as reported on the NASDAQ Global Market on June 30, 2022.

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

As of March 27, 2023, the registrant had 16,135,358 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Certain portions of the registrant's definitive proxy statement relating to the Annual Meeting of Shareholders are specifically incorporated by reference in Part III, Items 10, 11, 12, 13 and 14 of this Annual Report on Form 10-K, except for the equity plan information required by Item 12 as set forth herein.

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PART I

The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for forward-looking statements. This report contains certain forward-looking statements and information that are based on the beliefs of management as well as assumptions made by and information currently available to management. The statements contained in this report relating to matters that are not historical facts are forward-looking statements that involve risks and uncertainties, including, but not limited to, changes in economic conditions including inflation and supply chain disruptions affecting our business, revenues and earnings adversely; the continued impact of COVID-19 causing delays in the manufacture and delivery of our mission critical products to end customers; our reliance on certain key customers; our efforts to develop new commercial applications for our products; reduced U.S. and foreign military spending including the uncertainty associated with government budget approvals; the unique risks associated with our China operations; breaches in information systems security and other disruptions in our information technology systems; potential disruptions in our supply of raw materials and components; fluctuations in the price of oil and the resulting impact on the demand for downhole drilling; our ability to retain top management and key personnel; our resources being overwhelmed by our growth; possible future declines in demand for the products that use our batteries or communications systems; safety risks, including the risk of fire; variability in our quarterly and annual results and the price of our common stock; rising interest rate increasing the cost of our variable borrowings; purchases by our customers of product quantities not meeting the volume expectations in our supply agreements; potential costs attributable to the warranties we supply with our products and services; our inability to comply with changes to the regulations for the shipment of our products; our ability to utilize our net operating loss carryforwards; our entrance into new end-markets which could lead to additional financial exposure; negative publicity concerning Lithium-ion batteries; possible impairments of our goodwill and other intangible assets; our exposure to foreign currency fluctuations; the risk that we are unable to protect our proprietary and intellectual property; rules and procedures regarding contracting with the U.S. and foreign governments; exposure to possible violations of the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act or other anti-corruption laws; known and unknown environmental matters; possible audits of our contracts by the U.S. and foreign governments and their respective defense agencies; our ability to comply with government regulations regarding the use of "conflict minerals"; technological innovations in the non-rechargeable and rechargeable battery industries; and other risks and uncertainties, certain of which are beyond our control.

Although we base these forward-looking statements on assumptions that we believe are reasonable when made, we caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity and developments in the industries in which we operate may differ materially from those made in or suggested by the forward-looking statements contained herein. In addition, even if our results of operations, financial condition and liquidity and the development of the industries in which we operate are consistent with the forward-looking statements contained in this document, those results or developments may not be indicative of results or developments in subsequent periods. Given these risks and uncertainties, you are cautioned not to place undue reliance on these forward-looking statements. Any forward-looking statements that we make herein speak only as of the date of those statements, and we undertake no obligation to update those statements or to publicly announce the results of any revisions to any of those statements to reflect future events or developments. Comparisons of results for current and any prior periods are not intended to express any future trends or indications of future performance, unless expressed as such, and should only be viewed as historical data. When used in this report, the words "anticipate", "believe", "estimate", "plan", "intend", "foresee", "may", "could", "will", "likely" or "expect" or words of similar import are intended to identify some, but not all, such forward-looking statements. For further discussion of certain of the matters described above and other risks and uncertainties, see "Risk Factors" in Item 1A of this Form 10-K Annual Report.

As used in this Form 10-K Annual Report, unless otherwise indicated, the terms the "Company", "we", "our" and "us" refer to Ultralife Corporation ("Ultralife") and its wholly owned subsidiaries ABLE New Energy Co., Limited and its wholly owned subsidiary ABLE New Energy Co., Ltd (collectively "ABLE"); Ultralife UK LTD and its wholly owned subsidiary Accutronics Ltd (collectively "Accutronics"); Ultralife Batteries (UK) Ltd.; Southwest Electronic Energy Corporation and its wholly owned subsidiary, CLB, Inc. (collectively "SWE"); Ultralife Excell Holding Corp. ("UEHC") and its wholly owned subsidiary Excell Battery Corporation USA (collectively "Excell Battery USA"), Ultralife Canada Holding Corp (wholly owned by UEHC, "UCHC") and its wholly owned subsidiary Excell Battery Canada ULC ("Excell Battery Canada"), and its majority-owned joint venture Ultralife Batteries India Private Limited ("Ultralife India").

Dollar amounts throughout this Form 10-K Annual Report are presented in thousands of dollars, except for per share amounts.

ITEM 1. BUSINESS

General

We offer products and services ranging from power solutions to communications and electronics systems to customers across the globe in the government, defense and commercial sectors. With an emphasis on strong engineering and a collaborative approach to problem solving, we design and manufacture power and communications systems including: rechargeable and non-rechargeable batteries, charging systems, communications and electronics systems and accessories, and custom engineered systems related to those product lines. We continually evaluate ways to grow, including the design, development and sale of new products, expansion of our sales force to penetrate new markets and territories, as well as seeking opportunities to expand through acquisitions.

We sell our products worldwide through a variety of trade channels, including original equipment manufacturers ("OEMs"), industrial and defense supply distributors, and directly to U.S. and foreign defense departments. We enjoy strong name recognition in our markets under our Ultralife® Batteries, Lithium Power®, McDowell Research®, AMTI™, ABLE™, ACCUTRONICS™, ACCUPRO™, ENTELLION™, SWE Southwest Electronic Energy Group™, SWE DRILL-DATA™, SWE SEASAFE™, Excell Battery Group and Criterion Gauge brands. We have sales, operations and product development facilities in North America, Europe and Asia.

We report our results in two operating segments: Battery & Energy Products and Communications Systems. The Battery & Energy Products segment includes: Lithium 9-volt, cylindrical, thin cell and other non-rechargeable batteries, in addition to rechargeable batteries, uninterruptable power supplies, charging systems and accessories. The Communications Systems segment includes: RF amplifiers, power supplies, cable and connector assemblies, amplified speakers, equipment mounts, case equipment, man-portable systems, integrated communication systems for fixed or vehicle applications and communications and electronics systems design. We believe that reporting performance at the gross profit level is the best indicator of segment performance. As such, we report segment performance at the gross profit level and operating expenses as Corporate charges. (See Note 10 in the notes to consolidated financial statements.)

Our website address is www.ultralifecorporation.com. We make available free of charge via a hyperlink on our website (see Investor Relations link on the website) our annual reports on Form 10-K, proxy statements, quarterly reports on Form 10-Q, current reports on Form 8-K, and any amendments to those reports and statements as soon as reasonably practicable after such material is electronically filed with or furnished to the Securities and Exchange Commission ("SEC"). We will provide copies of these reports upon written request to the attention of Philip A. Fain, CFO, Treasurer and Secretary, Ultralife Corporation, 2000 Technology Parkway, Newark, New York, 14513. Our filings with the SEC are also available through the SEC website at www.sec.gov or at the SEC Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549 or by calling 1-800-SEC-0330.

Battery & Energy Products

We manufacture and/or market a family of Lithium Manganese Dioxide (Li-MnO_2), Lithium Manganese Dioxide Carbon Monofluoride (Li-CFx/MnO2) hybrid and Lithium Thionyl Chloride (Li-SOCl2) non-rechargeable batteries including 9-volt, HiRate® cylindrical, ThinCell®, and other form factors. Applications for our 9-volt batteries include: smoke alarms, wireless security systems and intensive care monitors, among many other devices. Our HiRate® and ThinCell® Lithium non-rechargeable batteries are sold primarily to the military and to OEMs in industrial markets for use in a variety of applications including radios, emergency radio beacons, search and rescue transponders, pipeline inspection gauges, portable medical devices, wearable medical products, Bluetooth tracking devices and other specialty applications. Military applications for our non-rechargeable HiRate® batteries include: manpack and survival radios, night vision devices, targeting devices, chemical agent monitors and thermal imaging equipment. Our Lithium Thionyl Chloride batteries, sold under our ABLE and Ultralife brands as well as a private label brand, are used in a variety of applications including utility meters, wireless security devices, electronic meters, automotive electronics and geothermal devices. We believe that the chemistry of Lithium batteries provides significant advantages over other currently available non-rechargeable battery technologies. These advantages include: higher energy density, lighter weight, longer operating time, longer shelf life and a wider operating temperature range. Our non-rechargeable batteries also have relatively flat voltage profiles, which provide stable power. Conventional non-rechargeable batteries, such as alkaline batteries, have sloping voltage profiles that result in decreasing power output during discharge. While the price of our Lithium batteries is generally higher than alkaline batteries, the increased energy per unit of weight and volume of our Lithium batteries allow for longer operating times and less frequent battery replacements for our targeted applications.

We believe that our ability to design and produce lightweight, high-energy Lithium-ion and Nickel Metal Hydride (NiMH) rechargeable batteries and charging systems in a variety of custom sizes, shapes, and thicknesses offers substantial benefits to our customers. We market Lithium-ion and Nickel Metal Hydride rechargeable batteries comprising cells manufactured by qualified cell manufacturers. Our rechargeable products can be used in a wide variety of applications including communications, medical and other portable electronic devices.

Within this segment, we also seek to fund the development of new products that we hope will advance our technologies through contracts with both government agencies and private sector third parties.

We continue to be awarded development contracts with public and private customers resulting in intellectual property that we believe will enhance our efforts to commercialize new products that we develop. Revenues in this segment that pertain to product development may vary widely each year, depending upon the quantity and size of contracts awarded.

Revenues for this segment for the year ended December 31, 2022 were $119,995 and segment contribution (gross profit) was $26,154.

Communications Systems

Under our McDowell Research and AMTI brands, we design and manufacture a line of communications systems and accessories to support military communications requirements and under Ultralife Corporation brand provide system integration products and services.

The military systems include RF amplifiers, power supplies, power cables, connector assemblies, amplified speakers, equipment mounts, case equipment, man-portable systems and integrated communication systems for fixed or vehicle applications such as vehicle amplifier-adaptors ("VAA") for multiple programs. These programs include Vehicle Installed Power Enhanced Rifleman Appliqué ("VIPER") systems, U.S. Army Leader Radio Program, U.S. Army's Security Force Assistance Brigades ("SFABs") and SATCOM systems. All systems are packaged to meet specific customer needs in rugged enclosures to allow for their use in extreme environments. We market these products to all branches of the U.S. military and foreign defense organizations that we are permitted to sell our products to, as well as U.S. and international prime defense contractors.

Commercial products offered to date under the Ultralife brand integrate information technology equipment and power conversion capability into rugged cases, supporting use in various industries. We market these products to automotive, cellular carriers and manufacturing industries.

Revenues for this segment for the year ended December 31, 2022 were $11,845 and segment contribution (gross profit) was $3,246.

Corporate

We report revenues and cost of sales for the above operating segments. The balance of income and expense, including but not limited to research and development expenses, and selling, general and administrative expenses, are reported as Corporate operating expenses.

Corporate had no revenues for the year ended December 31, 2022 and our Corporate operating expenses for the year ended December 31, 2022 were $29,271.

See Management's Discussion and Analysis of Financial Condition and Results of Operations and the 2022 Consolidated Financial Statements and Notes thereto contained in this Form 10-K Annual Report for additional information on the expenses referred to above. For information relating to total assets by segment, revenues for the last two years by segment, and contribution by segment for the last two years, see Note 10 in the notes to consolidated financial statements.

History

Ultralife was formed as a Delaware corporation in December 1990. In March 1991, we acquired certain technology and assets from Eastman Kodak Company ("Kodak") relating to its 9-volt Lithium Manganese Dioxide non-rechargeable battery. In December 1992, we completed our initial public offering and became listed on NASDAQ.

In May 2006, we acquired ABLE New Energy Co., Ltd. ("ABLE"), an established manufacturer of Lithium batteries located in Shenzhen, China, which broadened our product offering, including a wide range of Lithium Thionyl Chloride and Lithium Manganese batteries, and provided additional exposure to new consumer markets.

In July 2006, we finalized the acquisition of substantially all the assets of McDowell Research, Ltd. ("McDowell"), a manufacturer of military communications accessories. This acquisition expanded our product distribution channels into the military communications area and strengthened our presence in global defense markets. During the second half of 2007, the operations of the Waco, Texas facility of McDowell were relocated to our Newark, New York facility. In January 2012, we relocated these operations to our Virginia Beach, Virginia facility in order to gain operational efficiencies.

In March 2008, we formed a joint venture, named Ultralife Batteries India Private Limited ("India JV"), with our distributor partner in India. The India JV assembles Ultralife power solution products and manages local sales and marketing activities, serving commercial, government and defense customers throughout India. We have invested cash into the India JV, as consideration for our 51% ownership stake in the India JV.

In March 2009, we acquired the tactical communications products business of Science Applications International Corporation. The tactical communications products business designs, develops and manufactures tactical communications products including: amplifiers, man-portable systems, cables, power solutions and ancillary communications equipment, which are sold by Ultralife under the brand name AMTI. The acquisition strengthened our communications systems business and provided us with direct entry into the handheld radio/amplifier market, complementing Ultralife's communications systems offerings.

In January 2016, we acquired Accutronics Limited ("Accutronics"), a U.K. corporation based in Newcastle-under-Lyme, U.K., a leading independent designer and manufacturer of smart batteries and charger systems for high-performance, feature-laden portable and handheld electronic devices. With a portfolio encompassing custom battery design, development and manufacturing for OEM's; standard smart batteries, chargers and accessories; and pre-engineered batteries and power solutions for specific applications, Accutronics primarily serves the portable medical device market throughout Europe. Medical applications include digital imaging, ventilators, anesthesia, endoscopy, patient monitoring, cardiopulmonary care, oxygen concentration and aspiration. We acquired Accutronics to advance our strategy of commercial revenue diversification, to expand our geographical penetration, and to achieve revenue growth from new product development. We are continuing to experience sales synergies between Accutronics and our existing commercial battery business as we cross-sell our existing products and the acquired Accutronics' products to our respective customer bases.

On May 1, 2019, we acquired Southwest Electronic Energy Corporation, a Texas corporation ("SWE"), and a leading designer and manufacturer of high-performance smart battery systems and battery packs to customer specifications using Lithium cells. SWE serves a variety of industrial markets, including oil and gas, remote monitoring, process control and marine, which demand uncompromised safety, service, reliability and quality. We acquired SWE as a bolt-on acquisition to further support our strategy of commercial revenue diversification by providing entry to the oil and gas exploration and production, and subsea electrification markets, which were previously unserved by Ultralife. Another key benefit of our acquisition of SWE includes obtaining a highly valuable technical team of battery pack and charger system engineers and technicians to add to our new product development-based revenue growth initiatives in our commercial end-markets particularly asset tracking devices, smart metering for utilities and other industrial applications.

On December 13, 2021, we acquired Excell Battery Canada Inc., a British Columbia corporation ("Excell Canada"), and 656700 B.C. Ltd., a British Columbia corporation ("656700") and its wholly owned subsidiary, Excell Battery Corporation USA, a Texas corporation ("Excell USA" and together with Excell Canada and 656700, collectively, "Excell"), which operate under the name Excell Battery Group, based in Canada with U.S. operations, a leading independent designer and manufacturer of high-performance smart battery systems, battery packs and monitoring systems to customer specifications. Excell serves a variety of industrial markets including downhole drilling, OEM industrial and medical devices, automated meter reading, ruggedized computers, and mining, marine and other mission critical applications which demand uncompromised safety, service, reliability and quality. We acquired Excell as an important component of our strategy to diversify commercial revenue and expand the end markets we serve. Acquiring Excell offers us opportunities to further scale our Battery & Energy Products business and drive the operating leverage of our business model, expand into OEM device verticals that we do not presently serve, enhance our contributed value to both our customers and realize cost synergies. Furthermore, Excell possesses experienced technical resources which we plan to utilize in progressing our global new product initiatives while adding a complementary line of highly engineered products both existing and in development that are costly for our customers to substitute with products of a competitor.

Products, Services and Technology

Battery & Energy Products ’

A non-rechargeable battery is used until discharged and then replaced. The principal competing non-rechargeable battery technologies are Carbon Zinc, Alkaline and Lithium. We manufacture a range of non-rechargeable battery products based on Lithium Manganese Dioxide, Lithium Manganese Dioxide Carbon Monofluoride hybrid, and Lithium Thionyl Chloride technologies.

Non-Rechargeable Batteries

We believe that the chemistry of Lithium batteries provides significant advantages over currently available non-rechargeable battery technologies, which include: lighter weight, longer operating time, longer shelf life, and a wider operating temperature range. Our non-rechargeable batteries also have relatively flat voltage profiles, which provide more stable power. Conventional non-rechargeable batteries, such as Alkaline batteries, have sloping voltage profiles that result in decreasing power during discharge. While the prices for our Lithium batteries are generally higher than commercially available Alkaline batteries produced by others, we believe that the increased energy per unit of weight and volume of our batteries will allow longer operating time and less frequent battery replacements for our targeted applications. As a result, we believe that our non-rechargeable batteries are priced competitively with other battery technologies on a price per unit of energy or volume basis.

Our non-rechargeable products include the following product configurations:

9-Volt Lithium Battery. Our 9-volt Lithium battery delivers a unique combination of the highest-available energy density and stable voltage, which results in a longer operating life for the battery and, accordingly, fewer battery replacements. While our 9-volt battery price is generally higher than conventional 9-volt Carbon Zinc and Alkaline batteries, we believe the enhanced operating performance and decreased costs associated with longer battery life make our 9-volt battery more cost effective than conventional batteries on a cost per unit of energy or volume basis when used in a variety of applications.

We market our 9-volt Lithium batteries to OEM, distributor and retail markets including industrial electronics, safety and security, and medical. Typical applications include: smoke alarms, wireless alarm systems, bone growth stimulators, telemetry devices, blood analyzers, ambulatory infusion pumps and parking meters. A significant portion of the sales of our 9-volt battery is to major smoke alarm OEMs for use in their long-life smoke alarms. We also manufacture our 9-volt Lithium battery under private labels for a variety of companies. Additionally, we sell our 9-volt battery to the broader consumer market through national and regional retail chains and online retailers.

We believe our current 9-volt battery manufacturing capacity is adequate to meet forecasted customer demand over the next three years.

Cylindrical Batteries. Featuring high energy, wide temperature range, long shelf life and operating life, our cylindrical cells and batteries, based on Lithium Manganese Dioxide, Lithium Manganese Dioxide Carbon Monofluoride hybrid and Lithium Thionyl Chloride technologies, represent some of the most advanced Lithium power sources currently available. We market a wide range of cylindrical non-rechargeable Lithium cells and batteries in various sizes under both the Ultralife HiRate and ABLE brands. These include: D, C, 5/4 C, 1/2 AA, 2/3 A, CR123A and other sizes, which are sold individually as well as packaged into multi-cell battery packs, including our leading BA-5390 military battery, an alternative to the competing Li-SO_2 BA-5590 battery, a widely used battery type in the U.S. armed forces for portable applications. Our BA-5390 battery provides 50% to 100% more energy (mission time) than the BA-5590, and it is used in approximately 60 military applications. With the introduction of our Lithium Carbon Monofluoride hybrid chemistry, we now offer a D-cell that has 100% more energy than the competing Li-SO_2 D-cell.

We market our line of Lithium cells and batteries to the OEM market for commercial, defense, medical, asset tracking and search and rescue applications, among others. Significant commercial applications include oil and gas, pipeline inspection equipment, automatic re-closers and oceanographic and subsea devices. Asset tracking applications include Radio Frequency Identification (“RFID”), cellular, and Bluetooth systems. Among the defense uses are manpack radios, night vision goggles, chemical agent monitors and thermal imaging equipment. Medical applications include: Automated External Defibrillators (“AEDs”), infusion pumps, wearable patient monitoring and telemetry systems. Search and rescue applications include Emergency Locator Transmitters (“ELTs”) for aircraft and Emergency Position Indicating Radio Beacons (“EPIRBs”) for ships. Oil and gas applications include battery packs for downhole and directional drilling applications such as Measurement While Drilling (“MWD”) and Logging While Drilling (“LWD”) and pipeline inspection and monitoring.

Thin Cell Batteries. We manufacture a range of thin Lithium Manganese Dioxide batteries under the Thin Cell® brand. Thin Cell batteries are flat, lightweight batteries providing a unique combination of high energy, long shelf life, wide operating temperature range and very low profile. We are currently marketing these batteries to OEMs for applications such as displays, wearable medical devices, toll passes, theft detection systems, and RFID and Bluetooth tracking devices.

Rechargeable Batteries

In contrast to non-rechargeable batteries, after a rechargeable battery is discharged, it can be recharged and reused many times. Generally, discharge and recharge cycles can be repeated hundreds or thousands of times in rechargeable batteries depending on the technology of the battery. The achievable number of cycles (cycle life) varies among technologies and is an important competitive factor. All rechargeable batteries experience a small, but measurable, loss in energy capacity with each cycle. The industry commonly reports cycle life in the number of cycles a battery can achieve until 80% of the battery's initial energy capacity remains. In the rechargeable battery market, the principal competing technologies are Nickel Metal Hydride and Lithium-ion (including Lithium polymer) batteries. Rechargeable batteries are used in many applications, such as military radios, laptop computers, mobile telephones, portable medical devices, wearable devices and many other commercial, defense and consumer products.

Three important performance characteristics of a rechargeable battery are design flexibility, energy density and cycle life. Design flexibility refers to the ability of rechargeable batteries to be designed to fit a variety of shapes and sizes of battery compartments. Thin profile batteries with prismatic geometry provide the design flexibility to fit the battery compartments of today's electronic devices. Energy density refers to the total amount of electrical energy stored in a battery divided by the battery's weight and volume as measured in watt-hours per kilogram and watt-hours per liter, respectively. High energy density batteries generally are longer lasting power sources providing longer operating time and necessitating fewer battery recharges. High energy density and long achievable cycle life are important characteristics for comparing rechargeable battery technologies. Greater energy density will permit the use of batteries of a given weight or volume for a longer time period. Accordingly, greater energy density will enable the use of smaller and lighter batteries with energy comparable to those currently marketed. Lithium-ion batteries, by the nature of their electrochemical properties, are capable of providing higher energy density than comparably sized batteries that utilize other chemistries and, therefore, tend to consume less volume and weight for a given energy content. Long achievable cycle life, particularly in combination with high energy density, is suitable for applications requiring frequent battery recharges, such as cellular telephones and notebook computers, and allows the user to charge and recharge many times before noticing a difference in performance. We believe that our Lithium-ion batteries generally have high energy density and a long cycle life.

Lithium-ion Cells and Batteries. We market a variety of Lithium-ion cells and rechargeable batteries comprised of cells manufactured by qualified cell manufacturers. These products are used in a wide variety of applications including communications, medical and other portable electronic devices.

Battery Charging Systems and Accessories. To provide our customers with complete power system solutions, we offer a wide range of rugged military and commercial battery charging systems and accessories including smart chargers, multi-bay charging systems and a variety of cables.

Multi-Kilowatt Module. Our Multi-Kilowatt Module Lithium-ion battery system is a large format battery utilizable for energy storage, battery back-up, and remote power applications. This product is a direct replacement of 1.25 kWh and larger capacity lead acid batteries in 24V or 48V applications. It can be connected in multiples to obtain higher-voltages and is capable of over 3,000 cycles while maintaining 80% of its capacity.

Technology Contracts. Our technology contract activities involve the development of new products or the enhancement of existing products through contracts with both government agencies and private sector third parties.

Communications Systems

Under our McDowell Research and AMTI brands, we design and manufacture a line of communications systems and accessories to support military communications systems, including RF amplifiers, power supplies, power cables, connector assemblies, amplified speakers, equipment mounts, case equipment, man-portable systems and integrated communication systems for fixed or vehicle applications such as vehicle amplifier-adaptors. We package all systems to meet specific customer needs in rugged enclosures to allow their use in extreme environments and under our Ultralife Corporation brand provide system integration products and services for commercial requirements.
We offer a wide range of military communications systems and accessories designed to enhance and extend the operation of communications equipment such as vehicle-mounted, manpack and handheld transceivers. Our communications products include the following product configurations:

RF Amplifiers. These amplifiers are used to extend the range of manpack and handheld tactical transceivers, and our RF amplifiers include both mounted and dismounted versions and many related accessories and kits which can be used on mobile or fixed site applications.

Integrated Systems. Our integrated systems include: vehicle mounted systems; SATCOM systems; rugged, deployable case systems; and multiband transceiver kits. These systems provide enhanced capabilities which enable communications operators to provide links to support Command, Control, Communications, Computers, Cyber and Intelligence, Surveillance and Reconnaissance ("C5ISR").

Power Systems. Our power systems include: AC/DC power supplies with battery backup for tactical manpack radios and power adaptors and chargers. We can provide power supplies for virtually all tactical communications devices.

The commercial products to date are integration of information technology capability into rugged cases, supporting use of high computing capability in various configurations. We market these products to automotive, cellular carriers and manufacturing industries.

Communications and Electronics. Our communications and electronics services include the design, integration, and fielding of portable, mobile and fixed-site communications systems.

Sales and Marketing

We employ a staff of sales and marketing personnel in North America, Europe and Asia. We sell our products and services directly to commercial customers, including OEMs, as well as government and defense agencies in the U.S. and abroad and have contractual arrangements with sales agents who market our products on a commission basis in defined territories. Every effort is made to adjust future prices when and if possible, but the ability to adjust prices is generally based on market conditions.

We also distribute some of our products through domestic and foreign distributors and retailers. These sales are generated primarily from customer purchase orders. We have several long-term contracts with the U.S. government and other customers. These contracts do not commit the customers to specific purchase volumes, nor to specific timing of purchase order releases, and they include fixed price agreements over various periods of time. In general, we do not believe our sales are seasonal, although we may sometimes experience seasonality for some of our military products based on the timing of government fiscal budget expenditures.

A significant portion of our business comes from sales of products and services to U.S. and foreign governments through various contracts. These contracts are subject to procurement laws and regulations that specify policies and procedures for acquiring goods and services. The procurement laws and regulations also contain guidelines for managing contracts after they are awarded, including conditions under which contracts may be terminated, in whole or in part, at the government's convenience or for default. Failure to comply with applicable procurement laws or regulations can result in civil, criminal or administrative proceedings involving fines, penalties, suspension of payments, or suspension or debarment from government contracting or subcontracting for a period of time. Even if a contract is awarded to us there is no guarantee that the government will order any product under the contract.

We have one major customer, a large global defense primary contractor, which comprised 17% of our total revenues in 2022, and 20% of our total revenues in 2021. There were no other customers that comprised greater than 10% of our total revenues during these years.

In 2022, sales to U.S. and foreign customers were approximately $67,914 and $63,926, respectively. In 2021, sales to U.S. and foreign customers were approximately $48,819 and $49,448, respectively.

Battery & Energy Products

We target sales of our non-rechargeable products to manufacturers of security and safety equipment, medical devices, search and rescue equipment, specialty instruments, oil and gas downhole drilling and pipe inspection equipment, point of sale equipment and metering applications, as well as users of military equipment. Our strategy is to develop sales and marketing alliances with OEMs and governmental agencies that utilize our batteries in their products, commit to cooperative research and development or marketing programs, and recommend our products for design-in or replacement use in their products. We are addressing these markets through direct contact by our sales and technical personnel, use of sales agents and stocking distributors, manufacturing under private labels, and promotional activities.

We seek to capture a significant market share for our products within our targeted OEM markets, which we believe, if successful, will result in increased product awareness and sales at the end-user or consumer level. We are also selling our 9-volt battery to the consumer market through retail distribution channels. Most military procurements are done directly by the specific government organizations requiring products, based on a competitive bidding process. Additionally, we are typically required to successfully meet contractual specifications and to pass various qualifications testing for the products under contract by the military. Our inability to pass these tests for our new products in a timely fashion could have a material adverse effect on future growth prospects. When a government contract is awarded, there is a government procedure that permits unsuccessful companies to formally protest the award if they believe they were unjustly treated in the government's bid evaluation process. A prolonged delay in the resolution of a protest, or a reversal of an award resulting from such a protest, could have a material adverse effect on our business, financial condition and results of operations.

We market our products to defense organizations in the U.S. and other countries. In September 2019, we were awarded an indefinite-delivery/indefinite-quantity contract from the U.S. Government's Defense Logistics Agency for up to five years, with the potential to generate revenue of $14,422, to provide our BA-5368 batteries. In May 2021 we were awarded an indefinite-delivery/indefinite-quantity contract from the U.S. Army for purchases of Conformal Wear Batteries not to exceed $168,000 during the three-year base award period with the potential for up to an additional $350,000 should the six one-year options be exercised. We are scheduled to complete First Article Testing under this contract in the second half of 2023. In December 2021, we were awarded an indefinite-delivery/indefinite-quantity contract not to exceed $9,900 for the U.S. Government's Defense Logistics Agency for our lithium manganese dioxide, non-rechargeable BA-5390 batteries. The award consists of a three-year base contract with two one-year option periods.

We target sales of our Lithium-ion rechargeable batteries and charging systems to OEM customers, as well as distributors and resellers focused on our target markets. We respond to Requests for Proposals ("RFPs") to design products for OEMs, and believe that our design capabilities, product characteristics and solution integration will encourage OEMs to incorporate our batteries into their product offerings, resulting in revenue growth opportunities for us.

We continue to expand our marketing activities as part of our strategic plan, a comprehensive forward-looking document which sets forth our strategic growth plans, tactical actions and financial projections over a rolling three-year period, to increase sales of our battery and energy products for commercial, standby, defense and communications applications, as well as hand-held devices, wearable devices and other electronic portable equipment. A key part of this expansion includes increasing our design and assembly capabilities as well as building our international network of distributors and value-added distributors.

At December 31, 2022 and 2021, our backlog related to Battery & Energy Products was approximately $88,600 and $55,300, respectively. The 60% year-over-year increase in our Battery & Energy Products backlog at December 31, 2022 primarily resulted from the demand for our medical, government & defense and oil & gas batteries, which in some cases includes orders pushed into 2023 because of the supply chain disruptions experienced in 2022.

The 2022 year-end backlog is primarily related to orders that are expected to ship throughout 2023 and does not include future shipments under the indefinite-delivery/indefinite-quantity Defense Logistics Agency award for BA-5390 batteries ($9,900) and the U.S. Army award for Conformal Wearable Batteries ($168,000).

Communications Systems

We target sales of our communications systems, which include power solutions and accessories to support communications systems such as RF amplifiers, power supplies, power cables, connector assemblies, amplified speakers, equipment mounts, case equipment and integrated communication systems, to military OEMs and U.S. and allied foreign militaries. We sell our products directly and through authorized distributors to OEMs and directly to defense contractors and U.S. and foreign militaries. We market our products to defense organizations and OEMs in the U.S. and internationally.

Sales targets for commercial products include integrated systems for information technology equipment to support fixed, mobile and deployable locations. We sell our products directly to commercial businesses in the U.S.

At December 31, 2022 and 2021, our backlog related to Communications Systems orders was approximately $22,400 and $8,400, respectively. The 167% increase in our Communications Systems backlog at December 31, 2022 is primarily a result of purchase orders received in 2022 to supply a global defense prime with our Vehicle Amplifier-Adaptors for the U.S. Army's Leader Radio program and to supply an international defense contractor with our amplifiers and radio vehicle mounts for an ongoing allied country government/defense modernization program. The 2022 year-end backlog is related to orders that are expected to ship throughout 2023.

Patents, Trade Secrets and Trademarks

We use our patented and unpatented proprietary information, know-how and trade secrets to maintain and develop our competitive position. Despite our efforts to protect our proprietary information, there can be no assurance that others will neither develop the same or similar information independently nor unlawfully obtain access to our proprietary information, know-how and trade secrets. In addition, there can be no assurance that we would prevail if we asserted our intellectual property rights against third parties, or that third parties will not successfully assert infringement claims against us in the future. We believe, however, that our success depends more on the knowledge, ability, experience and technological expertise of our employees, than on the legal protection that our patents and other proprietary rights may or will afford.

We hold thirty-six patents issued in the U.S., six patents issued in the European Union member states, four patents issued in the European Union, four patents issued in India, four patents issued in Japan, four patents issued in South Korea, four patents issued in the United Kingdom, three patents issued in Canada, three patents issued in China, three patents issued in Taiwan, two patents issued in Norway, one patent issued in Australia, one patent issued in Hong Kong, one patent issued in Iceland, and one patent issued by the World Intellectual Property Organization. We believe our patents protect technology that makes automated production more cost-effective and protects important competitive features of our products. However, we do not consider our business to be dependent on patent protection.

As part of our employment commencement process, our employees are required to enter into agreements providing for confidentiality of certain information and the assignment of rights to inventions made by them while employed by us. These agreements also contain certain non-competition and non-solicitation provisions which are effective during the employment term and for varying periods thereafter depending on position and location. There can be no assurance that we will be able to enforce these agreements. All of our employees agree to abide by the terms of a Code of Ethics policy that provides for the confidentiality of certain information received during the course of their employment. Nevertheless, the enforceability of such agreements is subject to public policy limitations that vary from state to state and country by country so we cannot assure that they will be enforceable in accordance with their terms, if at all.

Trademarks are an important aspect of our business. We sell our products under a number of trademarks, that we own. The following are registered trademarks of ours: Ultralife®, Ultralife Thin Cell®, Ultralife HiRate®, Ultralife & design®, Ultra®, LithiumPower®, LithiumPower & Design®, SmartCircuit®, Smart Circuit®, Smart Circuit & design®, We Are Power®, AMTI®, ABLE™, ACCUTRONICS®, ACCUPRO®, ENTELLION®, Intelligent Power Vault®, McDowell Research®, RPS®, POW-R BMS®, POW-R TOTE®, POW-R-BMS®, SWE Southwest Electronic Energy Group®, SWE DRILL-DATA®, SWE DRILL-DATA®, SWE DRILL-DATA OBSERVER®, SWE SEASAFE®, SWE SEASAFE (& DESIGN)®, SWE SEASAFE + DIRECT®, SWE SOUTHWEST ELECTRONIC ENERGY GROUP ADVANCED BATTERY SOLUTIONS & DESIGN®, and THE NEW POWER GENERATION®.

Manufacturing and Raw Materials

We manufacture our products from raw materials and component parts that we purchase. Our manufacturing facility in Newark, New York is ISO 9001 and ISO 13485 certified. Our Canadian manufacturing facilities in Calgary and Mississauga are ISO 9001 certified and ISO 13485 certified. Our manufacturing facility in Shenzhen, China is ISO 9001, ISO 1401 and ISO 13485 certified. Our manufacturing facility in Missouri City, Texas is ISO 9001 and ISO 13485 certified. Our manufacturing facilities in the United Kingdom are ISO 9001 and ISO 13485 certified. Our manufacturing facility in Virginia Beach, Virginia is ISO 9001 certified.

We expect our future raw material purchases to fluctuate based on global demand for our products, our knowledge regarding the timing of customer orders, the related need to build inventory in anticipation of orders and actual shipment dates. The prices and availability of raw materials were impacted by COVID/supply chain disruptions in 2022 and may continue to be affected in 2023.

Battery & Energy Products

Our Newark, New York and Shenzhen, China facilities have the capacity to produce cylindrical cells, 9-volt batteries, 3-volt battery and thin cells. Capacity, however, is also affected by demand for particular products, and product mix changes can produce bottlenecks in an individual operation, constraining overall capacity. We have acquired new machinery and equipment in areas where production bottlenecks have occurred in the past and we believe that we have sufficient capacity in these areas. We continually evaluate our requirements for additional capital equipment, and we believe that planned increases will be adequate to meet foreseeable customer demand.

Certain materials used in our products, other than rechargeable battery cells, are available only from a single source or a limited number of sources. Additionally, we may elect to develop relationships with a single or limited number of sources for materials that are otherwise generally available. Although we believe that alternative sources may in some cases be available to supply materials that could replace materials we use and that, if necessary, we would be able to redesign our products to make use of an alternative material provided extensive customer testing and recertification are not required, any interruption in our supply from any supplier that serves currently as our sole source could delay product shipments and adversely affect our financial performance and relationships with our customers. Although we have experienced interruptions of product deliveries by sole source and other suppliers in 2022 resulting in the delay of shipments to future periods, we cannot assure that these interruptions and delays will not have an adverse effect on us in the future.

Generally, the raw materials and components utilized for our rechargeable batteries are readily available from many sources. Although we believe that alternative sources are available to supply materials and components that could replace materials or components we use, any interruption in our supply from any supplier that serves currently as our sole source could delay product shipments and adversely affect our financial performance and relationships with our customers.

Our Newark, New York facility has the capacity to produce significant volumes of batteries and energy products. This operation generally manufacturers non-rechargeable battery cells, non-rechargeable and rechargeable battery packs, and chargers and is limited only by physical space and is not constrained by manufacturing equipment capacity which can accommodate significant additional volumes of product. Similarly, our China and United Kingdom facilities also have capacity to produce significant quantities of non-rechargeable batteries and rechargeable battery packs beyond current volumes and are not constrained by manufacturing equipment capacity. Our Missouri City, Texas facility has the capacity to produce significant quantities of non-rechargeable battery packs and is not constrained by manufacturing equipment capacity. We are in the process of assessing the capacity our Excell facilities in Houston, Texas and in Calgary, Mississauga and Vancouver, Canada to determine constraints associated with human capital resources or manufacturing equipment.

The total carrying value of our Battery & Energy Products inventory, including raw materials, work in process and finished goods, amounted to $32,771 and $25,677 as of December 31, 2022 and 2021, respectively. The year-over-year 28% increase primarily reflects an increase in materials, including rechargeable cells, required to fulfill the backlog for our batteries primarily used in the medical devices, government & defense and oil & gas sectors. Management continuously monitors inventory levels in an effort to optimize such levels.

*Communications System**s***

In general, we believe that the raw materials and components utilized by us for our communications and commercial accessories and systems, including RF amplifiers, power supplies, cables, repeaters and integration kits and systems, are available from many sources. Although we believe that alternative sources are available to supply materials and components that could replace materials or components we use, any interruption in our supply from any supplier that serves currently as our sole source or any significant increase in lead times to provide components could delay product shipments and adversely affect our financial performance and relationships with our customers.

Our Virginia Beach, Virginia facility has the sufficient capacity to produce communications products and systems to meet current demand. This operation generally assembles products and is limited only by physical space and is not constrained by manufacturing equipment capacity.

The total carrying value of our Communications Systems inventory, including raw materials, work in process and finished goods, amounted to $8,421 and $7,512 as of December 31, 2022 and 2021, respectively. The year-over-year 12% increase is due to the procurement of longer lead time components to meet the commitment dates of our backlog orders. Management continuously monitors inventory levels in an effort to optimize such levels.

Research and Development

We devote significant resources to research and development activities to improve the technological capabilities of our products and to design new products for customers' applications. We conduct our research and development in Newark, New York; Virginia Beach, Virginia; Tallahassee, Florida; Missouri City, Texas; Newcastle-under-Lyme, United Kingdom; and Shenzhen, China. During 2022 and 2021, we expended $7,874 and $8,042, respectively, on research and development, including $793 and $1,216, respectively, on customer sponsored research and development activities, which are included in cost of products sold. The year-over-year decrease in customer sponsored research and development is due to the timing of key projects and helped to offset our increased costs for the hiring of engineering resources to support new product development in our Battery & Energy Products business segment, including the inclusion of a full year of operations for Excell which was acquired on December 13, 2021.

We expect that research and development expenditures in the future could increase by 10% or more over 2022 levels, based on current initiatives. These current initiatives include completing the development and testing of new battery and power solutions in our facilities in Newark, New York, Houston and Missouri City, Texas, Canada and Newcastle-under-Lyme, UK; our Thionyl Chloride battery project in China and new product initiatives for our Communications Systems business. Our expectation is that new product development is one of the factors that will drive our growth. As in the past, we will continue to make funding decisions for our research and development efforts based upon demand for customer applications.

Battery & Energy Products

We continue to internally develop non-rechargeable cells and batteries with the goal of broadening our product offering to our customers.

We continue to internally develop our rechargeable product portfolio, including batteries, battery management systems, cables and charging systems, as our customers' needs for portable power continue to grow and new technologies become available.

The U.S. government sponsors research and development programs, which Ultralife participates in, designed to improve the performance and safety of existing battery systems and to develop new battery systems.

Communications Systems

We continue to internally develop a variety of communications accessories and systems for the global defense and commercial markets to meet the ever-changing demands of our customers.

Safety; Regulatory Matters; Environmental Considerations

Certain materials utilized in our batteries may pose safety problems if improperly used, stored, or handled. We have designed our batteries to minimize safety hazards both in manufacturing and in use. Our batteries are subject to the regulations noted below, among others.

The transportation of non-rechargeable and rechargeable Lithium batteries is regulated in the U.S. by the Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA"), and internationally by the International Civil Aviation Organization ("ICAO") and corresponding International Air Transport Association ("IATA"), Dangerous Goods Regulations and the International Maritime Dangerous Goods Code ("IMDG"), and other country specific regulations. These regulations are based on the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations and the United Nations Manual of Tests and Criteria. We currently ship our products pursuant to PHMSA, ICAO, IATA, IMDG and other country specific hazardous goods regulations. The regulations require companies to meet certain testing, packaging, labeling, marking and shipping paper specifications for safety reasons. We have not incurred, and do not expect to incur, any significant costs in order to comply with these regulations. We believe we comply with all current U.S. and international regulations for the shipment of our products, and we intend and expect to comply with any new regulations that are imposed. We have established our own testing facilities to ensure that we comply with these regulations. However, if we are unable to comply with any such new regulations, or if regulations are introduced that limit our or our customers' ability to transport our products in a cost-effective manner, this could have a material adverse effect on our business, financial condition and results of operations.

The European Union's Restriction of Hazardous Substances Directive (the "EU RoHS Directive") places restrictions on the use of certain hazardous substances in electrical and electronic equipment. All applicable products sold in the European Union market must pass RoHS compliance. While this directive does not apply to batteries and does not currently affect our defense products, should any changes occur in the directive that would affect our products, we intend and expect to comply with any new regulations that are imposed. However, we cannot ensure that the cost of complying with such new regulations would not have a material adverse effect on us. We believe our commercial chargers are substantially in compliance with the EU RoHS Directive.

The European Union's Battery Directive "on batteries and accumulators and waste batteries and accumulators" (the "EU Battery Directive") is intended to cover all types of batteries regardless of their shape, volume, weight, material composition or use. It is aimed at reducing mercury, cadmium, lead and other metals in the environment by minimizing the use of these substances in batteries and by treating and re-using old batteries. The EU Battery Directive applies to all types of batteries except those used to protect European member states' security, for military purposes, or sent into space. To achieve these objectives, the EU Battery Directive prohibits the marketing of some batteries containing hazardous substances. It establishes schemes aimed at high levels of collection and recycling of batteries with quantified collection and recycling targets. The EU Battery Directive sets out minimum rules for producer responsibility and provisions with regard to labeling of batteries and their removability from equipment. The EU Battery Directive requires product markings for batteries and accumulators to provide information on capacity and to facilitate reuse and safe disposal. We currently ship our products pursuant to the requirements of the EU Battery Directive.

The EU Battery Directive requires producers or importers of particular classes of electrical goods to be financially responsible for specified collection, recycling, treatment and disposal of past and future covered products. This directive assigns levels of responsibility to companies doing business in European Union markets based on their relative market share. This directive calls on each European Union member state to enact enabling legislation to implement the directive. As additional European Union member states pass enabling legislation our compliance system should be sufficient to meet such requirements. Our current estimated costs associated with our compliance with these directives based on our current market share are not significant. However, we continue to evaluate the impact of these directives as European Union member states implement guidance, and actual costs could differ from our current estimates.

China's "Management Methods for Restricted Use of Hazardous Substances in Electrical and Electronic Products" ("China RoHS 2") provides a regulatory framework including hazardous substance restrictions similar to those imposed by the EU RoHS Directive. China RoHS 2 applies to methods for the control and reduction of pollution and other public hazards to the environment caused during the production, sale, and import of electrical and electronic products ("EEP") in China. The regulatory framework of China RoHS 2 also now references the updated marking and labeling requirements under Standard SJ/T 11364-2014. The methods under China RoHS 2 only apply to EEP placed in the marketplace in China. We believe *our compliance system is sufficient to meet our requirements under China RoHS 2. Our current estimated costs associated with our compliance with this regulation based on our current market share are not significant. However, we continue to evaluate the impact of this regulation, and actual costs could differ from our current estimates.*

National, state and local laws impose various environmental controls on the manufacture, transportation, storage, use and disposal of batteries and of certain chemicals used in the manufacture of batteries. Although we believe that our operations are in material compliance with current environmental regulations, there can be no assurance that changes in such laws and regulations will not impose costly compliance requirements on us or otherwise subject us to future liabilities, costs and expenses. There can be no assurance that additional or modified regulations relating to the manufacture, transportation, storage, use and disposal of materials used to manufacture our batteries or restricting disposal of batteries will not be imposed or that such regulations will not have a material adverse effect on our business, financial condition and results of operations. In 2022 and 2021, we spent $264 and $208, respectively, on environmental compliance, including costs to properly dispose of potentially hazardous waste.

Since non-rechargeable and rechargeable Lithium battery chemistries react adversely with water and water vapor, certain of our manufacturing processes must be performed in a controlled environment with low relative humidity. Our Newark, New York and Shenzhen, China facilities contain dry rooms or glove box equipment, as well as specialized air-drying equipment.

In addition to the environmental regulations previously described, our products are subject to U.S. and international laws and regulations governing international trade and exports including but not limited to the International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR") and trade sanctions against embargoed countries.

The ITAR is a set of U.S. government regulations that control the export and import of defense-related articles and services on the United States Munitions List. These regulations implement the provisions of the Arms Export Control Act, and are described in the Code of Federal Regulations. The Department of State Directorate of Defense Trade Controls interprets and enforces ITAR. Its goal is to safeguard U.S. national security and further U.S. foreign policy objectives.

The related EAR are enforced and interpreted by the Bureau of Industry and Security in the Commerce Department. The Department of Defense is also involved in the review and approval process. Inspections in support of import and export laws are performed at border crossings by Customs and Border Protection, an agency of the Department of Homeland Security.

Products and services developed and manufactured in our foreign locations are subject to the export and import controls of the nation in which the foreign location operates.

We believe we are in material compliance with these domestic and international export regulations. However, failure of compliance could have a material adverse effect on our business through possible fines, denial of export privileges, or loss of customers. Further, while we are not aware of any proposed changes to these regulations, any change in the scope or enforcement of export or import regulations or related legislation could have a material adverse effect on our business through increased costs of compliance or reduction in the international growth prospects available to us.

Based upon our current sales volumes, our future estimated costs associated with our compliance with ITAR, EAR, and the foreign export and import controls are not significant. However, we continue to evaluate the impact of these regulations, and actual costs could differ from our current estimates.

Battery & Energy Products

Our non-rechargeable battery products incorporate Lithium metal, which reacts with water and may cause fires if not handled properly. In the past, we have experienced fires that have temporarily interrupted certain manufacturing operations. We believe that we have adequate fire suppression systems and insurance, including business interruption insurance, to protect against the occurrence of fires and fire losses in our facilities.

Our 9-volt battery, among other sizes, is designed to conform to the dimensional and electrical standards of the American National Standards Institute. Authorized certification bodies such as Underwriters Laboratories, Intertek and SGS have certified several of our products.

Communications Systems

We are not currently aware of any regulatory requirements regarding the disposal of our communications products.

Corporate

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 Section 1502 (the "Dodd-Frank Act") requires public companies to disclose whether tantalum, tin, gold and tungsten, commonly known as "conflict minerals," are necessary to the functionality or production of a product manufactured by a public company and if those elements originated from armed groups in the Democratic Republic of Congo or adjoining countries. To comply with the Dodd-Frank Act, as implemented by SEC rules, we are required to perform due diligence inquiries of our suppliers to determine whether or not our products contain such minerals and from which countries and source (smelter) the minerals were obtained. Our annual report on Form SD was filed by the statutory due date of May 31, 2022 for the 2021 calendar year and we continue to utilize appropriate measures with our suppliers to better ascertain the origin of the conflict minerals in our products.

Competition

Competition in both the battery and communications systems markets is, and is expected to remain, intense. The competition ranges from development stage companies to major domestic and international companies, many of which have financial, technical, marketing, sales, manufacturing, distribution and other resources significantly greater than ours. We compete against companies producing batteries as well as companies producing communications systems. We compete on the basis of design flexibility, performance, price, reliability and customer support. There can be no assurance that our technologies and products will not be rendered obsolete by developments in competing technologies or services that are currently under development or that may be developed in the future or that our competitors will not market competing products and services that obtain market acceptance more rapidly than ours.

While we cannot assure that other entities will not attempt to take advantage of the growth of the battery market, the Lithium battery cell industry has certain technological and economic barriers to entry. The development of technology, equipment and manufacturing techniques and the operation of a facility for the automated production of Lithium battery cells require large capital expenditures, which may deter new competitors from commencing production. Through our experience in battery cell manufacturing, we have also developed significant production and design expertise in the non-rechargeable battery market, which we believe would be difficult for new competitors to reproduce without substantial time and expense.

Employees

As of December 31, 2022, we employed a total of 547 permanent and temporary employees: 424 in production, 78 in sales and administration, and 45 in research and development. None of our employees are represented by a labor union.

ITEM 1A. RISK FACTORS

Our business faces many risks. As such, prospective investors and shareholders should carefully consider and evaluate all of the risk factors described below as well as other factors discussed in this Form 10-K Annual Report and in our other filings with the SEC. Any of these factors could adversely affect our business, financial condition and results of operations. Additional risks and uncertainties that are not currently known to us or that are not currently believed by us to be material may also harm our business operations and financial results. These risk factors may change from time to time and may be amended, supplemented, or superseded by updates to the risk factors contained in periodic reports on Form 10-Q and Form 10-K that we file with the SEC in the future.

Company Risk Factors

Changes in economic conditions, including inflation and supply-chain disruptions have affected and may continue to affect our business, revenues and earnings adversely.

The disruptions resulting from supply chain and logistics complications were more pronounced on the Company in 2022, in large part because of a sharp uptick for our more-advanced rechargeable battery packs which increased the need for highly sought-after components, including various electronic components, PC boards, chip sets and certain metals to name a few. Major contributing factors resulting in the year-over-year reduction in our gross margin from 25.1% in 2021 to 22.3% in 2022 included the following: (1) Rapid cost inflation on raw materials and key components not entirely aligned with the timing of customer price increases - In 2022 we experienced more frequent weekly or sometimes daily input cost increases from our vendors this year versus more periodic customer price increases causing an inevitable lag in cost/price alignment. Going forward, to reduce this lag, we are initiating more frequent customer price increases closely aligned to cost increases, subject to our customers' willingness to accept of the price increases. (2) Incremental fees to source and expedite critical components – In 2022 increases in demand with tight shipment schedules from both government/defense and medical customers, in some cases went beyond the wherewithal of our vendors to obtain key materials in a timely manner, necessitating the one-time use of brokers at a much higher cost and with more complex logistic, and further complicating the timely matching of higher costs with customer price increases. To minimize the use of costly brokers going forward, we have now extended the forward time horizon of our sales and operations planning ("S&OP") process with customers and suppliers. Should a demand surge with expedited timing again necessitate more costly sourcing alternatives, we will work closely with our customers to fund all or a large portion of the incremental costs on a timely basis, subject to our customers' willingness to share in these costs. (3) Internal manufacturing inefficiencies – As a result of irregular component availability and lead time extensions, in 2022 we experienced continuous production-line start-ups, shut-downs and changeovers resulting in labor inefficiencies, higher scrap and decreased absorption of overhead. Most notable were delays in the supply of rechargeable cells for our fulfillment of a large medical order, as the vendor changed their focus to supplying large format cells for electric vehicles ("EV"). We have now qualified another vendor to meet the strict FDA requirements of our designed-in batteries. (4) Increased and uncertain lead times impacting timely deliveries – In 2022 more mundane yet vital components, such as epoxy, label and boxes, trickled in well past the expected dates reducing productivity and increasing costs to expedite shipments.

Going forward, we will use our global supply chain more effectively to secure alternate vendors to minimize these occurrences. Although the Company has focused a great deal of time and effort on improving gross margins, supply-chain disruptions, which could continue into 2023 and despite our best efforts, we may not be able to offset and/or minimize the unfavorable impact these disruptions may continue to cause on business and financial results.

The COVID-19 pandemic and other illnesses has caused and may continue to create significant economic and social disruption and uncertainty around the world, may impact the health of our employees, and that of our suppliers and customers causing delays in the manufacture and delivery of our mission critical products to end customers, and may disrupt business with our collaborative business partners and service providers, which may continue to adversely impact our operating results.

The novel coronavirus disease of 2019 (COVID-19) has created significant economic disruption and uncertainty around the world. As we enter the third year of the pandemic, our workforce, customers and vendors still face the risk of the emergence of new strains, availability of effective treatment, and potential regulatory and macroeconomic effects stemming from such impacts. Except for certain situations in China, lockdowns, shelter-in-place restrictions, and vaccine mandates, prevalent during the initial stages of the pandemic, have now been lifted for most companies. While we have maintained normal business operations at virtually all our facilities throughout the pandemic, the related supply chain disruptions including increased lead times on key components experienced within our business and by our customers and vendors, continue to impact our work schedules and timing of shipments. The lingering impact of these conditions, potentially exacerbated by the emergence of new strains, on our business and financial results is uncertain and will depend on many evolving factors which we continue to monitor but cannot predict, including the resistance to treatments and current vaccinations, and the duration and scope of any new pandemic variants, the resulting actions taken by governments, businesses and individuals, and the flow-through impact on operations and supply chains.

A significant portion of our revenues is derived from certain key customers.

We have one customer, L3Harris Technologies, a large global defense primary contractor, which comprised 17% of our total revenues in 2022 and 20% of our total revenues in 2021. There were no other customers that comprised greater than 10% of our total revenues during these years. While we consider our relationship with our major customer to be good, the reduction, delay or cancellation of orders from this customer or any delays in payments beyond their payment terms, for any reason, would reduce our revenue and operating income and could materially and adversely affect our business, operating results and financial condition in other ways.

Our efforts to develop new products or new commercial applications for our products could be prolonged or could fail.

Although we develop certain products for new commercial applications, we cannot assure that these new products will be accepted due to the highly competitive nature of our industries. There are many new product and technology entrants into the markets we sell our products to, and we must continually reassess the markets in which our products can be successful and seek to engage customers in those markets that will adopt our products for use in their products. In addition, these customers must be successful with their products in their markets for us to gain increased business. Increased competition, failure to gain customer acceptance of products, the introduction of competitive technologies or failure of our customers in their markets all may have an adverse effect on our business and reduce our revenue and operating income.

Reductions or delays in U.S. and foreign military spending could have a material adverse effect on our business, financial condition and results of operations.

A significant portion of our revenues is derived from contracts with U.S. and foreign militaries or OEMs that supply U.S. and foreign militaries. In the years ended December 31, 2022 and 2021, $38,795 or 29% and $34,751 or 35%, respectively, of our revenues were comprised of sales made directly or indirectly to U.S. and foreign militaries.

While significant gains have been made in commercial markets with our business, we are still highly dependent on sales to U.S. Government customers. The amounts and percentages of our net revenue that were derived from sales to U.S. Government customers, including the Department of Defense, whether directly or through prime contractors, was approximately $33,064 or 25% in 2022 and $26,870 or 27% in 2021. Therefore, any significant disruption or deterioration of our relationship with the U.S. Government or any prime defense contractor could significantly reduce our revenue. Our competitors continuously engage in efforts to expand their business relationships with the U.S. Government and will continue these efforts in the future, and the U.S. Government may choose to use other contractors or suppliers.

Budget and appropriations decisions made by the U.S. Government, including possible future sequestration periods or other similar formulaic reductions in federal expenditures, are outside of our control and have long-term consequences for our business. A decline in U.S. military expenditures could result in a reduction in the military's demand for our products, which could have a material adverse effect on our business, financial condition and results of operations.

Our operations in China are subject to unique risks and uncertainties, including political shifts, tariffs and trade restrictions.

Our operating facility in China presents unique risks including, but not limited to, changes in local regulatory requirements, changes in labor laws, local wage laws, environmental regulations, taxes and operating licenses, compliance with U.S. regulatory requirements, including the Foreign Corrupt Practices Act, uncertainties as to the application and interpretation of local laws and enforcement of contract and intellectual property rights, currency restrictions, currency exchange controls, fluctuations in the value of currency to the U.S. dollar and currency revaluations, eminent domain claims, civil unrest, power outages, water shortages, labor shortages, labor disputes, increase in labor costs, rapid changes in government, economic and political policies, political or civil unrest, war, acts of terrorism, or the threat of boycotts, other civil disturbances, the impact of the imposition of tariffs by the U.S. Government on 9-volt batteries that we manufacture in China as well as any retaliating trade policies or restrictions, and an outbreak of a contagious disease variant, related to COVID-19 or not, which may cause us or our suppliers and/or customers to temporarily suspend operations in the affected city or region. Any such disruptions could depress our earnings and have other material adverse effects on our business, financial condition and results of operations.

Breaches in security, whether cyber or physical, and related disruptions and/or our inability to prevent or respond to such breaches, could diminish our ability to generate revenues or contain costs, compromise our assets, and negatively impact our business in other ways.

We face certain security threats, including threats to our information technology infrastructure, attempts to gain access to our proprietary or classified information, and threats to physical and cyber security. Our information technology networks and related systems are critical to the operation of our business and essential to our ability to successfully perform day-to-day operations. The risks of a security breach, cyber-attack, cyber intrusion, or disruption, particularly through actions taken by computer hackers, foreign governments and cyber terrorists, have increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. Although we have acquired and developed systems and processes designed to protect our proprietary or classified information, they may not be sufficient to prevent security breach, cyber-attack, cyber intrusion, or disruption, and the failure to prevent these types of events could disrupt our operations, require significant management attention and resources, and could negatively impact our reputation among our customers and the public, which could have a negative impact on our financial condition, and weaken our results of operations and liquidity. In 2017, we formed a cyber security executive management committee (the "Committee") with oversight responsibility to minimize the risk of security breaches, cyber-attacks, cyber intrusions, or disruptions. In 2018, this Committee with the assistance of outside security consultants completed a comprehensive Systems Security Plan ("SSP") and a Plan of Action & Milestones ("POAM") in compliance with the requirements of National Institute of Standards and Technology ("NIST") Special Publication 800-171, Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations. In 2019, the Company made further progress in implementing many of the security measures in our SSP and POAM, including increasing the security awareness across our employee base. In 2020 through 2022, we continued to make substantial progress towards achieving full implementation of all NIST 800-171 security standards, as well as the requirements under the Cybersecurity Maturity Model Certification (CMMC) framework released by the Department of Defense in 2020. The Committee continues to review all key aspects of cyber security utilizing our outside security consultants to ensure a robust plan is in place and provides quarterly updates to our Board. Despite these measures, we cannot eliminate the risk of such security breaches and the potential adverse impacts these breaches may have on our business and financial results. Accordingly, for 2022 we maintained our cyber-security insurance policy to help mitigate the impact of a cyber-security incident.

As reported on Form 8-K filed on March 2, 2023, during performance of their daily information technology security procedures on January 25, 2023, our Information Technology Team ("IT Team") discovered an unauthorized entry into our information technology systems for our Newark, New York and Virginia Beach, Virginia locations. The accounts in question were immediately disabled by our IT Team, and the Company's Information Security Committee met promptly, taking swift action, including the immediate notification of our cyber-security insurance carrier. Shortly thereafter, with assistance of recommendations from our cyber-security carrier, we engaged external incident response professionals to assist with our assessment, recovery and response. On February 7, the Company received an electronic communication allegedly from a third-party, known for nefarious ransomware attacks, claiming responsibility for the incident, and discussions with that third party commenced through experienced cyber-security professionals engaged by the Company.

This incident caused a partial disruption of our business operations at these locations, which resulted in production and shipping downtime of approximately two weeks. The Company has now restored its information technology systems, and production has been resumed in both locations. We do not believe that any other Company locations were affected by this incident, and these other locations have continued their normal operations. The full scope of the costs and related impacts of this incident on our first quarter 2023 results, including the extent to which the Company's cyber-security insurance will offset the costs of the professionals we engaged and of the interruption to our business, is currently under review. The Company's deductible for its cyber-security insurance is $100,000.

Based on the recovery of our systems, review of the files affected, as well as the Company's prompt response to and assessment of the incident, no ransom or other amount has been or is expected to be paid to the third-party. However, there may be additional currently unknown ramifications from the intrusion into our information systems. We continue to monitor our information systems for any irregularities.

In addition to the impact of COVID-19, our supply of raw materials and components could be disrupted or delayed due to business conditions, weather, or other factors not under our control, or the cost of those raw materials and components may materially increase.

Certain materials and components used in our products are available only from a single or a limited number of suppliers. As such in the present situation, some materials and components have been in short supply resulting in limited availability and/or increased costs. Additionally, we may elect to develop relationships with a single or limited number of suppliers for materials and components that are otherwise generally available. Due to our supplying defense products to the U.S. government, we could receive a government preference to continue to obtain critical supplies to meet military production needs. However, if the government did not provide us with a government preference in such circumstances or if the suppliers are not able to meet the necessary demand for the components, the difficulty in obtaining supplies could have a material adverse effect on our business, financial condition and results of operations. We believe that alternative suppliers are available to supply materials and components that could replace materials and components currently used and that, if necessary, we may be able to redesign our products to make use of such alternatives provided that the costs and timing of our customers recertifying the alternate materials and components where necessary is not deemed prohibitive to our customers or us. Nevertheless, any interruption in the supply from any supplier that serves as a sole source could delay product shipments and have a material adverse effect on our business, financial condition and results of operations. We have experienced interruptions of product deliveries by sole source and other suppliers in the past, most notably in 2022 and 2021, and we cannot guarantee that we will not experience a continuation of material interruption of deliveries from sole source or other suppliers in the future. The present supply chain disruptions and increased component lead times resulting from COVID-19 and its after-effects have been exacerbated by the increased demand for Lithium-based cells from the electric vehicle manufacturers. While the latter has resulted in increased supply of such cells, meeting such demand may result in delays or even the discontinuation of the cells required for our products. Accordingly, these circumstances require us to regularly monitor all aspects of our supply chain and share the updates with our customers, to ensure that any potential supply interruptions are understood with all efforts taken to minimize.

As we look forward to potential rising demand for electrification, our lead times for certain critical components from our suppliers could be extended even further, resulting in shipping delays causing us to miss contractual timelines. Our internal purchasing process is focused on the current economic environment, and lead times in the current environment are considered when placing orders from our vendors, but we cannot control the ability of our vendors or potential vendors to meet our delivery dates.

Additionally, we could continue to face prolonged, increasing pricing pressure from our suppliers due to rising costs incurred by these suppliers that could be passed on to us in higher prices for our raw materials. These increased prices could increase our cost of business, lower our margins and have other materially adverse effects on our business, financial condition and results of operations, particularly, if our pass through of these price increases is not accepted by our customers.

Fluctuations in the demand, supply and price of oil and gas and the resulting volatility in the level of downhole drilling could have a material adverse effect on our business, financial condition and results of operations.

Fluctuations in the demand, supply and pricing encountered in the oil and gas industry, have placed financial strain on the producers and the companies that provide oilfield services and equipment to those producers. The cyclicality in this industry, whether driven by geopolitical developments; international tensions; supply and demand economics; the introduction of new global, national, and industry-specific regulations; U.S. administration policies; and technology, appears to be a trend. A significant downturn in the price of oil may result in a decrease in downhole drilling and adversely impact on our financial results. In response, we would expect we would be able to mitigate a portion, but not all of this risk by diversifying our product offerings.

Our ability to recruit and retain experienced, competent management is critical to the success of the business, and the loss of top management and key personnel could significantly harm our business, and ability to implement our succession plan.

The continued service of our officers and executive team is key to the successful implementation of our business model and growth strategy designed to deliver sustainable, consistent profitability. A top management priority has been the development and implementation of a formal written succession plan to mitigate the risks associated with the loss of senior executives. This formal succession plan is updated annually and presented to our Board of Directors. There is no guarantee that we will be successful in our efforts to effectively implement our succession plan.

Because of the specialized, technical nature of our business, we are highly dependent on certain members of our management, sales, engineering and technical staffs. The loss of one or more of these employees could have a material adverse effect on our business, financial condition and results of operations. Our ability to effectively pursue our business strategy will depend upon, among other factors, the successful retention of our key personnel, recruitment of additional highly skilled and experienced managerial, sales, engineering and technical personnel, and the integration of such personnel obtained through business acquisitions. We cannot assure that we will be able to retain or recruit this type of personnel. An inability to hire sufficient numbers of people or to find people with the desired skills could result in greater demands being placed on limited management resources which could delay or impede the execution of our business plans and have other material adverse effects on our business, financial condition and results of operations.

Our growth and expansion strategy could strain or overwhelm our resources.

Rapid growth of our business could significantly strain management, operations and technical resources. If we are successful in obtaining rapid market growth of our products, we may be required to deliver large volumes of products to customers on a timely basis at a reasonable cost. For example, demand for our new or existing products combined with our ability to penetrate new markets and geographies or secure a major project award, could strain the current capacity of our manufacturing facilities and require a substantial increase in our direct labor workforce in a tight job market, and require additional capital resources, equipment and time to meet the required demand. We cannot assure, however, that our business will grow rapidly or that our efforts to expand manufacturing and quality control activities will be successful or that we will be able to satisfy commercial scale production requirements on a timely and cost-effective basis. While we had the highest backlog in Company history at December 31, 2022, this does not mean that rapid growth and demand for our products in all cases will be met by our resources without delay. Although we have highly experienced technical and engineering employees, we cannot assure you that we will be able to fulfil the orders of our customers for our products, without delay.
The failure to manage growth and expansion effectively could have an adverse effect on our business, financial condition, and results of operations.

A decline in demand for products using our batteries or communications systems could reduce demand for our products and/or our products could become obsolete resulting in lower revenues and profitability.

A substantial portion of our business depends on the continued demand for products using our batteries and communications systems sold by our customers, including OEMs. Our success depends significantly upon the success of those customers' products in the marketplace. We are subject to many risks beyond our control that influence the success or failure of a particular product or service offered by a customer, including:

- competition faced by the customer in its particular industry,
- market acceptance of the customer's product or service,
- the engineering, sales, marketing and management capabilities of the customer,

- technical challenges unrelated to our technology or products faced by the customer in developing its products or services, and
- the financial and other resources of the customer.

The market for our products is characterized by changing technology and evolving industry standards, often resulting in product obsolescence or short product lifecycles. Although we believe that our products utilize state-of-the-art technology, there can be no assurance that competitors will not develop technologies or products that would render our technologies and products obsolete or less marketable. Many of the companies with which we compete have substantially greater resources than we do, and some have the capacity and volume of business to be able to produce their products more efficiently than we can. In addition, these companies are developing or have developed products using a variety of technologies that are expected to compete with our technologies. Furthermore, we have noted an increase in foreign competition, especially in Asia, over the last several years which tends to compete on price in the battery industry. If these companies successfully market their products in a manner that renders our technologies obsolete, this would reduce our revenue and operating income and could have other material adverse effects on our business, financial condition and results of operations.

We are subject to certain safety risks, including the risk of fire, inherent in the manufacture, use and transportation of Lithium batteries.

Due to the high energy inherent in Lithium batteries, our Lithium batteries can pose certain safety risks, including the risk of fire. We incorporate procedures in research, development, product design, manufacturing processes and the transportation of Lithium batteries that are intended to minimize safety risks, but we cannot assure that accidents will not occur or that our products will not be subject to recall for safety concerns. Although we currently carry insurance policies which cover loss of plant and machinery, leasehold improvements, inventory and business interruption, any accident, whether at the manufacturing facilities or from the use of the products, may result in significant production delays or claims for damages resulting from injuries or death. While we maintain what we believe to be sufficient casualty liability coverage to protect against such occurrences, these types of losses could reduce our available cash and our operating and net income and have other material adverse effects on our reputation, business, financial condition and results of operation.

Our quarterly and annual results and the price of our common stock could fluctuate significantly.

Our future operating results and the price of our common stock may vary significantly from quarter-to-quarter and from year-to-year depending on factors such as the timing and shipment of significant orders, new product introductions, the transition of new products to higher-volume production, major project wins, U.S. and foreign government demand, delays in customer releases of purchase orders, delays in receiving raw materials from vendors and other supply-chain disruptions, the mix of distribution channels through which we sell our products and services and general economic conditions. Due to such variances in operating results, we have sometimes failed to meet, and in the future may not meet, market expectations regarding our future operating results.

In addition to the uncertainties of quarterly and annual operating results, future announcements concerning us or our competitors, including technological innovations or commercial products, litigation or public concerns as to the safety or commercial value of one or more of our products, or the impact of economic or geopolitical factors on any of the markets segments we participate in may cause the market price of our common stock to fluctuate substantially, all of which may be unrelated to our operating results.

Rising interest rates will increase the cost of our variable borrowing and will affect our earnings adversely.

The Company’s Amended Credit Agreement, among other things, provides for a 5-year, $10,000 senior secured term loan (the “Term Loan Facility”) and extends the term of the $30,000 senior secured revolving credit facility (the “Revolving Credit Facility”, and together with the Term Loan Facility, the “Amended Credit Facilities”) through May 30, 2025. Up to six months prior to May 30, 2025, the Revolving Credit Facility may be increased to $50,000 with the Bank’s concurrence.

Upon closing of the Excell Acquisition on December 13, 2021, the Company drew down the full amount of the Term Loan Facility and $10,980 under the Revolving Credit Facility. As of December 31, 2022, the Company had $8,167 outstanding principal on the Term Loan Facility, of which $2,000 is due to be paid in 2023 and included in current portion of long-term debt on the balance sheet, and $13,330 outstanding on the Revolving Credit Facility. The related interest rates on our borrowings are variable as disclosed in Note 3 to our consolidated financial statements. While it is in the best interests of the Company to reduce the amount of debt quickly, those funds in some cases have been diverted to purchase raw material and component inventory above historical levels in order satisfy commitments to our customers in light of the significant increase in our backlog and the longer lead times and other supply chain disruptions. Accordingly, any increase in interest rates will adversely impact the Company's reported financial results.

Our customers may not meet the volume expectations in our supply agreements.

We sell most of our products and services through supply agreements and contracts. While supply agreements and contracts contain volume-based pricing based on expected volumes, we cannot assure that adjustments to reflect volume shortfalls will be made under current industry practices because pricing is rarely adjusted retroactively when contract volumes are not achieved. Every effort is made to adjust future prices accordingly, but our ability to adjust prices is generally based on market conditions and we may not be able to adjust prices in various circumstances. This could have an adverse impact in the form of lost revenue or decreasing margins.

We may incur significant costs or liabilities to satisfy obligations under the terms of the warranties we supply and the contractual terms under which we sell our products and services.

We typically offer standard warranties against product defects that range from ninety (90) days to three (3) years from the date of purchase. We also offer separately priced extended warranty contracts on certain Communications Systems products. Warranty costs expected to be incurred are estimated based on the Company's experience and recorded as costs of products sold. There is no assurance that future warranty claims will be consistent with our estimates, and in the event we experience a significant increase in warranty claims, there is no assurance that our reserves will be sufficient. Excessive warranty claims could have a material adverse effect on our business, financial condition and results of operations.

Any inability to comply with changes to the regulations for the shipment of our products could limit our ability to transport our products to customers in a cost-effective manner and reduce our operating income and margins.

The transportation of Lithium batteries is regulated by the International Civil Aviation Organization ("ICAO") and corresponding International Air Transport Association ("IATA") Dangerous Goods Regulations and the International Maritime Dangerous Goods Code ("IMDG") and in the U.S. by the Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA"). These regulations are based on the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations and the United Nations Manual of Tests and Criteria. We currently ship our products pursuant to ICAO, IATA and PHMSA hazardous goods regulations. These regulations require companies to meet certain testing, packaging, labeling and shipping specifications for safety reasons. We have not incurred, and do not expect to incur, any significant costs in order to comply with these regulations. We believe we comply with all current U.S. and international regulations for the shipment of our products, and we intend and expect to comply with any new regulations that are imposed. We have established our own testing facilities to ensure that we comply with these regulations. If, however, we are unable to comply with any such new regulations, or if regulations are introduced that limit our ability to transport our products to customers in a cost-effective manner, this could reduce our operating income and margins, and have other material adverse effects on our business, financial condition and results of operations.

Our ability to use our net operating loss and tax credit carryforwards in the future may be limited, which could increase our tax liabilities and reduce our cash flow and net income.

At December 31, 2022, we had approximately $41,000 of U.S. net operating loss carryforwards and $2,600 of U.S. tax credit carryforwards available to offset future taxable income. We continually assess the carrying value of these assets based on the relevant accounting standards. Based on our latest assessment at December 31, 2022, we believe it is more likely than not that our U.S. deferred tax assets will be fully realized. However, failure to achieve our business targets could result in future charges to our income tax provision if any of the net operating loss or tax credit carryforwards are not utilized. See discussion in Management's Discussion & Analysis beginning on Page 26.

Our entrance into new markets could lead to additional exposure to financial risk or increased liability, and our failure to enter into those markets could lead to negative customer perception or loss of business from existing customers.

Our new products supporting our commercial diversification strategy will likely result in the introduction of our products in new end markets that we have not participated in before. These new market opportunities may carry certain risks that we may not have experienced in the past or that we may not be fully aware of. While we perform extensive due diligence in the launch of our products in new end markets and mitigate our risks with our contracts and insurance coverage, we may not be fully aware of the risks that may exist until we gain more experience in these markets.

Negative publicity concerning Lithium-ion batteries may negatively impact the industries or markets we operate in.

We are unable to predict the impact, severity or duration of negative publicity related to fire/mishandling of Lithium-ion batteries or the environmental impact of their disposal, and how it may impact the industries or markets we serve. Ongoing negative attention being given to Lithium-ion batteries that are used in certain cellular phones or are integrated into the power systems of new commercial aircraft and electric motor vehicles may have an impact on the Lithium-ion battery industry as a whole, regardless of the design or usage of those batteries. The residual effects of such events could have an adverse effect on our business, financial condition, and results of operations.

Any impairment of goodwill and/or other indefinite-lived intangible assets could adversely impact our results of operations.

Our goodwill and other indefinite-lived intangible assets are subject to an impairment test on an annual basis. Additionally, goodwill and other indefinite-lived intangible assets are assessed for impairment whenever events and circumstances indicate that impairment may exist. Any excess carrying value of goodwill and/or other intangible assets resulting from an impairment assessment must be written off in the period of determination. In addition, from time to time, we may acquire a business which will require us to record goodwill and/or other indefinite-lived intangible assets based on the allocation of the total consideration transferred to consummate the acquisition to the identified tangible and intangible assets acquired and liabilities assumed based on their respective estimated fair values. We may subsequently experience unforeseen circumstances related to past or future acquisitions which may adversely impact the forecasted cash flows or other assumptions used to value these assets. Future determinations that the estimated fair value of our goodwill and/or indefinite-lived intangible assets is less than their respective carrying values may result in significant (non-cash) impairment charges which could have a material adverse impact on future results of operations.

We are subject to foreign currency fluctuations.

We maintain manufacturing operations in North America, the United Kingdom and China, and we export products to various countries. We purchase materials and sell our products in foreign currencies, and therefore currency fluctuations may impact our pricing of products sold and materials purchased. Sales to non-U.S. customers make up a significant percentage of our total revenues. For example, the percentage of our business with customers outside of the U.S. was 48% in 2022 and 50% in 2021. A future strengthening of the U.S. dollar relative to our customers' currencies could make our products relatively more expensive and, may adversely affect our sales levels and reduce profitability. In addition, our United Kingdom and China subsidiaries maintain their books in local currency and the translation of the subsidiary financial statements into U.S. dollars for our consolidated financial statements could have an adverse effect on our consolidated financial results due to changes in local currency value relative to the U.S. dollar. With the rapid pace of geopolitical events, it is difficult at this time to assess any future impact of currency fluctuation on the Company's financial results, despite our proactive efforts to minimize the short-term risks of currency fluctuations. Accordingly, currency fluctuations could have a material adverse effect on our business, financial condition and results of operations by increasing our expenses and reducing our income. Finally, we maintain certain domestic U.S. cash balances denominated in foreign currencies, and the U.S. dollar equivalent of these balances fluctuates with changes in the foreign exchange rates between these currencies and the U.S. dollar.

A finding that our proprietary and intellectual property rights are not enforceable or invalid could allow our competitors and others to produce competing products based on our proprietary and intellectual property or limit our ability to continue to manufacture and market our products.

We believe our success depends more on the knowledge, ability, experience and technological expertise of our employees than on the legal protection of patents and other proprietary rights. However, we claim proprietary rights in various unpatented technologies, know-how, trade secrets and trademarks relating to our products and manufacturing processes. We cannot guarantee the degree of protection these various claims may or will afford, or that competitors will not independently develop or patent technologies that are substantially equivalent or superior to our technology. We protect our proprietary rights in our products and operations through contractual obligations, including nondisclosure agreements with certain employees, customers, consultants and strategic partners. There can be no assurance as to the degree of protection these contractual measures may or will afford. We have had patents issued and have patent applications pending in the U.S. and elsewhere. We cannot assure (1) that patents will be issued from any of these pending applications, or that the claims allowed under any issued patents will be sufficiently broad to protect our technology, (2) that any patents issued to us will not be challenged, invalidated or circumvented, or (3) as to the degree or adequacy of protection any patents or patent applications may or will afford. Further, if we are found to be infringing upon third party patents, we cannot assure that we will not be subjected to significant liability for damages or that we will be able to obtain licenses with respect to such patents on acceptable terms, if at all. The failure to obtain necessary licenses could delay product shipments or the introduction of new products, and costly attempts to design around such patents could foreclose the development, manufacture or sale of products, all of which could materially adversely affect our business and the results of operations.

We are subject to the contract rules and procedures of the U.S. and foreign governments. These rules and procedures create significant risks and uncertainties for us that are not usually present in contracts with private parties.

We continue to develop battery products and communications systems to meet the needs of the U.S. and foreign governments. We compete in solicitations for awards of contracts. The receipt of an award, however, does not always result in the immediate release of an order and does not guarantee in any way any given volume of orders. Any delay of solicitations or anticipated purchase orders by, or future failure of, the U.S. or foreign governments to purchase products manufactured by us could have a material adverse effect on our business, financial condition and results of operations. In these scenarios we are also typically required to successfully meet contractual specifications and to pass various qualification-testing for the products under contract. Our inability to pass these tests in a timely fashion, or to meet delivery schedules for orders released under contract, could have a material adverse effect on our business, financial condition and results of operations.

Additionally, when a U.S. government contract is awarded, there is a government procedure that permits unsuccessful companies to formally protest such award if they believe they were unjustly treated in the evaluation process. As a result of these protests, the government is precluded from proceeding under these contracts until the protests are resolved. A prolonged delay in the resolution of a protest, or a reversal of an award resulting from such a protest could have material adverse effects on our business, financial condition and results of operations.

We could be adversely affected by violations of the U.S. Foreign Corrupt Practices Act ("FCPA"), the U.K. Bribery Act or other anti-corruption laws.

The FCPA, U.K. Bribery Act and other anti-corruption laws generally prohibit companies and their intermediaries from making improper payments (to foreign officials and otherwise) and require companies to keep accurate books and records and maintain appropriate internal controls. Our training program and policies mandate compliance with such laws. We operate in some parts of the world that have experienced governmental corruption to some degree, and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. If we are found to be liable for violations of anti-corruption laws (either due to our own acts or our inadvertence, or due to the acts or inadvertence of others, including employees of our third-party partners or agents), we could suffer from civil and criminal penalties or other sanctions, incur significant internal investigation costs and suffer reputational harm.

We may incur significant costs because of known and unknown environmental matters.

National, state and local laws impose various environmental controls on the manufacture, transportation, storage, use and disposal of batteries and of certain chemicals used in the manufacture of batteries. We use and generate a variety of chemicals and other hazardous by-products in our manufacturing operations. These environmental laws govern, among other things, air emissions, wastewater discharges and the handling, storage and release of wastes and hazardous substances. Such laws and regulations can be complex and are subject to change. Although we believe that our operations are in substantial compliance with current environmental regulations and that there are no environmental conditions that will require material expenditures for clean up at our present or former facilities or at facilities to which we have sent waste for disposal, there can be no assurance that changes in such laws and regulations will not impose costly compliance requirements on us or otherwise subject us to future liabilities. There can be no assurance that additional or modified regulations relating to the manufacture, transportation, storage, use and disposal of materials used to manufacture our batteries or restricting disposal of batteries will not be imposed, or as to how these regulations will affect us or our customers. Such changes in regulations could reduce our operating income and margins and have other material adverse effects on our business, financial condition and results of operations. We could incur substantial costs as a result of violations of environmental laws, including clean-up costs, fines and sanctions and third-party property damage or personal injury claims. Failure to comply with environmental requirements could also result in enforcement actions that materially limit or otherwise affect the operations of the facilities involved. Under certain environmental laws, a current or previous owner or operator of an environmentally contaminated site may be held liable for the entire cost of investigation, removal or remediation of hazardous materials at such property. This liability could result whether or not the owner or operator knew of, or was responsible for, the presence of any hazardous materials.

The EU RoHS Directive places restrictions on the use of certain hazardous substances in electrical and electronic equipment. All applicable products sold in the European Union market after July 1, 2006 must comply with EU RoHS Directive. While this directive does not apply to batteries and does not currently affect our defense products, should any changes occur in the directive that would affect our products, we intend and expect to comply with any new regulations that are imposed. Our commercial chargers comply with this directive. Additional European Union directives, entitled the Waste Electrical and Electronic Equipment ("WEEE") Directive and the Directive "on batteries and accumulators and waste batteries and accumulators", impose regulations affecting our non-defense products. These directives require producers or importers of particular classes of electrical goods to be financially responsible for specified collection, recycling, treatment and disposal of past and future covered products. These directives assign levels of responsibility to companies doing business in European Union markets based on their relative market share. These directives call on each European Union member state to enact enabling legislation to implement the directive. As additional European Union member states pass enabling legislation our compliance system should be sufficient to meet such requirements. Our current estimated costs associated with our compliance with these directives based on our current market share are not significant. However, we continue to evaluate the impact of these directives as European Union member states implement guidance, and actual costs could differ from our current estimates.

The EU Battery Directive is intended to cover all types of batteries regardless of their shape, volume, weight, material composition or use. It is aimed at reducing mercury, cadmium, lead and other metals in the environment by minimizing the use of these substances in batteries and by treating and re-using old batteries. This directive applies to all types of batteries except those used to protect European member states' security, for military purposes, or sent into space. To achieve these objectives, the EU Battery Directive prohibits the marketing of some batteries containing hazardous substances. It establishes processes aimed at high levels of collection and recycling of batteries with quantified collection and recycling targets. The directive sets out minimum rules for producer responsibility and provisions with regard to labeling of batteries and their removability from equipment. Product markings are required for batteries and accumulators to provide information on capacity and to facilitate reuse and safe disposal. We currently ship our products pursuant to the requirements of the directive. Our current estimated costs associated with our compliance with these directives based on our current market share are not significant. However, we continue to evaluate the impact of these directives as European Union member states implement guidance, and actual costs could differ from our current estimates.

The China RoHS 2 directive provides a regulatory framework, including hazardous substance restrictions which are similar to those imposed by the EU RoHS Directive, and applies to methods for the control and reduction of pollution and other public hazards to the environment caused during the production, sale, and import of EEP in China affecting a broad range of electronic products and parts. The regulatory framework of China RoHS 2 also now references the updated marking and labeling requirements under Standard SJ/T 11364-2014. The methods under China RoHS 2 only apply to EEP placed in the marketplace in China. We believe our compliance system is sufficient to meet our requirements under China RoHS 2. Our current estimated costs associated with our compliance with this regulation based on our current market share are not significant. However, we continue to evaluate the impact of this regulation, and actual costs could differ from our current estimates.

A number of domestic and international communities are prohibiting the landfill disposal of batteries and requiring companies to make provisions for product recycling. Of particular note are the EU Batteries Directive and the New York State Rechargeable Battery Recycling Law. We are committed to responsible product stewardship and ongoing compliance with these and future statutes and regulations. The compliance costs associated with current recycling statutes and regulations are not expected to be significant at this time. However, we continue to evaluate the impact of these regulations, and actual costs could differ from our current estimates and additional laws could be enacted by these and other states which entail greater costs of compliance.

The U.S. and foreign governments can audit our contracts with their respective defense and government agencies and, under certain circumstances, can adjust the economic terms, delivery schedule or other terms of those contracts.

A portion of our business comes from sales of products and services to the U.S. and foreign governments through various contracts. These contracts are subject to procurement laws and regulations that lay out policies and procedures for acquiring goods and services. The procurement laws and regulations also contain guidelines for managing contracts after they are awarded, including conditions under which contracts may be terminated, in whole or in part, at the government's convenience or for default. Failure to comply with the procurement laws or regulations can result in civil, criminal or administrative proceedings involving fines, penalties, suspension of payments, or suspension or disbarment from government contracting or subcontracting for a period of time, which could have a material adverse effect on the Company.

Compliance with government regulations regarding the use of "conflict minerals" may result in increased costs and risks to the Company.

As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act"), the SEC has promulgated disclosure requirements regarding the use of certain minerals, which are mined from the Democratic Republic of Congo and adjoining countries, known as conflict minerals. We are required to perform due diligence inquiries of our supply chain and publicly disclose whether we manufacture (as defined in the Act) any products that contain conflict minerals and could incur significant costs related to implementing a process that will meet the mandates of the Act. Additionally, customers typically rely on us to provide critical data regarding the parts they purchase, including conflict mineral information. Our material sourcing is broad-based and multi-tiered, and we may not be able to easily verify the origins for conflict minerals used in the products we sell. We have many suppliers, and each provides conflict mineral information in a different manner, if at all. Accordingly, because our supply chain is complex, we may face reputational challenges if we are unable to sufficiently verify the origins of conflict minerals used in our products. Additionally, customers may demand that the products they purchase be free of conflict minerals. This may limit the number of suppliers that can provide products in sufficient quantities to meet customer demand or at competitive prices.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

As of December 31, 2022, we own two buildings in Newark, New York comprising approximately 250,000 square feet, which serve operations primarily in the Battery & Energy Products operating segment. Our corporate headquarters are located in our Newark, New York facility. We own one building in Missouri City, Texas comprising 69,000 square feet, which houses our SWE and Excell USA operations, and lease approximately 97,000 square feet in two buildings on one campus in Shenzhen, China, including a dormitory facility, approximately 25,000 square feet in six buildings in a contiguous area in Newcastle-under-Lyme, United Kingdom, and approximately 24,000 square feet in three facilities for our Excell Canada operations located in and Calgary, Mississauga and Vancouver, Canada, all which serve operations in the Battery & Energy Products operating segment. We lease approximately 32,500 square feet in a facility in Virginia Beach, Virginia, which serves operations in the Communications Systems operating segment. We also lease sales and administrative offices, as well as manufacturing and production facilities, in India, which serve operations in the Battery & Energy Products operating segment. Our research and development efforts for Battery & Energy Products are conducted at our Newark, New York; Missouri City, Texas; Newcastle-under-Lyme, United Kingdom; Shenzhen, China; and Canada facilities, while our research and development efforts for our Communications Systems products are conducted in our leased facilities in Tallahassee, Florida and in Virginia Beach, Virginia. We believe that our facilities are adequate and suitable for our current needs.

ITEM 3. LEGAL PROCEEDINGS

We are subject to legal proceedings and claims that arise from time to time in the normal course of business. We believe that the final disposition of any such matters will not have a material adverse effect on the Company's financial position, results of operations or cash flows. However, recognizing that legal matters are subject to inherent uncertainties, there exists the possibility that ultimate resolution of these matters could have a material adverse impact on the Company's financial position, results of operations or cash flows. We are not aware of any such situations at this time.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Ultralife's common stock is listed on the NASDAQ Global Market under the symbol "ULBI."

Holders

As of March 1, 2023, there were approximately 5,000 registered holders of record of our common stock.

Purchases of Equity Securities by the Issuer

There were no purchases of our common stock by the Company during the years ended December 31, 2022 and December 31, 2021.

Dividends

We have never declared or paid any cash dividends on our capital stock. Pursuant to our current credit facility, we are precluded from paying any dividends. We intend to retain earnings, if any, to finance future operations and expansion and, therefore, do not anticipate paying any cash dividends in the foreseeable future. Any future payment of dividends will depend upon our financial condition, capital requirements and earnings, as well as upon other factors that our Board of Directors may deem relevant.

ITEM 6. [RESERVED]

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with the accompanying consolidated financial statements and notes thereto appearing in Item 8 of this Form 10-K.

The financial information in this Management's Discussion and Analysis of Financial Condition and Results of Operations is presented in thousands of dollars, except for share and per share amounts. All figures presented below represent results from continuing operations, unless otherwise specified.

General

We offer products and services ranging from power solutions to communications and electronics systems to customers across the globe in the government, defense and commercial sectors. With an emphasis on strong engineering and a collaborative approach to problem solving, we design, manufacture, install and maintain power and communications systems including rechargeable and non-rechargeable batteries, communications and electronics systems and accessories and custom engineered systems. We sell our products internationally through a variety of trade channels, including original equipment manufacturers ("OEMs"), industrial and defense supply distributors and directly to U.S. and international defense departments.

We report our results in two operating segments: Battery & Energy Products and Communications Systems. The Battery & Energy Products segment includes: Lithium 9-volt, cylindrical, thin cell and other non-rechargeable batteries, in addition to rechargeable batteries, uninterruptable power supplies, charging systems and accessories such as cables. The Communications Systems segment includes RF amplifiers, power supplies, power cables, connector assemblies, amplified speakers, equipment mounts, case equipment, man-portable systems and integrated communication systems for fixed or vehicle applications such as vehicle amplifier-adaptors ("VAA") for multiple programs. We believe that reporting performance at the gross profit level is the best indicator of segment performance. As such, we report segment performance at the gross profit level and operating expenses as Corporate charges.

We continually evaluate ways to grow, including opportunities to expand through mergers, acquisitions and joint ventures, which we believe can broaden the scope of our products and services, expand operating and market opportunities and provide the ability to enter new lines of business synergistic with our portfolio of product offerings.

In January 2016, we acquired Accutronics Limited ("Accutronics"), a U.K. corporation based in Newcastle-under-Lyme, U.K., a leading independent designer and manufacturer of smart batteries and charger systems for high-performance, feature-laden portable and handheld electronic devices. We acquired Accutronics to advance our strategy of commercial revenue diversification, to expand our geographic penetration, and to achieve revenue growth from new product development.

On May 1, 2019, we acquired Southwest Electronic Energy Corporation, a Texas corporation ("SWE"), and a leading designer and manufacturer of high-performance smart battery systems and battery packs to customer specifications using Lithium cells. SWE serves a variety of industrial markets, including oil and gas, remote monitoring, process control and marine, which demand uncompromised safety, service, reliability and quality. We acquired SWE as a bolt-on acquisition to further support our strategy of commercial revenue diversification by providing entry to the oil and gas exploration and production, and subsea electrification markets, which were previously unserved by us. Another key benefit includes obtaining a highly valuable technical team of battery pack and charger system engineers and technicians to add to our new product development-based revenue growth initiatives in our commercial end-markets particularly asset tracking, smart metering and other industrial applications.

On December 13, 2021, we acquired Excell Battery Canada Inc., a British Columbia corporation ("Excell Canada") and 656700 B.C. Ltd., a British Columbia corporation ("656700") and its wholly owned subsidiary, Excell Battery Corporation USA, a Texas corporation ("Excell USA" together with Excell Canada and 656700, collectively, "Excell"), which operate under the name Excell Battery Group, based in Canada with U.S. operations, Excell is a leading independent designer and manufacturer of high-performance smart battery systems, battery packs and monitoring systems to customer specifications. Excell serves a variety of industrial markets including downhole drilling, OEM industrial and medical devices, automated meter reading, and mining, marine and other mission critical applications which demand uncompromised safety, service, reliability and quality. We acquired Excell as an important component of our strategy to diversify commercial revenue and expand the end markets we serve. Acquiring Excell offers us opportunities to further scale our Battery & Energy Products business and drive the operating leverage of our business model, expand into OEM device verticals that we do not presently serve, enhance our contributed value to our customers and realize cost synergies. Furthermore, Excell possesses experienced engineering and technical resources which we plan to utilize in progressing our global new product initiatives while adding a complementary line of highly engineered products that are costly to switch out.

Currently, we do not experience significant seasonal sales trends in either of our operating segments, although sales to the U.S. Department of Defense and other international defense organizations can be sporadic based on the needs of those particular customers and allocated funding levels.

The COVID-19 pandemic has created significant economic disruption and uncertainty around the world. The Company continues to closely monitor the developments surrounding COVID-19 and its related strains and take actions to mitigate the business risks involved. During this challenging time, we remain focused on ensuring the health and safety of our employees by implementing the material protocols established by public health officials. We continue to strive to ensure an uninterrupted flow of our mission critical products serving medical device, first responder, public safety, energy and national security customers.

As we enter the third year of the pandemic, our workforce, customers and vendors still face the risk of the emergence of new strains, availability of effective treatment, and potential regulatory and macroeconomic effects stemming from such impacts. Except for certain situations in China, lockdowns, shelter-in-place restrictions, and vaccine mandates, prevalent during the earlier periods of the pandemic, have now been lifted. While we have maintained normal business operations at virtually all of our facilities throughout the pandemic, the related supply chain disruptions including increased and in some cases unreliable lead times on key components experienced within our business and by our customers and vendors, continue to impact our work schedules and timing of shipments. For 2021, we estimated that the net impact of COVID-19 was a reduction to sales of approximately $11,000, a reduction to operating income of approximately $4,500 and a reduction to net income of approximately $3,400 or approximately $0.21 per diluted share. For 2022, the resulting, lingering supply chain disruptions to our business seemed to intensify, making it not feasible to estimate the resulting financial impact. Nevertheless, the demand for our products remains strong as evidenced by our backlog of $111.0 million as of December 31, 2022, an increase of $47.3 million or 74.2% compared to that exiting 2021. To some extent, this increase is attributable to supply chain disruptions pushing shipments into 2023.

Consolidated revenues increased by $33,573 or 34.2% to $131,840 for the year ended December 31, 2022 compared to $98,267 for the year ended December 31, 2021. During 2022, we experienced revenue growth of 37.8% for our Battery & Energy Products business and 5.9% for our Communications Systems business. This 2022 performance reflected a $29,529 or 46.5% increase in sales to our commercial customers and a $4,044 or 11.6% increase in sales to government and defense customers. The increase in our commercial business was due to the full year contribution of Excell which comprised $27,014 and organic sales growth of $2,515 or 4.0% representing a 14.6% increase in oil and gas market sales. Medical sales of $27,322 were down $342 or 1.2% due entirely to component shortages to fulfill increased demand from a large global medical device OEM. The increase in government and defense sales reflects growth in U.S. sales of $6,194 or 23.1% representing higher demand from prime defense contractors including a $2,621 or 12.3% increase for Battery & Energy Products and a $3,573 or 64.7% increase for Communications Systems, with the latter reflecting the receipt of components to commence the fulfillment to supply a defense prime with Vehicle Amplifier-Adaptors for a U.S. Army's Leader radio program order with some spillover into 2023. This increase was partially offset by a $2,150 or 27.3% decrease in non-U.S. government and defense sales primarily due to long lead times for key components experienced by our Communications Systems business to fulfill a large international order.

Gross margin decreased to 22.3% for the year ended December 31, 2022 from 25.1% for the year ended December 31, 2021. The 280-basis point decrease was due primarily to disruptions resulting from supply chain and logistics complications in large part because of a sharp increase in demand for our more-advanced rechargeable battery packs which increased the need for highly sought-after components, including various electronic components, PC boards, chip sets and certain metals to name a few. Major contributing factors resulting in the year-over-year reduction in our gross margin included the following: (1) Rapid cost inflation on raw materials and key components not entirely aligned with the timing of customer price increases - In 2022 we experienced more frequent weekly or sometimes daily input cost increases from our vendors this year versus more periodic customer price increases causing an inevitable lag in cost/price alignment. (2) Incremental fees to source and expedite critical components – In 2022 increases in demand with tight shipment schedules from both government/defense and medical customers, in some cases went beyond the wherewithal of our vendors to obtain key materials in a timely manner, necessitating the one-time use of brokers at a much higher cost and with more complex logistics, and further complicating the timely matching of higher costs with customer price increases. (3) Internal manufacturing inefficiencies – As a result of irregular component availability and lead time extensions, in 2022 we experienced continuous production-line start-ups, shut-downs and changeovers resulting in labor inefficiencies, higher scrap and decreased absorption of overhead. Most notable were delays in the supply of rechargeable cells for our fulfillment of a large medical order, as a major vendor changed their focus to supplying large format cells for EV. (4) Increased and uncertain lead times impacting timely deliveries – In 2022 more mundane yet vital components, such as epoxy, labels and boxes, arrived well past the expected dates reducing productivity and increasing costs to expedite shipments.

Operating expenses increased by $4,664 or 19.0% to $29,271 during the year ended December 31, 2022, compared to $24,607 during the year ended December 31, 2021. The increase in operating expense is primarily attributable to Excell which was acquired on December 13, 2021, accounting for $4,381 of the increase, and a one-time charge of $779 for severance costs associated with the Company's former President and CEO, who, as announced on November 22, 2022, is no longer with the Company. Both periods reflected our continued tight control over discretionary spending. Operating expenses as a percentage of revenue was 22.2% or 21.6% when excluding the one-time severance expense; the latter representing a 340 basis-point improvement over 25.0% of revenue which operating expenses represented for the year-earlier period.

Other expenses totaled $575 for the year-ended December 31, 2022 compared to $186 for the year ended December 31, 2021. The increase is primarily attributable to a $709 increase in interest expense resulting from the debt financing of the acquisition of Excell on December 13, 2021, partially offset by other income of $376 primarily representing foreign currency exchange gains due to fluctuations in foreign currency exchange rates.

Income tax benefit was $326 for the year ended December 31, 2022, compared to a provision of $79 for the year ended December 31, 2021. Our effective tax rate was 73.1% for 2022, as compared to (52.3%) for 2021, primarily due to the geographic mix of earnings. The income tax benefit for the 2022 period is comprised of a $636 current provision for income taxes expected to be paid primarily in foreign jurisdictions and a $962 deferred tax benefit which represents a non-cash benefit primarily for U.S. net operating losses and temporary tax differences which are expected to offset future U.S. taxable income. The income tax provision for the 2021 period is comprised of a $226 current provision for income taxes due primarily to foreign jurisdictions and a $147 deferred tax benefit primarily for U.S. net operating losses and temporary tax differences which are expected to offset future U.S. taxable income.

Net loss attributable to Ultralife was $119 for 2022 as compared to $234 for 2021. Net loss attributable to Ultralife common shareholders per diluted share was $0.01 for both 2022 and 2021.

Adjusted EBITDA, defined as net income (loss) attributable to Ultralife before net interest expense, provision (benefit) for income taxes, depreciation and amortization, plus/minus income/expense that we do not consider reflective of our continuing operations, amounted to $6,575 for the year ended December 31, 2022 compared to $4,818 for the prior year. See the section "Adjusted EBITDA" beginning on page 32 for a reconciliation of adjusted EBITDA to net income attributable to Ultralife.

The Company's liquidity remains solid, with cash on hand of $5,713, working capital of $50,075 and a current ratio (current assets divided by current liabilities) of 2.7. To protect our ability to service our substantial backlog while considering the longer lead times and unreliable delivery dates for critical components, during 2022 we increased inventory by $8,003 or 24.1%. As of December 31, 2021, the Company had cash on hand of $8,413, working capital of $47,600 and a current ratio of 3.5.

As we look ahead, we believe our backlog, durable customer relationships, diversified end markets, new product initiatives, and actions underway to improve our gross margins position us to deliver high-quality, sustainable profitable growth.

Results of Operations

Year Ended December 31, 2022 Compared with the Year Ended December 31, 2021:

	Year Ended December 31,		Increase/
	2022	2021	(Decrease)
Revenues:			
Battery & Energy Products	$ 119,995	$ 87,083	$ 32,912
Communications Systems	11,845	11,184	661
Total	131,840	98,267	33,573
Cost of Products Sold:			
Battery & Energy Products	93,841	66,021	27,820
Communications Systems	8,599	7,604	995
Total	102,440	73,625	28,815
Gross Profit:			
Battery & Energy Products	26,154	21,062	5,092
Communications Systems	3,246	3,580	(334)
Total	29,400	24,642	4,758
Operating Expenses	29,271	24,607	4,664
Operating Income	129	35	94
Other Expense, Net	575	186	389
Loss Before Taxes	(446)	(151)	(295)
Income Tax (Benefit) Provision	(326)	79	(405)
Net Loss	(120)	(230)	110
Net (Loss) Income Attributable to Non-Controlling Interest	(1)	4	(5)
Net Loss Attributable to Ultralife	$ (119)	$ (234)	$ 115
Net Loss Attributable to Ultralife Common Shares – Basic	$ (0.01)	$ (0.01)	$ -
Net Loss Attributable to Ultralife Common Shares – Diluted	$ (0.01)	$ (0.01)	$ -
Weighted Average Shares Outstanding –Basic	16,125,239	16,036,676	88,563
Weighted Average Shares Outstanding – Diluted	16,125,239	16,036,676	88,563

Revenues. Total revenues for the year ended December 31, 2022 amounted to $131,840, an increase of $33,573, or 34.2% from the $98,267 reported for the year ended December 31, 2021.

Battery & Energy Products revenues increased $32,912, or 37.8%, for the year ended December 31, 2022 as compared to the prior year. Commercial revenues of this business increased $29,529 or 46.5% from 2021 and now comprise 77.5% of total segment sales versus 72.9% last year. The year-over-year increase was due primarily to the full year contribution of Excell which comprised $27,014 of the growth and organic sales growth of $2,515 or 4.0% driven by a $2,422 or 14.6% increase in oil & gas market (downhole drilling) sales. Medical sales of $27,322 were down $342 or 1.2% due primarily to component shortages to fulfill increased demand from a large global medical device OEM. Government and defense sales of this business increased $3,383 or 14.4% from 2021 and now comprise 22.5% of total segment sales versus 27.1% last year. The increase primarily reflects higher U.S. and international demand resulting in year-over-growth of 12.3% and 34.3%, respectively. The domestic increase represents growth of 11% for our batteries and radios used for military radios and 30% growth in batteries used for public safety radios. The international increase of 34.3% reflects higher demand for our batteries from allied countries.

Communications Systems revenues increased $661 or 5.9% for the year ended December 31, 2022 as compared to the prior year. The increase reflects the receipt of components to commence the fulfillment of a large international order and to continue the fulfillment of a large U.S. order received in October 2021 valued at approximately $4,200 to supply a global defense prime with our Vehicle Amplifier-Adaptors for the U.S. Army's Leader radio program. Due to supply chain lead times, there will be some spillover of fulfilling these orders into 2023.

Our order backlog at December 31, 2022 was $110,994, an increase of $47,281 or 74.2% from the backlog at December 31, 2021 which was $63,713. For our Battery & Energy Products business, the backlog increased $33,286 or 60.1% to $88,632 from $55,346. The year-over-year increase is primarily driven by higher demand across the major markets that we serve including government and defense, medical, oil and gas and industrial, which in some cases includes orders pushed into 2023 because of the supply chain disruptions experienced in 2022. The 2022 year-end backlog is primarily related to orders expected to ship in the next year and does not include future shipments under the indefinite delivery/indefinite quantity U.S. Department of Defense awards for our BA-5390 batteries ($9,900) and Conformal Wearable Batteries ($168,000).

For our Communications Systems business, the backlog increased $13,995 or 167.3% to $22,362 from $8,367. The year-over-year increase is primarily a result of a July 2022 purchase order valued at approximately $4,600 to supply a global defense prime with our Vehicle Amplifier-Adaptors for the U.S. Army's Leader radio program, a September 2022 contract valued at approximately $7,500 to supply its integrated system of A-320 amplifiers and A-320HVA radio vehicle mounts to a major international defense contractor for an ongoing government/defense modernization program, and an October 2022 purchase order for $5,500 to supply its vehicle communications systems to a global prime defense contractor for the U.S. Army. The 2022 year-end backlog is related to orders that are expected to ship throughout 2023.

Cost of Products Sold and Gross Profit. Cost of products sold for the year ended December 31, 2022 increased $28,815 or 39.1% from the year ended December 31, 2021. Consolidated cost of products sold as a percentage of total revenue increased from 74.9% for the year ended December 31, 2021 to 77.7% for the year ended December 31, 2022. Correspondingly, consolidated gross margin was 22.3% for the year ended December 31, 2022, compared with 25.1% for the year ended December 31, 2021. The 280-basis point decline in gross margin is due primarily to disruptions resulting from supply chain and logistics complications in large part because of a sharp increase in demand for our more-advanced rechargeable battery packs which increased the need for highly sought-after components, including various electronic components, PC boards, chip sets and certain metals to name a few. Major contributing factors resulting in the year-over-year reduction in our gross margin included the following: (1) Rapid cost inflation on raw materials and key components not entirely aligned with the timing of customer price increases - In 2022 we experienced more frequent weekly or sometimes daily input cost increases from our vendors versus more periodic customer price increases causing lags in cost/price alignment. (2) Incremental fees incurred to source and expedite critical components – In 2022 increases in demand with tight shipment schedules from both government/defense and medical customers, in some cases went beyond the wherewithal of our vendors to obtain key materials in a timely manner, necessitating the one-time use of brokers at a much higher cost and with more complex logistics, and further complicating the timely matching of higher costs with customer price increases. (3) Internal manufacturing inefficiencies – As a result of irregular component availability and lead time extensions, in 2022 we experienced continuous production-line start-ups, shut-downs and changeovers resulting in labor inefficiencies, higher scrap and decreased absorption of overhead. Most notable were delays in the supply of rechargeable cells for our fulfillment of a large medical order, as the vendor changed their focus to supplying large format cells for EV. (4) Increased and uncertain lead times impacting timely deliveries – In 2022 more mundane yet vital components, such as epoxy, label and boxes, arrived well past the expected dates reducing productivity and increasing costs to expedite shipments.

For our Battery & Energy Products segment, the cost of products sold increased $27,820 or 42.1%, from the year ended December 31, 2021. Battery & Energy Products' gross profit for 2022 was $26,154 or 21.8% of revenues, an increase of $5,092 or 24.2% from gross profit of $21,062, or 24.2% of revenues, for 2021. Battery & Energy Products' gross margin decreased for the year ended December 31, 2022 by 240 basis points from the prior year to 21.8% due to supply chain disruptions, including rapid cost inflation and lags in price realization, as noted above resulting from the aftermath of COVID-19, costs associated with the transition of new products to higher volume production, and unfavorable sales product mix.

For our Communications Systems segment, the cost of products sold increased by $995 or 13.1% from the year ended December 31, 2021. Communications Systems' gross profit for the year ended December 31, 2022 was $3,246 or 27.4% of revenues, a decrease of $334 or 9.3% from gross profit of $3,580 or 32.0% of revenues for the year ended December 31, 2021. The 460 basis points decrease in gross margin during 2022 to 27.4% is primarily due to inefficiencies associated with delays in receipt of components and sales mix.

Operating Expenses. Total operating expenses for the year ended December 31, 2022 increased $4,664 or 19.0% from the year ended December 31, 2021. The increase in operating expense is primarily attributable to Excell which was acquired on December 13, 2021, accounting for $4,381 of the increase, and a one-time charge of $779 for severance costs associated with the Company's former President and CEO, who, as announced on November 22, 2022, is no longer with the Company. Both periods reflected our continued tight control over discretionary spending.

Overall, operating expenses as a percentage of revenues was 22.2% for the year ended December 31, 2022 compared to 25.0% for the comparable 2021 period. Amortization expense associated with intangible assets related to our acquisitions increased to $1,282 for the year-ended December 31, 2022 ($1,185 in selling, general and administrative expenses and $97 in research and development costs) from $633 for the year ended December 31, 2021 ($515 in selling, general and administrative expenses and $118 in research and development costs) as a result of our acquisition of Excell in December 2021. Research and development costs were $7,081 in 2022, an increase of $255 or 3.7%, from $6,826 reported in 2021. This increase is largely attributable to our acquisition of Excell in December 2021. Selling, general, and administrative expenses increased $4,409 or 24.8%, to $22,190 for the year ended December 31, 2022 from $17,781 for the year ended December 31, 2021. Selling, general, and administrative expenses for 2022 include $4,608 attributable to Excell compared to $564 for 2021 which included $354 of one-time direct acquisition costs reflecting customary legal, audit and due diligence fees. 2022 also included a one-time charge of $779 for severance costs associated with the Company's former President and CEO, who, as announced on November 22, 2022, is no longer with the Company. We continued tight control over discretionary spending across the Company.

Other (Income) Expense. Other expense totaled $575 for the year ended December 31, 2022 compared to $186 for the year ended December 31, 2021. Interest and financing expense increased $709 to $951 for 2022 from $242 for 2021 due to the debt financing of the acquisition of Excell on December 13, 2021. Miscellaneous income amounted to $376 for 2022 compared to $56 for 2021, primarily attributable to foreign exchange gains and loss due to fluctuations in foreign currency exchange rates.

Income Tax (Benefit) Provision. Income tax benefit was $326 for the year ended December 31, 2022, compared to a provision of $79 for the year ended December 31, 2021. Our effective tax rate was 73.1% for 2022, as compared to (52.3%) for 2021, primarily due to the geographic mix of earnings. The income tax benefit for the 2022 period is comprised of a $636 current provision for income taxes expected to be paid primarily in foreign jurisdictions and a $962 deferred tax benefit which represents a non-cash benefit primarily for U.S. net operating losses and temporary tax differences which are expected to offset future U.S. taxable income. The income tax provision for the 2021 period is comprised of a $226 current provision for income taxes due primarily to foreign jurisdictions and a $147 deferred tax benefit primarily for U.S. net operating losses and temporary tax differences which are expected to offset future U.S. taxable income.

Net loss attributable to Ultralife was $119 for 2022 as compared to $234 for 2021. Net loss attributable to Ultralife common shareholders per diluted share was $0.01 for both 2022 and 2021. Weighted average common shares outstanding used to compute diluted earnings per share increased from 16,036,676 for the 2021 period to 16,125,239 for the 2022 period, mainly due to the issuance of common stock upon the exercise of stock options and the vesting of restricted stock in 2022.

Adjusted EBITDA

In evaluating our business, we consider and use adjusted EBITDA, a non-GAAP financial measure, as a supplemental measure of our operating performance. We define adjusted EBITDA as net income (loss) attributable to Ultralife before net interest expense, provision (benefit) for income taxes, depreciation and amortization, and stock-based compensation expense, plus/minus expense/income that we do not consider reflective of our ongoing continuing operations. We also use adjusted EBITDA as a supplemental measure to review and assess our operating performance and to enhance comparability between periods. We also believe the use of adjusted EBITDA facilitates investors' understanding of operating performance from period to period by backing out potential differences caused by variations in such items as capital structures (affecting relative interest expense and stock-based compensation expense), the amortization of intangible assets acquired through our business acquisitions (affecting relative amortization expense and provision (benefit) for income taxes), the age and book value of facilities and equipment (affecting relative depreciation expense) and one-time charges/benefits relating to income taxes. We also present adjusted EBITDA from operations because we believe it is frequently used by securities analysts, investors and other interested parties as a measure of financial performance. We reconcile adjusted EBITDA to net income (loss) attributable to Ultralife, the most comparable financial measure under GAAP.

We use adjusted EBITDA in our decision-making processes relating to the operation of our business together with GAAP financial measures such as operating income. We believe that adjusted EBITDA permits a comparative assessment of our operating performance, relative to our performance based on our GAAP results, while isolating the effects of depreciation and amortization, which may vary from period to period without any correlation to underlying operating performance, and of stock-based compensation, which is a non-cash expense that varies widely among companies. We believe that by presenting adjusted EBITDA, we assist investors in gaining a better understanding of our business on a going forward basis. We provide information relating to our adjusted EBITDA so that securities analysts, investors and other interested parties have the same data that we employ in assessing our overall operations. We believe that trends in our adjusted EBITDA are a valuable indicator of our operating performance on a consolidated basis and of our ability to produce operating cash flows to fund working capital needs, to service debt obligations and to fund capital expenditures.

The term adjusted EBITDA is not defined under GAAP, and is not a measure of operating income, operating performance or liquidity presented in accordance with GAAP. Our adjusted EBITDA has limitations as an analytical tool, and when assessing our operating performance, adjusted EBITDA should not be considered in isolation or as a substitute for net income attributable to Ultralife or other consolidated statement of operations data prepared in accordance with GAAP. Some of these limitations include, but are not limited to, the following:

a. Adjusted EBITDA does not reflect (1) our cash expenditures or future requirements for capital expenditures or contractual commitments; (2) changes in, or cash requirements for, our working capital needs; (3) the interest expense, or the cash requirements necessary to service interest or principal payments, on our debt; (4) income taxes or the cash requirements for any tax payments; and (5) all of the costs associated with operating our business;

b. Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized often will have to be replaced in the future, and adjusted EBITDA from continuing operations does not reflect any cash requirements for such replacements;

c. While stock-based compensation is a component of cost of products sold and operating expenses, the impact on our consolidated financial statements compared to other companies can vary significantly due to such factors as assumed life of the stock-based awards and assumed volatility of our common stock; and

d. Other companies may calculate adjusted EBITDA differently than we do, limiting its usefulness as a comparative measure.

We compensate for these limitations by relying primarily on our GAAP results and using adjusted EBITDA only on a supplemental basis. Neither current nor potential investors in our securities should rely on adjusted EBITDA as a substitute for any GAAP measures and we encourage investors to review the following reconciliation of adjusted EBITDA to net income attributable to Ultralife.

	Year ended December 31,	
	2022	2021
Net loss attributable to Ultralife	$ (119)	$ (234)
Add:		
Interest and financing expense, net	951	242
Income tax (benefit) provision	(326)	79
Depreciation expense	3,177	2,906
Amortization of intangible assets	1,282	633
Stock-based compensation expense	776	671
Non-cash purchase accounting adjustments	55	121
Severance to Former President & CEO	779	-
Adjusted EBIDTA	$ 6,575	$ 4,418

Liquidity and Capital Resources

Cash Flows and General Business Matters

As of December 31, 2022, cash totaled $5,713 (including restricted cash of $79), a decrease of $2,700 from the $8,413 as of December 31, 2021, primarily attributable to the procurement of inventory amidst challenging supply chain conditions.

During the year ended December 31, 2022, cash used in operations was $1,263, as compared to $4,325 generated from operations for the year ended December 31, 2021. For the 2022 period, cash used was comprised of a $120 net loss and a $5,452 increase in net working capital, partially offset by non-cash items totaling $4,309 for depreciation, amortization, stock-based compensation, and deferred taxes. The increase in working capital was primarily attributable to $8,747 cash used to procure inventory to proactively manage our supply chain, reduce lead times and the impact of potential cost increases on components and raw materials, and enhance our position to service customer orders.

Cash used in investing activities for the year ended December 31, 2022 was $1,679 for capital expenditures, reflecting investments in equipment for new products transitioning to high-volume manufacturing, as compared to $2,814 capital spending for the year ended December 31, 2021.

Cash provided by financing activities for the year ended December 31, 2022 was $518, primarily attributable to net borrowings on our credit facility for the purchase of certain critical raw materials requiring cash-in-advance payment terms by the vendors.

We continue to have significant U.S. net operating loss carryforwards available to utilize as an offset to taxable income. As of December 31, 2022, none of our U.S. net operating loss carryforwards have expired. See Note 7 to the consolidated financial statements for additional information.

Going forward, we expect positive operating cash flow and the availability under our Revolving Credit Facility will be sufficient to meet our obligations for both financing and investing.

Commitments

On December 13, 2021, in connection with financing the Excell acquisition (see Note 2 to the consolidated financial statements), the Company drew down $10,000 on its Term Loan Facility and $10,980 under its Revolving Credit Facility. As of December 31, 2022, the Company had $8,167 outstanding principal on the Term Loan Facility, of which $2,000 is due to be paid in 2023, and $13,330 outstanding principal on the Revolving Credit Facility. The Company is in full compliance with its debt covenants under the Credit Facilities.

As of December 31, 2022, we had made commitments to purchase approximately $661 of production machinery and equipment.

We typically offer standard warranties against product defects that range from ninety (90) days to three (3) years from the date of purchase. We also offer separately priced extended warranty contracts on certain Communications Systems products. Warranty costs expected to be incurred are estimated based on the Company's experience and recorded as costs of products sold. There is no assurance that future warranty claims will be consistent with our estimates, and in the event we experience a significant increase in warranty claims, there is no assurance that our reserves will be sufficient. Excessive warranty claims could have a material adverse effect on our business, financial condition and results of operations.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements.

Critical Accounting Policies and Estimates

The above discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of our consolidated financial statements requires the application of accounting policies and the use of estimates. The accounting policies most important to the preparation of the consolidated financial statements and estimates that require management's most difficult, subjective or complex judgments are described below.

Revenue Recognition:

Revenues are generated from the sale of products. Performance obligations are met and revenue is recognized upon transfer of control to the customer, which is generally upon shipment. When contract terms require transfer of control upon delivery at a customer's location, revenue is recognized on the date of delivery. For products shipped under vendor managed inventory arrangements, revenue is recognized and billed when the product is consumed by the customer, at which point control has transferred and there are no further obligations by the Company. Revenue is measured as the amount of consideration we expect to receive in exchange for shipped product. Sales, value-added and other taxes billed and collected from customers are excluded from revenue. Customers, including distributors, do not have a general right of return.

Separately priced extended warranty contracts are offered on certain products. Extended warranties are treated as separate performance obligations and recognized to revenue evenly over the term of the respective contract. Revenue not yet recognized on extended warranty contracts is recorded as deferred revenue on the consolidated balance sheet.

For customer contracts with an original expected duration of less than one year, we apply the practical expedient with respect to disclosure of the deferral and future expected timing of revenue recognition for transaction price allocated to remaining performance obligations.

Valuation of Inventory:

Inventories are stated at the lower of cost or net realizable value, with cost determined using the first-in, first-out ("FIFO") method. Our inventory includes raw materials, work in process and finished goods. We recognize provisions for excess, obsolete or slow-moving inventory. Inherent in our estimates of net realizable value in determining inventory valuation are assumptions related to expectations of future demand for our products, product lifecycles, product support, technical obsolescence, regulatory requirements, and economic and market conditions. Estimates related to the valuation of inventory are susceptible to changes as the underlying assumptions are continuously evaluated. If our assumptions are adversely different from those estimated by management, inventory adjustments to reduce inventory values would result in an increase in inventory write-offs and a decrease in gross margins.

Goodwill and Other Indefinite Lived Intangible Assets:

Under the acquisition method of accounting, the total consideration transferred to consummate the acquisition is allocated to the identified tangible and intangible assets acquired and liabilities assumed based on their respective estimated fair values as of the acquisition date with the residual amount recorded to goodwill. We do not amortize goodwill and other intangible assets with indefinite lives, but instead evaluate these assets for impairment at least annually and whenever events or circumstances indicate that impairment may exist.

The annual impairment test for goodwill consists of a comparison of the estimated fair value for each reporting unit to which goodwill is assigned to the carrying value of the respective reporting unit. The annual impairment test for the other intangible assets with an indefinite life consists of a comparison of the estimated fair value of each asset to the carrying value of the respective asset. If the estimated fair value of a reporting unit or other indefinite-lived intangible asset exceeds its respective carrying value, the goodwill or indefinite-lived intangible asset is considered not impaired. If carrying value of a reporting unit or indefinite-lived intangible asset exceeds its estimated fair value, the excess carrying value of the respective goodwill or indefinite-lived intangible asset is recognized as an impairment loss.

We conducted our annual impairment test for goodwill and other indefinite-lived intangible assets as of October 1, 2022. We identified two (2) goodwill reporting units and five (5) indefinite-lived intangible assets. We performed a quantitative impairment assessment of each goodwill reporting unit and indefinite-lived intangible asset. The estimated fair value of each reporting unit was determined using a discounted cash flow model. The estimated fair value of each indefinite-lived intangible asset was determined using other income-based valuation models. Significant estimates and assumptions were used to estimate fair value, including our internal operating and cash flow forecasts, excess working capital requirements, and inputs to the weighted-average cost of capital used to discount future cash flows. Other key assumptions used to value the trademarks and customer relationships included royalty rates and attrition rates, respectively. The significant estimates and assumptions used in these valuations are subject to judgment based on sources utilized and the assessment of risks related to our internal forecasts. Based on the results of our impairment test, and consideration of qualitative factors, no impairments were identified. There is a possibility that our goodwill and other intangible assets could be impaired in the future should there be a significant change in the significant estimates and assumptions used in our impairment assessment.

Impairment of Long-Lived Assets:

We assess our long-lived assets for impairment whenever events or circumstances indicate their carrying amounts may not be recoverable. This is accomplished by comparing the expected undiscounted future cash flows of the assets with the respective carrying amount as of the date of assessment. Should aggregate undiscounted future cash flows be less than the carrying value, a write-down would be required, measured as the difference between the carrying value and the fair value of the asset. Fair value is estimated either through the assistance of an independent valuation or as the present value of expected discounted future cash flows. The discount rate used by us in our evaluation is an industry-based weighted average cost of capital. If the expected undiscounted future cash flows exceed the respective carrying amount as of the date of assessment, no impairment charge is recognized.

Income Taxes:

We account for income taxes using the asset and liability method. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax basis of assets and liabilities and are measured using the enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Pursuant to ASC 740, a valuation allowance is recognized when the realizability of deferred tax assets is not more likely than not, based all available evidence, both positive and negative, weighted based on objective verifiability.

As of December 31, 2022, we concluded that it is more likely than not that our U.S. deferred tax assets will be fully realized based on management's assessment. In evaluating the realizability of our U.S. deferred tax assets, management considered all available evidence, both positive and negative, weighted based on objective verifiability. Our assessment also considered our ability to fully utilize before expiration our domestic net operating loss carryforwards, which expire 2025 thru 2035, and our general business tax credit carryforwards, which expire 2028 thru 2042. As of December 31, 2022, our domestic net operating loss carryforwards and general business tax credits were approximately $41,000 and $2,600, respectively.

As of December 31, 2022, for certain past operations in the U.K., we continue to report a valuation allowance for net operating loss carryforwards of approximately $10,000, nearly all of which can be carried forward indefinitely. Management has concluded that utilization of the U.K. net operating losses may be limited due to the change in the past U.K. operation, and that they cannot currently be used to reduce taxable income of our other U.K. subsidiary, Accutronics Ltd. As of December 31, 2022, we have not recognized a valuation allowance against our other foreign deferred tax assets, as we believe that it is more likely than not that they will be realized. We will continue to evaluate the realizability of our deferred tax assets in future periods.

Stock-Based Compensation:

We recognize compensation cost relating to share-based payment transactions in our financial statements. The cost is measured at the grant date, based on the estimated fair value of the award, and is recognized as an expense over the employee's requisite service period (generally the vesting period of the equity award). We calculate implied volatility for stock options based on an average of historical volatility over the expected life of the awards. The computation of expected term is determined based on historical experience of similar awards, giving consideration to the contractual terms of the awards and the vesting period. The interest rate for periods within the contractual life of the award is based on the U.S. Treasury yield in effect at the time of grant. Our awards are generally valued using the Black-Scholes method. If required, our market-based awards are valued using a Monte Carlo simulation.

Business Combinations:

We account for businesses acquired using the acquisition method of accounting. Under this method, all acquisition-related costs are expensed as incurred, and the total consideration transferred to consummate the acquisition is allocated to the identified tangible and intangible assets acquired and liabilities assumed based on their respective estimated fair values as of the acquisition date with the residual amount recorded to goodwill. As part of this process, we identify and attribute values and estimated lives to property and equipment and intangible assets acquired. These determinations involve significant estimates and assumptions, including those with respect to future cash flows, discount rates and asset lives, and therefore require considerable judgment. These determinations affect the amount of depreciation and amortization expense recognized in future periods. The results of operations of acquired businesses are included in the consolidated statements of income and comprehensive income beginning on the respective acquisition date.

Warranties:

We typically offer standard warranties against product defects that range from ninety (90) days to three (3) years from the date of purchase. We also offer separately priced extended warranty contracts on certain products. Warranty costs expected to be incurred are estimated based on the Company's experience and recorded as costs of products sold. Standard warranty costs are recognized upon product sale. Extended warranty costs are recognized over the term of the contract. Provision for warranty costs is recorded in accrued expenses and other current liabilities and other noncurrent liabilities on our consolidated balance sheet based on the duration of the warranty.

Environmental Issues:

Environmental expenditures, if any, that relate to current operations, are generally expensed. Remediation costs that relate to an existing condition caused by past operations are accrued when it is probable that these costs will be incurred and can be reasonably estimated.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As a smaller reporting company, we are not required to provide this information.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements and schedules listed in Item 15(a)(1) are included in this Report beginning on page 40.

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Ultralife Corporation

Opinion on the Financial Statements
We have audited the accompanying consolidated balance sheets of Ultralife Corporation and its subsidiaries (the Company) as of December 31, 2022 and 2021, the related consolidated statements of loss, comprehensive loss, changes in shareholders' equity and cash flows for the years then ended, and the related notes to the consolidated financial statements (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion
These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters
The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Estimate for excess, obsolete, and slow-moving inventory reserve

As discussed in Notes 1 and 4 to the financial statements, inventories are stated at the lower of cost or net realizable value with cost determined under the first-in, first-out method. The Company records provisions for excess, obsolete, and slow-moving inventory based on changes in customer demand, technology developments or other economic factors. The excess, obsolete, and slow-moving inventory reserve serves to reduce the Company's inventory balance through a charge to cost of products sold.

The Company's reserve for excess, obsolete, and slow-moving inventory is based upon assumptions related to expectations of future demand, product lifecycles, product support, technical obsolescence, regulatory requirements, and economic and market conditions. If the actual realization of excess, obsolete, and slow-moving inventory does not meet the Company's assumptions future inventory adjustments would result in a decrease in gross margin. Due to the magnitude of the inventory and the subjectivity involved in estimating the reserve, we identified the evaluation of the reserve as a critical audit matter, which required a high degree of auditor judgment.

Addressing the matter involved performing subjective procedures and evaluating audit evidence in connection with forming our overall opinion on the financial statements. The primary procedures we performed include: obtaining an understanding of the process and assumptions used by management to develop the reserve for excess, obsolete, and slow-moving inventory; testing management's calculation of the reserve for excess, obsolete, and slow-moving inventory by: testing the completeness and accuracy of the source information used, testing the mathematical accuracy of management's calculations, evaluating the reasonableness and consistency of methodology and assumptions applied by management, and performing a retrospective review of the prior-year estimates used to identify potential bias of management judgements.

Goodwill Impairment Analysis

As discussed in Notes 1 and 4 to the financial statements, the Company performs its goodwill impairment test on an annual basis as of October 1st or whenever events and changes in circumstances indicate that the carrying value of a reporting unit might exceed its fair value. For each reporting unit the Company performed a quantitative test, which compares the fair value of the reporting unit to the carrying value of the respective reporting unit. The Company has identified two goodwill reporting units.

Management determines fair value of the respective reporting units using a discounted cash flow model. Significant estimates and judgements used in this model include internal operating and cash flow forecasts, excess working capital requirements, and inputs to the weighted-average cost of capital used to discount future cash flows. Future revenue and operating cash flow forecasts, the development of the weighted average cost of capital used to discount the future cash flows, and excess working capital requirements are subject to judgement based on sources utilized and the assessment of risks related to the cash flows. Due to the subjectivity involved with the assumptions used to determine the fair value of the reporting units, we identified the goodwill impairment test as a critical audit matter, which required a high degree of auditor judgement.

Addressing the matter involved performing subjective procedures and evaluating audit evidence in connection with forming our overall opinion on the financial statements. The primary procedures we performed include: obtaining an understanding of the process and assumptions used by management to perform the impairment test; and testing management's impairment calculation by: testing the completeness and accuracy of the source information used, testing the mathematical accuracy of management's calculations, evaluating the reasonableness and consistency of methodology and assumptions applied by management, performing a retrospective review of the prior-year estimates used to identify potential bias of management judgements, and verifying certain third party data used by the Company in building their assumptions. Professionals with specialized skills and knowledge were used to assist in evaluating certain methodologies and assumptions used in the model and performing sensitivity analysis on various inputs.

/s/ Freed Maxick CPAs, P.C.

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

Rochester, NY
March 31, 2023

ULTRALIFE CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(Dollars in Thousands)

	December 31,	
	2022	**2021**
ASSETS		
Current Assets:		
Cash	$ 5,713	$ 8,413
Trade accounts receivable, net of allowance for doubtful accounts of $303 and $346, respectively	27,779	20,232
Inventories, net	41,192	33,189
Prepaid expenses and other current assets	4,304	4,690
Total current assets	78,988	66,524
Property, plant and equipment, net	21,716	23,205
Goodwill	37,428	38,068
Other intangible assets, net	15,921	17,390
Deferred income taxes, net	12,069	11,472
Other noncurrent assets	2,308	2,879
Total assets	$ 168,430	$ 159,538
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current Liabilities:		
Accounts payable	$ 16,074	$ 9,823
Current portion of long-term debt	2,000	2,000
Accrued compensation and related benefits	2,890	1,842
Accrued expenses and other current liabilities	7,949	5,259
Total current liabilities	28,913	18,924
Long-term debt, net	19,310	18,857
Deferred income taxes	1,917	2,254
Other noncurrent liabilities	1,887	1,760
Total liabilities	52,027	41,795
Commitments and contingencies (Note 5)		
Shareholders' Equity:		
Preferred stock – par value $.10 per share; authorized 1,000,000 shares; none issued	-	-
Common stock – par value $.10 per share; authorized 40,000,000 shares; issued – 20,570,710 shares and 20,522,427 shares, respectively;outstanding – 16,135,358 shares and 16,089,832 shares, respectively	2,057	2,052
Capital in excess of par value	187,405	186,518
Accumulated deficit	(47,951)	(47,832)
Accumulated other comprehensive loss	(3,750)	(1,653)
Treasury stock - at cost; 4,435,352 shares and 4,432,595 shares, respectively	(21,484)	(21,469)
Total Ultralife Corporation equity	116,277	117,616
Non-controlling interest	126	127
Total shareholders’ equity	116,403	117,743
Total liabilities and shareholders' equity	$ 168,430	$ 159,538

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

ULTRALIFE CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF LOSS AND COMPREHENSIVE LOSS
(Dollars in Thousands, Except Per Share Amounts)

	Year ended December 31,	
	2022	**2021**
Revenues	$ 131,840	$ 98,267
Cost of products sold	102,440	73,625
Gross profit	29,400	24,642
Operating expenses:		
Research and development	7,081	6,826
Selling, general and administrative	22,190	17,781
Total operating expenses	29,271	24,607
Operating income	129	35
Other expense (income):		
Interest and financing expense	951	242
Miscellaneous income	(376)	(56)
Total other expense, net	575	186
Loss before income taxes	(446)	(151)
Income tax (benefit) provision	(326)	79
Net loss	(120)	(230)
Net (loss) income attributable to non-controlling interest	(1)	4
Loss attributable to Ultralife Corporation	(119)	(234)
Other comprehensive (loss) income:		
Foreign currency translation adjustments	(2,097)	129
Comprehensive loss attributable to Ultralife Corporation	$ (2,216)	$ (105)
Net loss per share attributable to Ultralife Corporation common shareholders – Basic	$ (.01)	$ (.01)
Net loss per share attributable to Ultralife Corporation common shareholders – Diluted	$ (.01)	$ (.01)
Weighted average shares outstanding – Basic	16,125	16,037
Weighted average shares outstanding – Diluted	16,125	16,037

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

ULTRALIFE CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
(Dollars in Thousands)

	Common stock							
	Number of shares	Amount	Capital in excess of par value	Accumulated other comprehensive income (loss)	Accumulated deficit	Treasury stock	Non-controlling interest	Total
Balance – December 31, 2020	20,373,519	$ 2,037	$ 185,464	$ (1,782)	$ (47,598)	$ (21,321)	$ 123	$ 116,923
Net loss					(234)		4	(230)
Stock option exercises	133,907	13	385			(133)		265
Stock-based compensation - stock options			618					618
Stock-based compensation - restricted stock			53					53
Vesting of restricted stock	15,001	2	(2)			(15)		(15)
Foreign currency translation adjustments				129				129
Balance – December 31, 2021	20,522,427	$ 2,052	$ 186,518	$ (1,653)	$ (47,832)	$ (21,469)	$ 127	$ 117,743
Net loss					(119)		(1)	(120)
Stock option exercises	39,119	4	112			(7)		109
Stock-based compensation - stock options			761					761
Stock-based compensation - restricted stock			15					15
Vesting of restricted stock	9,164	1	(1)			(8)		(8)
Foreign currency translation adjustments				(2,097)				(2,097)
Balance – December 31, 2022	20,570,710	$ 2,057	$ 187,405	$ (3,750)	$ (47,951)	$ (21,484)	$ 126	$ 116,403

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

ULTRALIFE CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in Thousands)

	Year ended December 31,	
	2022	**2021**
OPERATING ACTIVITIES:		
Net loss	$ (120)	$ (230)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Depreciation	3,177	2,906
Amortization of intangible assets	1,282	633
Amortization of financing fees	36	104
Stock-based compensation	776	671
Deferred income tax expense	(962)	(147)
Changes in operating assets and liabilities:		
Accounts receivable	(7,881)	4,423
Inventories	(8,747)	(1,296)
Prepaid expenses and other assets	911	64
Income taxes receivable and payable	180	(91)
Accounts payable and other liabilities	10,085	(2,712)
Net cash (used in) provided by operating activities	(1,263)	4,325
INVESTING ACTIVITIES:		
Purchase of Excell, net of cash acquired	-	(23,519)
Purchases of property, plant and equipment	(1,679)	(2,814)
Net cash used in investing activities	(1,679)	(26,333)
FINANCING ACTIVITIES:		
Borrowings on credit facility	3,350	20,980
Payment of credit facilities	(2,833)	(1,474)
Proceeds from exercise of stock options	116	398
Payment of debt issuance costs	(100)	(114)
Tax withholdings on stock-based awards	(15)	(148)
Net cash provided by financing activities	518	19,642
Effect of exchange rate changes on cash	(276)	126
DECREASE IN CASH	(2,700)	(2,240)
Cash - Beginning of year	8,413	10,653
Cash - End of year	$ 5,713	$ 8,413
Supplemental cash flow information:		
Construction in process in accounts payable	$ 339	$ 135
Income taxes paid	$ 354	$ 324
Interest paid	$ 930	$ 142

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

Note 1 - Summary of Operations and Significant Accounting Policies

a. *Description of Business*

As used in this annual report, unless otherwise indicated, the terms the "Company", "we", "our" and "us" refer to Ultralife Corporation ("Ultralife") and its wholly owned subsidiaries ABLE New Energy Co., Limited and its wholly owned subsidiary ABLE New Energy Co., Ltd (collectively "ABLE"); Ultralife UK LTD and its wholly owned subsidiary Accutronics Ltd (collectively "Accutronics"); Ultralife Batteries (UK) Ltd.; Southwest Electronic Energy Corporation and its wholly owned subsidiary, CLB, Inc. (collectively "SWE"); Ultralife Excell Holding Corp. ("UEHC") and its wholly owned subsidiary Excell Battery Corporation USA (collectively "Excell USA"), Ultralife Canada Holding Corp (wholly owned by UEHC, "UCHC") and its wholly owned subsidiary Excell Battery Canada ULC ("Excell Canada," and collectively "Excell"); and its majority-owned joint venture Ultralife Batteries India Private Limited ("Ultralife India").

We offer products and services ranging from power solutions to communications and electronics systems. Through our engineering and collaborative approach to problem solving, we serve government, defense and commercial customers across the globe. We design, manufacture, install and maintain power and communications systems including: rechargeable and non-rechargeable batteries, charging systems, communications and electronics systems and accessories, and custom engineered systems. We sell our products worldwide through a variety of trade channels, including original equipment manufacturers ("OEMs"), industrial and defense supply distributors, and directly to U.S. and international defense departments.

b. *Principles of Consolidation*

The consolidated financial statements are prepared in accordance with generally accepted accounting principles in the United States ("GAAP") and include the accounts of Ultralife Corporation and its wholly owned subsidiaries ABLE, Accutronics, Ultralife Batteries (UK) Ltd., SWE, Excell, and its majority-owned joint venture Ultralife India. Intercompany accounts and transactions have been eliminated in consolidation.

c. *Management's Use of Judgment and Estimates*

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at year end and the reported amounts of revenues and expenses during the reporting period. Key areas affected by estimates include: (a) carrying value of goodwill and intangible assets; (b) reserves for excess and obsolete inventory, deferred tax assets, warranties, and bad debts; (c) valuation of assets acquired and liabilities assumed in business combinations; (d) various expense accruals; and (e) stock-based compensation. Our actual results could differ from these estimates.

d. *Reclassifications*

Certain items previously reported in specific financial statement captions are reclassified to conform to the current presentation. There were no material reclassifications for the years ended December 31, 2022 and 2021.

e. *Cash*

Our cash balances may at times exceed federally insured limits. We have not experienced any losses in these accounts and believe we are not exposed to any significant risk with respect to cash.

f. *Accounts Receivable and Allowance for Doubtful Accounts*

We extend credit to our customers in the normal course of business. We perform ongoing credit evaluations and generally do not require collateral. Payment terms are generally thirty (30) to sixty (60) days. Trade accounts receivable are recorded at their invoiced amounts, net of allowance for doubtful accounts. We evaluate the adequacy of our allowance for doubtful accounts quarterly. Accounts outstanding for longer than contractual payment terms are considered past due and are reviewed for collectability. We maintain reserves for potential credit losses based upon our historical experience and the aging of specific receivables. Receivable balances are written off when collection is deemed unlikely.

g. *Inventories*

Inventories are stated at the lower of cost or net realizable value with cost determined under the first-in, first-out (FIFO) method. We record provisions for excess, obsolete or slow-moving inventory based on changes in customer demand, technology developments or other economic factors.

h. *Property, Plant and Equipment*

Property, plant and equipment is stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives. Estimated useful lives are as follows (in years):

Buildings	10 – 40
Machinery and Equipment	5 – 10
Furniture and Fixtures	3 – 10
Computer Hardware and Software	3 – 5
Leasehold Improvements	Lesser of useful life or lease term

Betterments, renewals and extraordinary repairs that extend the life of the assets are capitalized. Other repairs and maintenance costs are expensed when incurred. When disposed, the cost and accumulated depreciation applicable to assets retired are removed from the accounts and the gain or loss on disposition is recognized in operating income.

i. *Long-Lived Assets, Goodwill and Intangibles*

We assess our long-lived assets for impairment whenever events or circumstances indicate that their carrying amounts may not be recoverable. For property, plant and equipment and amortizable intangible assets, this is accomplished by comparing the expected undiscounted future cash flows of the assets with the respective carrying amount as of the date of assessment. If the expected undiscounted future cash flows exceed the respective carrying amount as of the date of assessment, no impairment is recognized. Should aggregate undiscounted future cash flows be less than the carrying value, a write-down would be required, measured as the difference between the carrying value and the fair value of the asset. Fair value is estimated as the present value of expected discounted future cash flows. The discount rate used in our evaluation is an industry-based weighted average cost of capital.

Under the acquisition method of accounting, the purchase price paid, or the total consideration transferred, to consummate the acquisition is allocated to the identified tangible and intangible assets acquired and liabilities assumed based on their respective estimated fair values as of the acquisition date with the residual amount recorded to goodwill. We do not amortize goodwill and intangible assets with indefinite lives, but instead evaluate these assets for impairment at least annually, or whenever events or circumstances indicate that impairment may exist. We amortize intangible assets that have definite lives so that the economic benefits of the intangible assets are being recognized over their estimated useful life.

The annual impairment test for goodwill consists of a comparison of the estimated fair value for each reporting unit to which goodwill is assigned to the carrying value of the respective reporting unit. The annual impairment test for other indefinite-lived intangible assets consists of a comparison of the estimated fair value of each asset to the carrying value of the respective asset. If the estimated fair value of a reporting unit or other indefinite-lived intangible asset exceeds its respective carrying value, the goodwill or indefinite-lived intangible asset is considered not impaired. If carrying value of a reporting unit or indefinite-lived intangible asset exceeds its estimated fair value, the excess carrying value of the respective goodwill or indefinite-lived intangible asset is recognized as an impairment loss.

j. *Translation of Foreign Currency*

The financial statements of our foreign subsidiaries are translated from the functional currency into U.S. dollar equivalents, with translation adjustments recorded as the sole component of accumulated other comprehensive income (loss). Exchange gains and losses related to foreign currency transactions and balances denominated in currencies other than the functional currency are recognized in net income (loss).

k. *Revenue Recognition*

Revenues are generated from the sale of products. Performance obligations are met and revenue is recognized upon transfer of control to the customer, which is generally upon shipment. When contract terms require transfer of control upon delivery at a customer's location, revenue is recognized on the date of delivery. For products shipped under vendor managed inventory arrangements, revenue is recognized and billed when the product is consumed by the customer, at which point control has transferred and there are no further obligations by the Company. Revenue is measured as the amount of consideration we expect to receive in exchange for shipped product. Sales, value-added and other taxes billed and collected from customers are excluded from revenue. Customers, including distributors, do not have a general right of return.

Separately priced extended warranty contracts are offered on certain Communications Systems products for a duration of up to eight (8) years. Extended warranties are treated as separate performance obligations and recognized to revenue evenly over the term of the respective contract. Revenue not yet recognized on extended warranty contracts is recorded as deferred revenue on the consolidated balance sheet.

As of December 31, 2022, there was deferred revenue on extended warranty contracts of $682, comprised of $119 expected to be recognized as revenue within one (1) year and classified as accrued expenses and other current liabilities on our consolidated balance sheet, and $563 expected to be recognized as revenue over the remaining duration of the respective contracts and classified as other noncurrent liabilities on our consolidated balance sheet.

As of December 31, 2022 and 2021, the Company had no other unsatisfied performance obligations for contracts with an original expected duration of greater than one year. Pursuant to Topic 606, we have applied the practical expedient with respect to disclosure of the deferral and future expected timing of revenue recognition for transaction price allocated to remaining performance obligations.

l. *Warranty Reserves*

We typically offer standard warranties against product defects that range from ninety (90) days to three (3) years from the date of purchase. We also offer separately priced extended warranty contracts on certain products. Warranty costs expected to be incurred are estimated based on the Company's experience and recorded as costs of products sold. Standard warranty costs are recognized upon product sale. Extended warranty costs are recognized over the term of the contract. Provision for warranty costs is recorded in accrued expenses and other current liabilities and other noncurrent liabilities on our consolidated balance sheet based on the duration of the warranty.

m. *Shipping and Handling Costs*

Costs incurred by us related to shipping and handling are included in cost of products sold. Amounts charged to customers pertaining to these costs are reflected as revenue.

n. *Sales Commissions*

Sales commissions are expensed as incurred for contracts with an expected duration of one year or less. There were no sales commissions capitalized as of December 31, 2022 and 2021.

o. *Research and Development*

Research and development expenditures are charged to operations as incurred. The majority of research and development expenses pertain to salaries and benefits, developmental supplies, depreciation and other contracted services. For the years ended December 31, 2022 and 2021, we expended $7,874 and $8,042, respectively, on research and development, including costs of $793 and $1,216, respectively, on customer sponsored research and development activities, which are included in cost of products sold.

p. *Environmental Costs*

Environmental expenditures that relate to current operations are expensed. Remediation costs that relate to an existing condition caused by past operations are accrued when it is probable that these costs will be incurred and can be reasonably estimated.

q. *Income Taxes*

We account for income taxes using the asset and liability method. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax basis of assets and liabilities and are measured using the enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Pursuant to ASC 740, a valuation allowance is recognized when the realizability of deferred tax assets is not more likely than not, based all available evidence, both positive and negative, weighted based on objective verifiability.

r. *Concentration Related to Customers and Suppliers*

One of our customers, a large global defense primary contractor, comprised 17% and 20% of our total consolidated revenues for 2022 and 2021, respectively. Revenues for this customer represented 19% and 22% of our total Battery & Energy Products segment revenues for 2022 and 2021, respectively. There were no other customers that comprised greater than 10% of our total consolidated revenues during these years.

s. *Fair Value Measurements and Disclosures*

Fair value is defined as the price that would be received for an asset or the exit price that would be paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants on the measurement date. Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

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

Level 2: Observable inputs, other than Level 1 prices, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or that we corroborate with observable market data for substantially the full term of the related assets or liabilities.

Level 3: Unobservable inputs supported by little or no market activity that are significant to the fair value of the assets or liabilities.

The fair value of financial instruments approximated their carrying values at December 31, 2022 and 2021. The fair value of cash, accounts receivable, accounts payable, accrued liabilities, and the current portion of long-term debt approximates carrying value due to the short-term nature of these instruments. The carrying value of long-term debt approximates fair value, as the variable interest rates approximate current market rates.

t. *Earnings Per Share*

Basic earnings per share (“EPS”) is computed by dividing net income (loss) attributable to Ultralife Corporation by the weighted average shares of common stock outstanding for the period. Diluted EPS reflects the assumed exercise and conversion of dilutive outstanding stock options and unvested restricted stock, if any, applying the treasury stock method.

For the years ended December 31, 2022 and December 31, 2021, there were no outstanding awards included in the calculation of diluted weighted average shares outstanding and no potential common shares included in the calculation of diluted EPS, as no securities were dilutive. There were 1,425,693 outstanding stock options and 2,500 unvested restricted stock awards not included in the calculation of diluted EPS for the year ended December 31, 2022, as the effect would be antidilutive. For the comparable year ended December 31, 2021, there were 1,306,824 outstanding stock options and 11,664 unvested restricted stock awards not included in the calculation of diluted EPS, as the effect would be antidilutive.

u. *Stock-Based Compensation*

We have various stock-based employee compensation plans that are described more fully in Note 6. The compensation cost relating to share-based payment transactions is measured at the grant date, based on the estimated fair value of the award, and is recognized as expense over the employee’s requisite service period (generally the vesting period of the equity award).

v. *Segment Reporting*

We have two operating segments – Battery & Energy Products and Communications Systems. The basis for determining our operating segments is the manner in which financial information is used in monitoring our operations. Management operates and organizes itself according to business units that comprise unique products and services across geographic locations.

w. *Business Combinations*

We allocate the purchase price of acquired businesses to the tangible and intangible assets acquired and the liabilities assumed based on their estimated fair values on the acquisition date. Any excess of the purchase price over the net fair value of the separately identifiable assets acquired and liabilities assumed is allocated to goodwill. Management determines the fair values of identifiable intangible assets acquired based on historical data, estimated discounted future cash flows, expected royalty rates for trademarks and trade names, as well as certain other information. The valuation of assets acquired and liabilities assumed requires a number of judgments and is subject to change as additional information about the fair value of assets and liabilities becomes available. Additional information, which existed as of the acquisition date but unknown to us at that time, may become known during the remainder of the measurement period. This measurement period may not exceed twelve months from the acquisition date. We will recognize any adjustments to provisional amounts that are identified during the measurement period in the reporting period in which the adjustments are determined. Additionally, in the same period in which adjustments are recognized, we will record the effect on earnings of changes in depreciation, amortization, or other income effects, if any, as a result of any change to the provisional amounts, calculated as if the accounting adjustment had been completed at the acquisition date. Acquisition costs are expensed as incurred. The results of operations and cash flows of acquired businesses are included in our consolidated financial statements from the date of acquisition.

x. *Leases*

At contract inception, the Company determines whether the arrangement is or contains a lease and determines the lease classification. The lease term is determined based on the non-cancellable term of the lease adjusted to the extent optional renewal terms and termination rights are reasonably certain. Lease expense for operating leases is recognized evenly over the lease term. Variable lease payments are recognized as period costs. The present value of remaining lease payments is recognized as a liability on the balance sheet with a corresponding right-of-use asset adjusted for prepaid or accrued lease payments. The Company uses its incremental borrowing rate for the discount rate, unless the interest rate implicit in the lease contract is readily determinable. The Company has adopted the practical expedients to not separate non-lease components from lease components and to not present short-term leases on the balance sheet. See Note 8 for further disclosure regarding lease accounting.

y. *Recent Accounting Pronouncements*

Recently Adopted Accounting Guidance

Effective January 1, 2021, the Company adopted Accounting Standards Update (“ASU”) 2019-12, “Simplifying the Accounting for Income Taxes (Topic 740)”. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and clarifies and amends existing guidance to improve consistent application. Adoption of the new standard did not materially impact the Company’s consolidated financial statements.

In March 2020, the Financial Accounting Standards Board (“FASB”) issued ASU 2020-04, "Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting”. ASU 2020-04 provides temporary optional expedients and exceptions for contract modifications and hedge accounting to ease the financial reporting burdens related to the expected market transition from the London Interbank Offered Rate ("LIBOR") and other interbank offered rates to alternative reference rates. The standard was effective upon issuance and may be applied prospectively on or before December 31, 2024. The Company has elected the optional practical expedient for debt contract modifications related to the discontinuation of reference rates. Adoption of this new standard did not materially impact the Company’s consolidated financial statements.

Recent Accounting Guidance Not Yet Adopted

In June 2016, the FASB issued ASU 2016-13, “Financial Instruments – Credit Losses (Topic 326) – Measurement of Credit Losses on Financial Instruments”, which requires entities to measure all expected credit losses for financial assets held at the reporting date based on historical experience, current conditions, and reasonable and supportable forecasts. This replaces the existing incurred loss model and is applicable to the measurement of credit losses on financial assets measured at amortized cost. This guidance is effective for the Company for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2022. The Company is currently assessing the impact that adopting this new accounting standard will have on our consolidated financial statements.

Note 2 – Acquisition

On December 13, 2021, the Company acquired all the outstanding shares of Excell (as defined below) for an aggregate net purchase price of $23,519 in cash.

On December 13, 2021, 1336889 B.C. Unlimited Liability Company, a British Columbia unlimited liability company and wholly-owned subsidiary of Ultralife Canada Holding Corp., a Delaware corporation ("UCHC") and wholly-owned subsidiary of Ultralife Excell Holding Corp., a Delaware corporation ("UEHC") and wholly-owned subsidiary of Ultralife Corporation, completed the acquisition of all issued and outstanding shares of Excell Battery Canada Inc., a British Columbia corporation ("Excell Canada") (the "Excell Canada Acquisition"), and, concurrently, 1336902 B.C. Unlimited Liability Company, a British Columbia unlimited liability company and wholly-owned subsidiary of UCHC, completed the acquisition of all issued and outstanding shares of 656700 B.C. LTD, a British Columbia corporation and sole owner of all issued and outstanding shares of Excell Battery Corporation USA, a Texas corporation ("Excell USA", and together with Excell Canada, "Excell Battery Group" or "Excell") (the "Excell USA Acquisition", and together with the Excell Canada Acquisition, the "Excell Acquisition").

Based in Canada with U.S. operations, Excell is a leading independent designer and manufacturer of high-performance smart battery systems, battery packs and monitoring systems to customer specifications. Excell serves a variety of industrial markets including downhole drilling, OEM industrial and medical devices, automated meter reading, ruggedized computers, and mining, marine and other mission critical applications which demand uncompromised safety, service, reliability and quality.

The Excell Canada Acquisition was completed pursuant to a Share Purchase Agreement dated December 13, 2021 (the "Excell Canada Acquisition Agreement") by and among 1336889 B.C. Unlimited Liability Company, Mark Kroeker, Randolph Peters, Brian Larsen, M. & W. Holdings Ltd., Karen Kroeker, Heather Peterson, Michael Kroeker, Nicholas Kroeker, Brentley Peters, Craig Peters, Kurtis Peters, Heather Larsen, Ian Kane, Carol Peters, and 0835205 B.C. LTD (the "Excell Canada Sellers"), Mark Kroeker in his capacity as the Excell Canada Sellers' Representative, and Excell Canada. The Excell USA Acquisition was completed pursuant to a Share Purchase Agreement dated December 13, 2021 (the "Excell USA Acquisition Agreement", and together with the Excell Canada Acquisition Agreement, the "Excell Acquisition Agreements") by and among 1336902 B.C. Unlimited Liability Company, M. & W. Holdings Ltd., Ian Kane, Sanford Capital Ltd., Arcee Enterprises Inc., and 0835205 B.C. Ltd. (the "Excell USA Sellers", and together with the Excell Canada Sellers, the "Sellers"), Mark Kroeker in his capacity as the Excell USA Sellers' Representative, and 656700 B.C. LTD. The Excell Acquisition Agreements contain customary terms and conditions including representations, warranties and indemnification provisions. A portion of the consideration paid to the Sellers was held in escrow for indemnification purposes for a period of twelve months from the closing date. The remaining indemnification escrow amount is to be held for a period of sixteen months from the closing date.

The Excell Acquisition was funded by the Company through a combination of cash on hand and borrowings under the Amended Credit Facilities (Note 3).

The Excell Acquisition was accounted for in accordance with the accounting treatment of a business combination pursuant to FASB ASC Topic 805, Business Combinations ("ASC 805"). Accordingly, the purchase price was allocated to the tangible and intangible assets acquired and the liabilities assumed based on their estimated fair values on the acquisition date. The excess of the purchase price over the estimated fair value of the separately identifiable assets acquired and liabilities assumed was allocated to goodwill. Management is responsible for determining the acquisition date fair value of the assets acquired and liabilities assumed, which requires the use of various assumptions and judgments that are inherently subjective. The purchase price allocation presented below reflects all known information about the fair value of the assets acquired and liabilities assumed as of the acquisition date.

Cash	$	736
Accounts receivable		3,570
Inventories		3,622
Prepaid expenses and other current assets		785
Property, plant and equipment		429
Goodwill		10,989
Other intangible assets		8,870
Other noncurrent assets		991
Accounts payable		(1,450)
Accrued compensation and related benefits		(540)
Accrued expenses and other current liabilities		(720)
Deferred tax liability, net		(2,223)
Other noncurrent liabilities		(803)
Net assets acquired	$	24,256

The purchase price allocation was adjusted during the year ended December 31, 2022 to reflect a change in the estimated fair value of certain other intangible assets acquired. The measurement period adjustment resulted in a $40 increase in other intangible assets acquired, a $10 increase in deferred tax liabilities and a $30 decrease to goodwill. The adjusted purchase price allocation is reflected in the consolidated balance sheet as of December 31, 2022.

The goodwill included in the Company's purchase price allocation presented above represents the value of Excell's assembled and trained workforce, the incremental value that Excell engineering and technology will bring to the Company and the revenue growth which is expected to occur over time which is attributable to increased market penetration from future new products and customers. The goodwill acquired in connection with the acquisition is not deductible for income tax purposes.

Other intangible assets were valued using the income approach which requires a forecast of all expected future cash flows and the use of certain assumptions and estimates. The following table summarizes the estimated fair value and annual amortization for each of the identifiable intangible assets acquired.

			Annual Amortization				
	Estimated Fair Value	Amortization Period (Years)	Year 1	Year 2	Year 3	Year 4	Year 5
Customer relationships	$ 4,100	15	$ 273	$ 273	$ 273	$ 273	$ 273
Trade name	3,150	Indefinite	-	-	-	-	-
Customer contracts	1,140	15	76	76	76	76	76
Backlog	360	1	360	-	-	-	-
Technology	120	7	17	17	17	17	17
Total	$ 8,870		$ 726	$ 366	$ 366	$ 366	$ 366

We acquired right-of-use assets and assumed lease liabilities of $960 for Excell's operating facilities. Right-of-use assets are classified as other noncurrent assets, and current and long-term lease liabilities are classified as accrued expenses and other current liabilities and other noncurrent liabilities, respectively, on the Company's consolidated balance sheet.

The operating results and cash flows of Excell are reflected in the Company's consolidated financial statements from the date of acquisition. Excell is included in the Battery & Energy Products segment.

For the year ended December 31, 2022, Excell contributed revenue of $28,145 and pre-tax income of $1,844, inclusive of amortization expense of $726 on acquired identifiable intangible assets and $55 in cost of products sold attributable to the fair market value step-up of acquired finished goods inventory sold during the year.

For the year ended December 31, 2021, from the December 13, 2021 acquisition date, Excell contributed revenue of $1,131 and pre-tax loss of $128, inclusive of a $121 increase in cost of products sold for the fair value step-up of acquired finished goods inventory sold during the period, and amortization expense of $30 on acquired identifiable intangible assets.

During the year ended December 31, 2021, the Company incurred acquisition-related costs and other non-recurring expenses of $354 directly attributable to the acquisition, including one-time accounting, legal and due diligence services.

Note 3 – Debt

Credit Facilities

On December 13, 2021, Ultralife, Southwest Electronic Energy Corporation, a Texas corporation ("SWE"), CLB, INC., a Texas corporation and wholly owned subsidiary of SWE ("CLB"), UEHC, UCHC and Excell USA, as borrowers, entered into the Second Amendment Agreement with KeyBank National Association ("KeyBank" or the "Bank"), as lender and administrative agent, to amend the Credit and Security Agreement dated May 31, 2017 as amended by the First Amendment Agreement by and among Ultralife, SWE, CLB and KeyBank dated May 1, 2019 (the "Credit Agreement"). On November 28, 2022, Ultralife, SWE, CLB, UEHC, UCHC, Excell USA, and Excell Battery Canada entered into that certain Third Amendment Agreement with KeyBank, to further amend the Credit Agreement to, among other things, facilitate the joinder of Excell Battery Canada as a guarantor under the Credit Agreement and to replace the LIBOR benchmark thereunder with SOFR (the "Third Amendment Agreement", and together with the Second Amendment Agreement and the Credit Agreement, the "Amended Credit Agreement").

The Amended Credit Agreement, among other things, provides for a 5-year, $10,000 senior secured term loan (the "Term Loan Facility") and extends the term of the $30,000 senior secured revolving credit facility (the "Revolving Credit Facility", and together with the Term Loan Facility, the "Amended Credit Facilities") through May 30, 2025. Up to six months prior to May 30, 2025, the Revolving Credit Facility may be increased to $50,000 with the Bank's concurrence.

As of December 31, 2022, the Company had $8,167 outstanding principal on the Term Loan Facility, $2,000 of which is included in current portion of long-term debt on the balance sheet, and $13,330 outstanding on the Revolving Credit Facility. As of December 31, 2022, total unamortized debt issuance costs of $187, including placement, renewal and legal fees associated with the Amended Credit Agreement, are classified as a reduction of long-term debt on the balance sheet. Debt issuance costs are amortized to interest expense over the term of the Amended Credit Facilities.

The remaining availability under the Revolving Credit Facility is subject to certain borrowing base limits based on trade receivables and inventories.

The Company is required to repay the borrowings under the Term Loan Facility in equal consecutive monthly payments commencing on February 1, 2022, in arrears, together with applicable interest. All unpaid principal and accrued and unpaid interest with respect to the Term Loan Facility is due and payable in full on January 1, 2027. All unpaid principal and accrued and unpaid interest with respect to the Revolving Credit Facility is due and payable in full on May 30, 2025. The Company may voluntarily prepay principal amounts outstanding at any time subject to certain restrictions.

In addition to the customary affirmative and negative covenants, the Company must maintain a consolidated senior leverage ratio, as defined in the Amended Credit Agreement, of equal to or less than 3.5 to 1.0 for the fiscal quarters ending December 31, 2022 and March 31, 2023, and equal to or less than 3.0 to 1.0 for the fiscal quarters ending June 30, 2023 and thereafter.

Borrowings under the Amended Credit Facilities are secured by substantially all the assets of the Company and its subsidiaries.

Upon the effectiveness of the Third Amendment Agreement, interest accrues on outstanding indebtedness under the Amended Credit Facilities at the Daily Simple SOFR Rate, plus an index spread adjustment of 0.10%, plus the applicable margin. The applicable margin ranges from 185 to 215 basis points and is determined based on the Company's senior leverage ratio.

The Company must pay a fee of 0.15% to 0.25% based on the average daily unused availability under the Revolving Credit Facility.

Payments must be made by the Company to the extent borrowings exceed the maximum amount then permitted to be drawn on the Amended Credit Facilities and from the proceeds of certain transactions. Upon the occurrence of an event of default, the outstanding obligations may be accelerated, and the Bank will have other customary remedies including resort to the security interest the Company provided to the Bank.

Future minimum principal repayment obligations on our Amended Credit Facilities as of December 31, 2022 are as follows:

2023	$2,000
2024	2,000
2025	15,330
2026	2,000
2027	167
Thereafter	0
Total	$21,497

Note 4 - Supplemental Balance Sheet Information

a. Cash and Restricted Cash

The Company had cash and restricted cash totaling $5,713 and $8,413 as of December 31, 2022 and 2021, respectively.

	December 31,	
	2022	2021
Cash	$ 5,634	$ 8,329
Restricted cash	79	84
Total	$ 5,713	$ 8,413

As of December 31, 2022 and December 31, 2021, restricted cash included $79 and $84, respectively, of euro-denominated deposits withheld by the Dutch tax authorities and third-party VAT representatives in connection with a previously utilized logistics arrangement in the Netherlands. Restricted cash is included as a component of the cash balance for purposes of the consolidated statements of cash flows.

b. Inventory, Net

Inventories are stated at the lower of cost or net realizable value with cost determined under the first-in, first-out (FIFO) method. The composition of inventories, net was:

	December 31,	
	2022	2021
Raw materials	$ 29,200	$ 21,660
Work in process	2,757	4,227
Finished products	9,235	7,302
Total	$ 41,192	$ 33,189

c. Property, Plant and Equipment

Major classes of property, plant and equipment consisted of the following:

	December 31,	
	2022	2021
Land	$ 1,759	$ 1,273
Buildings and leasehold improvements	15,572	15,442
Machinery and equipment	63,495	63,780
Furniture and fixtures	2,845	2,588
Computer hardware and software	7,744	7,579
Construction in progress	1,245	761
	92,660	91,423
Less – Accumulated depreciation	(70,944)	(68,218)
Total	$ 21,716	$ 23,205

Depreciation expense was $3,177 and $2,906 for the years ended December 31, 2022 and 2021, respectively.

d. *Goodwill and Other Intangible Assets*

The Company conducted its annual impairment test for goodwill and other indefinite-lived intangible assets as of October 1, 2022. We identified two (2) goodwill reporting units and five (5) indefinite-lived intangible assets. We performed a quantitative impairment assessment of each goodwill reporting unit and indefinite-lived intangible asset. Based on the results of our quantitative impairment tests, and consideration of qualitative factors as of our test date and December 31, 2022, no impairment was identified.

The following table summarizes the goodwill activity by segment for the years ended December 31, 2022 and 2021:

	Battery & Energy Products	Communications Systems	Total
Balance – January 1, 2022	$ 26,575	$ 11,493	$ 38,068
Effect of foreign currency translation	(640)	-	(640)
Balance – December 31, 2022	$ 25,935	$ 11,493	$ 37,428

The composition of intangible assets was:

	December 31, 2022,		
	Cost	Accumulated amortization	Net
Customer relationships	$ 12,970	$ 5,992	$ 6,978
Patents and technology	5,557	5,171	386
Trade names	4,629	522	4,107
Trademarks	3,404	-	3,404
Other	1,500	454	1,046
Total other intangible assets	$ 28,060	$ 12,139	$ 15,921

	December 31, 2021,		
	Cost	Accumulated amortization	Net
Customer relationships	$ 13,214	$ 5,484	$ 7,730
Patents and technology	5,667	5,126	541
Trade names	4,670	436	4,234
Trademarks	3,413	-	3,413
Other	1,490	18	1,472
Total other intangible assets	$ 28,454	$ 11,064	$ 17,390

The change in the cost value of other intangible assets is a result of the Excell Acquisition (Note 2) and the effect of foreign currency translations.

Amortization of other intangible assets was included in the following financial statement captions:

	Year ended December 31,	
	2022	2021
Research and development expense	$ 97	$ 118
Selling, general and administrative expense	1,185	515
Total	$ 1,282	$ 633

Future amortization expense of amortizable intangible assets will be approximately $907, $897, $897, $767 and $767 for the five fiscal years ending December 31, 2023 through 2027, respectively.

Note 5 - Commitments and Contingencies

a. *Legal Matters*

We are subject to legal proceedings and claims that arise from time to time in the ordinary course of business. We believe that the final disposition of any such matters of which we are currently aware will not have a material adverse effect on the Company's financial position, results of operations or cash flows. However, recognizing that legal matters are subject to inherent uncertainties, there exists the possibility that ultimate resolution of current or future legal matters could have a material adverse impact on the Company's financial position, results of operations or cash flows. We are not aware of any such situations at this time.

b. *Indemnity*

Our organizational documents provide that our directors or officers will be reimbursed for all expenses, to the fullest extent permitted by law arising out of their performance.

c. *Purchase Commitments*

As of December 31, 2022, we have made commitments to purchase approximately $661 of production machinery and equipment.

d. *China*

Our operating facility in China presents risks including, but not limited to, changes in local regulatory requirements, changes in labor laws, local wage laws, environmental regulations, taxes and operating licenses, compliance with U.S. regulatory requirements, including the Foreign Corrupt Practices Act, uncertainties as to application and interpretation of local laws and enforcement of contract and intellectual property rights, currency restrictions, currency exchange controls, fluctuations of currency, and currency revaluations, eminent domain claims, civil unrest, power outages, water shortages, labor shortages, labor disputes, increase in labor costs, rapid changes in government, economic and political policies, political or civil unrest, acts of terrorism, or the threat of boycotts, other civil disturbances and the possible impact of the imposition of tariffs by the U.S. Government on 9 Volt batteries that we manufacture in China as well as any retaliating trade policies or restrictions. Any such disruptions could depress our earnings and have other material adverse effects on our business, financial condition and results of operations.

e. *Employment Contracts*

As of December 31, 2022, we had an Employment Agreement dated December 6, 2010 with Michael D. Popielec (the "Employment Agreement"), our former President and Chief Executive Officer. Under the terms of the Employment Agreement, Mr. Popielec was given sixty days advance notice of his involuntary termination by the Company's Board of Directors on November 22, 2022, at which time he relinquished his position as President and Chief Executive Officer and as a member of the Board of Directors, with his employment ending on January 20, 2023.

In connection with the termination of his employment, Mr. Popielec was entitled to receive the following severance benefits under the terms of the Employment Agreement with the total cost of $779 comprising a one-time charge reflected in the Company's 2022 fourth quarter results:

- Salary, any unpaid bonus from the prior year, and the cash value of any accrued Paid Time Off through January 20, 2023 plus continued salary for a period of twelve months thereafter in accordance with the Company's regular payroll schedule;
- A pro-rata amount (calculated on a per-diem basis) of the full year bonus which Mr. Popielec would have earned for the 2023 calendar year;
- Acceleration of vesting of all outstanding stock options held by Mr. Popielec; however that the acceleration shall not cover more than eighteen months from January 20, 2023, and all such options shall remain exercisable for one year from January 20, 2023;
- Continuation of health benefits for Mr. Popielec, his spouse and any dependent children for a period of twelve months following January 20, 2023.

The foregoing description of the termination benefits provided by Mr. Popielec's Employment Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Employment Agreement, a copy of which is filed as Exhibit 10.40 to the Company's Form 10-K filed with the Securities and Exchange Commission on March 15, 2011 and is incorporated herein by reference.

There is no employment agreement in place between Mr. Manna, appointed as President and Chief Executive Officer on November 22, 2022, and the Company.

As part of our employment commencement process, employees are required to enter into agreements providing for confidentiality of certain information and the assignment of rights to inventions made by them while employed by us. These agreements also contain certain non-competition and non-solicitation provisions effective during the employment term and for varying periods thereafter depending on position and location. There can be no assurance that we will be able to enforce these agreements. All our employees agree to abide by the terms of a Code of Ethics policy that provides for the confidentiality of certain information received during the course of their employment.

f. *Product Warranties*

We typically offer standard warranties against product defects that range from ninety (90) days to three (3) years from the date of purchase. We also offer separately priced extended warranty contracts on certain products. Warranty costs expected to be incurred are estimated based on the Company's experience and recorded as costs of products sold. Standard warranty costs are recognized upon product sale. Extended warranty costs are recognized over the term of the contract.

	2022	2021
Accrued warranty obligations – beginning	$ 133	$ 149
Accruals for warranties issued	287	142
Settlements made	(97)	(158)
Accrued warranty obligations - ending	$ 323	$ 133

Note 6 – Stock-Based Compensation

We recorded non-cash stock compensation expense in each period as follows:

	Year ended December 31,	
	2022	2021
Stock options	$ 761	$ 618
Restricted stock	15	53
Total	$ 776	$ 671

We have various stock-based employee compensation plans, for which compensation cost is recognized in the financial statements. The cost is measured at the grant date, based on the estimated fair value of the award, and is recognized as an expense over the employee's requisite service period (generally the vesting period of the equity award).

Our shareholders have approved various equity-based plans that permit the grant of stock options, restricted stock and other equity-based awards. In addition, our shareholders have approved the grant of stock options outside of these plans.

In June 2014, our shareholders approved the 2014 Long-Term Incentive Plan ("2014 LTIP") as the successor plan to the 2004 Long-Term Incentive Plan ("2004 LTIP") that expired on June 10, 2014. Under the 2014 LTIP, a total of 1,750,000 shares of common stock were made available for grant of awards. In July 2021, our shareholders approved an amendment to the 2014 LTIP to increase the total number shares of our common stock authorized to be issued pursuant to the 2014 LTIP to 2,750,000. Of the total number of shares of common stock available for awards under the 2014 LTIP, no more than 800,000 shares of common stock may be used for awards other than stock options and stock appreciation rights. Grants under the 2014 LTIP may be awarded through June 2, 2024.

Stock options granted under the 2014 LTIP are either Incentive Stock Options ("ISOs") or Non-Qualified Stock Options ("NQSOs"). Key employees are eligible to receive ISOs and NQSOs; however, directors and consultants are eligible to receive only NQSOs. Stock options vest in equal installments on the first, second and third anniversaries of the grant date and expire on the seventh anniversary of the grant date. As of December 31, 2022, there were 1,425,693 stock options outstanding under the 2014 LTIP. There were no stock options outstanding under the 2004 LTIP.

As of December 31, 2022, there was $691 of total unrecognized compensation costs related to outstanding stock options, which we expect to recognize over a weighted average period of 1.4 years.

We use the Black-Scholes option-pricing model to estimate fair value of stock-based awards. The following weighted average assumptions were used to value options granted during the years ended December 31, 2022 and 2021:

	Year ended December 31,	
	2022	**2021**
Risk-free interest rate	4.2%	1.0%
Volatility factor	50%	50%
Weighted average expected life (years)	4.8	4.8
Forfeiture rate	10.0%	10.0%
Dividends	0.0%	0.0%

We used a Monte Carlo simulation option-pricing model to estimate the fair value of market performance stock-based awards, of which there were no new awards for the years ended December 31, 2022 and 2021.

We calculate expected volatility for stock options by taking an average of historical volatility over the expected term. The computation of expected term was determined based on historical experience of similar awards, giving consideration to the contractual terms of the stock-based awards and vesting schedules. The interest rate for periods within the contractual life of the award is based on the U.S. Treasury yield in effect at the time of grant. Forfeiture rates are calculated by dividing unvested shares forfeited by beginning shares outstanding. The pre-vesting forfeiture rate is calculated yearly and is determined based on historical experience.

The following tables summarize data for the stock options issued by us:

	Year ended December 31, 2022			
	Number of shares	**Weighted average exercise price per share**	**Weighted average remaining contractual term**	**Aggregate intrinsic value**
Shares under option – January 1	1,306,824	$ 6.87		
Options granted	289,950	5.42		
Options exercised	(59,500)	3.82		
Options forfeited or expired	(111,581)	6.56		
Shares under option – December 31	1,425,693	$ 6.72	4.15	-
Vested and expected to vest - December 31	1,300,732	$ 6.78	3.97	-
Options exercisable – December 31	881,804	$ 7.13	2.96	-

Year ended December 31, 2021		
	Number of shares	**Weighted average exercise price per share**
Shares under option – January 1	1,217,163	$ 6.50
Options granted	340,500	6.78
Options exercised	(204,429)	4.39
Options forfeited or expired	(46,410)	7.44
Shares under option – December 31	1,306,824	$ 6.87
Options exercisable – December 31	745,288	$ 6.85

The following table represents additional information about stock options outstanding at December 31, 2022:

	Option outstanding			Options exercisable	
Range of exercise prices	Number of outstanding options	Weighted-average remaining contractual life	Weighted-average exercise price	Number of options exercisable	Weighted-average exercise price
$4.29 - $5.45	516,949	4.65	$ 5.10	197,001	$ 4.64
$5.71 - $6.51	302,244	3.53	6.29	224,937	6.22
$6.69 - $6.97	177,667	5.76	6.96	65,362	6.96
$8.25 - $9.96	428,833	3.34	8.88	394,504	8.92
$4.29 - $9.96	1,425,693	4.16	$ 6.72	881,804	$ 7.13

The weighted average fair value of options granted during the years ended December 31, 2022 and 2021 was $2.55 and $2.90, respectively. The total intrinsic value of options (which is the amount by which the stock price exceeded the exercise price of the options on the date of exercise) exercised during the years ended December 31, 2022 and 2021 was $88 and $738, respectively.

Cash received from stock option exercises under our stock-based compensation plans for the years ended December 31, 2022 and 2021 was $116 and $398, respectively.

Restricted shares vest in equal annual installments over three years. As of December 31, 2022, there was $3 of total unrecognized compensation costs related to outstanding restricted shares.

There were 763,617 shares of common stock available for future issuance under equity compensation plans as of December 31, 2022.

Note 7 - Income Taxes

For the years ended December 31, 2022 and 2021, we recognized income tax (benefit) provision of ($326) and $79, respectively.

	Year ended December 31,	
	2022	2021
Current:		
State	19	$ 16
Foreign	617	210
	636	226
Deferred:		
Federal	(661)	(158)
Foreign	(301)	11
	(962)	(147)
Total income tax (benefit) provision	$ (326)	$ 79

Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amount used for income tax purposes. Significant components of our deferred tax assets and liabilities are as follows:

	December 31,	
	2022	2021
Deferred tax assets:		
Net operating loss carryforwards	$ 11,460	$ 12,567
Research and development	2,812	1,999
Tax credit carryforwards	2,600	2,239
Accrued expenses, reserves and other	2,419	1,996
Intangible assets	1,521	1,412
Total deferred tax assets	20,812	20,213
Valuation allowance for deferred tax assets	(2,416)	(2,697)
Net deferred tax assets	18,396	17,516
Deferred tax liabilities:		
Intangible assets	(8,176)	(8,219)
Accrued expenses, reserves and other	(68)	(79)
Total deferred tax liabilities	(8,244)	(8,298)
Net deferred tax assets	$ 10,152	$ 9,218

Net deferred tax assets (liabilities) are comprised of the following balance sheet amounts:

	December 31,	
	2022	2021
Deferred tax assets	$ 12,069	$ 11,472
Deferred tax liabilities	(1,917)	(2,254)
	$ 10,152	$ 9,218

For financial reporting purposes, net loss from continuing operations before income taxes is as follows:

	Year ended December 31,	
	2022	2021
United States	$ (2,771)	$ (704)
Foreign	2,325	553
	$ (446)	$ (151)

The provision for income taxes differs from the amount of income tax determined by applying the applicable U.S. statutory federal income tax rate to income from continuing operations before income taxes as follows:

	Year ended December 31,	
	2022	2021
Statutory income tax rate	21%	21%
Increase (decrease) in tax provision resulting from:		
Equity compensation	(29.7)	11.6
Acquisition-related costs	-	(34.7)
Global intangible low-taxed income	(73.1)	-
China R&D deduction	20.6	48.2
Income tax credits	81.0	72.7
Foreign tax rate change	18.3	(89.7)
Foreign tax rates	11.5	(15.5)
States taxes	(3.4)	(10.8)
Other	26.9	(55.1)
Effective income tax rate	73.1%	(52.3)%

As of December 31, 2022, it was concluded that it is more likely than not that our U.S. deferred tax assets will be fully realized on the basis of management's assessment. In evaluating the realizability of our U.S. deferred tax assets, management considered all available evidence, both positive and negative, weighted based on objective verifiability. Our assessment also considered our ability to fully utilize before expiration our domestic net operating loss carryforwards, which expire 2025 thru 2035, and our general business tax credit carryforwards, which expire 2028 thru 2042. As of December 31, 2022, our domestic net operating loss carryforwards and general business tax credits were $40,952 and $2,600, respectively.

As of December 31, 2022, for certain past operations in the U.K., we continue to report a valuation allowance for net operating loss carryforwards of approximately $10,000, nearly all of which can be carried forward indefinitely. Management has concluded that utilization of the U.K. net operating losses may be limited due to the change in the past U.K. operation, and that they cannot currently be used to reduce taxable income of our other U.K. subsidiary, Accutronics Ltd. There are no other deferred tax assets related to the past U.K. operations.

As of December 31, 2022, we have not recognized a valuation allowance against our other foreign deferred tax assets.

There were no unrecognized tax benefits related to uncertain tax positions at December 31, 2022 and 2021.

As of December 31, 2022, the Company maintains its assertion that all foreign earnings will be indefinitely reinvested in those operations, other than earnings generated in the U.K.

As a result of our operations, we file income tax returns in various jurisdictions including U.S. federal, U.S. state and foreign jurisdictions. We are routinely subject to examination by taxing authorities in these various jurisdictions. Our U.S. tax matters for 2019-2021 remain subject to IRS examination. Our U.S. tax matters for 2002, 2005-2007 and 2011-2015 also remain subject to IRS examination due to the remaining availability of net operating loss carryforwards generated in those years. Our U.S. tax matters for 2002, 2005-2007 and 2011-2021 remain subject to examination by various state and local tax jurisdictions. Our tax matters for the years 2012 through 2021 remain subject to examination by the respective foreign tax jurisdiction authorities.

Note 8 – Operating Leases

The Company has operating leases predominantly for operating facilities. As of December 31, 2022, the remaining lease terms on our operating leases range from approximately one (1) year to nine (9) years. Lease terms include renewal options reasonably certain of exercise. There is no transfer of title or option to purchase the leased assets upon expiration. There are no residual value guarantees or material restrictive covenants.

The components of lease expense for the current and prior-year comparative periods were as follows:

	Year ended December 31,	
	2022	2021
Operating lease cost	$ 894	$ 762
Variable lease cost	95	79
Total lease cost	$ 989	$ 841

Supplemental cash flow information related to leases was as follows:

	Year ended December 31,	
	2022	2021
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 908	$ 744
Right-of-use assets obtained in exchange for lease liabilities:	$ 476	$ 1,020

Supplemental balance sheet information related to leases was as follows:

		December 31,	
	Balance Sheet Classification	2022	2021
Assets:			
Operating lease right-of-use asset	Other noncurrent assets	$ 2,187	$ 2,581
Liabilities:			
Current operating lease liability	Accrued expenses and other current liabilities	$ 895	$ 867
Operating lease liability, net of current portion	Other noncurrent liabilities	1,307	1,743
Total operating lease liability		$ 2,202	$ 2,610
Weighted-average remaining lease term (years)		4.4	4.5
Weighted-average discount rate		4.5%	4.5%

Future minimum lease payments as of December 31, 2022 are as follows:

Maturity of Operating Lease Liabilities	
2023	$ 918
2024	518
2025	215
2026	217
2027	217
Thereafter	425
Total lease payments	$ 2,510
Less: Imputed interest	(308)
Present value of remaining lease payments	$ 2,202

Note 9 - 401(k) Retirement Benefit Plan

We maintain a defined contribution 401(k) plan covering substantially all employees. Employees can contribute a portion of their salary or wages as prescribed under Section 401(k) of the Internal Revenue Code and, subject to certain limitations, we may, at the discretion of our Board of Directors, authorize an employer contribution based on a portion of the employees' contributions. For the years ended December 31, 2022 and 2021, the Company matched 100% on the first 3% and 50% on the next 2% contributed by the employee, or a maximum of 4% of the employee's income. For 2022 and 2021, we contributed $600 and $586, respectively, to the 401(k) plan.

Note 10 - Business Segment Information

We report our results in two operating segments: Battery & Energy Products and Communications Systems. The Battery & Energy Products segment includes: Lithium 9-volt, cylindrical and various other non-rechargeable batteries, in addition to rechargeable batteries, uninterruptable power supplies, charging systems and accessories. The Communications Systems segment includes: RF amplifiers, power supplies, cable and connector assemblies, amplified speakers, equipment mounts, case equipment, man-portable systems, integrated communication systems for fixed or vehicle applications and communications and electronics systems design. We believe that reporting performance at the gross profit level is the best indicator of segment performance.

2022:

	Battery & Energy Products	Communications Systems	Corporate	Total
Revenue	$ 119,995	$ 11,845	$ -	$ 131,840
Segment contribution	26,154	3,246	(29,271)	129
Other expense, net			575	575
Income tax benefit			(326)	(326)
Non-controlling interest			(1)	(1)
Net loss attributable to Ultralife				$ (119)
Total assets	$ 117,017	$ 29,424	$ 21,989	$ 168,430
Capital expenditures	$ 1,371	$ 81	$ 227	$ 1,679
Goodwill	$ 25,935	$ 11,493	$ -	$ 37,428
Depreciation and amortization of intangible assets	$ 3,761	$ 261	$ 437	$ 4,459
Stock-based compensation	$ 396	$ 82	$ 298	$ 776

2021:

	Battery & Energy Products	Communications Systems	Corporate	Total
Revenue	$ 87,083	$ 11,184	$ -	$ 98,267
Segment contribution	21,063	3,579	(24,607)	35
Other expense			186	186
Income tax expense			79	79
Non-controlling interest			4	4
Net loss attributable to Ultralife				$ (234)
Total assets	$ 110,633	$ 25,359	$ 23,546	159,538
Capital expenditures	$ 2,104	$ 255	$ 455	$ 2,814
Goodwill	$ 26,575	$ 11,493	-	$ 38,068
Depreciation and amortization of intangible assets	$ 2,847	$ 326	$ 366	$ 3,539
Stock-based compensation	$ 298	$ 125	$ 248	$ 671

Long-lived assets (comprised of property, plant and equipment; goodwill; and other intangible assets) held outside the U.S., principally in Canada, United Kingdom and China, were $24,405 and $26,762 as of December 31, 2022 and 2021, respectively.

The following tables disaggregate our business segment revenues by major source and geography.

Commercial and Government/Defense Revenue Information:

Year ended December 31, 2022:

	Total Revenue	Commercial	Government/ Defense
Battery & Energy Products	$ 119,995	$ 93,045	$ 26,950
Communications Systems	11,845	-	11,845
Total	$ 131,840	$ 93,045	$ 38,795
		71%	29%

Year ended December 31, 2021:

	Total Revenue	Commercial	Government/ Defense
Battery & Energy Products	$ 87,083	$ 63,516	$ 23,567
Communications Systems	11,184	-	11,184
Total	$ 98,267	$ 63,516	$ 34,751
		65%	35%

U.S. and Non-U.S. Revenue Information[1]:

Year ended December 31, 2022:

	Total Revenue	United States	Non-United States
Battery & Energy Products	$ 119,995	$ 58,820	$ 61,175
Communications Systems	11,845	9,094	2,751
Total	$ 131,840	$ 67,914	$ 63,926
		52%	48%

Year ended December 31, 2021:

	Total Revenue	United States	Non-United States
Battery & Energy Products	$ 87,083	$ 43,298	$ 43,785
Communications Systems	11,184	5,521	5,663
Total	$ 98,267	$ 48,819	$ 49,448
		50%	50%

[1] Sales classified to U.S. include shipments to U.S.-based prime contractors which in some cases may serve non-U.S. projects.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures – Our president and chief executive officer (principal executive officer) and our chief financial officer and treasurer (principal financial officer) have evaluated our disclosure controls and procedures (as defined in Securities Exchange Act Rule 13a-15(e)) as of the end of the period covered by this annual report. Based on this evaluation, our president and chief executive officer and chief financial officer and treasurer concluded that our disclosure controls and procedures were effective as of such date.

Changes in Internal Controls Over Financial Reporting –There has been no change in our internal control over financial reporting (as defined in Securities Exchange Act Rule 13a-15(f)) that occurred during the fourth quarter of the fiscal year covered by this annual report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Management's Report on Internal Control Over Financial Reporting – Our management team is responsible for establishing and maintaining adequate internal control over our financial reporting. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Because of the inherent limitations of internal control systems, our internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2022. In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated Framework (2013). Based on our assessment, we concluded that, as of December 31, 2022, our internal control over financial reporting was effective based on those criteria.

ITEM 9B. OTHER INFORMATION

None.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

None.

PART III

The information required by Part III, other than as set forth in Item 12, and each of the following items is omitted from this report and will be presented in our definitive proxy statement ("Proxy Statement") to be filed pursuant to Regulation 14A, not later than 120 days after the end of the fiscal year covered by this report, in connection with our 2022 Annual Meeting of Shareholders, which information included therein is incorporated herein by reference.

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The sections entitled "Election of Directors", "Executive Officers", "Delinquent Section 16(a) Reports Compliance" and "Corporate Governance" in the Proxy Statement are incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The sections entitled "Executive Compensation", "Directors Compensation", "Employment Arrangements" and "Compensation and Management Committee" in the Proxy Statement are incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The section entitled "Security Ownership of Certain Beneficial Owners" and "Security Ownership of Management" in the Proxy Statement is incorporated herein by reference.

Equity Compensation Plan Information

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders	1,425,693	$ 6.72	763,617
Equity compensation plans not approved by security holders	-	-	-
Total	1,425,693	$ 6.72	763,617

See Note 6 in the notes to consolidated financial statements for additional information.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The section entitled "Corporate Governance – General" in the Proxy Statement is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The section entitled "Proposal to Ratify the Selection of Independent Registered Accounting Firm - Principal Accountant Fees and Services" in the Proxy Statement is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) Documents filed as part of this report:

1. Financial Statements

The financial statements and schedules required by this Item 15 are set forth in Part II, Item 8 of this Form 10-K.

Auditor information:
Freed Maxick CPAs, P.C.
Rochester, New York
PCAOB ID 317

(b) Exhibits. The following exhibits are filed as a part of this report:

Exhibit Index	Description of Document	Filed Herewith or Incorporated by Reference from:
2.1	Share Purchase Agreement, dated December 13, 2021, by and among 1336889 B.C. Unlimited Liability Company, Mark Kroeker, Randolph Peters, Brian Larsen, M. & W. Holdings Ltd., Karen Kroeker, Heather Peterson, Michael Kroeker, Nicholas Kroeker, Brentley Peters, Craig Peters, Kurtis Peters, Heather Larsen, Ian Kane, Carol Peters, 0835205 B.C. LTD, and Excell Battery Canada Inc.	Exhibit 2.1 of the Form 8-K filed on December 16, 2021
2.2	Share Purchase Agreement, dated December 13, 2021, by and among 1336902 B.C. Unlimited Liability Company, M. & W. Holdings Ltd., Ian Kane, Sanford Capital Ltd., Arcee Enterprises Inc., 0835205 B.C. Ltd., and 656700 B.C. LTD	Exhibit 2.2 of the Form 8-K filed on December 16, 2021
2.3	Stock Purchase Agreement, dated May 1, 2019, by and among Ultralife Corporation, Southwest Electronic Energy Corporation, Southwest Electronic Energy Medical Research Institute, and Claude Leonard Benckenstein	Exhibit 10.1 of the Form 8-K filed on May 2, 2019
2.4	Stock Purchase Agreement Relating to Accutronics Limited by and between Robert Andrew Phillips and Others and Ultralife Corporation	Exhibit 2.2 of the Form 10-K for the year ended December 31, 2015, filed March 2, 2016
3.1	Restated Certificate of Incorporation	Exhibit 3.1 of the Form 10-K for the year ended December 31, 2008, filed March 13, 2009
3.2	Amended and Restated By-laws	Exhibit 3.2 of the Form 8-K filed December 9, 2011
4.1	Specimen Stock Certificate	Exhibit 4.1 of the Form 10-K for the year ended December 31, 2008, filed March 13, 2009
4.2	Description of Registrant's Securities	Exhibit 4.2 of the Form 10-K/A for the year ended December 31, 2019, filed April 28, 2020
10.1*	Amendment to the Agreement relating to rechargeable batteries	Exhibit 10.24 of our Form 10-K for the fiscal year ended June 30, 1996 (this Exhibit may be found in SEC File No. 0-20852)

10.2†	Employment Agreement between the Registrant and Michael D. Popielec dated December 6, 2010	Exhibit 10.40 of the Form 10-K for the year ended December 31, 2010, filed March 15, 2011
10.3†	Ultralife Corporation Amended 2014 Long-Term Incentive Plan	Appendix B of Form DEF 14A filed on June 1, 2021
10.4	Credit and Security Agreement between Ultralife Corporation and KeyBank National Association dated May 31, 2017	Exhibit 10.1 of the Form 8-K filed on June 6, 2017
10.5	First Amendment Agreement, dated May 1, 2019, by and among Ultralife Corporation, Southwest Electronic Energy Corporation, CLB, Inc., and KeyBank National Association	Exhibit 10.1 of the Form 8-K filed on May 2, 2019
10.6†	Amendment No. 1 to Ultralife Corporation Amended 2014 Long-Term Incentive Plan	Appendix A of Form DEF 14A filed on June 1, 2021
10.7	Second Amendment Agreement, dated December 13, 2021, by and among Ultralife Corporation, Southwest Electronic Energy Corporation, CLB, Inc., Ultralife Excell Holding Corp., Ultralife Canada Holding Corp., Excell Battery Corporation USA, and KeyBank National Association	Exhibit 10.1 of the Form 8-K filed on December 16, 2021
10.8	Third Amendment Agreement, dated November 28, 2022, by and among Ultralife Corporation, Southwest Electronic Energy Corporation, CLB, Inc., Ultralife Excell Holding Corp., Ultralife Canada Holding Corp., Excell Battery Corporation USA, Excell Battery Canada ULC and KeyBank National Association	Filed herewith
21	Subsidiaries	Filed herewith
23.1	Consent of Freed Maxick CPAs, P.C.	Filed herewith
31.1	Rule 13a-14(a) / 15d-14(a) CEO Certifications	Filed herewith
31.2	Rule 13a-14(a) / 15d-14(a) CFO Certifications	Filed herewith
32	Section 1350 Certifications	Filed herewith
101.INS	Inline XBRL Instance Document	Filed herewith
101.SCH	Inline XBRL Taxonomy Extension Schema Document	Filed herewith
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	Filed herewith
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	Filed herewith
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	Filed herewith
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	Filed herewith
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)	Filed herewith

* Confidential treatment has been granted as to certain portions of this exhibit.

† Management contract or compensatory plan or arrangement.

Attached as Exhibit 101 to this report are the following formatted in iXBRL (Inline eXtensible Business Reporting Language): (i) Consolidated Balance Sheets as of December 31, 2022 and December 31, 2021, (ii) Consolidated Statements of Loss and Comprehensive Loss for the years ended December 31, 2022 and December 31, 2021, (iii) Consolidated Statements of Cash Flows for the years ended December 31, 2022 and December 31, 2021, (iv) Consolidated Statements of Changes in Shareholders' Equity for the years ended December 31, 2022 and December 31, 2021, and (v) Notes to Consolidated Financial Statements.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ULTRALIFE CORPORATION

Date: March 31, 2023

/s/ Michael E. Manna
Michael E. Manna
President, Chief Executive Officer and Director

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

Date: March 31, 2023

/s/ Michael E. Manna
Michael E. Manna
President, Chief Executive Officer and Director
(Principal Executive Officer)

Date: March 31, 2023

/s/ Philip A. Fain
Philip A. Fain
Chief Financial Officer and Treasurer
(Principal Financial Officer and Principal Accounting Officer)

Date: March 31, 2023

/s/ Janie Goddard
Janie Goddard (Director)

Date: March 31, 2023

/s/ Thomas L. Saeli
Thomas L. Saeli (Director)

Date: March 31, 2023

/s/ Robert W. Shaw II
Robert W. Shaw II (Director)

Date: March 31, 2023

/s/ Ranjit C. Singh
Ranjit C. Singh (Director)

Date: March 31, 2023

/s/ Bradford T. Whitmore
Bradford T. Whitmore (Director)

Exhibit 10.8

THIRD AMENDMENT AGREEMENT

This Third Amendment Agreement (this "Agreement") is made and entered into as of this 28th day of November, 2022, by and among ULTRALIFE CORPORATION, a Delaware corporation ("Ultralife"), SOUTHWEST ELECTRONIC ENERGY CORPORATION, a Texas corporation ("Southwest"), CLB, INC., a Texas corporation ("CLB"), ULTRALIFE EXCELL HOLDING CORP., a Delaware corporation ("UEHC"), ULTRALIFE CANADA HOLDING CORP., a Delaware corporation ("UCHC"), EXCELL BATTERY CORPORATION USA, a Texas corporation ("Excell USA", and together with Ultralife, Southwest, CLB, UEHC and UCHC, collectively, the "Borrowers", and each individually a "Borrower"), EXCELL BATTERY CANADA ULC, a British Columbia unlimited liability company ("Excell Canada"), the lending institutions currently a party to the Credit Agreement (as hereinafter defined) (each, a "Lender" and collectively, the "Lenders"), and KEYBANK NATIONAL ASSOCIATION ("KeyBank", and in its capacity as agent for the Lenders under the Credit Agreement, "Agent").

WHEREAS, Lenders, Agent and Borrowers are parties to a certain Credit and Security Agreement dated as of May 31, 2017 (as amended by that certain First Amendment Agreement dated as of May 1, 2019 and that certain Second Amendment Agreement dated as of December 13, 2021, and as it may from time to time be further amended, restated or otherwise modified or supplemented from time to time, the "Credit Agreement").

WHEREAS, Lenders, Agent and Borrowers desire to amend the Credit Agreement by modifying certain provisions thereof, including, among other things, joining Excell Canada as a Credit Party under the Credit Agreement and other Loan Documents.

WHEREAS, unless defined herein, each term used herein shall be defined in accordance with the Credit Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein and for other valuable consideration Lenders, Agent, and Credit Parties agree as follows:

As of the date of this Agreement, the Credit Agreement is hereby amended to delete the stricken text (indicated in the same manner as the following example: ~~stricken text~~) and to add the bold and double underlined text (indicated textually in the same manner as the following example: **bold and double underlined text**) as set forth on the pages of the Credit Agreement attached as Exhibit 1 hereto. Such amended Credit Agreement constitutes the entire Credit Agreement as of the date hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the Credit Agreement.

Credit Parties, Agent and the Lenders agree and acknowledge that all references in the Credit Agreement and each other Loan Document to the term "Credit Parties" shall be deemed to include Excell Canada as a co-Credit Party with the other Credit Parties. The obligations, duties, undertakings and liabilities of Excell Canada and the Borrowers as "Credit Parties" under the Credit Agreement and each other Loan Document shall be joint and several and, without limiting the generality of the foregoing, each Credit Party hereby specifically and expressly ratifies and reaffirms all of the provisions of Article XII of the Credit Agreement and its guaranty of the full and prompt payment and performance when due of the Secured Debt provided for thereunder, and agrees that its obligations, duties, undertakings and liabilities under such Article XII and such guaranty are unaffected by the joinder of Excell Canada as a co-Credit Party with the Borrowers under the Credit Agreement and the other Loan Documents.

As a condition precedent to the effectiveness of this Agreement:

(a) Credit Parties shall have executed and delivered to Agent an Assumption and Joinder Agreement (the "Joinder Agreement") and such Joinder Agreement shall be in form and substance satisfactory to Agent;

(b) Pursuant to the Pledge Agreement executed by UEHC on the Second Amendment Closing Date, UEHC has pledged all Equity Interests of Excell USA. In connection therewith, UEHC shall have executed and delivered to Agent share certificates (or control agreements), appropriate stock powers (or equivalent), and such other documents in connection therewith as Agent shall reasonably request, each in form and substance satisfactory to Agent;

(c) UCHC shall have executed and delivered to Agent a Pledge Agreement (the "New Pledge Agreement"), in form and substance satisfactory to Agent, together with the delivery of share certificates (or control agreements), appropriate stock powers (or equivalent), and such other documents in connection therewith as Agent shall reasonably request, each in form and substance satisfactory to Agent;

(d) Excell Canada shall have executed and delivered to Agent (i) a Canadian Security Agreement, and (ii) a Canadian Guarantee, each in form and substance satisfactory to Agent;

(e) Each Credit Party shall have delivered to Agent an officer's certificate (or equivalent) certifying the names of the officers of such Credit Party authorized to sign this Agreement, the Joinder Agreement, the New Pledge Agreement, the Canadian Security Agreement, the Canadian Guarantee, and each other document, agreement, writing or instrument executed in connection with this Agreement (collectively, the "Amendment Documents") by such Credit Party, together with the true signatures of such officers, and certified copies of (i) the resolutions of the board of directors (or equivalent governing body) of such Credit Party evidencing approval of the execution and delivery of such documents, (ii) the articles of incorporation (or equivalent organizational document) of such Credit Party, and in the case of any Credit Party other than Excell Canada, having been certified, not more than ten (10) days prior to this Agreement, by the Secretary of State (or equivalent appropriate governmental officer) of the jurisdiction under which such Credit Party is organized, and (iii) the bylaws (or equivalent governance documents) of such Credit Party. Notwithstanding the foregoing, Ultralife may, in lieu of providing copies of such Borrower's articles of incorporation (or equivalent organizational document) and bylaws (or equivalent governance documents), certify that there has been no change since the Closing Date to such Borrower's formation and governance documents and that such documents are in full force and effect on and as of the date hereof and no action for any amendment to such documents has been taken or is pending;

(f) Agent shall have received a good standing certificate (or equivalent) available in the jurisdiction of incorporation, formation or organization for each Credit Party from the appropriate governmental officer in such jurisdiction;

(g) Agent shall have received an executed legal opinion for Excell Canada, in form and substance satisfactory to Agent, which shall cover such matters incident to the transactions contemplated by this Agreement and the Amendment Documents being executed in connection herewith, and Excell Canada hereby authorizes and directs counsel providing such legal opinion to deliver such opinion to Agent and Lenders;

(h) Credit Parties shall have delivered to Agent revised schedules to the Credit Agreement, in form and substance satisfactory to Agent;

(i) Agent shall have received for Excell Canada, (i) the results of lien searches in such jurisdictions reasonably satisfactory to Agent; and (ii) termination statements and payoff letters reflecting termination of all financing statements (other than financing statements related to Permitted Liens) previously filed by any party having a security interest in any part of the Collateral or any other property securing the Secured Debt;

(j) Excell Canada shall have delivered to Agent appropriate financing statements duly filed pursuant to the PPSA;

(k) Excell Canada shall have delivered to Agent a landlord's waiver, in form and substance satisfactory to Agent and the Lenders, for each location where Excell Canada's books and records are located;

(l) Agent shall have received in form and substance satisfactory to Agent, one or more insurance certificates and copies of Excell Canada's casualty insurance policies, and copies of Excell Canada's liability insurance policies; and

(m) Borrowers shall have paid all reasonable and documented out of pocket legal fees and expenses of Agent incurred in connection with this Agreement.

Each Credit Party hereby represents and warrants to Agent and the Lenders that as of the date hereof: (a) such Credit Party has the legal power and authority to execute and deliver the Amendment Documents executed by such Credit Party in connection with this Agreement; (b) the officers (or other authorized Persons) of such Credit Party executing the Amendment Documents have been duly authorized to execute and deliver the same and bind such Credit Party with respect to the provisions thereof; (c) the execution and delivery by such Credit Party of the Amendment Documents to which it is a party and the performance and observance by such Loan Party of the provisions thereof do not violate or conflict with the Organizational Documents of such Credit Party or any law applicable to such Credit Party or result in a breach of any provision of or constitute a default under any other material agreement, instrument or document binding upon or enforceable against such Loan Party; (d) after giving effect to this Agreement, no Default or Event of Default exists under the Loan Documents, nor will any occur upon giving effect to the execution and delivery of the Amendment Documents or by the performance or observance of any provision thereof; (e) such Credit Party does not have any claim or offset against, or defense or counterclaim to, any of such Credit Party's obligations or liabilities under the Credit Agreement or the other Loan Documents; (f) the representations and warranties set forth in Article VII of the Credit Agreement are true and correct in all material respects (without duplication of materiality qualifiers) on and as of the date hereof, except to the extent such representation or warranty relates to an earlier specified date, in which case such representation and warranty is reaffirmed true and correct in all material respects as of such date; and (g) the Amendment Documents to which such Credit Party is a party constitute a valid and binding obligation of such Credit Party in every respect, enforceable in accordance with their respective terms, except as such enforceability may be limited by any Debtor Relief Laws.

In consideration of this Agreement, each Credit Party hereby waives and releases Agent and the Lenders and their respective affiliates, officers, directors, equity holders, agents, attorneys, employees and representatives from any and all such claims, offsets, defenses and counterclaims of which such Credit Party is aware or unaware in connection with the Credit Agreement to the extent arising on or prior to the date hereof, such waiver and release being with full knowledge and understanding of the circumstances and effect thereof and after having consulted legal counsel with respect thereto.

Each reference that is made in the Credit Agreement or any other writing shall hereafter be construed as a reference to the Credit Agreement as amended hereby. Except as herein otherwise specifically provided, all provisions of the Credit Agreement shall remain in full force and effect and be unaffected hereby. Each Amendment Document is a Loan Document as defined in the Credit Agreement.

Each Credit Party hereby reaffirms its obligations, as applicable, under the Credit Agreement and all other Loan Documents to which such Credit Party is a party, as any of them may from time to time be amended, restated or otherwise modified (the "Reaffirmed Documents"). Each Credit Party agrees (i) that each Reaffirmed Document shall remain in full force and effect following the execution and delivery of this Agreement and any other Amendment Document, and (ii) that all references in any of the Reaffirmed Documents to the "Credit Agreement" or "Loan Agreement" shall be deemed to refer to the Credit Agreement, as amended by this Agreement or as it may be further amended, restated or otherwise modified from time to time.

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts and may be delivered by facsimile or pdf electronic transmission, each of which when so executed and delivered shall be deemed to be an original and effective as a manually signed counterpart and all of which when taken together shall constitute but one and the same agreement.

The rights and obligations of all parties hereto shall be governed by the laws of the State of New York, without regard to principles of conflicts of laws (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HEREBY CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

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IN WITNESS WHEREOF, the duly authorized officers of the parties to this Agreement have executed this Agreement as of the date first written above.

BORROWERS:

ULTRALIFE CORPORATION

By: /s/ Michael E. Manna
Name: Michael E. Manna
Title: President and Chief Executive Officer

SOUTHWEST ELECTRONIC ENERGY CORPORATION

By: /s/ Michael E. Manna
Name: Michael E. Manna
Title: President

CLB, INC.

By: /s/ Michael E. Manna
Name: Michael E. Manna
Title: President

ULTRALIFE EXCELL HOLDING CORP.

By: /s/ Michael E. Manna
Name: Michael E. Manna
Title: President

ULTRALIFE CANADA HOLDING CORP.

By: /s/ Michael E. Manna
Name: Michael E. Manna
Title: President

EXCELL BATTERY CORPORATION USA

By: /s/ Michael E. Manna
Name: Michael E. Manna
Title: President

OTHER CREDIT PARTIES:

EXCELL BATTERY CANADA ULC

By: /s/ Michael E. Manna
Name: Michael E. Manna
Title: President and Director

AGENT AND THE LENDERS:

KEYBANK NATIONAL ASSOCIATION,
as Agent and as a Lender

By: /s/ Peter F. Leonard
Name: Peter F. Leonard
Title: Senior Vice President

EXHIBIT 1

CONFORMED CREDIT AGREEMENT

See attached.

CREDIT AND SECURITY AGREEMENT

This CREDIT AND SECURITY AGREEMENT (as the same may from time to time be amended, restated, supplemented or otherwise modified, this "Agreement") is made effective as of the 31st day of May, 2017, among ULTRALIFE CORPORATION, a Delaware corporation ("Ultralife"), SOUTHWEST ELECTRONIC ENERGY CORPORATION, a Texas corporation ("Southwest"), CLB, INC., a Texas corporation ("CLB"), ULTRALIFE EXCELL HOLDING CORP., a Delaware corporation ("UEHC"), ULTRALIFE CANADA HOLDING CORP., a Delaware corporation ("UCHC"), EXCELL BATTERY CORPORATION USA, a Texas corporation ("Excell USA"), each other Person which may be added as a "Borrower" hereto, subsequent to the date hereof (collectively, together with Ultralife, Southwest, CLB, UEHC, UCHC and Excell USA, the "Borrowers", and each individually, a "Borrower"), **EXCELL BATTERY CANADA ULC, a British Columbia unlimited liability company ("Excell Canada")**, certain Credit Parties (as hereinafter defined) which from time to time become party hereto, the lending institutions from time to time party hereto (collectively, "Lenders", and individually,
"Lender"), and KEYBANK NATIONAL ASSOCIATION ("KeyBank", and in its capacity as agent for the Lenders under this Agreement, "Agent").

WITNESSETH:

WHEREAS, Borrowers, the other Credit Parties and the Lenders desire to contract for the establishment of credits in the aggregate principal amounts hereinafter set forth, to be made available to Borrowers upon the terms and subject to the conditions hereinafter set forth; NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE I. DEFINITIONS AND GENERAL TERMS

SECTION 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings:

"Acquisition" shall mean any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of any Person, or any business (as defined in SEC Regulation S-X Section 11.01(d)) of any Person, (b) the acquisition of in excess of 50% of the Capital Stock of any Person, or (c) the acquisition of another Person (other than a Credit Party) by a merger**, amalgamation** or consolidation or any other combination with such Person.

"Additional Commitment" shall have the meaning given to such term in Section 2.5(b) hereof.

"Additional Lender" shall mean an Eligible Assignee that shall become a Lender during the Commitment Increase Period pursuant to Section 2.5(b) hereof.

"Additional Lender Assumption Agreement" shall mean an additional lender assumption agreement, in form and substance satisfactory to Agent, wherein an Additional Lender shall become a Lender.

"Additional Lender Assumption Effective Date" shall mean that term as defined in Section 2.5(b) hereof.

"Adjusted Daily Simple SOFR" shall mean, with respect to a SOFR Loan, the greater of (1) the sum of (a) Daily Simple SOFR and (b) the applicable SOFR Index Adjustment and (2) the Floor.

"Administrative Questionnaire" shall mean an Administrative Questionnaire in a form supplied by Agent.

"Advantage" shall mean any payment (whether made voluntarily or involuntarily, by offset of any deposit or other indebtedness or otherwise) received by any Lender in respect of the Debt, if such payment results in that Lender having less than its Pro Rata Share of the Applicable Debt then outstanding, than was the case immediately before such payment.

"Affiliate" shall mean, with respect to a specified Person (a) an officer or directors of such Person, (b) another Person that directly or indirectly, controls or is controlled by or is under direct or indirect common control with the Person specified; and "control" (including the correlative meanings, the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of (i) 15% or more of the Voting Power of such Person, or (ii) the power to direct or cause the direction of the management and policies of such specified Person, whether through the ownership of voting securities, by contract or otherwise; provided, however, that neither any Lender nor any of its Affiliates shall be deemed or construed to be an Affiliate of the Companies.

"Agent" shall have the meaning given to such term in the opening paragraph of this Agreement and shall include any successor agent appointed pursuant to the provisions of Article X hereto.

"Agent's Report" shall have the meaning given to such term in Section 2.3(c) hereof.

"Aggregate Commitment Percentage" shall mean, for any Lender, as of any date, the percentage calculated by dividing (a) the aggregate, on such date, of (i) the Revolving Credit Commitments of such Lender, or if the Revolving Credit Commitments have expired or have been terminated or otherwise reduced to $0, then the amount outstanding under the Revolving Credit Notes of such Lender, plus (ii) the amount outstanding for such Lender under the Term Notes, plus (iii) the amount outstanding for such Lender under the Term Notes B, by (b) the aggregate, on such date, of (i) the Revolving Credit Commitments of all Lenders, or if the Revolving Credit Commitments have expired or have been terminated or otherwise reduced to $0, then the amount outstanding under the Revolving Credit Notes of all Lenders, plus (ii) the amount outstanding for all Lenders under the Term Notes, plus (iii) the amount outstanding for all Lenders under the Term Notes B.

"Aggregate Term Loan Commitment Percentage" shall mean, for any Term Loan Lender, as of any date, the percentage calculated by dividing (a) the aggregate, on such date, of the amount outstanding for such Lender under the Term Notes, by (b) the aggregate, on such date, of the amount outstanding for all Lenders under the Term Notes.

"Aggregate Term Loan B Commitment Percentage" shall mean, for any Term Loan B Lender, as of any date, the percentage calculated by dividing (a) the aggregate, on such date, of the amount outstanding for such Lender under the Term Notes B, by (b) the aggregate, on such date, of the amount outstanding for all Lenders under the Term Notes B.

"Alternate Base Rate " shall mean, for any day, a fluctuating rate per annum equal to the highest of (i) the Federal Funds Rate *plus* 0.50%, (ii) the rate of interest in effect for such day as established from time to time by KeyBank National Association as its "prime rate", whether or not publicly announced, which interest rate may or may not be the lowest rate charged by it for commercial loans or other extensions of credit and (iii) 3.00%. Any change in the Alternate Base Rate due to a change in the prime rate or the Federal Funds Rate shall be effective from and including the effective date of such change in the prime rate or the Federal Funds Rate, as applicable.

"Alternate Base Rate Loan" shall mean a Loan bearing interest at the sum of (a) the Alternate Base Rate *plus* (b) the Alternate Base Rate Margin.

"Alternate Base Rate Margin" shall mean, at any time, the greater of (i) 0.00% and (ii) the then-applicable Applicable Margin (from time to time in effect) for SOFR Loans *minus* 1.00%.

"Anti-Terrorism Laws" shall mean any ~~L~~laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, the laws comprising or implementing the Bank Secrecy Act, ~~and~~ the laws administered by the United States Treasury Department's Office of Foreign Asset Control**, and Canadian Anti-Money Laundering & Anti-Terrorism Legislation and the Canadian Economic Sanctions and Export Control Laws** (as any of the foregoing Laws may from time to time be amended, renewed, extended, or replaced).

"Applicable Commitment Percentage" shall mean, for each Lender, (a) with respect to the Revolving Credit Commitment, the percentage set forth opposite such Lender's name under the column headed "Revolving Credit Commitment Percentage" as described in Schedule 1 hereto, and (b) with respect to the Term Loan Commitment, the percentage set forth opposite such Lender's name under the column headed "Term Loan Commitment Percentage" as described in Schedule 1 hereto, and (c) with respect to the Term Loan B Commitment, the percentage set forth opposite such Lender's name under the column headed "Term Loan B Commitment Percentage" as described in Schedule 1 hereto.

"Applicable Debt" at any time shall mean:

(a) with respect to the Revolving Credit Commitment, collectively, (i) all Debt incurred by Borrowers to Agent or the Lenders pursuant to this Agreement and includes the principal of and accrued and unpaid interest on all Notes at such time, and (ii) each extension, renewal or refinancing thereof in whole or in part;

(b) with respect to the Term Loan Commitment, collectively, (i) all Debt incurred by Borrowers to Agent or the Lenders pursuant to the Term Loan Commitment and includes the principal of, and accrued and unpaid interest on, the Term Notes at such time, and (ii) each extension, renewal or refinancing thereof in whole or in part hereunder, and (iii) any prepayment fees payable in connection with the Term Loan Commitment; and

(c) with respect to the Term Loan B Commitment, collectively, (i) all Debt incurred by Borrowers to Agent or the Lenders pursuant to the Term Loan B Commitment and includes the principal of, and accrued and unpaid interest on, the Term Notes B at such time, and (ii) each extension, renewal or refinancing thereof in whole or in part hereunder, and (iii) any prepayment fees payable in connection with the Term Loan B Commitment.

"Applicable Margin" **shall** mean~~s~~:

(a) for the period from the **Third Amendment** Closing Date until the Pricing Change Date (as hereinafter defined) related to the fiscal quarter ending ~~December~~**June** 3~~1~~**0**, 20~~17~~**22**, (i) **2**~~1~~85 basis points for ~~Overnight LIBOR Loans, (ii) negative 50 basis points for Base Rate~~**SOFR** Loans, and (ii~~i~~) ~~20~~**15** basis points for the Unused Fee; and

(b) commencing on the Pricing Change Date related to the fiscal quarter ending ~~December~~**June** 3~~1~~**0**, 20~~17~~**22**, the number of basis points (depending upon whether Loans are ~~Overnight LIBOR Loans, Base Rate~~**SOFR** Loans or the Unused Fee) set forth in the following matrix, based upon the result of the computation of the Consolidated Senior Leverage Ratio as set forth in the Compliance Certificate for such fiscal period, shall be used to establish the number of basis points that will go into effect on such Pricing Change Date and thereafter, as set forth in each successive Compliance Certificate, as provided below:

Consolidated Senior Leverage Ratio	Applicable Basis Points for ~~Overnight LIBOR~~ **SOFR** Loans	~~Applicable Basis Points for Base Rate Loans~~	Applicable Basis Points for Unused Fee
Less than 1.50 to 1.00	185	~~(50)~~	25
Greater than or equal to 1.50 to 1.00 but less than 2.50 to 1.00	200	~~(25)~~	20
Greater than or equal to 2.50 to 1.00	215	~~0~~	15

Changes to the Applicable Margin (including the first change) shall be effective on the first Business Day of each month following the date upon which the ~~Administrative~~ Agent should have received, pursuant to Section 5.3(d) hereof, the Compliance Certificate for the most recently ended fiscal quarter (each a "Pricing Change Date"). The above matrix does not modify or waive, in any respect, the requirements of Section 5.7 hereof, the rights of the Agent and the Lenders to charge the Default Rate, or the rights and remedies of the Agent and the Lenders pursuant to Articles VIII and IX hereof. Notwithstanding anything herein to the contrary, (i) during any period when Borrowers shall have failed to timely deliver the Consolidated financial statements pursuant to Section 5.3(b) hereof or the Compliance Certificate related thereto pursuant to Section 5.3(d) hereof, until such time as the appropriate Consolidated financial statements and Compliance Certificate are delivered, the Applicable Margin shall be the highest rate per annum indicated in the above pricing grid, regardless of the Consolidated Senior Leverage Ratio at such time, and (ii) in the event that any financial information or certification provided to the Agent in the Compliance Certificate is shown to be inaccurate (regardless of whether this Agreement or the Commitment is in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Margin Period") than the Applicable Margin applied for such Applicable Margin Period, then (A) the Borrowers shall immediately deliver to the Agent a corrected Compliance Certificate for such Applicable Margin Period, (B) the Applicable Margin shall be determined based on such corrected Compliance Certificate to the extent such change would have resulted in a higher rate during such period, and (C) the Borrowers shall immediately pay to the ~~Administrative~~ Agent the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Margin Period.

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

"Assigned Contracts" **shall** means, collectively, all of each Credit Party's rights and remedies under, and all moneys and claims for money due or to become due to any Credit Party under any contract with respect to any Acquisition to which any Credit Party is or becomes a party, and any and all amendments, supplements, extensions, and renewals thereof including all rights and claims of any Credit Party now or hereafter existing: (a) under any insurance, indemnities, warranties, and guarantees provided for or arising out of or in connection with any of the foregoing agreements; (b) for any damages arising out of or for breach or default under or in connection with any of the foregoing contracts; (c) to all other amounts from time to time paid or payable under or in connection with any of the foregoing agreements; or (d) to exercise or enforce any and all covenants, remedies, powers and privileges thereunder.

"Assignment and Assumption" shall mean an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.10), and accepted by Agent, in substantially the form of Exhibit D or any other form approved by Agent.

"Bail-In Action" **shall** means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" **shall** means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Banking Services" shall mean each and any of the following bank services provided to any Credit Party by Agent or any Lender or any their respective affiliates: (a) commercial credit cards, (b) stored value cards and (c) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, returned items, overdrafts and interstate depository network services).

"Banking Services Obligations" shall mean any and all obligations of any one or more of the Credit Parties to Agent or any Lender or any their respective affiliates, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

~~"Base Rate" means, for any day, a rate per annum equal to the highest of (a) the Prime Rate, (b) one-half of one percent (.50%) in excess of the Federal Funds Effective Rate, and (c) one hundred (100) basis points in excess of the Overnight LIBOR Rate (or, if such day is not a Business Day, such rate as calculated on the most recent Business Day); provided, however, that in no event shall the Base Rate be less than zero percent (0%). Any change in the Base Rate shall be effective immediately from and after such change in the Base Rate.~~

"Benchmark" shall mean, initially, Daily Simple SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Daily Simple SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.6.

~~"Base Rate Loan~~**Beneficial Ownership Certification**" shall mean a ~~Loan on which Borrowers shall pay interest at a rate based on the Base Rate~~**certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.**

"Beneficial Ownership Regulation" shall mean 31 C.F.R. § 1010.230.

"BIA" shall mean, the *Bankruptcy and Insolvency Act* (Canada) (or any successor statute) as amended from time to time, and includes all regulations thereunder.

"Blocked Person" shall have the meaning given to such term in Section 7.26 hereof.

"Borrower" and "Borrowers" shall have the meaning given to such terms in the opening paragraph of this Agreement.

"Borrowing Agent" shall mean Ultralife.

"Borrowing Base" shall mean an amount not in excess of the sum of the following: (a) eighty-five percent (85%) of the amount due and owing on Eligible Accounts, plus (b) the lesser of (i) fifty percent (50%) of the cost or market value (whichever is lower) of Eligible Inventory, or (ii) $12,750,000, minus (c) such reserves as Agent shall deem necessary in its Permitted Discretion**, including, without limitation, the Canadian Priority Payable Reserve**. The Agent may, in its Permitted Discretion, increase or reduce the advance rates and the limit set forth above, adjust reserves or reduce one or more of the other elements used in computing the Borrowing Base.

"Borrowing Base Certificate" shall mean a certificate, substantially in the form of the attached Exhibit E.

"Business Day" shall mean **(i)** a day of the year on which banks are not required or authorized to close in New York, NY **and (ii) with respect to any matters relating to SOFR Loans, a SOFR Business Day.**

"Canadian Anti-Money Laundering & Anti-Terrorism Legislation" shall mean the *Criminal Code*, R.S.C. 1985, c. C-46, *the Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 and *the United Nations Act*, R.S.C. 1985, c. U-2 or any similar Canadian legislation, together with all rules, regulations and interpretations thereunder or related thereto including, without limitation, the Regulations Implementing the *United Nations Resolutions on the Suppression of Terrorism* and the *United Nations Al-Qaida and Taliban Regulations* promulgated under the United Nations Act.

"Canadian Blocked Person" shall mean any Person that is a "designated person","politically exposed foreign person" or "terrorist group" as described in any Canadian Economic Sanctions and Export Control Laws.

"Canadian Defined Benefit Plan" shall mean a pension plan for the purposes of any applicable pension benefits standards statute or regulation in Canada, which contains a "defined benefit provision," as defined in subsection 147.1(1) of the *Income Tax Act* (Canada).

"Canadian Dollars" shall mean the dollars in the lawful currency of Canada.

"Canadian Economic Sanctions and Export Control Laws" shall mean any Canadian laws, regulations or orders governing transactions in controlled goods or technologies or dealings with countries, entities, organizations, or individuals subject to economic sanctions and similar measures, including the *Special Economic Measures Act* (Canada), the *United Nations Act* (Canada), the *Freezing Assets of Corrupt Foreign Officials Act* (Canada), Part II.1 of the *Criminal Code* (Canada) and the *Export and Import Permits Act* (Canada), and any related regulations.

"Canadian Guarantee" shall mean, collectively, (a) the Guaranty of Payment, and (b) a guarantee dated as of the Third Amendment Closing Date, governed by the laws of the Province of British Columbia made by Excell Canada in favor of the Agent, as same may be amended, restated, supplemented or otherwise modified from time to time.

"Canadian Pension Event" shall mean (a) the whole or partial withdrawal of the Canadian Guarantor or another Loan Party from a Canadian Pension Plan during a plan year; or (b) the filing of a notice of intent to terminate in whole or in part a Canadian Pension Plan or the treatment of a Canadian Pension Plan amendment as a termination or partial termination; or (c) the institution of proceedings by any Governmental Authority to terminate in whole or in part or have a trustee appointed to administer a Canadian Pension Plan; or (d) any other event or condition which might constitute grounds for the termination of, winding up or partial termination of winding up or the appointment of trustee to administer, any Canadian Pension Plan.

"Canadian Pension Plan" shall mean a pension plan that is covered by the applicable pension standards laws of any jurisdiction in Canada including the *Pension Benefits Act* (Ontario) and the *Income Tax Act* (Canada) and that is either (a) maintained or sponsored by Excell Canada or any other Canadian Subsidiary for employees or (b) maintained pursuant to a collective bargaining agreement, or other arrangement under which more than one employer makes contributions and to which Excell Canada or any other Canadian Subsidiary is making or accruing an obligation to make contributions or has within the preceding five years made or accrued such contributions.

"Canadian Priority Payable Reserve" shall mean the reserves established in the good faith credit discretion of the Agent for amounts secured by any Liens, choate or inchoate, which rank or are capable of ranking in priority to the Agent's Liens and/or for amounts which may represent costs relating to the enforcement of the Agent's Liens including, without limitation, in the good faith credit discretion of the Agent, any such amounts due and not paid for wages, salaries, commission or compensation, including vacation pay; (including, as provided for, under the *Wage Earners Protection Program Act* (Canada)), amounts due and not paid under any legislation relating to workers' compensation or to employment insurance, all amounts deducted or withheld and not paid and remitted when due under the *Income Tax Act* (Canada), amounts currently or past due and not paid for realty, municipal or similar taxes, any and all unfunded wind-up or solvency deficiency amounts under, and all amounts currently or past due and not contributed, remitted or paid to or under any Canadian Pension Plans or under the *Canada Pension Plan*, the *Pension Benefits Standards Act* (British Columbia) or any similar legislation.

"Canadian Security Agreement" shall mean that certain Canadian Security Agreement, dated as of the Third Amendment Closing Date, among Excell Canada and the Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Capital Distribution" shall mean a payment made, liability incurred or other consideration given for the purchase, acquisition, redemption or retirement of any Capital Stock of any Company or as a dividend, return of capital or other distribution (other than any stock dividend, stock split or other equity distribution payable only in Capital Stock of the Company in question) in respect of any Company's Capital Stock.

"Capital Expenditures" shall mean, for any Person and for any period, the aggregate amount of all expenditures made, directly or indirectly, by such Person and its Consolidated Subsidiaries during such period which should be capitalized in accordance with GAAP and, without duplication, the principal portion of Capital Lease Obligations paid by such Person and its Consolidated Subsidiaries during such period.

"Capital Lease" shall mean, as applied to any Person, any lease of (or any other agreement conveying the right to use) any property (whether real, personal or mixed) by such Person as lessee which would, in accordance with GAAP, be required to be classified and accounted for as a capital lease on the balance sheet of such person.

"Capital Lease Obligation" shall mean with respect to any Capital Lease, the amount of the obligation of the lessee thereunder which would, in accordance with GAAP, appear on a balance sheet of such lessee (or the notes thereto) in respect of such Capital Lease and, for purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"Capital Stock" shall mean, with respect to any Person, any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, member interests, participation or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act), including in each case all of the following rights relating to such Equity Interests, whether arising under the Organizational Documents of the Person issuing such Capital Stock (the "issuer") or under the applicable laws of such issuer's jurisdiction of organization relating to the formation, existence and governance of corporations, limited liability companies or partnerships or business trusts or other legal entities, as the case may be: (i) all economic rights (including all rights to receive dividends and distributions) relating to such Capital Stock; (ii) all voting rights and rights to consent to any particular action(s) by the applicable issuer; (iii) all management rights with respect to such Issuer; (iv) in the case of any Capital Stock consisting of a general partner interest in a partnership, all powers and rights as a general partner with respect to the management, operations and control of the business and affairs of the applicable issuer; (v) in the case of any Capital Stock consisting of the membership/limited liability company interests of a managing member in a limited liability company, all powers and rights as a managing member with respect to the management, operations and control of the business and affairs of the applicable issuer; (vi) all rights to designate or appoint or vote for or remove any officers, directors, manager(s), general partner(s) or managing member(s) of such issuer and/or any members of any board of members/managers/partners/directors that may at any time have any rights to manage and direct the business and affairs of the applicable issuer under its Organizational Documents as in effect from time to time or under applicable law; (vii) all rights to amend the Organizational Documents of such issuer, (viii) in the case of any Capital Stock in a partnership or limited liability company, the status of the holder of such Capital Stock as a "partner", general or limited, or "member" (as applicable) under the applicable Organizational Documents and/or applicable law; and (ix) all certificates evidencing such Capital Stock.

"Cash Collateral Account" shall mean a commercial Deposit Account designated as a "cash collateral account" and maintained by a Credit Party with Agent or its designee, without liability by Agent or the Lenders to pay interest thereon, from which account Agent shall have the exclusive right to withdraw funds until all of the Secured Debt is paid in full.

"Cash Equivalents" shall mean (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than nine (9) months from the date of acquisition, (b) certificates of deposit with maturities of six (6) months or less from the date of acquisition, bankers' acceptances with maturities not exceeding six (6) months and overnight bank deposits, in each case with any Lender that is a domestic commercial bank having capital and surplus in excess of $100,000,000 or any other domestic commercial bank having capital and surplus in excess of $500,000,000, (c) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clauses (a) and (b) entered into with any financial institution meeting the qualifications specified in clause (b) above, (d) commercial paper issued by any Lender or the parent corporation of any Lender, and commercial paper rated A-1 or the equivalent thereof by Standard & Poor's or P-1 or the equivalent thereof by Moody's and in each case maturing within six (6) months after the date of acquisition, (e) money market accounts or funds containing only assets of types described in clauses (a) through (d) above.

"Change in Control" shall mean: (a) with respect to any Person or group (within the meaning of the Exchange Act and the rules of the SEC thereunder as in effect on the Closing Date) holding in excess of ten percent (10%) of the voting Capital Stock of Ultralife as of the Closing Date (based upon Exchange Act filings of beneficial ownership with the SEC), the acquisition of ownership, directly or indirectly, beneficially or of record, by such Person or group, of Capital Stock of Ultralife representing more than 49% of the aggregate ordinary voting power represented by the issued and outstanding voting Capital Stock of Ultralife; (b) the acquisition of ownership, directly or indirectly, beneficially or of record, by any other Person or group (within the meaning of the Exchange Act and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof), of Capital Stock of Ultralife representing more than 25% of the aggregate ordinary voting power represented by the issued and outstanding voting Capital Stock of Ultralife; (c) occupation of a majority of the seats (other than vacant seats) on the board of directors of Borrower or any of its Subsidiaries by Persons who were neither (i) nominated by the board of directors of Ultralife or any of its Subsidiaries nor (ii) appointed by directors so nominated; (d) any merger, consolidation or sale of substantially all of the property or assets of Borrowers; (e) Ultralife ceasing to directly own and control 100% of each class of the outstanding Capital Stock of Southwest or UEHC; (f) Southwest ceasing to directly own and control 100% of each class of the outstanding Capital Stock of CLB; ~~or~~ (g) UEHC ceasing to directly ~~or indirectly~~ own and control 100% of each class of the outstanding Capital Stock of ~~its Subsidiaries as of the Second Amendment Closing Date.~~**UCHC or Excell USA; or (h) UCHC ceasing to directly own and control 100% of each class of the outstanding Capital Stock of Excell Canada and Dormant Subsidiary (subject to the provisions of Section 5.28 hereof).**

"CLB" shall ~~mean CLB, Inc., a Texas corporation~~**have the meaning given to such term in the opening paragraph of this Agreement**.

"Closing Date" shall mean the effective date of this Agreement.

"Code" shall mean the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated thereunder.

"Collateral" shall have the meaning ascribed thereto in Section 6.1.

"Commitment" shall mean the obligation hereunder of each Lender as set forth on Schedule 1, to make Loans pursuant to the Revolving Credit Commitment, the Term Loan Commitment and the Term Loan B Commitment, and to participate in the issuance of Letters of Credit up to the Maximum Amount for such Lender, as such amounts may be reduced or adjusted pursuant to the terms hereof.

"Commitment Increase Period" shall have the meaning given to such term in Section 2.5(b) hereof.

"Commitment Period" shall mean the period from the Closing Date until May 30, 2025, or such earlier date on which the Commitment shall have been terminated pursuant to Article IX hereof.

"Commodity Account" shall mean an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer**, including a futures account (as defined in the PPSA)**.

"Commodity Exchange Act" **shall** means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Company" shall mean any Borrower or any Subsidiary.

"Companies" shall mean all Borrowers and all Subsidiaries.

"Compliance Authority" shall mean each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) the U.S. Internal Revenue Service, (f) the U.S. Justice Department, and (g) the SEC**, and (h) the federal government of Canada**.

"Compliance Certificate" shall mean a certificate, substantially in the form of the attached Exhibit C.

"Consolidated" shall mean the resultant consolidation of the financial statements of Ultralife and its Subsidiaries in accordance with GAAP, including principles of consolidation consistent with those applied in preparation of the consolidated financial statements referred to in Section 7.17 hereof.

"Consolidated Depreciation and Amortization Expense" shall mean, for any Person and for any period, the Consolidated depreciation and amortization expense of such Person and its Consolidated Subsidiaries for such period, determined in accordance with GAAP.

"Consolidated EBITDA" shall mean, for any Person and for any period of determination, without duplication, such Person's Consolidated Net Income for such period increased, to the extent deducted in the calculation of Consolidated Net Income, by the sum of such Person's (i) Consolidated Interest Expense, plus (ii) Consolidated Income Tax Expense, plus (iii) Consolidated Depreciation and Amortization Expense, plus (iv) non-cash stock compensation expenses, plus (v) other one-time nonrecurring items or losses which are factually supported and are acceptable to Agent in its reasonable discretion, plus (vi) salary and bonus of Claude Leonard Benckenstein, minus (vii) extraordinary, unusual and one-time nonrecurring income or gains. For purposes of this definition, each reference to Person shall be deemed to include such Person and its Subsidiaries on a Consolidated basis.

"Consolidated Fixed Charge Coverage Ratio" shall mean, for any Person and for any period, the ratio of (a) Consolidated EBITDA, to (b) Consolidated Fixed Charges.

"Consolidated Fixed Charges" shall mean, for any period, on a Consolidated basis and in accordance with GAAP, the sum, without duplications, of (a) any payment on the principal portion of Indebtedness of the Companies which is paid or required to be paid in cash for such period, (b) the current maturities of Capital Leases, (c) Consolidated Interest Expense paid or required to be paid in cash for such period, (d) Unfunded Capital Expenditures, (e) Capital Distributions by Ultralife to the extent permitted under this Agreement (to the extent paid in cash), and (f) Consolidated Income Tax Expense for such period (to the extent paid in cash).

"Consolidated Income Tax Expense" shall mean, for any Person and for any period, on a Consolidated basis, the aggregate of all Federal, state, local and foreign taxes, based upon income and franchise tax expense of such Person and its Consolidated Subsidiaries for such period, determined in accordance with GAAP.

"Consolidated Interest Expense" shall mean, for any Person and for any period, on a Consolidated basis, the aggregate amount of interest expense (including the interest portion of any deferred payment obligation, calculated in accordance with the effective interest method of accounting and amortization of original issue discount) and all but the principal component of rentals in respect of Capital Leases, paid, accrued and/or scheduled to be paid or accrued by such Person and its Consolidated Subsidiaries during such period (including, without limitation, any payment-in-kind interest accrued during such period), all determined in accordance with GAAP. For purposes of this definition, interest on a Capital Lease will be deemed to accrue at an interest rate reasonably determined in accordance with GAAP.

"Consolidated Net Income" shall mean, for any Person and for any period, on a Consolidated basis, the net income (loss) of such Person and its Consolidated Subsidiaries for such period, determined in accordance with GAAP, provided that: (a) all non-cash gains and all losses realized by such Person and its Consolidated Subsidiaries upon the sale or other disposition (including, without limitation, pursuant to sale and leaseback transactions) of property or assets which are not sold or otherwise disposed of in the ordinary course of business, or pursuant to the sale of any capital stock of such person or any Subsidiary, shall be excluded, (b) all non-cash items of gain or loss which are properly classified as extraordinary in accordance with GAAP shall be excluded, (c) all items which are properly classified in accordance with GAAP as cumulative effects of accounting changes shall be excluded, and (d) net income (loss) of any Person which is not a Subsidiary of such Person and which is Consolidated with such Person or is accounted for by such Person by the equity method of accounting shall be included in the calculation of Consolidated Net Income hereunder only to the extent of the amount of dividends or distributions paid to such Person.

"Consolidated Net Worth" shall mean, for any Person at any date, as determined on a Consolidated basis and in accordance with GAAP, (a) the net book value (after deducting all applicable reserves and excluding any re appraisal or write up of assets) of the assets (other than patents, goodwill, treasury stock and other intangibles) of such Person on such date, minus (b) the total of all items of Indebtedness or liability (other than deferred tax liabilities relating to goodwill and other intangibles) that, in accordance with GAAP, would be included in determining total liabilities on the liability side of the balance sheet as of the date of determination for such Person on such date.

"Consolidated Senior Leverage Ratio" shall mean, for any Person and as of any measurement date, the ratio of (a) all Senior Funded Debt of such Person and its Consolidated Subsidiaries on such date, to (b) the Consolidated EBITDA of such Person and its Consolidated Subsidiaries for the preceding four consecutive Fiscal Quarters ending on such measurement date. "Controlled Group" shall mean a Company and each "person" (as therein defined) required to be aggregated with a Company under Code Sections 414(b), (c), (m) or (o).

"Copyright" shall mean any copyright, any copyrightable work, any registration or recording of any copyright or copyrightable work, and any application in connection with any copyright or copyrightable work, including, without limitation, any such registration, recording, or application in the United States Copyright Office**, Canadian Intellectual Property Office** or in any similar office or agency of the United States, **Canada,** any State **or province or territory** thereof, or any other country or political subdivision of such other country, and any renewal of any of the foregoing.

"Copyright License" shall mean any agreement granting any right in any Copyright, as the same may from time to time be amended, restated or otherwise modified.

"Credit Party" shall mean any Borrower**, Excell Canada** or any other Person that shall join as a Credit Party hereunder pursuant to the terms of Section 5.22 hereof.

"Credit Parties" shall mean all Borrowers**, Excell Canada** and all other Persons that join as a Credit Party hereunder pursuant to the terms of Section 5.22 hereof.

"Daily Simple SOFR" shall mean, for any day, an interest rate per annum, reset on each SOFR Business Day (rounded upwards in accordance with the Agent's customary practices, unless a Hedge Agreement with the Agent as the counterparty is in effect with respect to the Loans), equal to SOFR for the day that is five (5) SOFR Business Days prior to such day, published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding SOFR Business Day. If by 5:00 pm (New York City time) on the second (2nd) SOFR Business Day immediately following any day on which SOFR is to be reset, SOFR for such day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such day will be SOFR as published in respect of the first preceding SOFR Business Day for which such SOFR was published on theSOFR Administrator's Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than ten (10) consecutive SOFR Business Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrowers.

"Debt" shall mean, collectively, (a) all Indebtedness incurred by any Borrower to Agent and the Lenders pursuant to this Agreement and includes the principal of and interest on all Loans; (b) each extension, renewal or refinancing thereof in whole or in part; (c) the commitment and other fees and any prepayment fees payable hereunder; (d) all Related Expenses; and (e) all other obligations of the Credit Parties under this Agreement and the Loan Documents.

"Debtor Relief Laws" shall mean the Bankruptcy Code of the United States, the BIA, the *Companies' Creditors Arrangement Act* (Canada), and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States, Canada or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" shall mean an event or condition that, with the lapse of any applicable grace period or the giving of notice or both would constitute, an Event of Default and which has not been waived by the Required Lenders (or all of the Lenders if required by Section 11.3) in writing or fully corrected prior to becoming an actual Event of Default.

"Default Rate" shall mean (a) with respect to any Loan or other Secured Debt for which a rate is specified, a rate per annum equal to two percent (2%) in excess of the rate otherwise applicable thereto, and (b) with respect to any other amount, if no rate is specified or available, a rate per annum equal to two percent (2%) in excess of the Alternate Base Rate plus the Alternate Base Rate Margin from time to time in effect.

"Defaulting Lender" means any Lender who: (a) has failed, within one Business Day of the date required to be funded or paid, to (i) fund any portion of its portion of any incurrence of Loans, (ii) if applicable, fund any portion of its participation in Letters of Credit or (iii) pay over to Agent, or any Lender any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including a particular Default or Event of Default, if any) has not been satisfied; (b) has notified Borrowers or Agent in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including a particular Default or Event of Default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within one Business Day after request by Agent, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and, if applicable, participations in then outstanding Letters of Credit under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon Agent's receipt of such certification in form and substance satisfactory to Agent; (d) has become the subject of any action or proceeding of a type described in Section 8.12 hereof or of a Bail-in Action; or (e) has failed at any time to comply with the provisions of Section 9.5 with respect to purchasing participations from the other Lenders, whereby such Lender's share of any payment received, whether by setoff or otherwise, is in excess of its pro rata share of such payments due and payable to all of the Lenders.

~~"Default Rate" means (a) with respect to any Loan or other Obligation for which a rate is specified, a rate per annum equal to two percent (2%) in excess of the rate otherwise applicable thereto, and (b) with respect to any other amount, if no rate is specified or available, a rate per annum equal to two percent (2%) in excess of the Derived Base Rate from time to time in effect.~~

"Derived ~~Base~~**Adjusted Daily Simple SOFR** Rate" **shall** mean~~s~~ a rate per annum equal to the sum of the Applicable Margin (from time to time in effect) for ~~Base Rate~~**SOFR** Loans *plus* the ~~Base~~**Adjusted Daily Simple SOFR** ~~R~~**r**ate.

~~"Derived Overnight LIBOR Rate" means a rate per annum equal to the sum of the Applicable Margin (from time to time in effect) for Overnight LIBOR Loans plus the Overnight LIBOR Rate.~~

"Designated Lender" means (a) a Lender; (b) any commercial bank organized under the laws of the United States or any State, having been consented to by the Required Lenders and Agent, and having total assets in excess of $3,000,000,000 and a reported unimpaired capital and surplus of at least $150,000,000, (c) any savings and loan association or savings bank organized under the laws of the United States or any State, having been consented to by the Required Lenders and Agent, and having total assets in excess of $3,000,000,000 and a reported unimpaired capital and surplus of at least $150,000,000, and (d) any finance company or other financial institution (other than any described in the immediately preceding clauses (b) or (c)) organized under the laws of the United States or any State and engaged in making commercial loans in the ordinary course of its business, having been consented to by the Required Lenders and Agent, and having total assets in excess of $3,000,000,000 and a reported unimpaired capital and surplus of at least $150,000,000.

"Dodd-Frank Act" means the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173) signed into law on July 21, 2010, as amended from time to time.

"Dollars" and the sign "$" shall mean the lawful money of the United States of America.

"Dollar Equivalent" means for any amount, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in Canadian Dollars, the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with Canadian Dollars last provided (either by publication or otherwise provided to the Agent) by the applicable Thompson Reuters Corp. ("Reuters") source on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of Dollars with Canadian Dollars, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Agent using any method of determination it deems appropriate in its sole discretion) (the rate of exchange set forth in this clause (b), the "Spot Rate" and (c) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Agent using any method of determination it deems appropriate in its sole discretion.

"Domestic Subsidiary" shall mean any Subsidiary that is not a Foreign Person.

"Dormant Subsidiary" shall mean 1336902 B.C. unlimited liability company, a British Columbia unlimited liability company.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Accounts" shall mean all Accounts of a and payable to a Borrower in Dollars **or Excell Canada in Dollars or Canadian Dollars** other than:

(a) Accounts that do not arise out of sales of goods (that have been shipped) or rendering of services (fully completed) in the ordinary course of such ~~Borrower's~~**Credit Party's** business;

(b) Accounts on terms other than those normal or customary in ~~a Borrower's~~**such Credit Party's** business;

(c) Accounts owing from any Person that is an Affiliate, employee or shareholder of any Company;

(d) Accounts more than (i) ninety (90) days past original invoice date according to the original terms of sale or (ii) sixty (60) days past original due date;

(e) Accounts owing from any Person from which an aggregate Dollar **Equivalent** amount of more than 50% of the Accounts owing are ineligible under clause (d) above;

(f) Accounts with respect to which there (i) is any disputed liability for such Account or (ii) is any claim, counterclaim, credit, allowance, discount, rebate, adjustment, demand or liability, whether by action, suit, counterclaim or otherwise;

(g) Accounts owing from any Person that has taken or is the subject of (or where any ~~Borrower~~**Credit Party** has received a notice or has any knowledge of) any action or proceeding (whether impending or actual) of a type described in Section 8.12 hereof;

(h) Accounts (i) owing from any Person that is also a supplier to or creditor of any ~~Borrower~~**Credit Party** to the extent of the amount owing to such supplier or creditor by any ~~Borrower~~**Credit Party** or (ii) representing any manufacturer's or supplier's credits, discounts, incentive plans or similar arrangements entitling any ~~Borrower~~**Credit Party** to discounts on future purchases therefrom;

(i) Accounts subject to assignment, pledge, claim, mortgage, **hypothecation**, lien or security interest of any type except granted to or in favor of Agent;

(j) Accounts arising out of sales to any Account Debtor located outside the United States or a province **or territory** of Canada that has not adopted the ~~Personal Property Security Act of Canada~~**PPSA** (a "Prohibited Foreign Customer"), unless (x) the sale is on letter of credit, guaranty or acceptance terms or is subject to credit insurance, in each case acceptable to Agent in its Permitted Discretion, or (y) such Accounts are owing from certain Prohibited Foreign Customers acceptable to Agent in its sole and absolute discretion (which shall not in any event include Actia Nordic AB (Serbia) or PT Multikreasindo (Iraq) or any Account Debtor located in a Sanctioned Country) in an aggregate amount not to exceed fifteen percent (15%) of the Maximum Revolving Amount;

(k) Accounts arising out of sales on a bill and hold, guaranteed sale, sale or return, sale on approval or consignment basis or that are currently subject to any claim seeking set off or charge back or exercise of any right of return; provided, however, that bill and hold Accounts shall be considered as eligible hereunder up to an aggregate amount of $1,000,000 outstanding so long as the applicable Account Debtor and ~~Borrower~~**Credit Party** have executed and delivered a bill ~~an~~**and** hold agreement satisfactory to the Agent in its Permitted Discretion;

(l) Accounts owing from an account debtor that **(A)** is an agency, department or instrumentality of the United States or any State thereof unless such ~~Borrower~~**Credit Party** has satisfied the requirements of the Assignment of Claims Act of 1940, and any similar legislation **and Agent is satisfied as to the absence of set offs, counterclaims and other defenses on the part of such account debtor and (B) any Governmental Authority of Canada, or any province, territory, department, agency, public corporation, or instrumentality thereof, unless the *Financial Administration Act* (Canada) or any other legislation of similar purpose and effect restricting the assignment of such Account and any other steps necessary to perfect the Lien of the Agent in such Account, have been complied with** and Agent is satisfied as to the absence of set offs, counterclaims and other defenses on the part of such account debtor; provided, however that the requirement to satisfy the requirements of the Assignment of Claims Act of 1940 ~~and any similar legislation shall not serve to disqualify any Account as ineligible hereunder under~~ (i) until the occurrence and continuance of an Event of Default or (ii) until such Account is more than thirty (30) days past original invoice date according to the original terms of sale;

(m) Accounts that are evidenced by a promissory note or any other negotiable instrument or chattel paper;

(n) Accounts in respect of which this Agreement, after giving effect to the related filings of financing statements that have then been made, if any, does not or has ceased to create a valid and perfected first priority lien in favor of Agent securing the Secured Debt and as to which no other Liens (other than Permitted Liens) exist;

(o) Accounts with respect to which any representation, warranty or covenant contained in this Agreement or any other Loan Document has been breached;

(p) Accounts which relate to any goods that have been rejected or returned, or acceptance of which has been revoked or refused;

(q) Accounts which are not evidenced by an invoice or other writing in form acceptable to Agent in its sole discretion;

(r) Any other Accounts which Agent may from time to time in its Permitted Discretion deem not to be considered Eligible Accounts; and

(s) Any Account owing from an Account Debtor located in any state that requires an entity to file a business activity report or similar document in order to bring suit or otherwise enforce its remedies against an account debtor in the courts or through any judicial process of such state and is not curable retroactively, unless (i) a ~~Borrower~~**Credit Party** has filed all such reports or documents, or (ii) such ~~Borrower~~**Credit Party** is exempt from such filing requirements.

"Eligible Assignee" means (a) a Lender; (b) an affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural Person) approved by (i) Agent, and (ii) unless an Event of Default has occurred and is continuing, Borrowers (such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include Borrowers or any of Borrowers' Affiliates or Subsidiaries.

"Eligible Inventory" shall mean, at any time, all Inventory of Borrowers other than any Inventory:

(a) which is not subject to a first priority perfected Lien in favor of Agent;

(b) which is subject to any Lien other than a Permitted Lien that does not have priority over the Lien in favor of Agent;

(c) which is, in Agent's Permitted Discretion, slow moving, obsolete, unmerchantable, defective, unfit for sale, not salable at prices approximating at least the cost of such Inventory in the ordinary course of business or unacceptable due to age, type, category and/or quantity;

(d) with respect to which any covenant, representation, or warranty contained in this Agreement **or the Canadian Security Agreement** has been breached or is not true in any material respect and which does not conform to all standards imposed by any Governmental Authority in any material respect;

(e) in which any Person other than a Borrower shall (i) have any direct or indirect ownership, interest or title to such Inventory (other than rights of a bailee or transporter in the ordinary course of business) or (ii) be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;

(f) which is not finished goods or raw materials or which constitutes work in process, spare or replacement parts (other than spare or replacement parts sold in the ordinary course of business consisting of finished goods or raw materials), subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(g) which is not located in the U.S. or is in transit with a common carrier from vendors and suppliers;

(h) which is located in any location leased by a Borrower unless (i) the lessor has delivered to Agent a landlord waiver, or (ii) a reserve for rent, charges and other amounts due or to become due with respect to such facility has been established by Agent in its Permitted Discretion;

(i) which is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document unless (i) such warehouseman or bailee has delivered to Agent a bailee waiver and such other documentation as Agent may reasonably require, or (ii) a reserve for rent, charges and other amounts due or to become due with respect to such location has been established by Agent in its Permitted Discretion;

(j) which is being processed offsite at a third party location or outside processor, or is in transit to or from said third party location or outside processor;

(k) which is a discontinued product or component thereof or which is the subject of a consignment by a Borrower as consignor;

(l) which is perishable;

(m) which contains or bears any intellectual property rights licensed to a Borrower unless Agent is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement;

(n) for which reclamation rights have been asserted by the seller; or

(o) which Agent determines in its Permitted Discretion is unacceptable.

"Environmental Laws" shall mean all legally binding provisions of law, statutes, ordinances, rules, regulations, permits, licenses, judgments, writs, injunctions, decrees, orders, awards and standards promulgated by the government of the United States of America or **Canada or** by any state**, province, territory** or municipality thereof or by any court, agency, instrumentality, regulatory authority or commission of any of the foregoing concerning occupational health and safety with respect to hazardous substances and protection of, or regulation of the discharge of substances into, the environment.

"Equipment" shall mean goods other than Inventory, farm products or consumer goods.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated pursuant thereto.

"ERISA Event" shall mean (a) the existence of any condition or event with respect to an ERISA Plan that presents a risk of the imposition of an excise tax or any other liability on a Company or of the imposition of a Lien on the assets of a Company; (b) a Controlled Group member has engaged in a non-exempt "prohibited transaction" (as defined under ERISA Section 406 or Code Section 4975) or a breach of a fiduciary duty under ERISA that could result in liability to a Company; (c) a Controlled Group member has applied for a waiver from the minimum funding requirements of Code Section 412 or ERISA Section 302 or a Controlled Group member is required to provide security under Code Section 401(a)(29) or ERISA Section 307; (d) a Reportable Event has occurred with respect to any Pension Plan as to which notice is required to be provided to the PBGC; (e) a Controlled Group member has withdrawn from a Multiemployer Plan in a "complete withdrawal" or a "partial withdrawal" (as such terms are defined in ERISA Sections 4203 and 4205, respectively); (f) a Multiemployer Plan is in or is likely to be in reorganization under ERISA Section 4241; (g) an ERISA Plan (and any related trust) that is intended to be qualified under Code Sections 401 and 501 fails to be so qualified or any "cash or deferred arrangement" under any such ERISA Plan fails to meet the requirements of Code Section 401(k); (h) the PBGC takes any steps to terminate a Pension Plan or appoint a trustee to administer a Pension Plan, or a Controlled Group member takes steps to terminate a Pension Plan; (i) a Controlled Group member or an ERISA Plan fails to satisfy any requirements of law applicable to an ERISA Plan; (j) a claim, action, suit, audit or investigation is pending or threatened with respect to an ERISA Plan, other than a routine claim for benefits; or (k) a Controlled Group member incurs or is expected to incur any liability for post-retirement benefits under any Welfare Plan, other than as required by ERISA Section 601, et. seq. or Code Section 4980B.

"ERISA Plan" shall mean an "employee benefit plan" (within the meaning of ERISA Section 3(3)) that a Controlled Group member at any time sponsors, maintains, contributes to, has liability with respect to or has an obligation to contribute to such plan.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" shall mean an event or condition that constitutes an event of default as defined in Article VIII hereof.

"Excell Acquisition" shall mean the acquisition by UCHC of all of the Capital Stock of Excell Canada, Excell USA and Excell USA Holdco from the Excell Sellers pursuant to the terms of the Excell Acquisition Documents.

"Excell Acquisition Agreements" shall mean (a) that certain Share Purchase Agreement dated as of December 13, 2021, by and among 1336889 B.C. Unlimited Liability Company, the Excell Sellers, Mark Kroeker, in his capacity as the Sellers' Representative, and Excell Canada, together with all exhibits and schedules thereto, as the same may be amended, modified, supplemented or restated from time to time, and (b) that certain Share Purchase Agreement dated as of December 13, 2021, by and among 1336902 B.C. Unlimited Liability Company, the Excell Sellers, Mark Kroeker, in his capacity as the Sellers' Representative and Excell USA Holdco, together with all exhibits and schedules thereto, as the same may be amended, modified, supplemented or restated from time to time.

"Excell Acquisition Documents" shall mean the Excell Acquisition Agreements and all other agreements, documents and writings heretofore, now or hereafter executed, delivered, or otherwise authenticated in connection with or related to the Excell Acquisition Agreements, in each case as any of the foregoing may be amended, restated or otherwise modified from time to time.

"Excell Canada" shall ~~mean Excell Battery Canada Inc., a British Columbia corporation~~**have the meaning given to such term in the opening paragraph of this Agreement**.

"Excell Sellers" shall mean (a) with respect to clause (a) of the definition of Excell Acquisition Agreements, Mark Kroeker, Randolph Peters, Brian Larsen, M. &. W. Holdings Ltd., Karen Kroeker, Heather Peterson, Michael Kroeker, Nicholas Kroeker, Brentley Peters, Craig Peters, Kurtis Peters, Heather Larsen, Ian Kane, Carol Peters and 0835205 B.C. Ltd., and (b) with respect to clause (b) of the definition of Excell Acquisition Agreements, M. & W. Holdings Ltd., Sanford Capital Ltd., Ian Kane, Arcee Enterprises Inc. and 0835205 B.C. Ltd.

"Excell USA" shall ~~mean Excell Battery Corporation USA, a Texas corporation~~**have the meaning given to such term in the opening paragraph of this Agreement**.

"Excell USA Holdco" shall mean 656700 B.C. Ltd., a British Columbia corporation.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Excluded Accounts" shall mean (a) up to three (3) Deposit Accounts which are not maintained with KeyBank so long as (i) the maximum amount at any time in any such account is not more than $5,000, and (ii) the maximum aggregate amount at any time in all such accounts is not more than $25,000, (b) any other Deposit Accounts used exclusively to fund payroll obligations (including payroll taxes and other employee wage and benefit payments) so long as the Credit Parties shall not maintain funds on deposit therein or credited thereto at any time in excess of 105% of the amounts necessary to fund such payroll obligations and any related payroll processing expenses routinely paid from such accounts on a current basis, (c) Deposit accounts used for segregating 401(k) contributions, and (d) Deposit Accounts in foreign jurisdictions in which KeyBank does not maintain a branch so long as the aggregate maximum amount at any time in all such accounts is not more than $2,000,000.

"Excluded Property" means (a) any rights of a Credit Party in any contract, license, right or other agreement if under the terms thereof, or any applicable law with respect thereto, the valid grant of a security interest therein to Agent is prohibited and such prohibition has not been waived or the consent of the other party to such contract or license has not been obtained or, under applicable law, such prohibition cannot be waived, provided however that the "Excluded Property" shall not be interpreted (i) to apply to any contract, license, right or other agreement to the extent the applicable prohibition is ineffective or unenforceable under the UCC **or the PPSA** (including Sections 9-406 through 9-409 or any other applicable law), or (ii) so as to limit, impair or otherwise affect Agent's or any Lender's unconditional continuing security interest in and Lien upon any rights or interests of such Credit Party in or to moneys due or to become due under any such contract, license, right or other agreement (including any Accounts); (b) any intent-to-use trademark application to the extent that, and solely during the period in which, the grant of a security interest therein to Agent would impair the validity or enforceability of such intent-to-use trademark application or the trademark that is the subject of such application under federal law; ~~and~~ (c) any of the outstanding Capital Stock of a Subsidiary that is a First Tier Foreign Subsidiary in excess of 65% of the Voting Power of all classes of Capital Stock of such Subsidiary entitled to vote and any of the outstanding Capital Stock of a Subsidiary that is a Foreign Person in excess of 65% of the Voting Power of all classes of Capital Stock of such Subsidiary entitled to vote, in each case, to the extent that the inclusion of such property could reasonably be expected to result in material adverse tax consequences to the Credit Parties taken as a whole; **and (d) with respect to any property located in Canada (i) "consumer goods" as such term is defined in the PPSA; and (ii) the last day of the term of any lease or agreement for lease of rental property, provided that upon enforcement of the security interest, each Credit Party shall stand possessed of such last day in trust or assign the same to any person acquiring such term;** provided that the proceeds of any of the foregoing property (including, without limitations, proceeds from the sale or other disposition thereof) shall not constitute Excluded Property.

"Excluded Swap Obligation" means, with respect to any Credit Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Credit Party of, or the grant by such Credit Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Credit Party's failure for any reason not to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time the guaranty of such Credit Party becomes effective with respect to such related Swap Obligation.

"Excluded Taxes" shall mean with respect to Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of Borrowers hereunder (i) any taxes imposed on or measured in whole or in part by its revenue or net income and franchise or other taxes imposed on it in lieu thereof by the United States or by any jurisdiction in which such Lender or Agent (a) is organized or incorporated, (b) maintains its principal office, (c) has a lending office or as a result of any other present or former connection between such recipient and such jurisdiction (other than any connection arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced, any Loan Document), (ii) any branch profit taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which any Borrower is located, (iii) any **United States federal** withholding tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party hereto (or designates a new lending office) except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Borrowers with respect to such withholding tax pursuant to Section 3.2, (iv) any taxes imposed under FATCA and (v) in each of clause (i) through (iv), including any interest, fines, additions to Tax or penalties applicable thereto.

"Executive Order No. 13224" shall mean Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"FATCA" means Section 1471 through 1474 of the Code (as of the date hereof) and any regulations or official interpretations thereof (including any Revenue Ruling, Revenue Procedure, Notice or similar guidance issued by the IRS thereunder) as a precondition to relief or exemption from Taxes under such provisions.

"Federal Funds ~~Effective~~ Rate" shall mean, for any day, the rate per annum ~~(rounded upward to the nearest one one-hundredth of one percent (1/100 of 1%)) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the~~**equal to the** weighted average of the rates on overnight ~~f~~**F**ederal funds transactions **with members of the Federal Reserve System** arranged by federal funds brokers on ~~the previous trading day, as computed and announced by such~~**such day, as published by the** Federal Reserve Bank ~~(or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate" as of the Closing Date.~~**on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Agent on such day on such transactions as determined by the Agent; provided that the Federal Funds Rate shall not be less than 0.00% per annum.**

"Financial Officer" shall mean any of the following officers: chief executive officer, president, chief financial officer, controller or treasurer.

"First Amendment Closing Date" shall mean May 1, 2019.

"First Tier Foreign Subsidiary" means any Subsidiary that is a Foreign Person owned directly by a Borrower or a Domestic Subsidiary.

"Fiscal Quarter" shall mean each March 31, June 30, September 30 and December 31 occurring in each Fiscal Year of any Credit Party.

"Fiscal Year" shall mean the fiscal year of each Credit Party ending on December 31 in each calendar year. Changes of the fiscal year of any Credit Party subsequent to the date of this Agreement will not change the definition of "Fiscal Year" for purposes of this Agreement unless such change of fiscal year complies with Section 5.26 hereof.

"Floor" shall mean a rate of interest equal to 0%.

"Foreign Person" shall mean a Person organized under the laws of any jurisdiction other than the United States or any State thereof.

"Formation Documents" shall mean, with respect to any Person (other than a natural Person), such Person's **Notice of** Articles**, Articles** (or Certificate) of Incorporation, Articles of Organization, **Articles of Amalgamation,** Certificate of Formation or equivalent formation documents which were filed with the Secretary of State **or other applicable Governmental Authority** in the jurisdiction in which such Person was incorporated, organized or formed, together with any amendments to any of the foregoing.

"Fund" shall mean any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" shall mean generally accepted accounting principles as then in effect, which shall include the official interpretations thereof by the Financial Accounting Standards Board, applied on a basis consistent with the past accounting practices and procedures of Ultralife.

"Governance Documents" shall mean, with respect to any Person (other than a natural Person), such Person's Regulations (or Bylaws), Operating Agreement (or Limited Liability Company Agreement), Partnership Agreement or equivalent governing documents, together with any amendments to any of the foregoing.

"Governmental Authority" means any nation or government, any state, province ~~or~~, territory**, municipality** or other political subdivision thereof, any governmental agency, department, authority, instrumentality, regulatory body, court, central bank or other governmental entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization exercising such functions.

"Guarantor" shall mean a Person that pledges its credit or property in any manner for the payment or other performance of the indebtedness, contract or other obligation of another and includes (without limitation) any guarantor (whether of payment or of collection), surety, comaker, endorser or Person that agrees conditionally or otherwise to make any purchase, loan or investment in order thereby to enable another to prevent or correct a default of any kind.

"Guarantor of Payment" shall mean any Person which shall deliver a Guaranty of Payment to Agent subsequent to the Closing Date.

"Guarantor Security Agreement" shall mean any security agreement, including this Agreement **and the Canadian Security Agreement**, executed and delivered on or after the Closing Date in connection herewith by the Guarantors of Payment, as the same may from time to time be amended, restated or otherwise modified.

"Guaranty of Payment" shall mean the terms and provisions of Article XII hereof and any other guaranty **(including the Canadian Guarantee)** of the obligations of Borrowers executed and delivered on or after the Closing Date in connection herewith by the Guarantors of Payment, as the same may from time to time be amended, restated or otherwise modified.

"Hedge Agreement" shall mean (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Hedge Bank" shall mean any Person that (a) is a party to a Hedge Agreement in its capacity as such and (b) at the time it enters into such Hedge Agreement is also a Lender or an Affiliate of a Lender (even if such Person thereafter ceases to be a Lender or such Person's Affiliate ceases to be a Lender).

"Highest Lawful Rate" means at the particular time in question the maximum rate of interest which, under applicable law, any applicable Lender is then permitted to charge on the Notes or Letters of Credit, as applicable. If the maximum rate of interest which, under applicable law, any applicable Lender is permitted to charge on the Notes or Letters of Credit, as applicable, shall change after the date hereof, the Highest Lawful Rate shall be automatically increased or decreased, as the case may be, from time to time as of the effective time of each change in the Highest Lawful Rate without notice to Borrowers.

"Indebtedness" shall mean, for any Person, (a) all obligations to repay borrowed money, direct or indirect, incurred, assumed, or guaranteed, (b) all Capital Lease Obligations of such Person, (c) all obligations under conditional sales or other title retention agreements, (d) all obligations (contingent or otherwise) under any letter of credit or banker's acceptance, (e) net obligations under any Hedge Agreement, (f) all obligations of such Person under synthetic leases, (g) all obligations of such Person with respect to asset securitization financing programs to the extent that there is recourse against such Person or such Person is liable (contingent or otherwise) under any such program, (h) all obligations to advance funds to, or to purchase assets, property or services from, any other Person in order to maintain the financial condition of such Person, (i) all trade payables (other than trade payables payable in the ordinary course of business by such Person which are due within 120 days of the incurrence thereof and which are not more than 60 days past due), (j) any earnout obligation or other deferred purchase price obligation, and (k) any other transaction (including forward sale or purchase agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements.

"Insurance Proceeds" shall have the meaning given to such term in Section 2.7(e) hereof.

"Intellectual Property" shall mean any Copyright, any Copyright License, any Patent, any Patent License, any Trademark, any Trademark License, any customer list, any trade secret, any confidential or proprietary information, any invention (whether or not patented or patentable), any technical information, procedure, design, knowledge, know how, skill, expertise, experience, process, model, drawing, or record, and any work (whether or not copyrighted or copyrightable).

"Intellectual Property Security Agreement" shall mean an agreement relating to the Patents, Trademarks, Copyrights and licenses of any Borrower or any Guarantor of Payment executed and delivered to Agent, for the benefit of the Secured Creditors, by such Credit Party on or after the Closing Date in connection with this Agreement, as the same may be from time to time amended, restated or otherwise modified.

"Intercompany Promissory Note" shall mean the Master Intercompany Subordinated Note, dated the Closing Date, made by each Credit Party, as obligors, to each other Credit Party, as payees, as the same may be amended, restated or otherwise modified from time to time.

"Letter of Credit" shall mean any sight commercial documentary letter of credit or any standby letter of credit that shall be issued by Agent for the account of a Borrower or any Credit Party, including amendments thereto, if any, and shall have an expiration date no later than the earlier of (a) one (1) year after the date of its issuance, or (b) 30 Business Days prior to the last day of the Commitment Period.

"Letter of Credit Exposure" shall mean the sum of (a) the aggregate undrawn face amount of all issued and outstanding Letters of Credit, and (b) the aggregate of the draws made on Letters of Credit that have not been reimbursed by Borrowers or converted to a Revolving Loan pursuant to Section 2.1A hereof.

"Letter of Credit Right" shall mean a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance, provided, that the term "Letter of Credit Right" does not include the right of a beneficiary to demand payment or performance under a letter of credit.

"Letter of Credit Sublimit" shall mean $1,500,000.

"Liabilities" shall have the meaning given to such term in Section 12.1 hereof.

"Lien" shall mean any mortgage, security interest, lien, charge, **hypothecation**, encumbrance on, pledge or deposit of, or conditional sale or other title retention agreement with respect to any property (real or personal) or asset.

"Loan" or "Loans" shall mean the credit extended to Borrowers by the Lenders in accordance with Section 2.1 hereof.

"Loan Documents" shall mean this Agreement, each of the Notes, each of the Guaranties of Payment, each of the Guarantor Security Agreements, each Intellectual Property Security Agreement, each Pledge Agreement, all documentation relating to each Letter of Credit, each UCC **or PPSA** ~~F~~financing ~~S~~statement, any Hedge Agreement entered into pursuant hereto and any other documents relating to any of the foregoing, as any of the foregoing may from time to time be amended, restated or otherwise modified or replaced.

"Management Fees" shall mean any management fee or similar fee paid, and the reimbursement of ordinary and reasonable out-of-pocket expenses, by any Company to any Person.

"Material Adverse Effect" shall mean (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties or financial condition of Borrowers or the Credit Parties taken as a whole; (b) a material impairment of the ability of any Credit Party or any other Person (other than Agent or Lenders) to perform in any material respect its obligations under any Loan Document; or (c) a material adverse effect upon (i) the legality, validity, binding effect or enforceability of any Loan Document, or (ii) the perfection or priority of any Lien granted to the Lenders or to the Agent for the benefit of the Lenders hereunder or under any of the Loan Documents, except, in the case of clause (ii), to the extent arising solely as a result of any negligent act or negligent failure to act by Agent or the Lenders.

"Material Contract" shall mean any contract, agreement, instrument, permit, lease or license of Borrowers, which is required by applicable regulations of the SEC to be filed with the reports of Borrowers under the Exchange Act.

"Maximum Amount" shall mean, for each Lender, the amount set forth opposite such Lender's name under the column headed "Maximum Amount" as listed on Schedule 1 hereto.

"Maximum Revolving Amount" shall mean $30,000,000 as such amount may be increased pursuant to Section 2.5(b) hereof.

"Moody's" shall mean Moody's Investors Service, Inc., or any successor to such company.

"Multiemployer Plan" shall mean a Pension Plan that is subject to the requirements of Subtitle E of Title IV of ERISA.

"Net Cash Proceeds" shall mean (a) in the case of a sale, lease, transfer or other disposition of assets, the aggregate amount received in cash (including any cash received by way of deferred payment, but only when and as such cash is received) from such sale or disposition, net of (i) the principal, premium, penalty and interest amount of Indebtedness secured by such assets (other than the Secured Debt), or that is required to be repaid in connection with the sale or disposition thereof (other than pursuant to Section 2.7(d)), (ii) the reasonable fees, commissions and other out-ofpocket expenses incurred by the Companies in connection with such sale, lease, transfer or disposition, other than any such amounts payable to an Affiliate of a Company, including attorney, accountant, brokerage and/or consultant fees, and (iii) taxes incurred or payable in connection with such sale, lease transfer or disposition; and (b) in the case of an equity or debt offering, the aggregate amount received in cash (including any cash received by way of deferred payment, but only when and as such cash is received) from such offering, net of (i) the fees, commission and other out-of-pocket expenses incurred by any Company in connection with such offering, other than any such amounts payable to an Affiliate of a Company, and (ii) taxes incurred or payable in connection with such offering.

"Note" or "Notes" shall mean any Revolving Credit Note, any Term Note, any Term Note B or any other note delivered pursuant to this Agreement, together with any replacement or substitution thereof, any addition or allonge thereto and any amendment, restatement or other modification thereto from time to time.

"Notice of Loan" shall mean a Notice of Loan in the form of the attached Exhibit B.

"Obligor" shall mean a Person whose credit or any of whose property is pledged to the payment of any portion of the Secured Debt and includes, without limitation, any Borrower and any Guarantor of Payment.

"Organizational Documents" shall mean, with respect to any Person (other than an individual), such Person's Formation Documents and Governance Documents.

"Other Debt" shall mean (a) every liability, whether owing by only a Credit Party or by a Credit Party with one or more others in a several, joint or joint and several capacity, whether owing absolutely or contingently, whether created by note, overdraft, guaranty of payment or other contract or by quasi-contract, tort, statute or other operation of law, whether incurred directly to Agent or any Lender or any their respective affiliates or acquired by Agent or any Lender or any their respective affiliates by purchase, pledge or otherwise and whether participated to or from Agent or any Lender or any their respective affiliates in whole or in part, (b) all obligations and liabilities of Borrowers now existing or hereafter incurred under, arising out of or in connection with any Hedge Agreement entered into by any Credit Party with Agent or any Lender or any their respective affiliates, and (c) the Banking Services Obligations.

"Other Taxes" means any and all present or future stamp or documentary taxes or any other excise, ad valorem or property taxes, goods and services taxes, harmonized sales taxes and other sales taxes, use taxes, value added taxes, charges or similar taxes or levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

~~"Overnight LIBOR Interest Period" means, with respect to an Overnight LIBOR Loan, the period commencing on the date such Overnight LIBOR Loan is made and ending on the next day, with successive Overnight LIBOR Interest Periods automatically commencing daily thereafter. "Overnight LIBOR Loan" means a Loan described in Section 2.1 hereof, that shall be denominated in Dollars and on which the Borrowers shall pay interest at a rate based on the Overnight LIBOR Rate.~~

~~"Overnight LIBOR Rate" means, for any Overnight LIBOR Interest Period with respect to an Overnight LIBOR Loan, the per annum rate of interest (rounded upwards, if necessary, to the nearest 1/16th of 1%) at which, determined by the Agent in accordance with its usual procedures (which determination shall be conclusive absent manifest error) as of approximately 11:00 A.M. (London time) two Business Days prior to the beginning of such Overnight LIBOR Interest Period, dollar deposits in immediately available funds in an amount comparable to such Overnight LIBOR Loan and with a maturity of one day are offered to the prime banks by leading banks in the London interbank market); provided, however, that in no event shall the Overnight LIBOR Rate be less than zero percent (0%).~~

"Participant" has the meaning assigned to such term in clause (d) of Section 11.10.

"Participant Register" shall have the meaning assigned to such term in clause (h) of Section 11.10.

"Patent" shall mean any letters patent **or industrial design** of the United States **or Canada** or any other country, any registration or recording of any letters patent **or industrial design**, any application for letters patent **or industrial design** in the United States or **Canada or** any other country, including, without limitation, any such registration, recording, or application in the United States Patent and Trademark Office or **the Canadian Intellectual Property Office or** in any similar office or agency of the United States, **Canada,** any State **or province or territory** thereof, or any other country or political subdivision of such other country, and all reissues, continuations, continuations in part, or extensions of any of the foregoing.

"Patent License" shall mean any agreement granting any right to practice any invention on which any Patent is in existence, as the same may from time to time be amended, restated or otherwise modified.

"PBGC" shall mean the Pension Benefit Guaranty Corporation, or its successor.

"Pension Plan" shall mean an ERISA Plan that is a "pension plan" (within the meaning of ERISA Section 3(2)).

"Permitted Acquisitions" shall mean any Acquisition so long as: (a) at the time of and after giving effect to such Acquisition, Borrower has Revolving Loan Availability of not less than $1,000,000; (b) the total costs and liabilities (including without limitation, all assumed liabilities, all earn-out payments, deferred payments and the value of any other stock or assets transferred, assigned or encumbered with respect to such Acquisitions) of any Acquisitions during any twelve month period does not exceed $10,000,000; (c) with respect to the Acquisition of Capital Stock, the target shall (i) have a positive EBITDA (as calculated on a trailing twelve (12) month basis), calculated in accordance with GAAP immediately prior to such Acquisition, (ii) be added as a Borrower or a Credit Party to this Agreement and be jointly and severally liable for all Secured Debt, and (iii) grant to Lender a first priority lien in all assets of any such target; (d) the target and/or property is located in the United States **or Canada**, is used or useful and is in the same or a similar line of business as Ultralife was engaged in on the Closing Date (or any reasonable extensions or expansions thereof); (e) Lender shall have received a first-priority security interest in all acquired assets or Capital Stock, subject to documentation satisfactory to Agent in its Permitted Discretion; (f) the board of directors (or other comparable governing body) of the target shall have duly approved the transaction; (g) the Borrowers shall have provided Agent with at least ten (10) Business Days prior written notice of such Acquisition together with (i) a pro forma balance sheet and pro forma financial statements (in each case on a consolidated and consolidating basis) and a Compliance Certificate demonstrating that, upon giving effect to such Acquisition on a pro forma consolidated basis, the Borrowers would be in compliance with the financial covenants set forth in Section 5.7 as of the most recent fiscal quarter end; provided, that for purposes of this definition the required Fixed Charge Coverage Ratio shall be increased to 1.25 to 1.00 from the level otherwise shown in Section 5.7, (ii) an executed copy of the term sheet and/or commitment letter setting forth in reasonable detail the terms and conditions of such Acquisition, (iii) financial statements of the acquired entity for the two most recent fiscal years then ended and the most recently available interim financial statements, in each case in form and substance acceptable to Agent in its Permitted Discretion, and (iv) pro forma projections of consolidated and consolidating financial statements for the three (3) years immediately following the expected date of the consummation of such Acquisition, which shall be set forth on a month to month basis for the first such year, in each case, presented in accordance with GAAP, taking into consideration such acquisition and all Indebtedness incurred or assumed in connection therewith; (h) if such Acquisition includes general partnership interests or any other Capital Stock that does not have a corporate (or similar) limitation on liability of the owners thereof, then such Acquisition shall be effected by having such Capital Stock acquired by a corporate holding company directly or indirectly wholly-owned by Ultralife and newly formed for the sole purpose of effecting such Acquisition; (i) no Default or Event of Default shall have occurred or will occur after giving pro forma effect to such Acquisition; (j) in the case such Acquisition constitutes a merger, consolidation**, amalgamation** or other combination, Ultralife or a Credit Party is the surviving entity of such merger, consolidation**, amalgamation** or other combination; (k) Borrowers' pro forma Fixed Charge Coverage Ratio, after giving effect to such Acquisition, and calculated on a trailing twelve month basis, is greater than or equal to 1.25 to 1.00; and (l) on or prior to the closing date of such Acquisition, Borrower shall have delivered to Lender (x) revised schedules to this Agreement and the other Loan Documents and (y) if real estate is being acquired by any Person through the Acquisition, Borrowers shall have made certain other deliveries required by Agent in its Permitted Discretion, including, without limitation, appraisals, environmental reports, flood determinations, surveys, title policies and mortgages.

"Permitted Discretion" shall mean a determination made in good faith and in the exercise of reasonable (from the perspective of a secured lender) business judgment.

"Permitted Liens" shall mean:

(a) any Lien granted to Agent or the Lenders pursuant to this Agreement or the other Loan Documents or Related Writings;

(b) Liens for taxes, assessments, fees and other governmental charges that are not yet due and payable or the payment of which is being Properly Contested;

(c) statutory liens of landlords and liens of carriers, warehousemen, mechanics, repairmen and materialmen incurred in the ordinary course of business for sums not yet due or, if due, the payment of which is being Properly Contested;

(d) Liens (other than any lien created by section 406B of ERISA and securing an obligation of any employer or employers which is delinquent) incurred or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, payment and performance bonds, return of money bonds and other similar obligations (not incurred in connection with the borrowing of money or the obtaining of advances or credits to finance the purchase price of property);

(e) any attachment or judgment Lien which does not result in a violation of Section 8.8 hereof;

(f) easements, rights of way, restrictions and other Liens incurred, and leases and subleases (including oil and gas leases and subleases), timber rights and other similar rights granted to others in the ordinary course of business (but not incurred or granted in connection with the borrowing of money or the obtaining of advances or credits to finance the purchase price of property) and not, individually or in the aggregate, materially interfering with the use (actual or proposed) made or to be made of the properties and assets of any Credit Party, or materially detracting from the value thereof;

(g) Liens securing Indebtedness permitted pursuant to Section 5.8(b) and UCC **or PPSA** financing statements filed in connection with same; provided that (i) such Liens do not at any time encumber any property other than the property being financed by such Indebtedness, and (ii) the Indebtedness secured thereby does not exceed the purchase price or lease amount of such property being purchased or leased, as the case may be;

(h) the Liens set forth on Schedule 5.9 attached hereto and any replacement or extension thereof so long as any replacements or extensions do not extend to any other property or asset of any Company;

(i) the filing of precautionary UCC **or PPSA** financing statements relating solely to leases of personal property entered into in the ordinary course of business and the filing of UCC **or PPSA** financing statements by bailees and consignees in the ordinary course of business;

(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Credit Party with any financial institution, in each case in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing solely the customary amounts owing to such bank with respect to cash management and operating account arrangements; provided, that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness; and

(k) any interest or title of a lessor, licensor or sublessor under any lease, license or sublease entered into by any Credit Party in the ordinary course of business and covering only the assets so leased, licensed or subleased.

"Person" shall mean any individual, sole proprietorship, partnership, joint venture, unincorporated organization, corporation, limited liability company, **unlimited liability company,** institution, trust, estate, government or other agency or political subdivision thereof or any other entity.

"Pledge Agreement" shall mean each of the agreements executed and delivered to Agent, for the benefit of the Secured Creditors, on or after the date hereof in connection with the Pledged Securities, as the same may be from time to time amended, restated or otherwise modified.

"Pledged Securities" shall mean the Capital Stock of Borrowers and the Capital Stock of any direct or indirect Domestic Subsidiary (and up to 65% of the Capital Stock of any Subsidiary which is a First Tier Foreign Subsidiary) of any Borrower, whether now owned or existing or hereafter acquired or created, and all Proceeds thereof.

"Pledged ULC Shares" shall mean the Pledged Securities which are shares in the capital stock of a ULC.

"PPSA" means the *Personal Property Security Act* (British Columbia), including the regulations thereto; provided that, if perfection or the effect of perfection or non-perfection or the priority of any Lien created hereunder on the Collateral is governed by the personal property security legislation or other applicable legislation with respect to personal property security, in effect in a jurisdiction other than British Columbia, "PPSA" means the Personal Property Security Act or such other applicable legislation (including the Civil Code of Quebec) in effect from time to time in such other jurisdiction for the purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"Prime Rate" shall mean the interest rate established from time to time by Agent as Agent's prime rate, whether or not such rate is publicly announced; the Prime Rate may not be the lowest interest rate charged by Agent for commercial or other extensions of credit. Each change in the Prime Rate shall be effective immediately from and after such change.

"Products" shall mean property directly or indirectly resulting from any manufacturing, processing, assembling, or commingling of any goods.

"Properly Contested" means, with respect to any obligation of an applicable Person, (a) the obligation is subject to a bona fide dispute regarding amount or such Person's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not reasonably be expected to result in a Material Adverse Effect, nor reasonably expected to result in forfeiture or sale of any assets of the Person; (e) no Lien is imposed on assets of the Person, unless bonded and stayed to the satisfaction of Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

"Pro Rata Basis" shall mean distribution to the Lenders by Agent in accordance with each Lender's Applicable Commitment Percentage of the Applicable Debt.

"Pro Rata Share" shall mean, with respect to the Applicable Debt, such Lender's share of such Applicable Debt in accordance with such Lender's Applicable Commitment Percentage with respect to such Applicable Debt.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Credit Party that has total assets exceeding $10,000,000 at the time such Swap Obligation is incurred or such other person that constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder.

"Ratable Account" shall mean each Lender's share of the Applicable Debt in accordance with such Lender's Applicable Commitment Percentage with respect to such Applicable Debt.

"Ratable Share" shall mean each Lender's share of the Applicable Debt in accordance with such Lender's Applicable Commitment Percentage with respect to such Applicable Debt.

"Ratably" shall mean in accordance with each Lender's Ratable Share.

"Receivable" shall mean any claim for or right to payment, however arising, whether classified as an Account, a Deposit Account, Investment Property, a Letter of Credit Right, a Payment Intangible, a Supporting Obligation, or otherwise, whether contingent or fixed, whether or not evidenced by any writing or other record, and, if so evidenced, whether evidenced by one or more certificated securities, any Chattel Paper, one or more Instruments, any letter of credit, or otherwise.

"Related Expenses" shall mean any and all costs, liabilities, and expenses (including, without limitation, losses, damages, penalties, claims, actions, reasonable attorneys' fees, legal expenses, judgments, suits, and disbursements) (a) incurred by, imposed upon, or asserted against, Agent in any attempt by Agent to (i) obtain, preserve, perfect, or enforce any security interest evidenced by this Agreement or any Loan Document; (ii) obtain payment, performance, and observance of any and all of the Secured Debt; or (iii) maintain, insure, audit, collect, preserve, repossess, and dispose of any of the Collateral securing the Secured Debt or any thereof, including, without limitation, costs and expenses for appraisals, assessments, field examinations, site visits and audits of the Credit Parties or any such Collateral, in each case permitted pursuant to, and subject to the limitations of, this Agreement and the other Loan Documents; or (b) incidental or related to (a) above, including, without limitation, interest thereupon from the date incurred, imposed or asserted until paid at the Default Rate.

"Related Parties" shall mean, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Related Writing" shall mean each Loan Document and any other assignment, mortgage, **deed of hypothec,** security agreement, guaranty agreement, pledge agreement, subordination agreement, financial statement, audit report or other writing furnished by any Company or any Obligor, or any of their respective officers, to Agent or the Secured Creditors pursuant to or otherwise in connection with this Agreement.

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

"Reportable Event" shall mean a reportable event as that term is defined in Title IV of ERISA, with respect to which notice is required to be provided to the PBGC.

"Required Lenders" shall mean the holders of at least 51% of the Total Commitment Amount, or, if there is any borrowing hereunder, the holders of at least 51% of the aggregate of (a) the Revolving Credit Commitments, (b) the amount outstanding under the Term Notes, and (c) the amount outstanding under the Term Notes B; provided, however, that the unused Revolving Credit Commitment of, and the portion of the total outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided further, however, that at any time there are fewer than three (3) Lenders hereunder, "Required Lenders" shall mean both such Lenders.

"Requirement of Law" means, as to any Person, any law, treaty, rule or regulation or determination or policy statement or interpretation of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property.

"Restricted Payment" shall mean with respect to any Company (a) a Capital Distribution; (b) any dividend or other distribution of assets, properties, cash, rights, obligations or securities, direct or indirect, on account of any Capital Stock of such Company, or on account of the Subordinated Indebtedness; or (c) any amount paid in redemption, retirement, repurchase, direct or indirect, of (x) any shares of any Capital Stock or the Subordinated Indebtedness; or (y) any warrants, options or other rights to acquire any Capital Stock or other equity interests of such Company.

"Revolving Borrowing Limit" shall mean an amount equal to the lesser of (a) Maximum Revolving Amount or (b) the Borrowing Base.

"Revolving Credit Commitment" shall mean the obligation hereunder of the Revolving Loan Lenders, during the Commitment Period, to make Revolving Loans and to issue Letters of Credit, up to an aggregate principal amount outstanding at any time equal to the Revolving Borrowing Limit; with each Revolving Loan Lender's obligation to participate therein being equal to (as subject to increase pursuant to Section 2.5(b) hereof) the lesser of (i) the amount set forth opposite such Revolving Loan Lender's name under the column headed "Revolving Credit Commitment" as set forth on Schedule 1 hereto or (ii) such Lender's Applicable Commitment Percentage of the Borrowing Base.

"Revolving Credit Exposure" shall mean, at any time, the sum of (a) the aggregate principal amount of all Revolving Loans outstanding, and (b) the Letter of Credit Exposure.

"Revolving Credit Note" shall mean any Revolving Credit Note executed and delivered pursuant to Section 2.1A hereof, together with any replacement or substitution thereof, any addition or allonge thereto and any amendment, restatement or other modification thereto from time to time.

"Revolving Loan" shall mean a Loan granted to Borrowers by the Lenders in accordance with Section 2.1A hereof.

"Revolving Loan Availability" shall mean an amount equal to (a) the Revolving Borrowing Limit, minus (b) the Revolving Credit Exposure.

"Revolving Loan Lenders" shall mean, collectively, each Lender which has committed to make Revolving Loans.

"Sanctioned Country" shall mean a country subject to a sanctions program maintained by any Compliance Authority **or subject to Canadian Economic Sanctions and Export Control Laws**.

"SEC" shall mean the Securities and Exchange Commission or any successor thereto.

"Second Amendment Closing Date" shall mean December 13, 2021.

"Secured Creditors" shall mean, collectively, the Agent, the Lenders, each Hedge Bank that is party to a Hedge Agreement, each provider of Banking Services, each co-agent or sub-agent appointed by the Agent, any other holder of the Secured Debt, and the respective successors and assigns of each of the foregoing.

"Secured Debt" shall mean, collectively, (a) the Debt; and (b) the Other Debt.

"Securities Account" shall mean an account to which a financial asset is or may be credited in accordance with an agreement under which the Person maintaining the account undertakes to treat the Person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

"Senior Funded Debt" shall mean all Total Funded Debt of a Person other than Subordinated Indebtedness.

"Settlement" means as of any time, the making of, or the receiving of, payments, in immediately available funds, by a Revolving Loan Lender, to the extent necessary to cause such Revolving Loan Lender's actual share of the outstanding amount of Revolving Loans (after giving effect to any Revolving Loan to be made on such day) to be equal to such Revolving Loan Lender's Applicable Commitment Percentage of the Revolving Loans then outstanding (after giving effect to any Revolving Loan to be made on such day), in any case where, prior to such event or action, such Revolving Loan Lender's actual share of the Revolving Loans is not so equal.

"Settlement Amount" shall have the meaning given to such term in Section 2.3(c) hereof.

"Settlement Date" shall have the meaning given to such term in Section 2.3(c) hereof.

"SOFR" or "SOFR Rate" shall mean, with respect to any SOFR Business Day, a rate per annum equal to the secured overnight financing rate for such SOFR Business Day.

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

"SOFR Administrator's Website" shall mean the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SOFR Business Day" shall mean any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"SOFR Index Adjustment" shall mean for any calculation with respect to a SOFR Loan, a percentage per annum equal to 0.10%.

"SOFR Loan" shall mean a Loan that bears interest at a rate based on Adjusted Daily Simple SOFR.

"SOFR Unavailability Period" shall mean the period (if any) (a) beginning at the time that either (i) the SOFR Administrator permanently or indefinitely has ceased to provide SOFR or (ii) the SOFR Administrator has announced that SOFR is no longer representative and (b) ending at the time that either (i) the SOFR Administrator has resumed providing SOFR or (ii) the SOFR Administrator has announced that SOFR is representative, as applicable.

"Software" shall mean any computer program and any supporting information provided in connection with a transaction relating to the program, provided, that the term "Software" does not include a computer program embedded in goods (other than goods that consist solely of the medium with which the program is embedded) or any information provided in connection with a transaction relating to the program so embedded if (a) the program is associated with the goods in such a manner that it customarily is considered a part of the goods or (b) by becoming the owner of the goods, a Person acquires the right to use the program in connection with the goods.

"Southwest" ~~shall mean Southwest Electronic Energy Corporation, a Texas corporation~~ (f/k/a SWE Holdco, Inc.) **shall have the meaning given to such term in the opening paragraph of this Agreement**.

"Southwest Acquisition" shall mean the acquisition by Ultralife of all of the Capital Stock of Southwest from the Southwest Seller pursuant to the terms of the Southwest Acquisition Documents.

"Southwest Acquisition Agreement" shall mean that certain Stock Purchase Agreement dated as of May 1, 2019, by and among Ultralife, Southwest, Southwest Seller and Claude Leonard Benckenstein, an individual, together with all exhibits and schedules thereto, as the same may be amended, modified, supplemented or restated from time to time.

"Southwest Acquisition Documents" shall mean the Southwest Acquisition Agreement and all other agreements, documents and writings heretofore, now or hereafter executed, delivered, or otherwise authenticated in connection with or related to the Southwest Acquisition Agreement, in each case as any of the foregoing may be amended, restated or otherwise modified from time to time.

"Southwest Seller" shall mean Southwest Electronic Energy Medical Research Institute, a Texas non-profit corporation.

"Spot Rate" has the meaning assigned to such term in the definition of Dollar Equivalent.

"Standard & Poor's" shall mean Standard & Poor's Rating Group, a division of McGrawHill, Inc., or any successor to such company.

"State" shall mean a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Subordinated", as applied to Indebtedness, shall mean that the Indebtedness has been subordinated (by written terms or written agreement being, in either case, in form and substance reasonably satisfactory to Agent) in favor of the prior payment in full of the Secured Debt.

"Subsidiary" of a Company or any of its Subsidiaries shall mean a Person (other than an individual) (a) of which more than 50% of the Capital Stock or Voting Power is owned, directly or indirectly, by a Company or by one or more other Subsidiaries of a Company or by a Company and one or more Subsidiaries of a Company, or (b) which is otherwise controlled by a Company or by one or more other Subsidiaries of a Company or by a Company and one or more Subsidiaries of a Company.

"Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Taxes" means any and all present or future taxes of any kind, including but not limited to, levies, imposts, duties, surtaxes, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority (together with any interest, penalties, fines, additions to taxes or similar liabilities with respect thereto) other than Excluded Taxes.

"Term Loan" shall mean the Loan granted to Borrowers by the Term Loan Lenders in accordance with Section 2.1B hereof.

"Term Loan Commitment" shall mean the obligation hereunder of the Term Loan Lenders to make a Term Loan in the original principal amount of $8,000,000, with each Term Loan Lender's obligation to participate therein being in the amount set forth opposite such Term Loan Lender's name under the column headed "Term Loan Commitment" as set forth on Schedule 1 hereto (as such amounts may be reduced by the amounts of any payments applied thereto).

"Term Loan Lenders" shall mean, collectively, each Lender which has a Term Loan Commitment.

"Term Loan B" shall mean the Loan granted to Borrowers by the Term Loan B Lenders in accordance with Section 2.1C hereof.

"Term Loan B Commitment" shall mean the obligation hereunder of the Term Loan B Lenders to make a Term Loan B in the original principal amount of $10,000,000, with each Term Loan B Lender's obligation to participate therein being in the amount set forth opposite such Term Loan B Lender's name under the column headed "Term Loan B Commitment" as set forth on Schedule 1 hereto (as such amounts may be reduced by the amounts of any payments applied thereto).

"Term Loan B Lenders" shall mean, collectively, each Lender which has a Term Loan B Commitment.

"Term Note" shall mean the Term Notes executed and delivered pursuant to Section 2.1B hereof, together with any replacement or substitution thereof, any addition or allonge thereto and any amendment, restatement or other modification thereto from time to time.

"Term Note B" shall mean the Term Notes B executed and delivered pursuant to Section 2.1C hereof, together with any replacement or substitution thereof, any addition or allonge thereto and any amendment, restatement or other modification thereto from time to time.

"Third Amendment Closing Date" shall mean November [___], 2022.

"Total Commitment Amount" shall mean the Maximum Revolving Amount, plus the aggregate Term Loan Commitment, plus the aggregate Term Loan B Commitment of the Lenders.

"Total Funded Debt" shall mean Indebtedness of a Person of the type described in clauses (a), (b), (f), (g), (j) and (k) of the definition of "Indebtedness".

"Trademark" shall mean any trademark, trade name, corporate name, business name, Internet domain name, trade style, service mark, logo, source identifier, business identifier, design, or intangible identifier of the source of goods of like nature, any registration or recording of the foregoing or any thereof, and any application in connection therewith, including, without limitation, any such registration, recording, or application in the United States Patent and Trademark Office or **the Canadian Intellectual Property Office or** in any similar office or agency of the United States **or Canada**, any State**, province or territory** thereof, or any other country or political subdivision of such other country, and all reissues, extensions, or renewals of any of the foregoing, but not including any "intent to use" applications for which a statement of use has not been filed and accepted with the U.S. Patent and Trademark Office.

"Trademark License" shall mean any agreement granting any right to use any Trademark or Trademark registration, as the same may from time to time be amended, restated or otherwise modified.

"UCC" shall mean the Uniform Commercial Code as in effect in the State of New York; provided, however, that if by reason of any mandatory provisions of law, any or all of the attachment, perfection, or priority of Agent's security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, then, and in each such case, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the attachment, perfection, or priority of Agent's security interest in such Collateral. Except as otherwise specified in this Agreement or any other Loan Document, the UCC "as in effect" in the State of New York or any other jurisdiction shall mean the UCC as in effect from time to time in the State of New York or such other jurisdiction.

"UCHC" shall ~~mean Ultralife Canada Holding Corp., a Delaware corporation~~**have the meaning given to such term in the opening paragraph of this Agreement.**

"UEHC" shall ~~mean Ultralife Excell Holding Corp., a Delaware corporation~~**have the meaning given to such term in the opening paragraph of this Agreement**.

"ULC" shall mean any unlimited company, unlimited liability company or unlimited liability corporation or any similar entity existing under the laws of any province or territory of Canada and any successor to any such entity.

"Ultralife" shall have the meaning given to such term in the opening paragraph of this Agreement.

"Unfunded Capital Expenditures" shall mean Capital Expenditures made by any one or more of the Companies which Capital Expenditures are (i) made with Proceeds received in connection with any asset sale, equity issuance, debt issuance or from insurance proceeds in each case to the extent permitted hereunder, (ii) or otherwise unfinanced or financed with Revolving Loans; provided, however, that Unfunded Capital Expenditures shall not in any event be deemed to include any project specific Capital Expenditures approved by Agent in its reasonable discretion to the extent financed out of cash on the balance sheet or investments of Borrowers, including, without limitation, the Newark CR123A automation project up to $4,300,000.

"Unused Fee" shall mean the fee due and payable under Section 2.5(a) hereof. "USA Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"Voting Power" shall mean, with respect to any Person, the exclusive ability to control, through the ownership of Capital Stock or otherwise, the election of members of the board of directors or other similar governing body of such Person, and the holding of a designated percentage of Voting Power of a Person means the ownership of Capital Stock of such Person sufficient to control exclusively the election of that percentage of the members of the board of directors or similar governing body of such Person.

"Welfare Plan" shall mean an ERISA Plan that is a "welfare plan" within the meaning of ERISA Section 3 (l).

"Wholly-Owned Subsidiary" shall mean, with respect to any Person, any corporation, limited liability company or other entity all of the Capital Stock of which (having ordinary Voting Power) are at the time directly or indirectly owned by such Person.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.2 INTERPRETIVE MATTERS. Each term defined in the singular in this Agreement shall have the same meaning when used in the plural and each term defined in the plural in this Agreement shall have the same meaning when used in the singular. Except as otherwise defined in this Agreement, or unless the context otherwise requires, each term that is used in this Agreement and that is defined in Article 9 of the UCC **or the PPSA, as applicable**, shall have, for purposes of this Agreement and the other Related Writings, the meaning ascribed to that term in ~~such~~**in** Article **9 of the UCC or the PPSA, as applicable**. Except as otherwise defined in this Agreement, or unless the context otherwise requires, each accounting term that is used in this Agreement and that is defined by GAAP shall have, for purposes of this Agreement and the other Related Writings, the meaning ascribed to that term by GAAP.

SECTION 1.3 TERMINOLOGY. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, and (d) all references herein to Sections, Schedules and Exhibits shall be construed to refer to Sections of, and Schedules and Exhibits to, this Agreement. Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document. Unless otherwise provided, all financial calculations shall be performed with Inventory valued on a first-in, first-out basis. A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by the Required Lenders. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

For purposes of any Collateral located in the Province of Quebec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Québec, (q) "personal property" shall be deemed to include "movable property", (r) "real property" shall be deemed to include "immovable property", (s) "tangible property" shall be deemed to include "corporeal property", (t) "intangible property" shall be deemed to include "incorporeal property", (u) "security interest" and "mortgage" shall be deemed to include a "hypothec", (v) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (w) all references to "perfection" of or "perfected " Liens shall be deemed to include a reference to the "opposability" of such Liens to third parties, (x) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (y) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, and (z) an "agent" shall be deemed to include a "mandatary".

SECTION 1.4 TIMES OF DAY. Except as otherwise specifically provided herein, all references herein to times of day shall be references to Eastern Standard or Eastern Daylight Savings time, whichever shall then be applicable.

SECTION 1.5 CERTIFICATIONS. Any certificate or other writing required hereunder or under any other Loan Document to be certified by any officer or other authorized representative of any Person shall be deemed to be executed and delivered by such officer or other authorized representative solely in such individual's capacity as an officer or other authorized representative of such Person and not in such officer's or other authorized representative's individual capacity.

SECTION 1.6 ~~BENCHMARK NOTIFICATION~~**RATES**. The Agent does not warrant or accept ~~any~~ responsibility for, and shall not have any liability with respect to~~,~~ **(a)** the administration **of,** submission **of, calculation of** or any other matter related to ~~USD LIBOR or with respect to~~**Daily Simple SOFR, any component definition thereof or rates referenced in the definition thereof or** any alternative, **comparable** or successor ~~benchmark thereto, or replacement~~ rate ~~thereft~~**t**~~or or thereof~~**(including any then-current Benchmark or any Benchmark Replacement)**, including~~, without limitation,~~ whether the composition or characteristics of any such alternative, ~~successor or replacement reference rate, as it may or may not be adjusted pursuant to Section 3.6,~~**comparable or successor rate (including any Benchmark Replacement)** will be similar to, or produce the same value or economic equivalence of, ~~USD LIBOR or any other benchmark~~ or have the same volume or liquidity as~~ did USD LIBOR~~**, Daily Simple SOFR** or any other ~~b~~**B**enchmark ~~rate prior to its discontinuance or unavailability~~**, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes**.

SECTION 1.7 DIVISIONS. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Capital Stock at such time.

SECTION 1.8 EXCHANGE RATES; CURRENCY EQUIVALENTS

(a) Without limiting the other terms of this Agreement, the calculations and determinations under this Agreement of any amount in any currency other than Dollars shall be deemed to refer to the Dollar Equivalent thereof, as the case may be, and all Borrowing Base Certificates delivered under this Agreement shall express such calculations or determinations in Dollars or the Dollar Equivalent thereof, as the case may be. Each requisite currency translation shall be based on the Spot Rate.

(b) For purposes of this Agreement and the other Loan Documents, the Dollar Equivalent of the Borrowing Base and of any Loans, Letters of Credit, Banking Services Obligations, and other obligations shall be determined in accordance with the terms of this Agreement. Such Dollar Equivalent shall become effective as of the revaluation date for the Borrowing Base and for such Loans, Letters of Credit, Banking Services Obligations, and other obligations and shall be the Dollar Equivalent employed in converting any amounts between the applicable currencies until the next revaluation date to occur for the Borrowing Base and for such Loans, Letters of Credit, Banking Services Obligations and other obligations.

ARTICLE II. AMOUNT AND TERMS OF CREDIT

SECTION 2.1 AMOUNT AND NATURE OF CREDIT. Subject to the terms and conditions of this Agreement, each Lender will, to the extent hereinafter provided, make Loans to Borrowers, and participate in Letters of Credit issued at the request of Borrowers, in such aggregate amount as Borrowers shall request pursuant to the Commitment; provided, however, that in no event shall the aggregate principal amount of all Loans and Letter of Credit Exposure outstanding under this Agreement be in excess of the Total Commitment Amount.

Each Lender, for itself and not for any other Lender, agrees to make Loans and to participate in Letters of Credit issued hereunder during the Commitment Period on such basis that (a) immediately after the completion of any borrowing by Borrowers or issuance of a Letter of Credit hereunder, the aggregate principal amount then outstanding on the Loans held by such Lender, when combined with such Lender's Pro Rata Share of the Letter of Credit Exposure, shall not be in excess of the Maximum Amount for such Lender; (b) the aggregate principal amount outstanding of all outstanding Revolving Loans held such Lender shall represent that percentage of the aggregate principal amount then outstanding on all Revolving Loans (including the Revolving Loans held by such Lender) which is not in excess of such Lender's Applicable Commitment Percentage with respect thereto; (c) the aggregate principal amount of all outstanding Term Loans held by such Lender shall represent that percentage of the aggregate principal amount then outstanding on all Term Loans (including the Term Loans held by such Lender) which is not in excess of such Lender's Applicable Commitment Percentage with respect thereto; (d) the aggregate principal amount of all outstanding Term Loans B held by such Lender shall represent that percentage of the aggregate principal amount then outstanding on all Term Loans B (including the Term Loans B held by such Lender) which is not in excess of such Lender's Applicable Commitment Percentage with respect thereto; and (e) such aggregate principal amount outstanding on the Loans held by such Lender shall represent that percentage of the aggregate principal amount then outstanding on all Loans (including the Loans held by such Lender) that is not in excess of such Lender's Aggregate Commitment Percentage.

Each borrowing from the Lenders hereunder shall be made on a Pro Rata Basis according to the Lenders' respective Applicable Commitment Percentages. The Loans may be made as Revolving Loans, as a Term Loan, as a Term Loan B and Letters of Credit may be issued, as follows:

A. Revolving Credit.

1. Revolving Loans.

(i) Subject to the terms and conditions of this Agreement, during the Commitment Period, the Revolving Credit Lenders shall make a Revolving Loan or Revolving Loans to Borrowers in such amount or amounts as Borrowers may from time to time request, but not exceeding in aggregate principal amount at any time outstanding hereunder the Revolving Borrowing Limit, when such Revolving Loans are combined with the Letter of Credit Exposure. **Subject to the provisions of Section 3.6, all Revolving Loans shall bear interest at the Derived Adjusted Daily Simple SOFR Rate.**

~~(ii) Borrowers shall pay interest on the unpaid principal amount of Base Rate Loans outstanding from time to time from the date thereof until paid at the Derived Base Rate from time to time in effect. Interest on such Base Rate Loans shall be payable, commencing June 30, 2017, and on the last day of each succeeding month thereafter and at the maturity thereof.~~

(ii~~i~~) Borrowers shall pay interest on the unpaid principal amount of ~~Overnight LIBOR~~**SOFR** Loan~~s~~ outstanding from time to time from the date thereof until paid at the Derived ~~Overnight LIBOR~~**Adjusted Daily Simple SOFR** Rate from time to time in effect. Interest on such ~~Overnight LIBOR~~**SOFR** Loans shall be payable, commencing ~~June~~**November** 30, 20~~17~~**22**, and on the last day of each succeeding month thereafter and at the maturity thereof.

~~(iv) At the request of Borrowing Agent to Agent, provided no Default or Event of Default exists hereunder and subject to the notice and other provisions of Section 2.2 hereof, the Revolving Credit Lenders shall convert (x) Base Rate Loans to Overnight LIBOR Loans at any time, and (y) Overnight LIBOR Loans to Base Rate Loans at any time.~~

(~~v~~**iiii**) The joint and several obligation of Borrowers to repay the Revolving Loans made by each Revolving Credit Lender and to pay interest thereon shall be evidenced by a Revolving Credit Note of Borrowers in the form of Exhibit A hereto (if requested by the particular Revolving Credit Lender), with appropriate insertions, dated the Closing Date and payable to the order of such Revolving Credit Lender in the principal amount of its Revolving Credit Commitment, or, if less, the aggregate unpaid principal amount of Revolving Loans made hereunder by such Revolving Credit Lender. Subject to the provisions of this Agreement, Borrowers shall be entitled under this Section 2.1A to borrow Revolving Loans, repay the same in whole or in part and reborrow hereunder at any time and from time to time during the Commitment Period.

2. Letters of Credit.

(i) Subject to the terms and conditions of this Agreement, during the Commitment Period, Agent shall, but only as Agent for the Revolving Credit Lenders, issue such Letters of Credit for the account of Borrowers or any other Credit Party, as Borrowers may from time to time request. Borrowers shall not request any Letter of Credit (and Agent shall not be obligated to issue any Letter of Credit) if, after giving effect thereto, (a) the aggregate undrawn face amount of all issued and outstanding Letters of Credit would exceed the Letter of Credit Sublimit or (b) the Revolving Credit Exposure would exceed the Revolving Borrowing Limit. The issuance of each Letter of Credit shall confer upon each Revolving Credit Lender the benefits and liabilities of a participation consisting of an undivided Pro Rata Share in the Letter of Credit to the extent of such Revolving Credit Lender's Applicable Commitment Percentage.

(ii) Each request for a Letter of Credit shall be delivered to Agent not later than 12:00 P.M. two (2) Business Days prior to the day upon which the Letter of Credit is to be issued. Each such request shall be in a form acceptable to Agent and specify the face amount thereof, whether such Letter of Credit is a commercial documentary or a standby Letter of Credit, the account party, the beneficiary, the intended date of issuance, the expiry date thereof, and the nature of the transaction to be supported thereby. Concurrently with each such request, Borrowers, and any other Credit Party for whose benefit the Letter of Credit is to be issued, shall execute and deliver to Agent an appropriate application and agreement, being in the standard form of Agent for such letters of credit, as amended to conform to the provisions of this Agreement if required by Agent. Agent shall give each Revolving Credit Lender notice of each such request for a Letter of Credit.

(iii) In respect of each Letter of Credit that is a commercial documentary letter of credit and the drafts thereunder, Borrowers jointly and severally agree (a) to pay to Agent, on a Pro Rata Basis for the benefit of the Revolving Credit Lenders, a non-refundable commission based upon the face amount of the Letter of Credit, which shall be paid on the date that any draw is made on a Letter of Credit, at the rate per annum equal to the Applicable Margin for ~~Overnight LIBOR~~**SOFR** Loans multiplied by the amount drawn under such Letter of Credit, and (b) to pay to Agent, for its sole account, such other issuance, amendment, negotiation, draw, acceptance, telex, courier, postage and similar transactional fees as are generally charged by Agent under its fee schedule as in effect from time to time. In respect of each Letter of Credit that is a standby letter of credit and the drafts thereunder, if any, whether issued for the account of Borrowers or another Credit Party, Borrowers agree (a) to pay to Agent, on a Pro Rata Basis for the benefit of the Revolving Credit Lenders, a non-refundable commission based upon the face amount of the Letter of Credit, which shall be paid monthly in arrears, on the 15th day of each month, at the rate per annum of the Applicable Margin for ~~Overnight LIBOR~~**SOFR** Loans times the face amount of the Letter of Credit; (b) to pay to Agent, for its sole account, an additional Letter of Credit fee, which shall be paid on each date that such Letter of Credit is issued and each anniversary thereafter at the rate per annum 0.25% of the face amount of such Letter of Credit, calculated based on a 360-day year and the actual number of days elapsed; and (c) to pay to Agent for its sole account, such other issuance, amendment, negotiation, draw, acceptance, telex, courier, postage and similar transactional fees as are generally charged by Agent under its fee schedule as in effect from time to time.

(iv) Whenever a Letter of Credit is drawn, Borrowers shall immediately reimburse Agent for the amount drawn. In the event that the amount drawn is not reimbursed by Borrowers within one (1) Business Day of the drawing of such Letter of Credit, at the sole option of Agent, Borrowers shall be deemed to have requested a Revolving Loan, subject to the provisions and requirements of subpart 1 of this Section 2.1A and Section 2.2(a) hereof, in the amount drawn. Such Revolving Loan shall be evidenced by the Revolving Credit Notes. Each Revolving Credit Lender agrees to make a Revolving Loan on the date of such notice, subject to no conditions precedent whatsoever. Each Revolving Credit Lender acknowledges and agrees that its obligation to make a Revolving Loan pursuant to subpart 1 of this Section 2.1A when required by this subpart 2 of this Section 2.1A is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, the occurrence and continuance of a Default or Event of Default, and that its payment to Agent, for the account of Agent, of the proceeds of such Revolving Loan shall be made without any offset, abatement, recoupment, counterclaim, withholding or reduction whatsoever and whether or not such Lender's Revolving Credit Commitment shall have been reduced or terminated. Each Revolving Credit Lender also agrees with Agent that Agent shall not be responsible for, and each Revolving Credit Lender's obligations under this subpart 2 of this Section 2.A shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among Borrowers and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of Borrowers against any beneficiary of such Letter of Credit or any such transferee. Agent shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit issued by it, except for errors or omissions caused by Agent's gross negligence or willful misconduct. Borrowers irrevocably authorize and instruct Agent to apply the proceeds of any borrowing pursuant to this paragraph to reimburse, in full, Agent for the amount drawn on such Letter of Credit. Each such Revolving Loan shall be deemed a ~~Base Rate~~**SOFR** Loan unless otherwise requested by and available to Borrowers hereunder. Each Revolving Credit Lender is hereby authorized to record on its records relating to its Revolving Loans such Revolving Credit Lender's Pro Rata Share of the amounts paid and not reimbursed on the Letters of Credit.

B. Term Loan.

(i) Subject to the terms and conditions of this Agreement, the Term Loan Lenders shall make a Term Loan to Borrowers on the First Amendment Closing Date, in the amount for each Term Loan Lender equal to its respective Term Loan Commitment. To evidence the Term Loan, Borrowers shall execute and deliver to each Term Loan Lender a Term Note, substantially in the form of Exhibit E hereto, with appropriate insertions. Borrowers shall pay principal on the Term Loan in equal consecutive monthly installments of $133,333.33 commencing May 31, 2019, and continuing on the last day of each succeeding month thereafter, with a final payment in the amount of the then remaining balance thereof payable in full on May 1, 2024. The Term Loan may not be reborrowed.

(ii) Subject to the provisions of Section 3.6, the Term Loan shall bear interest at the Derived Adjusted Daily Simple SOFR Rate.

~~(ii) Borrowers shall notify Agent from time to time, in accordance with the notice provisions of Section 2.2 hereof, whether the Term Loan will be a Base Rate Loan or an Overnight LIBOR Loan. The Term Loan may be a mixture of Base Rate Loans and Overnight LIBOR Loans. The Term Loan Lenders, at the request of Borrower to Agent, provided that no Event of Default exists hereunder and subject to the applicable notice and other provisions of Section 2.2 hereof, shall convert a Base Rate Loan to an Overnight LIBOR Loan at any time and shall convert an Overnight LIBOR Loan to a Base Rate Loan at any time.~~

~~(iii) Borrowers shall pay interest on the unpaid principal amount of Base Rate Loans outstanding from time to time from the date thereof until paid, commencing May 31, 2019, and continuing on the last day of each succeeding month thereafter and at the maturity thereof, at the Derived Base Rate from time to time in effect.~~

(~~iv~~**iii**) Borrowers shall pay interest on the unpaid principal amount of each ~~Overnight LIBOR~~**SOFR** Loan outstanding from time to time from the date thereof until paid~~, fixed in advance for each Overnight LIBOR Interest Period as herein provided for each such Overnight LIBOR Interest Period~~. Interest on such ~~Overnight LIBOR~~**SOFR** Loans shall be payable, commencing May 31, 2019, and on the last day of each succeeding month thereafter and at the maturity thereof.

C. Term Loan B.

(i) Subject to the terms and conditions of this Agreement, the Term Loan B Lenders shall make a Term Loan B to Borrowers on the Second Amendment Closing Date, in the amount for each Term Loan B Lender equal to its respective Term Loan B Commitment. To evidence the Term Loan B, Borrowers shall execute and deliver to each Term Loan B Lender a Term Note B, substantially in the form of Exhibit F hereto, with appropriate insertions. Borrowers shall pay principal on the Term Loan B in equal consecutive monthly installments of $166,667.00 commencing February 1, 2022, and continuing on the first day of each succeeding month thereafter, with a final payment in the amount of the then remaining balance thereof payable in full on January 1, 2027. The Term Loan B may not be reborrowed.

(ii) Subject to the provisions of Section 3.6, the Term Loan B shall bear interest at the Derived Adjusted Daily Simple SOFR Rate.

~~(ii) Borrowers shall notify Agent from time to time, in accordance with the notice provisions of Section 2.2 hereof, whether the Term Loan B will be a Base Rate Loan or an Overnight LIBOR Loan. The Term Loan B may be a mixture of Base Rate Loans and Overnight LIBOR Loans. The Term Loan B Lenders, at the request of Borrowers to Agent, provided that no Event of Default exists hereunder and subject to the applicable notice and other provisions of Section 2.2 hereof, shall convert a Base Rate Loan to an Overnight LIBOR Loan at any time and shall convert an Overnight LIBOR Loan to a Base Rate Loan at any time.~~

~~(iii) Borrowers shall pay interest on the unpaid principal amount of Base Rate Loans outstanding from time to time from the date thereof until paid, commencing February 1, 2022, and continuing on the first day of each succeeding month thereafter and at the maturity thereof, at the Derived Base Rate from time to time in effect.~~

(~~iv~~**iii**) Borrowers shall pay interest on the unpaid principal amount of each ~~Overnight LIBOR~~**SOFR** Loan outstanding from time to time from the date thereof until paid~~, fixed in advance for each Overnight LIBOR Interest Period as herein provided for each such Overnight LIBOR Interest Period~~. Interest on such ~~Overnight LIBOR~~**SOFR** Loans shall be payable, commencing ~~February~~**December** 1, 2022, and on the first day of each succeeding month thereafter and at the maturity thereof.

SECTION 2.2 CONDITIONS TO LOANS AND LETTERS OF CREDIT. The obligation of the Lenders to make a Loan~~, convert a Base Rate Loan or Overnight LIBOR Loan~~ and of Agent to issue any Letter of Credit is conditioned, in the case of each borrowing~~, conversion, continuation~~ or issuance hereunder, upon:

(a) all conditions precedent as listed in Article IV hereof shall have been satisfied;

(b)~~ with respect to Base Rate Loans and Overnight LIBOR Loans,~~ receipt by Agent of a Notice of Loan, such notice to be received by 12:00 P.M. on the proposed date of borrowing~~ or conversion~~;

(c) with respect to Letters of Credit, satisfaction of the notice provisions set forth in subsection 2 of Section 2.1A hereof;

(d) [reserved];

(e) the fact that no Default or Event of Default shall then exist or immediately after the making~~, continuation or conversion~~ of the Loan or issuance of the Letter of Credit would exist;

(f) the fact that no Material Adverse Effect, in the reasonable opinion of Agent, shall have occurred; and

(g) the fact that each of the representations and warranties contained in Article VII hereof shall be true and correct in all material respects (without duplication of materiality qualifiers) with the same force and effect as if made on and as of the date of the making~~, conversion or continuation~~ of such Loan, or the issuance of the Letter of Credit, except to the extent that any thereof expressly relate to an earlier date.

Each request by Borrowers for the making of a Loan~~, conversion of a Base Rate Loan or Overnight LIBOR Loan~~ or for the issuance of a Letter of Credit hereunder shall be deemed to be a representation and warranty by the Credit Parties as of the date of such request as to the facts specified in (e) and (g) above. Borrowers' obligations to pay all or any portion of the Secured Debt or the Notes when due under the terms hereof is without setoff or counterclaim.

SECTION 2.3 PAYMENT ON NOTES, ETC.

(a) Time and Manner of Payments. All payments of principal, interest and commitment and other fees shall be made to Agent in immediately available funds for the account of the Lenders. Agent shall maintain a record of (a) any principal, interest or other payment, and (b) the principal amount of the ~~Base Rate Loans and Overnight LIBOR~~**SOFR** Loans and all prepayments thereof and the applicable dates with respect thereto, by such method as such Agent may generally employ; provided, however, that failure to make any such entry shall in no way detract from Borrowers' obligations with respect to the Secured Debt. The aggregate unpaid amount of Loans set forth on the records of Agent shall be rebuttably presumptive evidence of the principal and interest owing and unpaid on each Loan. Whenever any payment to be made hereunder, including without limitation any payment to be made on any Loan, shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in each case be included in the computation of the interest payable on such Loan.

(b) Application of Funds. Notwithstanding anything else to the contrary contained herein, any funds received by Agent or any Lender with respect to the Secured Debt shall be applied as follows:

(i) No Default. Subject to Section 2.7 hereof, if at the time any such funds are received hereunder (A) the Secured Debt has not been accelerated pursuant to Article IX, and (B) no Event of Default has occurred and be continuing (or if an Event of Default has occurred and is continuing, Agent, at the direction of the Required Lenders, shall not have provided notice to a Borrower of its intention to apply the provisions of Section 2.3(b)(ii)), in the following manner: (a) first, to the following items (i), (ii) and (iii) below in such manner as Borrowers shall direct (except that Borrowers may not alter the division as between Lenders as set forth in subparts (ii) and (iii) below), or in the absence of such direction in the following order: (i) to the payment of all ~~fees, charges and reimbursable expenses due and payable to Agent or a Lender under the Secured Debt, this Agreement or the other Loan Documents at such time; (ii) to the payment of all~~ of the interest which shall be due and payable on the principal of the Secured Debt at the time of such payment in accordance with each Lender's Applicable Commitment Percentage; (ii~~i~~) pro rata to (A) the payment of scheduled principal payments of the Term Loan that are then due in accordance with each Term Loan Lender's Aggregate Term Loan Commitment Percentage, (B) the payment of scheduled principal payments of the Term Loan B that are then due in accordance with each Term Loan B Lender's Aggregate Term Loan B Commitment Percentage, **(iii) to the payment of all fees, charges and reimbursable expenses due and payable to Agent or a Lender under the Secured Debt, this Agreement or the other Loan Documents at such time** and (C) the payment of all obligations and liabilities of Borrowers under any Hedge Agreement entered into by Borrowers with the Secured Creditors to the extent then due and payable; (b) second, subject to the provisions of Section 2.4 hereof and the fees set forth in Section 2.4, if applicable, to the payment of the principal amount of any Revolving Loans then outstanding in accordance with each Revolving Loan Lender's Applicable Commitment Percentage; and (c) third, to Borrowers.

(ii) Post-Default. Notwithstanding and in lieu of Section 2.7 hereof, if the Debt has been accelerated pursuant to Article IX, or if an Event of Default shall have occurred and be continuing (and Agent, at the direction of the Required Lenders, has provided notice to a Borrower of its intention to apply the provisions of this Section 2.3(b)(ii)), then such funds received with respect to the Secured Debt shall be applied in the following manner: (A) first, to the payment or reimbursement of Agent for all costs, expenses, disbursements and losses owing pursuant to this Agreement which shall have been incurred or sustained by Agent or the Lenders in or incidental to the collection of the Secured Debt or the exercise, protection or enforcement by Agent of all or any of the rights, remedies, powers and privileges of Lenders and Agent under this Agreement, the Notes, or any of the other Loan Documents and in and towards the provision of adequate indemnity to Agent and any of Lenders against all taxes or liens which by law shall have, or may have, priority over the rights of Agent or Lenders in and to such funds; (B) second, to the payment of all of the accrued but unpaid interest on the principal of the Loans in accordance with each Lender's Aggregate Commitment Percentage; (C) third, pro rata to (i) the payment of principal of the Loans in accordance with each Lender's Aggregate Commitment Percentage and (ii) the payment of all obligations and liabilities of any Borrower under any Hedge Agreement entered into by a Borrower with the Secured Creditors; (D) fourth, to the payment of any other amounts owing to the Lenders pursuant to this Agreement and the other Loan Documents, in accordance with each Lender's Aggregate Commitment Percentage; (E) fifth, to the payment of any other Secured Debt to be allocated pro rata amongst the Secured Creditors based on the amount of such Secured Debt outstanding, and (F) sixth, to Borrowers or whoever else may be lawfully entitled thereto.

(c) Weekly Settlement. In order to minimize the frequency of transfers of funds between Agent and the Lenders, advances and repayments of Loans will be settled according to the procedures described in this Section 2.3(c).

(i) Agent shall, once every seven (7) calendar days, or sooner, if so elected by Agent in its discretion, but in each case on a Business Day (each such day being a "Settlement Date"), distribute to each Lender a statement (the "Agent's Report") disclosing as of the immediately preceding Business Day, the aggregate unpaid principal balance of Loans outstanding as of such date (including Revolving Loans made by Agent under Section 2.3(c)(v) hereof), repayments and prepayments of principal received from Borrowers with respect to the Loans since the immediately preceding Agent's Report, additional Loans made to Borrowers since the date of the immediately preceding Agent's Report. Each Agent's Report shall disclose the net amount (the "Settlement Amount") due to or due from the Lenders to effect a Settlement of any Loan and the calculations therefor. Agent's Report submitted to a Lender shall be prima facie evidence of the amount due to or from such Lender to effect a Settlement of any Loan. If Agent's Report discloses a net amount due from Agent to any Lender to effect the Settlement of any Loan, Agent, concurrently with the delivery of Agent's Report to the Lenders, shall transfer, by wire transfer or otherwise, such amount to such Lender in funds immediately available to such Lender, in accordance with such Lender's instructions. If Agent's Report discloses a net amount due to Agent from any Lender to affect the Settlement of any Loan, then such Lender shall wire transfer such amount, in funds immediately available to Agent, as instructed by Agent. Such net amount due from a Lender to Agent shall be due on the Settlement Date if such Agent's Report is received before 1:00 p.m. and such net amount shall be due on the first Business Day following the Settlement Date if such Agent's Report is received after 1:00 p.m.

(ii) All funds advanced to Borrowers by Agent or a Lender pursuant to this Section 2.3(c) shall for all purposes be treated as a Loan made by such Lender and all funds received by any Lender pursuant to this Section 2.3(c) shall for all purposes be treated as a repayment of the Loans made by such Lender.

(iii) In the event that any bankruptcy, reorganization, liquidation, receivership, or similar cases or proceedings in which Borrowers are a debtor prevent Agent or any Lender from making any Loan to effect a Settlement contemplated hereby, Agent or such Lender, as the case may be, will make such dispositions and arrangements with the other Lenders with respect to such Loans, either by way of purchase of participations, distribution, pro tanto assignment of claims, subrogation, or otherwise, as shall result in each Lender's share of the outstanding Loans being equal to its Aggregate Commitment Percentage of all outstanding Loans.

(iv) Payments to effect a Settlement shall be made without set off, counterclaim or reduction of any kind. The failure or refusal of any Lender to make available to Agent at the aforesaid time and place the amount of the Settlement Amount due from such Lender (i) shall not relieve any other Lender from its several obligation hereunder to make available to Agent the amount of such other Lender's Settlement Amount and (ii) shall not impose upon such other Lender any liability with respect to such failure or refusal or otherwise increase the Commitment of such other Lender.

(v) Notwithstanding the notice requirements set forth in Section 2.2 above, but otherwise in accordance with the terms of this Agreement, Agent may, in its sole discretion without conferring with the Revolving Loan Lenders but on their behalf, make Revolving Loans in an amount requested by Borrowers. Any such Revolving Loans so funded by Agent shall be deemed Revolving Loans made by Agent under its Revolving Credit Commitment, except for purposes of Section 2.5 hereof. Each Revolving Loan Lender's obligation to fund its portion of any such Revolving Loan made by Agent will commence on the date such Revolving Loan is actually so made by Agent. However, until the date on which the Settlement of such Revolving Loan is required in accordance with this Section 2.3(c)(i) above, such obligation of the Revolving Loan Lender shall be satisfied by Agent making such Revolving Loan. So long as Borrowers shall have requested the Revolving Loan, Borrowers acknowledge and agree that the making of such Revolving Loans by Agent under this Section 2.3(c)(v) shall be subject in all respects to the provisions of this Agreement as if each such Revolving Loan was made in response to a notice requesting such Revolving Loan made in accordance with Section 2.2 hereof. All actions taken by Agent pursuant to the provisions of this Section 2.3(c)(v) shall be conclusive and binding on Borrowers in the absence of manifest error. Notwithstanding anything herein to the contrary, prior to the Settlement with any Revolving Loan Lender of any Revolving Loan funded by Agent under this Section 2.3(c)(v), interest payable on such Revolving Loan otherwise allocable to such Revolving Loan Lender shall be for the sole account of Agent and payment of principal on such Revolving Loan otherwise allocable to such Revolving Loan Lender shall be for the sole account of Agent.

SECTION 2.4 PREPAYMENT. Borrowers shall have the right at any time or from time to time to prepay all or any part of the principal amount of the Loans then outstanding, to be applied pursuant to the terms of Section 2.3(b) hereof, plus interest accrued on the amount so prepaid to the date of such prepayment. Borrowers shall give Agent notice of prepayment of any ~~Base Rate Loan or Overnight LIBOR~~ Loan by not later than 12:00 P.M. on the Business Day such prepayment is to be made. ~~Prepayments of Base Rate Loans shall be without any premium or penalty, other than any prepayment fees, penalties or other charges that may be contained in any Hedge Agreement.~~ Notwithstanding anything contrary contained herein, Borrowers hereby agree to give Agent at least 10 Business Days prior notice of a prepayment of the Secured Debt in full in connection with a termination of this Agreement.

SECTION 2.5 COMMITMENT AND OTHER FEES; INCREASE OF COMMITMENT.

(a) Borrowers shall pay to Agent, for the Ratable Account of the Revolving Loan Lenders (other than Defaulting Lenders), as a consideration for the Commitment, an unused fee from the date hereof to and including the last day of the Commitment Period, payable quarterly in arrears, equal to (a) the Applicable Margin for the Unused Fee, times (b) (i) the average daily Maximum Revolving Amount in effect during such month, minus (ii) the average daily Revolving Credit Exposure during such month. The commitment fee shall be payable in arrears, on ~~June~~**December** 3~~0~~**1**, 20~~17~~**22**, and on the last day of each succeeding June, September, December and March thereafter, and on the last day of the Commitment Period.

(b) (i) At any time during the period from the Closing Date until a date that is six (6) months prior to the last day of the Commitment Period (the "Commitment Increase Period"), the Borrowing Agent may request that Agent increase the Maximum Revolving Amount; provided that the aggregate amount of all such increases made pursuant to this subsection shall not exceed an aggregate amount of Twenty Million Dollars ($20,000,000). Borrowers shall not make more than two (2) such requests during the Commitment Increase Period and each such request for an increase shall be in an amount of at least Five Million Dollars ($5,000,000), increased by increments of One Million Dollars ($1,000,000), and may be made by either (1) increasing, for one or more Revolving Loan Lenders, with their prior written consent, their respective Revolving Credit Commitments or Applicable Commitment Percentages, or (2) including one or more Additional Lenders, each with a new commitment under the Revolving Credit Commitment, as a party to this Agreement (each an "Additional Commitment" and, collectively, the "Additional Commitments"), in each case in such allocation as determined by Agent in its sole discretion. Notwithstanding the foregoing, the existing Lenders shall be given the opportunity to provide Additional Commitments prior to Additional Lenders becoming party to this Agreement. If, within five days of the written request of the Agent, the Agent has not received an additional commitment from an existing Lender with respect to such increase, such existing Lender shall be deemed to have declined to provide a commitment with respect thereto.

(ii) During the Commitment Increase Period, one or more Additional Commitments shall be permitted upon satisfaction or waiver of the following requirements: (A) each Additional Lender, if any, shall execute an Additional Lender Assumption Agreement; (B) the Agent shall provide to the Borrower and each Lender a revised Schedule 1 to this Agreement, including revised Applicable Commitment Percentages and/or Revolving Credit Commitments for each of the Lenders, if appropriate, at least three (3) Business Days prior to the date of the effectiveness of such Additional Commitments (each an "Additional Lender Assumption Effective Date"), and (C) the Borrowers shall execute and deliver to Agent and the applicable Lenders such replacement or additional Revolving Credit Notes as shall be required by the Agent. The Lenders hereby authorize Agent to execute each Additional Lender Assumption Agreement on behalf of the Lenders.

(iii) On each Additional Lender Assumption Effective Date with respect to the Revolving Credit Commitment, the Lenders shall make adjustments among themselves with respect to the Revolving Loans then outstanding and amounts of principal, interest, commitment fees and other amounts paid or payable with respect thereto as shall be necessary, in the opinion of Agent, in order to reallocate among the applicable Lenders such outstanding amounts, based on the revised Applicable Commitment Percentages and Revolving Credit Commitments and to otherwise carry out fully the intent and terms of this Section 2.5(b). In connection therewith, it is understood and agreed that the Maximum Amount of any Lender will not be increased without the prior written consent of such Lender. The Borrowers shall not request any increase in the Revolving Credit Commitment pursuant to this subsection (b) if a Default or an Event of Default shall then exist, or, immediately after giving pro forma effect to any such increase, would exist. At the time of any such increase, the Agent, the Credit Parties and the Lenders shall enter into an amendment to evidence such increase and to address related provisions as deemed necessary or appropriate by Borrowing Agent and Agent. Upon each increase of the Revolving Credit Commitment, the Total Commitment Amount shall be automatically increased by the same amount. In the event of any conflict between the terms of this Section 2.5 and Section 11.10, the terms of this Section 2.5 shall govern and control.

SECTION 2.6 COMPUTATION OF INTEREST AND FEES; DEFAULT RATE.

~~.~~(a) With the exception of **Alternate** Base Rate Loans, interest on Loans, Related Expenses and commitment and other fees and charges hereunder shall be computed on the basis of a year having three hundred sixty (360) days and calculated for the actual number of days elapsed. With respect to **Alternate** Base Rate Loans, interest shall be computed on the basis of a year having three hundred sixty-five (365) days or three hundred sixty-six (366) days, as the case may be, and calculated for the actual number of days elapsed. Anything herein to the contrary notwithstanding, if an Event of Default shall occur hereunder, at the option of Agent or the Required Lenders (but automatically with respect to an Event of Default under Section 8.14 hereof), (a) the principal of each Loan and the unpaid interest thereon shall bear interest, from the date of the occurrence of such Event of Default until paid, at the Default Rate; and (b) the fee for the aggregate undrawn face amount of all issued and outstanding Letters of Credit shall be increased by two percent (2%). In no event shall the rate of interest hereunder exceed the Highest Lawful Rate. **For purposes of disclosure pursuant to the *Interest Act* (Canada), the annual rates of interest or fees to which the rates of interest or fees provided in this Agreement and the other Loan Documents (and stated herein or therein, as applicable, to be computed on the basis of 360 days or any other period of time less than a calendar year) are equivalent are the rates so determined multiplied by the actual number of days in the applicable calendar year and divided by 360 or such other period of time, respectively.**

(b) The applicable Adjusted Daily Simple SOFR shall be determined by the Agent, and such determination shall be conclusive absent manifest error. The Agent, upon determining the interest rate for any Borrowing, shall promptly notify the Borrowers thereof. Any changes in the Applicable Margin shall be determined by the Agent in accordance with the provisions set forth in the definition of "Applicable Margin," as applicable, and the Agent will promptly provide notice of such determinations to the Borrowers. Any such determination by the Agent shall be conclusive and binding absent manifest error.

(c) If for any reason Daily Simple SOFR is unavailable for a period of longer than ten (10) consecutive SOFR Business Days, as provided in the definition of "Daily Simple SOFR", the provisions of Section 3.6 will be applicable.

SECTION 2.7 MANDATORY PAYMENT.

(a) If the Revolving Credit Exposure at any time exceeds the Revolving Borrowing Limit, Borrowers shall, as promptly as practicable, but in no event later than the next Business Day, prepay an aggregate principal amount of the Revolving Loans sufficient to cause the Revolving Credit Exposure not to be in excess of the Revolving Borrowing Limit (without a permanent commitment reduction).

(b) [Reserved].

(c) If any Credit Party commences and completes a public or private offering of equity or debt securities (other than (i) a debt offering permitted under Section 5.8 hereof, or (iii) an equity or debt offering by any Credit Party to another Credit Party), then 100% of the Net Cash Proceeds of any such equity or debt offering shall be paid, within 5 days of receipt of such Net Cash Proceeds by such Company, to Agent, for the benefit of the Lenders, to be applied as a prepayment of the Loans. The provisions of this Section 2.7(c) shall not be understood to limit the rights and remedies of Agent and the Lenders for any breach of the provisions of this Agreement.

(d) If any Credit Party sells or otherwise disposes of any assets (other than assets specifically permitted to be sold or disposed pursuant to Section 5.12 to the extent they have not been made specifically subject to this Section 2.7(d) under the provisions of Section 5.12), then the Net Cash Proceeds, in an amount in excess of $100,000, of such sale or disposition shall be paid, within ten (10) days of the receipt of such proceeds, by Borrowers to Agent, for the benefit of the Lenders, to be applied as a prepayment on the Loans; provided, however, that so long as no Default or Event of Default then exists or would exist as a result thereof, Borrowers shall not be required to prepay the Loans with any such Net Cash Proceeds to the extent that Borrowers indicate to the Agent that they (or any Credit Party) intend to reinvest such Net Cash Proceeds within 270 days of receipt thereof in assets used in the business of any Company and which will be subject to a first priority Lien of Agent for the benefit of the Lenders, subject only to Permitted Liens. To the extent any Net Cash Proceeds are not so reinvested within 270 days of receipt thereof, Borrowers shall make the prepayment otherwise provided by this Section 2.7(d). The provisions of this Section 2.7(d) shall not be understood to limit the rights and remedies of Agent and the Lenders for any breach of the provisions of Section 5.12 hereof.

(e) Upon receipt by Agent or a Company of any insurance proceeds (other than business interruption insurance) (“Insurance Proceeds”), then 100% of the net Insurance Proceeds shall be applied as a mandatory prepayment of the Loans; provided, however, that so long as no Default or Event of Default then exists or would exist as a result thereof, Borrowers may use such Insurance Proceeds for the purpose of replacing, repairing, or restoring the insured property; provided, further, however, that if such funds have not been applied to such replacing, repairing or restoring within 270 days of the receipt thereof, Borrowers shall pay any remaining portion of such sums to Agent for application to the Loans.

(f) Upon receipt by Agent or a Credit Party of any proceeds (other than Insurance Proceeds) resulting from any condemnation, seizure, taking, confiscation or requisition for use of any property of a Credit Party, by the exercise of the power of eminent domain or otherwise, then 100% of such net proceeds shall be applied as a mandatory prepayment of the Loans; provided, however, that so long as no Default or Event of Default then exists or would exist as a result thereof, Borrowers may use such proceeds for the purpose of replacing, repairing, or restoring such property; provided, further, however, that if such funds have not been applied to such replacing, repairing or restoring within 270 days of the receipt thereof, Borrowers shall pay any remaining portion of such sums to Agent for application to the Loans.

(g) Each prepayment of the Loans pursuant to this Section 2.7 (other than subpart (a)) (unless subject to the provisions of Section 2.3(b)(ii) hereof) shall be applied in the following order: (A) prepayment of the Term Loan, together with all accrued and unpaid interest on the principal amount prepaid, until such Term Loan is paid in full, in the inverse order of maturity, based on each Term Loan Lender's Applicable Commitment Percentage, (B) prepayment of the Term Loan B, together with all accrued and unpaid interest on the principal amount prepaid, until such Term Loan B is paid in full, in the inverse order of maturity, based on each Term Loan B Lender's Applicable Commitment Percentage and (C) prepayment in full of all outstanding Revolving Loans, which such prepayment shall not constitute a permanent reduction to the Revolving Credit Commitment. Any prepayment required to be made under this Section 2.7 shall be subject to any fee or other charge in connection with any Hedge Agreement.

ARTICLE III. ADDITIONAL PROVISIONS RELATING TO LOANS; INCREASED CAPITAL; TAXES

SECTION 3.1 REQUIREMENTS OF LAW, ETC.

(a) If, after the Closing Date, (i) the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by a Governmental Authority, or (ii) the compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority:

(~~A~~**i**) shall subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit **or any SOFR Loan** made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Taxes and Excluded Taxes which are governed by Section 3.2 hereof);

(~~B~~**ii**) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender; or

(~~C~~**iii**) shall impose on such Lender any other condition; and the result of any of the foregoing is to increase the cost to such Lender of **making, converting into, continuing or maintaining SOFR Loans or** issuing or participating in Letters of Credit, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrowers shall pay to such Lender, promptly after receipt of a written request therefor, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this subsection (a), such Lender shall promptly notify Borrowing Agent (with a copy to the Agent) of the event by reason of which it has become so entitled.

(b) If any Lender shall have determined that, after the Closing Date, the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof by a Governmental Authority or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder, or under or in respect of any Letter of Credit, to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration the policies of such Lender or such corporation with respect to capital adequacy), then from time to time, upon submission by such Lender to Borrowing Agent (with a copy to the Agent) of a written request therefor (which shall include the method for calculating such amount), the Borrowers shall promptly pay or cause to be paid to such Lender such additional amount or amounts as will compensate such Lender or such corporation for such reduction.

(c) For purposes of this Section 3.1, the Dodd-Frank Act, any requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) under Basel III, and any rules, regulations, orders, requests, guidelines and directives adopted, promulgated or implemented in connection with any of the foregoing, regardless of the date adopted, issued, promulgated or implemented, are deemed to have been introduced and adopted after the Closing Date.

(d) A certificate as to any additional amounts payable pursuant to this Section 3.1 submitted by any Lender to Borrowing Agent (with a copy to the Agent) shall be conclusive absent manifest error. In determining any such additional amounts, such Lender may use any method of averaging and attribution that it (in its sole discretion) shall deem applicable. The obligations of the Borrowers pursuant to this Section 3.1 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

SECTION 3.2 TAX LAW, ETC.

(a) All payments made by any Credit Party under any Loan Document shall be made free and clear of, and without deduction or withholding for or on account of any Taxes or Other Taxes. If any Taxes or Other Taxes are required to be deducted or withheld from any amounts payable to the Agent or any Lender hereunder, the amounts so payable to the Agent or such Lender shall be increased to the extent necessary to yield to the Agent or such Lender (after deducting, withholding and payment of all Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in the Loan Documents.

(b) Whenever any Taxes or Other Taxes are required to be withheld and paid by a Credit Party, such Credit Party shall timely withhold and pay such taxes to the relevant Governmental Authorities. As promptly as possible thereafter, Borrowing Agent shall send to the Agent for its own account or for the account of the relevant Lender, as the case may be, a certified copy of an original official receipt received by such Credit Party showing payment thereof or other evidence of payment reasonably acceptable to the Agent or such Lender. If such Credit Party shall fail to pay any Taxes or Other Taxes when due to the appropriate Governmental Authority or fails to remit to the Agent the required receipts or other required documentary evidence, such Credit Party and the Borrowers shall indemnify the Agent and the appropriate Lenders on demand for any incremental Taxes or Other Taxes paid or payable by the Agent or such Lender as a result of any such failure.

(c) Each Lender that is not (i) a citizen or resident of the United States of America, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States of America (or any jurisdiction thereof), or (iii) an estate or trust that is subject to U.S. federal income taxation regardless of the source of its income (any such Person, a "Non-U.S. Lender") shall deliver to Administrative Borrower and the ~~Administrative~~ Agent two copies of either U.S. Internal Revenue Service Form W-8BENE, W-8BEN, Form W-8IMY or Form W-8ECI, or, in the case of a Non-U.S. Lender (x) claiming the benefits of an income tax treaty to which the United States is a party with respect to the payment so interest under the Loan Documents or (y) claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a statement with respect to such interest and two copies of a Form W-8BEN or W-BEN-E, as applicable, or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by Credit Parties under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement or such other Loan Document. In addition, each Non-U.S. Lender shall deliver such forms or appropriate replacements promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify Borrowing Agent at any time it determines that such Lender is no longer in a position to provide any previously delivered certificate to Borrowing Agent (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this subsection (c), a Non-U.S. Lender shall not be required to deliver any form pursuant to this subsection (c) that such Non-U.S. Lender is not legally able to deliver.

(d) Each Lender that is not a Non-U.S. Lender shall deliver to Borrowing Agent and the Agent on or prior to the date on which such Lender becomes a party to this Agreement or any other Loan Document (and from time to time thereafter upon the reasonable request of Borrowing Agent or the Agent) executed copies of IRS Form W-9, as applicable, certifying that such Lender is exempt from U.S. federal backup withholding tax.

(e) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrowing Agent and the Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrowing Agent or Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrowing Agent or Agent as may be necessary for Borrowing Agent and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 3.2(e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) The agreements in this Section 3.2 shall survive the termination of the Loan Documents and the payment of the Loans and all other amounts payable hereunder.

SECTION 3.3 [RESERVED].

SECTION 3.4 ~~OVERNIGHT LIBOR RATE LENDING UNLAWFUL;~~ INABILITY TO DETERMINE RATE**S; FUNDING LOSSES**.

~~(a) If any Lender shall determine (which determination shall, upon notice thereof to Borrowing Agent and the Agent, be conclusive and binding on the Borrowers in the absence of manifest error) that, after the Closing Date, (i) the introduction of or any change in or in the interpretation of any law makes it unlawful, or (ii) any Governmental Authority asserts that it is unlawful, for such Lender to make or continue any Loan as, or to convert (if permitted pursuant to this Agreement) any Loan into an Overnight LIBOR Loan, the obligations of such Lender to make, continue or convert any such Overnight LIBOR Loan shall, upon such determination, be suspended until such Lender shall notify the Agent that the circumstances causing such suspension no longer exist, and all outstanding Overnight LIBOR Loans payable to such Lender shall automatically convert (if conversion is permitted under this Agreement) into a Base Rate Loan, or be immediately repaid (if no conversion is permitted).~~

(a) Illegality. If the Agent determines that any applicable law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Agent, any Lender, or their applicable lending offices to make, maintain or fund Loans whose interest is determined by reference to Daily Simple SOFR or SOFR, or to determine or charge interest rates based upon Daily Simple SOFR or SOFR, then, upon notice thereof to the Borrowers, (a) any obligation of the Agent or the Lenders to make or continue SOFR Loans shall be suspended, and (b) the interest rate on which Alternate Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Agent without reference to the SOFR component of Alternate Base Rate, in each case until the Agent notifies the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrowers shall, upon demand from the Agent, prepay or, if applicable, convert all SOFR Loans to Alternate Base Rate Loans (the interest rate on which Alternate Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Agent without reference to the SOFR component of Alternate Base Rate), on the interest payment date therefor, if the Agent may lawfully continue to maintain such SOFR Loans to such day, or immediately, if the Agent or any Lender may not lawfully continue to maintain such SOFR Loans and (ii) the Agent shall during the period of such suspension compute the Alternate Base Rate without reference to the SOFR component thereof until it is no longer illegal for the Agent to determine or charge interest rates based upon Daily Simple SOFR. Upon any such conversion, the Borrowers shall also pay any additional amounts required pursuant to Section clause (c) below.

(b) Inability to Determine Rates.

(~~b~~**i)** ***Temporary.*** If the Agent ~~or the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Overnight LIBOR Rate with respect to a proposed Overnight LIBOR Loan for any Overnight LIBOR Interest Period, as the case may be, or that the Overnight LIBOR Rate for any Overnight LIBOR Interest Period with respect to a proposed Overnight LIBOR Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan~~**reasonably determines (which determination shall be conclusive and binding on the Borrowers) that "Daily Simple SOFR" other than due to a Benchmark Transition Event**, the Agent will promptly so notify ~~Borrowing Agent and each Lender. Thereafter, the~~**the Borrowers. Upon notice thereof by the Agent to the Borrowers, (i) any** obligation of the **Agent or the** Lenders to make or ~~maintain such Overnight LIBOR~~**continue SOFR** Loan**s** shall be suspended~~ until the Agent (upon the instruction of the Required Lenders)~~**, (ii) all SOFR Loans shall be immediately converted to Alternate Base Rate Loans (the interest rate on which Alternate Base Rate Loans shall be determined by the Agent without reference to the SOFR component of Alternate Base Rate) and (iii) the component of Alternate Base Rate based upon SOFR will not be used in any determination of Alternate Base Rate, in each case, until the Agent** revokes such notice. Upon receipt of such notice, **the** Borrow~~ing~~**ers** ~~Agent~~ may revoke any pending request for a borrowing ~~of, conversion to~~ or continuation of ~~such Overnight LIBOR~~**SOFR** Loan**s** or, failing that, will be deemed to have converted such request into a request for ~~a borrowing of a~~**Alternate** Base Rate Loan**s** in the amount specified therein. **Upon any such conversion, the Borrowers shall also pay any additional amounts required pursuant to clause (c) below.**

(ii) ***Permanent.*** **If the Agent reasonably determines (which determination shall be conclusive and binding on the Borrowers) that "Daily Simple SOFR" as a result of a Benchmark Transition Event, the Agent will promptly so notify the Borrowers, and the provisions of Section 3.6 of this Agreement shall be applicable. Upon notice thereof by the Agent to the Borrowers, (i) any obligation of the Agent or the Lenders to make or continue SOFR Loans shall be suspended, (ii) all SOFR Loans shall be immediately converted to Alternate Base Rate Loans (the interest rate on which Alternate Base Rate Loans shall be determined by the Agent without reference to the SOFR component of Alternate Base Rate) and (iii) the component of Alternate Base Rate based upon SOFR will not be used in any determination of Alternate Base Rate. Upon receipt of such notice, the Borrowers may revoke any pending request for a borrowing or continuation of SOFR Loans or, failing that, will be deemed to have converted such request into a request for Alternate Base Rate Loans in the amount specified therein. Unless and until the Agent and the Borrowers have amended this Agreement to provide for a Benchmark Replacement in accordance with Section 3.6 of this Agreement, all Loans shall be Alternate Base Rate Loans.**

(c) Breakage Compensation. In the event of (i) the payment of any principal of any SOFR Loan other than on the interest payment date therefor (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on the interest payment date therefor, (c) the failure to borrow, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any SOFR Loan other than on the interest payment date therefor as a result of a request by the Borrowers, then, in any such event, the Borrowers shall compensate each Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds. A certificate of the Agent or any Lender setting forth any amount or amounts that the Agent or such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay the Agent or such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 3.5 DISCRETION OF LENDERS AS TO MATTERS OF FUNDING. Notwithstanding any provision of this Agreement to the contrary, each Lender shall be entitled to fund and maintain its funding of all or any part of such Lender's Loans in any manner such Lender deems to be appropriate.

SECTION 3.6 BENCHMARK REPLACEMENT SETTING.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document (and any ~~Hedge~~**swap** ~~A~~**a**greement shall be deemed not to be a "Loan Document" for purposes of this Section~~):~~

3.6), upon the occurrence of a Benchmark Transition Event, the Agent and the Borrowers may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a ~~(a) Replacing USD LIBOR. On March5, 2021, the Financial Conduct Authority ("FCA"), the regulatory supervisor of USD LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12-month USD LIBOR tenor settings. On the earliest of (i) July 1, 2023, (ii) the date that all Available Tenors of USD LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (iii) the Early Opt-in Effective Date, if the then-current Benchmark is USD LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action by or consent of any other party to, this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.~~

~~(b) Replacing Future Benchmarks. If any~~ Benchmark Transition Event ~~occurs after the date hereof (other than as described above with respect to USD-LIBOR), the thencurrent Benchmark will be replaced with the Benchmark Replacement for all purposes hereunder and under any Loan Document in respect of any Benchmark setting on the later of (i) as of~~**will become effective at** 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the ~~date notice of such Benchmark Replacement is provided to the Lenders and the Borrowers (together, if applicable, with an amendment to this Agreement implementing such Benchmark Replacement and any applicable Benchmark Replacement Conforming Changes) or (ii) such other date as may be determined by the Agent, in each case, without any further action or consent of any other party to this Agreement or any other Loan Document, so long as the Agent has not received, by such time (or, in the case of clause (ii) above, such time as may be specified by the Agent as a deadline to receive objections, but in any case, no less than five (5) Business Days after the date such notice is provided to the Lenders and the Borrowers), written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders; provided, however, that in the event that the then-current Benchmark is not a SOFR-based rate, then the Benchmark Replacement shall be determined in accordance with clause (1) of the definition of "Benchmark Replacement" unless the Agent has determined that neither of such alternative rates is available. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrowers may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrowers' receipt of notice from the Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrowers will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of the Base Rate based upon the Benchmark will not be used in any determination of the Base Rate.~~ **Agent has provided notice thereof to the Borrowers. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 3.6 will occur prior to the applicable Benchmark Transition Start Date. Unless and until a Benchmark Replacement has been implemented, all Loans shall be Alternate Base Rate Loans.**

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

(~~d~~**c**) Notices; Standards for Decisions and Determinations. The Agent will promptly notify the Borrowers ~~and the Lenders~~ of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Agent pursuant to this Section **3.6,** including~~, without limitation,~~ any determination with respect to a tenor, rate or adjustment~~, or implementation of any Benchmark Replacement Conforming Changes, the timing of implementation of any Benchmark Replacement~~ or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding ~~on all parties hereto~~ absent manifest error and may be made in its sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section~~, and shall not be a basis of any claim of liability of any kind or nature by any party hereto, all such claims being hereby waived individually by each party hereto~~**3.6**.

(d) Definitions. For purposes of this Agreement, the following terms have the definitions provided below:

(e) ~~Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR or any alternate rate selected in an Early Opt-in Election), then the Agent may remove any tenor of such Benchmark that is unavailable or non-representative for such Benchmark (including any Benchmark Replacement) settings and (ii) if such tenor becomes available or representative, the Agent may reinstate any previously removed tenor for such Benchmark (including any Benchmark Replacement) settings.~~

"Benchmark Replacement" means with respect to any Benchmark Transition Event, the sum of: (i) the alternate benchmark rate that has been selected by the Agent and the Borrowers giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for U.S. dollar-denominated credit facilities and (ii) the related Benchmark Replacement Adjustment; provided that if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

(f) ~~Certain Defined Terms. As used in this Section:~~

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

"***Available Tenor***" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

"Benchmark" means, initially, USD LIBOR, provided that if a replacement for the Benchmark has occurred pursuant to this Section, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"Benchmark Replacement" means, for any Available Tenor:

(1) for purposes of clause (a) of this Section, the first alternative set forth below that can be determined by the Agent:

(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration, and 0.42826% (42.826 basis points) for an Available Tenor of six-months' duration; provided, that, if the Borrowers have provided a notification to the Agent in writing on or prior to the date on which the Benchmark Replacement will become effective that the Borrowers have a Hedge Agreement in place with respect to any of the Loans as of the date of such notice (which such notification the Agent shall be entitled to rely upon and shall have no duty or obligation to ascertain the correctness or completeness of), then the Agent, in its sole discretion, may decide not to determine the Benchmark Replacement pursuant to this clause(1)(a) for such Benchmark Transition Event or Early Opt-in Election, as applicable; or

(b) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment for an Available Tenor of one-month's duration (0.11448% (11.448 basis points));

provided, however, that if an Early Opt-in Election has been made, the Benchmark Replacement will be the benchmark selected in connection with such Early Opt-in Election; and

(2) for purposes of clause (b) of this Section, the sum of: (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value, or zero), in each case, that has been selected pursuant to this clause (2) by the Agent and the Borrowers as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

~~provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for all purposes of this Agreement and the other Loan Documents.~~

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

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

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

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any available tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (A) if the event giving rise to the Benchmark Replacement Date occurs prior to any setting of the then-current Benchmark, the Benchmark Replacement Date will be deemed to have occurred prior to such determination and (B) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current available tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

~~***"Benchmark Transition Event***" means, with respect to any then-current Benchmark (other than USD LIBOR), the occurrence of~~ **(b)** a public statement or publication of information by ~~or on behalf of the administrator of the then-current Benchmark, the~~**the** regulatory supervisor for the administrator of such Benchmark~~, the Board of Governors of the~~ **(or the published component used in the calculation thereof), the** Federal Reserve ~~System~~**Board**, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark **(or such component)**, a resolution authority with jurisdiction over the administrator for such Benchmark **(or such component)** or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark~~, announcing or stating that (a) such~~ **(or such component), which states that the** administrator **of such Benchmark (or such component)** has ceased or will cease ~~on a specified date~~ to provide ~~all Available Tenors of~~ such Benchmark~~,~~ **(or such component thereof)** permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide ~~any Available Tenor of~~ such Benchmark ~~or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.~~**(or such component thereof); or**

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) is no longer, or as of a specified future date will no longer be, representative.

"Benchmark Transition Start Date" means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication.

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

~~***"Daily Simple SOFR***" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; provided, that if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.~~

~~***"Early Opt-in Effective Date***" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.~~

~~***"Early Opt-in Election***" means the occurrence of:~~

~~(1) a notification by the Agent to each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time incorporate or adopt (as a result of amendment or as originally executed) either a SOFR-based rate (including SOFR or Term SOFR or any other rate based upon SOFR) as a benchmark rate or an alternate benchmark interest rate to replace USD LIBOR (and such syndicated credit facilities are identified in such notice and are publicly available for review), and~~

~~(2) the joint election by the Agent and the Borrowers to trigger a fallback from USD LIBOR and the provision by the Agent of written notice of such election to the Lenders.~~

~~***"Floor***" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.~~

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

~~***"SOFR"*** means, for any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org. (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time), on the immediately succeeding Business Day.~~

~~***"Term SOFR"*** means, for the applicable corresponding tenor, the forwardlooking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.~~

~~***"USD LIBOR"*** means the London interbank offered rate for U.S. dollars.~~

ARTICLE IV. CONDITIONS PRECEDENT

The obligation of the Lenders to make the first Loan and of Agent to issue the first Letter of Credit is subject to the Credit Parties satisfying each of the following conditions to the reasonable satisfaction of the Agent:

SECTION 4.1 NOTES. Borrowers shall have executed and delivered to each Lender its Revolving Credit Note.

SECTION 4.2 PLEDGE AGREEMENT. Ultralife shall execute and deliver to Agent, for the benefit of the Secured Creditors, a Pledge Agreement, in form and substance satisfactory to Agent, together with the original stock certificates (or equivalent), if applicable, and appropriate stock powers (or equivalent), if applicable, and such other documents in connection therewith as Agent shall reasonably request.

SECTION 4.3 INTELLECTUAL PROPERTY SECURITY AGREEMENTS. Borrowers shall have executed and delivered to Agent Intellectual Property Security Agreements, in form and substance reasonably satisfactory to Agent.

SECTION 4.4 SECRETARY'S CERTIFICATE, RESOLUTIONS, ORGANIZATIONAL DOCUMENTS. Each Borrower and each Guarantor of Payment shall have delivered to each Lender a secretary's certificate (or equivalent) certifying the names of the officers (or other authorized Persons) of such Borrowers or such Guarantor of Payment authorized to sign the Loan Documents, together with the true signatures of such officers (or other authorized Persons) and certified copies of (a) the resolutions of the board of directors (or equivalent governing body) of each Borrower and each Guarantor of Payment evidencing approval of the execution and delivery of the Loan Documents to which such Borrowers or such Guarantor of Payment, as the case may be, is a party, (b) the Formation Documents of each Borrower and each Guarantor of Payment, in each case having been certified, not more than thirty (30) days prior to the date of this Agreement, by the Secretary of State of the jurisdiction under which such Borrowers or such Guarantor of Payment has been organized, and (c) the Governance Documents of each Borrower and each Guarantor of Payment.

SECTION 4.5 GOOD STANDING CERTIFICATES. Each Borrower shall have delivered to Agent a good standing certificate (or equivalent) for such Borrowers and each Guarantor of Payment, issued on or about the Closing Date by the Secretary of State in the state(s) where such Borrowers or such Guarantor of Payment is organized or qualified as a foreign organization.

SECTION 4.6 LEGAL OPINION. Borrowers shall have delivered to Agent and each Lender an opinion of counsel for Borrowers and each Guarantor of Payment, in form and substance reasonably satisfactory to the Lenders.

SECTION 4.7 CLOSING, AGENT AND LEGAL FEES. Borrowers shall have paid to Agent, for the benefit of the Lenders, a closing fee in the amount of $30,000; and (b) all reasonable legal fees and expenses of Agent and the Lenders in connection with the preparation and negotiation of the Loan Documents.

SECTION 4.8 FINANCING STATEMENTS; LIEN SEARCHES AND PAYOFF LETTERS. With respect to the property owned or leased by each Borrower and each Guarantor of Payment (if any) and any other property securing the Secured Debt, Borrowers shall have caused to be delivered to Agent (a) the results of UCC lien searches reasonably satisfactory to Agent; (b) the results of federal and state tax lien and judicial lien searches reasonably satisfactory to Agent; and (c) UCC termination statements and payoff letters reflecting termination of all financing statements (other than financing statements related to Permitted Liens) previously filed by any party having a security interest in any part of the Collateral or any other property securing the Secured Debt.

SECTION 4.9 [RESERVED].

SECTION 4.10 [RESERVED].

SECTION 4.11 [RESERVED].

SECTION 4.12 [RESERVED].

SECTION 4.13 INSURANCE CERTIFICATE. Borrowers shall have delivered to Agent certificates of insurance, in form and substance reasonably satisfactory to Agent, as required by Section 5.1 with Agent listed as loss payee and additional insured.

SECTION 4.14 [RESERVED].

SECTION 4.15 [RESERVED].

SECTION 4.16 LANDLORD'S AND BAILEE'S WAIVER. Borrowers shall have delivered a landlord's waiver and/or a bailee's waiver, if applicable, each in form and substance satisfactory to Agent and the Lenders, for each location where either (a) a Credit Party's books and records are located, or (b) any Collateral of a Credit Party with a fair market value in excess of $50,000 in the aggregate is located.

SECTION 4.17 CASH MANAGEMENT PROCEDURES. Each Credit Party shall have established cash management and treasury management procedures with Agent satisfactory to Agent, in its sole and absolute discretion, including, without limitation, the establishment of (a) a demand Deposit Account with Agent as well as its other primary Deposit Accounts with Agent, (b) a subscription to Agent's web based financial reporting system.

SECTION 4.18 CUSTOMER IDENTIFICATION PROGRAM. Agent shall have received all customer identification program documentation and related documentation that it shall request in its Permitted Discretion.

SECTION 4.19 FINANCIAL INFORMATION. Borrowers shall have delivered to Agent a proforma opening balance sheet for the Companies and cash flow statements, income statements and balance sheets for the Companies covering the one year period from Closing Date and set forth on a monthly basis.

SECTION 4.20 NO MATERIAL ADVERSE CHANGE. No material adverse change, in the opinion of the Lenders, shall have occurred in the financial condition or operations of the Credit Parties since December 31, 2016.

SECTION 4.21 MISCELLANEOUS. The Credit Parties shall have provided to Agent such other items and shall have satisfied such other conditions as may be reasonably required by the Lenders.

ARTICLE V. COVENANTS

Each Credit Party agrees that so long as the Commitment remains in effect and thereafter until all of the Secured Debt shall have been paid in full (other than contingent indemnification obligations), each Credit Party shall perform and observe, and shall cause each other Company to perform and observe, each of the following provisions:

SECTION 5.1 INSURANCE. Each Company shall at all times maintain insurance upon its insurable Inventory, Equipment and other personal and real property, business interruption and general liability insurance in such form, written by such companies, in such amounts, for such period, and against such risks as are maintained by similar companies similarly situated, with provisions reasonably satisfactory to Agent for payment of all losses thereunder to Agent, for the benefit of the Lenders, and such Company as their interests may appear (loss payable and additional insured endorsement in favor of Agent), and, if required by Agent, after the occurrence and during the continuance of an Event of Default, Borrowers shall deposit the policies with Agent. Any such policies of insurance shall provide for no fewer than thirty (30) days prior written notice of cancellation to Agent. During the continuance of an Event of Default, Agent is hereby authorized to act as attorney-in-fact for any Credit Party in obtaining, adjusting, settling and canceling such insurance and indorsing any drafts. In the event of failure to provide such insurance as herein provided, Agent may, at its option, provide such insurance and the Credit Parties shall pay to Agent, upon demand, the cost thereof. Should the Credit Parties fail to pay such sum to Agent upon demand, interest shall accrue thereon, from the date of demand until paid in full, at the Default Rate. Within ten (10) days of Agent’s written request, each Credit Party shall furnish to Agent such information about any Company’s insurance as Agent may from time to time reasonably request, which information shall be prepared in form and detail satisfactory to Agent and certified by a Financial Officer of Borrowers. Notwithstanding the foregoing requirements, Agent acknowledges that Borrower’s insurance coverage in effect on the date hereof as reviewed by the Agent is satisfactory as of the Closing Date.

SECTION 5.2 MONEY OBLIGATIONS. Each Company shall pay in full (a) prior in each case to the date when penalties would attach, all taxes, assessments and governmental charges and levies (except only those so long as and to the extent that the same shall be Properly Contested) for which it may be or become liable or to which any or all of its properties may be or become subject; (b) all of its wage obligations to its employees in compliance with the Fair Labor Standards Act (29 U.S.C. 206 207) or any comparable provisions; and (c) all of its other material obligations calling for the payment of money (except only those so long as and to the extent that the same shall be Properly Contested) before such payment becomes overdue.

SECTION 5.3 FINANCIAL STATEMENTS. The Credit Parties shall furnish to each Lender:

(a) at any time when the outstanding principal amount of Revolving Loans exceed $5,000,000, within 15 days after the end of each calendar month for the prior calendar month (i) an accounts receivable aging (reconciled to the general ledger and the Borrowing Base Certificate), (ii) an accounts payable aging (reconciled to the general ledger), (iii) an Inventory report (valued on a first-in, first-out basis), and (iv) a Borrowing Base Certificate, or after the occurrence and during the continuance of an Event of Default, as frequently as Agent may reasonably request;

(b) within 45 days after the end of each Fiscal Quarter, a copy of 10Q filed with the SEC for such quarter together with (without duplication) balance sheets of Borrowers as of the end of such period and statements of income (loss), and cash flow for the Fiscal Quarter and Fiscal Year to date periods, all prepared on a Consolidated and consolidating basis, in accordance with GAAP, and in form and detail satisfactory to Agent and certified by a Financial Officer of Borrowers, together with a certificate of such officer setting forth the Defaults and Events of Default coming to such Financial Officer's attention or, if none, a statement to that effect;

(c) within 90 days after the end of each Fiscal Year, a copy of the 10K filed with the SEC for such Fiscal Quarter together with (without duplication) an annual audit report of Borrowers for that year prepared on a Consolidated and consolidating basis, in accordance with GAAP, and in form and detail satisfactory to Agent and certified by an independent public accountant satisfactory to Agent, which report shall include balance sheets and statements of income (loss), stockholders' equity and cash-flow for that period, together with an opinion with respect to such financial statements of nationally recognized independent accountants which opinion will be unqualified as to scope or going concern and will (i) state, in substance, that such accountants audited such financial statements in accordance with GAAP, that such audit provides a reasonable basis for their opinion, and that in their opinion such financial statements present fairly, in all material respects, the Borrowers and their Consolidated Subsidiaries on a Consolidated and consolidating basis as at the end of such Fiscal Year and the results of their operations and cash flows for such Fiscal Year in conformity with GAAP, or (ii) contain such statements as are customarily included in unqualified reports of independent accountants in conformity with the recommendations and requirements of the American Institute of Certified Public Accountants (or any successor organization);

(d) concurrently with the delivery of the financial statements in (b) and (c) above, a Compliance Certificate;

(e) with the delivery of the financial statements in (b) and (c) above, a copy of any management report, letter or similar writing furnished to the Companies by the accountants in respect of the Companies' systems, operations, financial condition or properties;

(f) on or prior to January 31 of each Fiscal Year, pro-forma projections (including balance sheets, income statements and statements of cash flows) and budget, set forth on a quarterly basis, of Borrowers and their Subsidiaries on a Consolidated basis for such Fiscal Year, to be in form acceptable to Agent;

(g) as soon as available, but in any event within ten (10) days after the issuance thereof, with copies of such financial statements, reports and returns as Ultralife or any Subsidiary of Ultralife which is not a Wholly-Owned Subsidiary shall send to its stockholders, members, other equityholders or the SEC; provided, however, that so long as such reports are publicly available on the website of the SEC, Borrowers shall not be required to separately provide them to Agent; ~~and~~

(~~H~~**h**) within 10 days of Agent's written request, such other information about the financial condition, properties and operations of any Company as Agent may from time to time reasonably request, which information shall be submitted in form and detail reasonably satisfactory to Agent~~.~~; **and**

(i) prompt written notice of any change in the information provided in the Beneficial Ownership Certification delivered to the Agent that would result in a change to the list of beneficial owners identified in such certification and, upon request, delivery of such other information and documentation required under the Beneficial Ownership Regulations as from time to time requested by Agent or any Lender.

SECTION 5.4 FINANCIAL RECORDS. Each Company shall at all times maintain true and complete records and books of account, including, without limiting the generality of the foregoing, appropriate reserves for possible losses and liabilities, all in accordance with GAAP, and at all reasonable times (during normal business hours and upon notice to such Company) permit the Lenders to examine that Company's books and records and to make excerpts therefrom and transcripts thereof.

SECTION 5.5 FRANCHISES. Except as permitted under Section 5.12 hereof, each Company shall preserve and maintain at all times its existence, material rights and other franchises material to such Company's business.

SECTION 5.6 ~~ERISA~~**PENSION PLAN** COMPLIANCE. No Company shall incur any material accumulated funding deficiency within the meaning of ERISA, or any material liability to the PBGC, established thereunder in connection with any ERISA Plan. The Credit Parties shall furnish to the Lenders (a) as soon as possible and in any event within thirty (30) days after any Company knows or has reason to know that any Reportable Event with respect to any ERISA Plan **or a Canadian Pension Event** has occurred, a statement of the Financial Officer of such Company, setting forth details as to such Reportable **Event or a Canadian Pension** Event and the action that such Company proposes to take with respect thereto, together with a copy of the notice of such Reportable Event given to the PBGC if a copy of such notice is available to such Company, (b) promptly after the filing thereof with the Internal Revenue Service, copies of each annual report with respect to each ERISA Plan that is subject to Title IV of ERISA or provides retiree medical benefits and is established or maintained by such Company for each plan year, including (i) where required by law, a statement of assets and liabilities of such ERISA Plan as of the end of such plan year and statements of changes in fund balance and in financial position, or a statement of changes in net assets available for plan benefits, for such plan year, certified by an independent public accountant satisfactory to Agent and (ii) if such ERISA Plan is required by law to perform an annual actuarial review, an actuarial statement of such ERISA Plan applicable to such plan year, certified by an enrolled actuary of recognized standing acceptable to Agent, ~~and~~ (c) promptly after receipt thereof a copy of any notice such Company or any member of the Controlled Group may receive from the PBGC or the Internal Revenue Service with respect to any ERISA Plan administered by such Company; provided, that this latter clause shall not apply to notices of general application promulgated by the PBGC or the Internal Revenue Service**; and (d) promptly after the sending or filing thereof, copies of any annual information report (including all actuarial reports and other schedules and attachments thereto) required to be filed with a Governmental Authority in connection with each Canadian Pension Plan that is required by Applicable Law to be funded; promptly upon receipt, copies of any notice, demand, inquiry or subpoena received in connection with any Canadian Pension Plan from a Governmental Authority (other than routine inquiries in the course of application for a favorable IRS determination letter); and at Agent's request, copies of any annual report required to be filed with a Governmental Authority in connection with any other Pension Plan or Canadian Pension Plan**. Borrowers shall promptly notify the Lenders of any material taxes assessed, proposed to be assessed or that any Credit Party has reason to believe may be assessed against a Company by the Internal Revenue Service with respect to any ERISA Plan. As soon as practicable, and in any event within twenty (20) days, after any Company becomes aware that an ERISA Event **or a Canadian Pension Event** has occurred, such Company shall provide Lender with notice of such ERISA **Event or Canadian Pension** Event with a certificate by a Financial Officer of such Company setting forth the details of the event and the action such Company or another Controlled Group member proposes to take with respect thereto. Each Credit Party shall, at the request of Agent or any Lender, deliver or cause to be delivered to Agent or such Lender, as the case may be, true and correct copies of any documents relating to the ERISA Plan established or maintained by any Company.

None of the Credit Parties shall, without the consent of the Agent, maintain, administer, contribute or have any liability in respect of any Canadian Defined Benefit Plan or acquire an interest in any Person if such Person sponsors, maintains, administers or contributes to, or has any liability in respect of any Canadian Defined Benefit Plan.

SECTION 5.7 FINANCIAL COVENANTS;

(a) CONSOLIDATED FIXED CHARGE COVERAGE RATIO. The

Companies shall not permit the Consolidated Fixed Charge Coverage Ratio of Borrowers to be less than 1.15 to 1.00 for the Fiscal Quarter ending March 31, 2019, and each Fiscal Quarter thereafter, as calculated for the four (4) consecutive Fiscal Quarter period ending on such date; provided, however, that (i) for the Fiscal Quarter ending June 30, 2019, the Consolidated Fixed Charges shall be the actual Consolidated Fixed Charges for the one Fiscal Quarter period ending on such date multiplied by four, (ii) for the Fiscal Quarter ending September 30, 2019, the Consolidated Fixed Charges shall be the actual Consolidated Fixed Charges for the two Fiscal Quarter period ending on such date multiplied by two, and (iii) for the Fiscal Quarter ending December 31, 2019, the Consolidated Fixed Charges shall be the actual Consolidated Fixed Charges for the three Fiscal Quarter period ending on such date multiplied by one and one third.

(b) CONSOLIDATED SENIOR LEVERAGE RATIO. The Companies shall not suffer or permit the Consolidated Senior Leverage Ratio to exceed (i) 3.50 to 1.00 for the Fiscal Quarters ending December 31, 2022 and March 31, 2023, and (ii) 3.00 to 1.00 for the Fiscal Quarter ending June 30, 2023 and on the last day of each Fiscal Quarter thereafter.

SECTION 5.8 BORROWING. No Company shall create, incur or have outstanding any Indebtedness of any kind; provided, that this Section shall not apply to (a) the Loans, the Letters of Credit, the Banking Services Obligations or any other Indebtedness under the Loan Documents; (b) any Indebtedness incurred by Borrowers or any Credit Party in respect of Capital Leases and any Indebtedness incurred to finance the acquisition, construction or improvement of any fixed or capital assets after the Closing Date that is secured by purchase money mortgage or purchase money security interests, so long as the combined aggregate principal amount of all such Indebtedness does not exceed $1,0**5**00,000 at any time outstanding; (c) the Indebtedness existing on the **Third Amendment** Closing Date as set forth in Schedule 5.8 hereto or as otherwise disclosed to Agent and any refinancings, refundings, renewals or extensions thereof, which do not increase the principal amount or shorten the maturity thereof; (d) loans to a Company from a Company so long as (I) each such Company borrowing such money is a Borrower or a Credit Party, (II) each such loan is evidenced by the Master Promissory Note, which such promissory note has been pledged to Agent, for the benefit of the Lenders, in a manner reasonably satisfactory to Agent, and (III) the Master Promissory Note is Subordinated; (e) Indebtedness under any Hedge Agreement entered into by Borrowers in connection with the Debt and not for speculative purposes, (f) guarantee obligations incurred in the ordinary course of business by a Company of Indebtedness of a Credit Party, (g) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts, (h) Indebtedness constituting Investments permitted pursuant to Section 5.11 hereof, (i) Indebtedness incurred in connection with Permitted Acquisitions to the extent it is subordinated to the Secured Debt on terms and conditions satisfactory to Agent in its Permitted Discretion, (j) obligations in respect of performance bonds or sureties incurred in the ordinary course of business, (k) Indebtedness of any Credit Party arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn by such Credit Party in the ordinary course of business against insufficient funds, so long as such Indebtedness is repaid within five (5) Business Days; (l) endorsements of items for deposit or collection of commercial paper received in the ordinary course of business; (m) Indebtedness in respect of deposits or advances received in the ordinary course of business; (n) Indebtedness incurred by Subsidiaries of Borrowers that are Foreign Persons **(other than Excell Canada)** in the aggregate amount at any time outstanding not to exceed $3,500,000, (o) Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Subsidiary pursuant to a Permitted Acquisition, or Indebtedness attaching to assets that are acquired by a Borrower or any of its Subsidiaries in a Permitted Acquisition, in each case after the Closing Date in an aggregate amount not to exceed $500,000 at any time outstanding; provided that such Indebtedness existed at the time such Person became a Subsidiary or at the time such assets were acquired and, in each case, was not created in anticipation or contemplation thereof, (p) to the extent constituting Indebtedness, Investments permitted under Section 5.11, (q) to the extent constituting Indebtedness, deferred compensation to employees of Borrowers or any of their Subsidiaries incurred in the ordinary course of business, (r) Indebtedness in connection with the repurchase of Capital Stock otherwise permitted hereunder issued to officers, executives, directors and employees to purchase Capital Stock (or options or warrants or similar instruments) of the Credit Parties or any of their Affiliates, and (s) any other unsecured debt which shall not exceed $250,000 in the aggregate.

SECTION 5.9 LIENS. No Company shall create, assume or suffer to exist any Lien upon any of its property or assets, whether now owned or hereafter acquired; provided that this Section shall not apply to Permitted Liens. In addition, no Company shall enter into any contract or agreement that would prohibit Agent or the Lenders from acquiring a security interest, mortgage or other Lien on, or a collateral assignment of, any of the property or assets of a Company, other than in connection with the Indebtedness described in Section 5.8(b) hereof or the licensing of Intellectual Property; provided that any such restriction contained therein relates only to the asset or assets subject to such Liens.

SECTION 5.10 REGULATIONS U AND X. No Company shall take any action that would result in any non-compliance of the Loans with Regulations U and X of the Board of Governors of the Federal Reserve System.

SECTION 5.11 INVESTMENTS AND LOANS. No Company shall: (a) create, acquire or hold any Subsidiary, (b) make or hold any investment in any stocks, bonds or securities of any kind, (c) be or become a party to any joint venture or other partnership, (d) make or keep outstanding any advance or loan to any Person, or (e) be or become a Guarantor of any kind; provided, that this Section shall not apply to:

(i) any endorsement of a check or other medium of payment for deposit or collection through normal banking channels or similar transaction in the normal course of business;

(ii) any investments in cash or Cash Equivalents;

(iii) the holding of Subsidiaries listed on Schedule 7.1 hereto as of the **Third Amendment** Closing Date;

(iv) intercompany loans to the extent permitted under Section 5.8(d);

(v) any advance or loan to an officer, director or employee of a Company made in the ordinary course of such Company's business, so long as all such advances and loans from all Companies aggregate not more than the maximum principal sum of $100,000 at any time outstanding;

(vi) the creation, acquisition or holding of any Wholly-Owned Subsidiary that is a Domestic Subsidiary so long as such Subsidiary is in compliance with Section 5.22 of this Agreement;

(vii) extensions of trade credit in the ordinary course of business;

(viii) investments by Borrowers in Hedge Agreements other than for speculative purposes;

(ix) investments acquired by Borrowers (a) in exchange for any other investment held by Borrowers in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other investment or (b) as a result of the foreclosure by Borrowers with respect to any secured investment or other transfer of title with respect to any secured investment in default;

(x) investments, loans and guaranties described on Schedule 5.11 hereto and any renewal or replacement thereof;

(xi) investments that constitute Restricted Payments permitted under Section 5.20 hereof or Acquisitions permitted under Section 5.13;

(xii) Investments in Capital Expenditures to the extent permitted hereunder;

(xiii) guaranties permitted under Section 5.8 hereof;

(xiv) contributions of capital by any Credit Party to any other Credit Party until such time as Agent or the Required Lenders directs the Credit Parties during the existence of a Default or Event of Default, that no such contribution of capital may be made;

(xv) Investments of any Subsidiary that is not a Credit Party in any other Subsidiary that is not a Credit Party;

(xvi) so long as no Event of Default has occurred or is continuing, Investments by any Credit Party in any Subsidiary that is not a Credit Party in an aggregate amount not to exceed $500,000 at any time;

(xvii) deposits, rebates, prepayments and other credits to customers and suppliers made in the ordinary course of business; or

(xviii) other investments in an aggregate amount not to exceed $100,000.

SECTION 5.12 MERGER AND SALE OF ASSETS. No Company shall merge, **amalgamate** or consolidate with any other Person, liquidate, wind-up or dissolve itself, or sell, lease or transfer or otherwise dispose of any assets to any Person other than Inventory in the ordinary course of business, except that, if no Default or Event of Default shall then exist or immediately thereafter shall begin to exist:

(a) any Company may sell or dispose of assets in amounts not to exceed $750~~0~~,000 in the aggregate for all Companies in any Fiscal Year so long as the proceeds of such sale or disposition are applied in the manner set forth in Section 2.7;

(b) so long as the security interest granted to Agent, for the benefit of the Lenders, in the Collateral shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger **or amalgamation**) any Subsidiary may merge **or amalgamate** with (i) any Borrower (provided that such Borrower shall be the continuing or surviving Person) or (ii) any one or more Credit Parties, provided that the continuing or surviving Person shall be a Domestic Subsidiary that is a Wholly-Owned Subsidiary that is a Credit Party;

(c) so long as the security interest granted to Agent, for the benefit of the Lenders, in the Collateral shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such transfer), any Subsidiary may sell, lease, transfer or otherwise dispose of any of its assets to (i) a Borrower, or (ii) any Wholly-
Owned Subsidiary that is a Domestic Subsidiary that is a Credit Party; ~~or~~

(d) any Company may (i) dispose of accounts receivable in connection with the collection or compromise thereof in the ordinary course of business; (ii) sell or otherwise dispose of Cash Equivalents for fair market value; or (iii) dispose of obsolete, damaged, surplus, unused or worn out property in the ordinary course of business in amounts not to exceed $750~~0~~,000 in the aggregate for all Companies in any Fiscal Year so long as the proceeds of such sale or disposition are applied in the manner set forth in Section 2.7~~.~~; **and**

(e) Dormant Subsidiary may be amalgamated into Excell Canada pursuant to Section 5.28.

SECTION 5.13 ACQUISITIONS. Except for the Southwest Acquisition, the Excell Acquisition, Permitted Acquisitions or as expressly permitted under Section 5.11 or 5.12 hereof, without the prior written consent of the Required Lenders, no Company shall acquire or permit any Subsidiary to acquire the assets or stock of any other Person; provided, however, that in the event Borrowers ask Agent and the Lenders to consider consenting to any Acquisition (other than a Permitted Acquisition) then Agent and the Lenders agree (i) to give such request all due consideration in good faith, as determined by Agent and the Lenders in their Permitted Discretion, and (ii) not to unreasonably delay its decision with respect to such request.

SECTION 5.14 NOTICE. The Credit Parties shall cause a Financial Officer of Borrowers to notify Agent and the Lenders within three (3) Business Days after obtaining knowledge of any (a) Default or Event of Default that has occurred hereunder or any representation or warranty made in Article VII hereof or elsewhere in this Agreement or in any Related Writing that has for any reason ceased in any material respect to be true and complete, (b) any default has occurred under any Material Contract, the Southwest Acquisition Documents, or the Excell Acquisition Documents which such default is continuing beyond any period of grace provided with respect thereto, (c) litigation or proceeding that is brought against any Company before any court or administrative agency which could reasonably be expected to have or result in a Material Adverse Effect, (d) material adverse change or development in connection with any such litigation or proceeding, (e) there is (i) any change to a ~~Borrower~~'~~s~~**Credit Party's** right to use any of its Intellectual Property necessary for the conduct of its business, (ii) any addition or acquisition of any material new Intellectual Property or (iii) any registration of any Intellectual Property with the United States Patent and Trademark **Office or Canadian Intellectual Property** Office, and (f) material change to any Company's insurance coverage, (g) there is any change to the requirement of any Credit Party to obtain any consent, approval or authorization of, or filing, registration or qualification with, any governmental authority or any other Person, required to be obtained or completed by the Credit Parties in connection with the execution, delivery or performance of any of the Loan Documents, that has not already been obtained or completed, (h) any material change in accounting policies of any Credit Party, (i) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other labor disruption against or involving any Credit Party, (j) any material breach or non-performance of, or any material default under, any material contract of a Credit Party, or any material violation of, or material noncompliance with, any law (statutory or common), ordinance, treaty, rule, regulation, order, policy, other legal requirement, (k) any material dispute, litigation, investigation, proceeding or suspension which may exist at any time between any Credit Party and any Governmental Authority, and (l) any Material Adverse Effect shall have occurred as determined by a Financial Officer of a Company. Each notice pursuant to this Section shall be accompanied by a written statement by a Financial Officer on behalf of the Credit Parties setting forth details of the occurrence referred to therein, and stating what action Borrowers or any other Company proposes to take with respect thereto and at what time. Each notice under Section 5.14(a) hereof shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been breached or violated.

SECTION 5.15 ENVIRONMENTAL COMPLIANCE. Each Company shall comply with any and all Environmental Laws including, without limitation, all Environmental Laws in jurisdictions in which any Company owns or operates a facility or site, arranges for disposal or treatment of hazardous substances, solid waste or other wastes, accepts for transport any hazardous substances, solid waste or other wastes or holds any interest in real property or otherwise, the failure to comply with which could be reasonably expected to result in a Material Adverse Effect. Borrowers shall furnish to the Lenders, promptly after receipt thereof, a copy of any notice any Company may receive from any governmental authority, private Person or otherwise that any material litigation or proceeding pertaining to any environmental, health or safety matter has been filed or is threatened against such Company, any real property in which such Company holds any interest or any past or present operation of such Company. No Company shall allow the release or disposal of hazardous substances, hazardous waste, solid waste or other substances or wastes on, under or to any real property in which any Company holds any interest in violation of any Environmental Law, the failure to comply with which could be reasonably expected to result in a Material Adverse Effect. As used in this Section, "litigation or proceeding" means any demand, claim, notice, suit, suit in equity action, administrative action, investigation or inquiry whether brought by any governmental authority, private Person or otherwise. Each Credit Party shall defend, indemnify and hold Agent and the Lenders harmless against all costs, expenses, claims, damages, penalties and liabilities of every kind or nature whatsoever (including reasonable attorneys' fees) arising out of or resulting from the noncompliance of any Company with any Environmental Law, provided that no Lender or Agent shall have the right to be indemnified under this Section for its gross negligence or willful misconduct. Such indemnification shall survive any termination of this Agreement.

SECTION 5.16 AFFILIATE TRANSACTIONS. No Company shall, or shall permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of a Company on terms that are less favorable in any material respect to such Company or such Subsidiary, as the case may be, than those that might be obtained at the time in a transaction with a non-Affiliate; provided, however, that the foregoing shall not prohibit (a) the payment of customary and reasonable directors' fees and expenses to directors who are not employees of a Company or any Affiliate of a Company; (b) compensation arrangements for officers and other employees of or consultants to any Company entered into in the ordinary course of business; (c) any transaction between a Borrower and an Affiliate (if a Credit Party) that Borrowers reasonably determine in good faith is beneficial to Borrowers and their Affiliates as a whole and that is not entered into for the purpose of hindering the exercise by Agent or the Lenders of their rights or remedies under this Agreement; (d) loan to employees and other investments permitted by Section 5.11; or (e) Restricted Payments permitted by Section 5.20, Indebtedness permitted by Section 5.8 and transactions permitted by Section 5.12.

SECTION 5.17 ASSIGNED CONTRACTS. Each Credit Party will secure all consents and approvals necessary or appropriate for the assignment to or for the benefit of Agent of any Assigned Contract and to enforce the security interests granted hereunder. Each Credit Party shall fully perform all of its obligations under each of its Assigned Contracts, and shall enforce all of its rights and remedies thereunder, in each case, as it deems appropriate in its business judgment. Such Credit Party shall notify Agent in writing, promptly after such Credit Party becomes aware thereof, of any event or fact which could give rise to a material claim by it for indemnification under any of its Assigned Contracts. If an Event of Default then exists, Agent may, and at the direction of Required Lenders shall, directly enforce such right in its own or such Credit Party's name and may enter into such settlements or other agreements with respect thereto as Agent shall determine. In any suit, proceeding or action brought by Agent under any Assigned Contract for any sum owing thereunder or to enforce any provision thereof, the Credit Parities shall indemnify and hold Agent and Lenders harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaims, recoupment, or reduction of liability whatsoever of the obligor thereunder arising out of a breach by such Credit Party of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing from the Credit Parties to or in favor of such obligor or its successors, except for such expenses, damages or losses resulting from Agent's or any Lender's gross negligence or willful misconduct. All such obligations of the Credit Parties shall be and remain enforceable only against the Credit Parties and shall not be enforceable against Agent or Lender. Notwithstanding any provision hereof to the contrary, the Credit Parties shall at all times remain liable to observe and perform all of its duties and obligations under its Assigned Contracts, and Agent's exercise of any of its rights with respect to the Collateral shall not release the Credit Parties from any of such duties and obligations. Neither Agent nor any Lender shall be obligated to perform or fulfill any of any Credit Party's duties or obligations under its Assigned Contracts or to make any payment thereunder, or to make any inquiry as to the nature or sufficiency of any payment or property received by it thereunder or the sufficiency of performance by any party thereunder, or to present or file any claim, or to take any action to collect or enforce any performance, any payment of any amounts, or any delivery of any property.

SECTION 5.18 NAMES AND LOCATION OF COLLATERAL. No Company shall change its jurisdiction of organization or name (as set forth in its Formation Documents), unless, in each case, such Company shall provide Agent with at least five (5) days prior written notice thereof. Borrowers shall also provide Agent with at least five (5) days prior written notification of (a) any new locations where any Company's Inventory or Equipment is to be maintained; (b) any change in the location of the office where any Company's records pertaining to its Accounts are kept; (c) the location of any new places of business and the changing or closing of any of its existing places of business; and (d) any change in any Company's chief executive office **or registered office**. In the event of any of the foregoing, each Credit Party hereby authorizes Agent to file, new UCC **or PPSA** financing statements (as such Credit Party's irrevocable attorney-infact) describing the Collateral and otherwise in form and substance sufficient for recordation wherever necessary or appropriate, as determined in Agent's sole discretion, to perfect or continue perfected the security interest of Agent, for the benefit of the Secured Creditors, in the Collateral, based upon such new places of business or names, and the Credit Parties shall pay all filing and recording fees and taxes in connection with the filing or recordation of such financing statements and shall promptly reimburse Agent therefor if Agent pays the same. Such amounts shall be Related Expenses hereunder. Notwithstanding anything to the contrary contained herein, no Credit Party shall be permitted to move any Collateral from a location inside the United States **or Canada** to a location outside the United States **or Canada** without the prior written consent of the Required Lenders.

SECTION 5.19 AMENDMENT OF ORGANIZATIONAL DOCUMENTS. Except as necessary to effectuate the mergers**, amalgamations** and consolidations permitted pursuant to Section 5.12 hereof, no Company shall amend its Organizational Documents without the prior written consent of Agent, only if such change would adversely affect the rights of Agent or the Lenders hereunder.

SECTION 5.20 RESTRICTED PAYMENTS. The Companies shall not pay or commit themselves to pay any Restricted Payments at any time, *except*:

(a) any Company may declare and pay or make Capital Distributions that are payable solely in additional shares of its common stock (or warrants, options or other rights to acquire additional shares of its common stock);

(b) (i) any Subsidiary may declare and pay or make Capital Distributions to any Credit Party; and (ii) any non-Credit Party may declare and pay or make Capital Distributions to any other non-Credit Party, or to the Borrower or any other Subsidiary;

(c) Ultralife may declare and pay or make Capital Distributions in cash, so long as (i) no Default or Event of Default shall then exist or, after giving pro forma effect to such payment, thereafter shall begin to exist, (ii) the Consolidated Senior Leverage Ratio, as measured pursuant to Section 5.7, hereof is less than or equal to 3.00 to 1.00 both prior to and after giving pro form effect to such Capital Distribution, and (iii) Borrowers Consolidated Fixed Charge Coverage Ratio, as measured pursuant to Section 5.7 hereof, is greater than or equal to 1.15 to 1.00 both prior to and after giving pro form effect to such Capital Distribution; and

(d) Ultralife may repurchase its capital stock as required by Ultralife's executive compensation program, so long as (i) no Default or Event of Default shall then exist or, after giving pro forma effect to such payment, thereafter shall begin to exist, (ii) the proceeds of such repurchase are used solely for the purpose of paying withholding tax incurred pursuant to the issuance of stock (as compensation) under such executive compensation program, and (iii) the amount of stock (as compensation) issued under such executive compensation program is consistent with past business practices of Ultralife.

SECTION 5.21 MANAGEMENT FEES. Except as permitted under Section 5.16(a), the Companies shall not pay any Management Fees during any Fiscal Year.

SECTION 5.22 SUBSIDIARY GUARANTIES. Each Domestic Subsidiary created or acquired subsequent to the Closing Date (as permitted under the terms of this Agreement) shall also be subject to the satisfaction of the following conditions on or prior to the date of its creation or acquisition or within five (5) Business Days thereafter (or such other time frame as specified below):

(i) Borrowers shall provide written notice to Agent at least ten (10) days prior to the creation or acquisition of such Subsidiary,

(ii) such Subsidiary shall execute and deliver to Agent, a joinder and assumption agreement to this Agreement, in form and substance satisfactory to Agent, which agreement shall make such Subsidiary a Credit Party hereunder, including, without limitation, pursuant to Articles VI and XII hereunder,

(iii) Borrowers or such other Person shall execute and deliver to Agent, for the benefit of the Lenders, a Pledge Agreement with respect to all of its issued and outstanding Capital Stock of such Subsidiary, and otherwise in form and substance reasonably satisfactory to Agent, together with the original stock certificates (or equivalent) and appropriate stock powers (or equivalent),

(iv) such Subsidiary shall authorize Agent to file appropriate UCC **or PPSA, as applicable,** financing statements naming such Subsidiary as debtor,

(v) with respect to an acquired Subsidiary, Borrowers shall deliver to Agent, the results of UCC, **PPSA,** federal ~~and~~**, provincial, territorial, municipal or** state tax lien and judicial lien searches with regard to such Subsidiary, satisfactory to Agent,

(vi) Borrowers shall cause such Subsidiary to deliver to Agent an officer's certificate certifying the names of the officers (or other authorized Persons) of such Subsidiary authorized to sign the Loan Documents, together with the true signatures of such officers (or other authorized Persons) and certified copies of (A) the resolutions of the board of directors (or equivalent governing body) of such Subsidiary evidencing approval of the execution and delivery of the Loan Documents and the execution of other Related Writings to which such Subsidiary is a party, (B) the Formation Documents of such Subsidiary having been recently certified by the Secretary of State of the jurisdiction under which such Domestic Subsidiary shall have been organized, and (C) the Governance Documents of such Subsidiary,

(vii) Borrowers shall, upon reasonable request of Agent, deliver to Agent and the Lenders, an opinion of counsel for such Subsidiary, in form and substance reasonably satisfactory to Agent,

(viii) Borrowers shall deliver to Agent a good standing certificate (or equivalent) for such Subsidiary issued by the Secretary of State in the state(s) where such Subsidiary is organized or qualified as a foreign entity,

(ix) Borrowers shall deliver to Agent a revised Schedule 7.1 to this Agreement reflecting the information required thereon for such Subsidiary; and

(x) Each Credit Party, including such Subsidiary, shall deliver to Agent such other documents as Agent may request, in its reasonable discretion.

SECTION 5.23 COLLATERAL. Each Credit Party shall:

(a) at all reasonable times and with prior notice thereof allow Agent by or through any of its officers, agents, employees, attorneys, or accountants to (i) examine, inspect, and make extracts from each Credit Party's books and other records, including, without limitation, the tax returns of such Credit Party; (ii) arrange for verification of each Credit Party's Accounts, under reasonable procedures, directly with Account Debtors or by other methods; and (iii) examine and inspect Each Credit Party's Inventory and Equipment, wherever located; provided, however, unless an Event of Default is continuing, the Credit Parties shall not be required to reimburse the Agent for more than one such inspection or visit in any Fiscal Year;

(b) promptly furnish to Agent upon request (i) additional statements and information with respect to the Collateral, and all writings and information relating to or evidencing any of any Credit Party's Accounts (including, without limitation, computer printouts or typewritten reports listing the mailing addresses of all present Account Debtors), and (ii) any other writings and information as Agent may reasonably request;

(c) notify Agent in writing of any Accounts with respect to which (i) the Account Debtor is the United States of America or **federal government of Canada or** any state**, province, territory**, city, county or other governmental authority or any department, agency or instrumentality of any of them and such Account is in excess $250,000 per year, and (ii) the Account Debtor is any foreign government or instrumentality thereof or any business which is located in a foreign country;

(d) promptly notify Agent in writing of any information which any Credit Party has or may receive with respect to the Collateral which materially and adversely affects the value thereof or the rights of Agent or the Lenders with respect thereto; and

(e) maintain the Equipment in good operating condition and repair, ordinary wear and tear excepted, making all necessary replacements thereof so that the value and operating efficiency thereof shall at all times be maintained and preserved, and promptly inform Agent of any material deletions from the Equipment, other than obsolete, worn out, damaged, surplus, unused or permanently retired Equipment.

If the Credit Parties fail to keep and maintain any material Equipment in good operating condition, other than obsolete, worn out, damaged, surplus, unused or permanently retired Equipment, Agent may (but shall not be required to) so maintain or repair all or any part of the Equipment and the cost thereof shall be a Related Expense. All Related Expenses are payable to Agent upon demand therefor; Agent may, at its option, debit Related Expenses directly to the Revolving Credit Notes or any other Notes.

SECTION 5.24 FURTHER ASSURANCE. Each Credit Party will, and will cause each other Company, at no expense to Agent or any Lender, make and do all such acts and things (including, without limitation, the delivery to Agent of any Chattel Paper, Document, Instrument, or other writing or record of any kind the possession of which perfects a security interest therein, and the taking of any action necessary to give Agent control of any Chattel Paper, Deposit Account, Investment Property, or Letter of Credit Rights the control of which perfects a security interest therein) as Agent may from time to time reasonably require for the better evidencing, perfection, protection, or validation of, or realization of the benefits of, its security interest in the Collateral of the Credit Parties or any real property of the Credit Parties. Without limiting the generality of the foregoing, each Credit Party will, at no expense to Agent or any Lender, upon each request of Agent:

(i) complete, correct, amend, continue, supplement, sign (or otherwise authenticate if Agent shall so require), and file in such public offices as Agent may from time to time deem advisable, such financing statements**, financing change statements** and amendments thereto (including, without limitation, continuation statements) naming such Credit Party as debtor and containing such collateral indications (including, by way of example, but without limitation, "all assets in which debtor now has or hereafter acquires any rights or any power to transfer rights" or "all personal property and fixtures in which debtor now has or hereafter acquires any rights or any power to transfer rights") and other information (including, without limitation, if Agent shall require, a statement to the effect that all chattel paper and each and every instrument in which such Credit Party has or at any time acquires any rights or any power to transfer rights has been assigned to Agent, and any further assignment of all or any part of any such chattel paper or instrument or any interest therein violates the rights of Agent) as Agent may from time to time require,

(ii) sign (or otherwise authenticate if Agent shall so require) and deliver, and, upon each request of Agent, use reasonable commercial efforts to cause third parties to sign (or otherwise authenticate if Agent shall so require) and deliver, such affidavits, assignments, financing statements, indorsements of specific items of the Collateral of such Credit Party, mortgages, **deeds of hypothec,** powers of attorney, control agreements, security agreements, and other writings and other records, as Agent may from time to time reasonably require, each in form and substance satisfactory to Agent, including, without limitation, short form motor vehicle security agreements in the form and substance as Agent shall require,

(iii) cause all Chattel Paper and Instruments in which such Credit Party now has or hereafter acquires any rights to bear a conspicuous legend, in form and substance reasonably satisfactory to Agent, indicating that the Chattel Paper or Instrument, as the case may be, has been assigned to Agent and that further assignment thereof violates the rights of Agent; provided, however, that so long as no Event of Default exists, such Credit Party shall only be required to comply with this subpart (iii) to the extent that the aggregate value of the Companies' Chattel Paper and Instruments exceeds $50,000,

(iv) cause all applicable certificates of title (in the case of any motor vehicle or other chattel in which Agent has been granted a security interest by such Credit Party and which is subject to any certificate of title law) to be duly noted with Agent's security interest and to be deposited with Agent,

(v) with respect to any Pledge Agreement related to Capital Stock of a Subsidiary organized under the laws of the United Kingdom (a "UK Subsidiary Pledge"), make or do all such acts or things as required at the discretion of Agent to insure that the UK Subsidiary Pledge is enforceable and that the security interests granted pursuant to the Pledge Agreement relating to such Subsidiary are recognized and properly evidenced under the laws of the United Kingdom, including, without limitation, the following: (A) engaging local counsel in the United Kingdom to review or amend, restate, supplement or otherwise modify any Pledge Agreement or to prepare a new agreement to the extent necessary, and opine on (i) the enforceability of any such Pledge Agreement (as presently drafted or as amended, restated, supplemented or otherwise modified based on such counsel's review) under the laws of the United Kingdom, or (ii) any such new agreement under the laws of the United Kingdom, (B) delivering or executing, or causing to be delivered or executed, such other documents, writings, opinions, instruments or records of any kind required or customary under the laws of the United Kingdom, and (C) filing, registering or recording (or authorizing Agent or Agent's designee to file, register or record) in any government or public offices (domestic or foreign) any documents, writings, instruments or records of any kind; provided, however, that no action shall be required under clauses (A) and (B) above until Revolving Credit Exposure is equal to or greater than $5,000,000,

(vi) comply with every other requirement deemed necessary by Agent in its reasonable discretion for the perfection of its security interest in the Collateral of such Credit Party, and

(vii) with respect to any other location where any books and records or any Collateral is located, cause to be delivered a landlord waiver and mortgagee waiver, if applicable, each in form and substance reasonably satisfactory to Agent.

Each Credit Party hereby authorizes Agent, on behalf of the Lenders, to file financing statements with respect to the Collateral, including such financing statements that describe the Collateral as "all assets" or "all **personal property" or "all present and after-acquired** personal property" or words of similar effect. Each Credit Party hereby authorizes Agent or Agent's designated agent (but without obligation by Agent to do so) to make and do all such acts and things referred to in this Section 5.24, and to incur Related Expenses (whether prior to, upon, or subsequent to any Default or Event of Default), and each Credit Party shall promptly repay, reimburse, and indemnify Agent and the Lenders for any and all Related Expenses. All Related Expenses are payable to Agent upon demand therefor.

SECTION 5.25 DEPOSIT ACCOUNTS. Within 90 days following the Closing Date, Borrowers shall have (a) delivered to Agent either (i) evidence, satisfactory to Agent, that Borrowers and each other Credit Party shall have closed or moved to Agent all Deposit Accounts (other than any Excluded Accounts) and lockboxes, or (ii) with respect to any such Deposit Accounts (other than Excluded Accounts) that are not closed or moved (the "Other Accounts"), deliver fully executed control agreements, in form and substance satisfactory to Agent, whereby Agent is given exclusive control over such Other Accounts; and (b) established Agent as its primary depository, cash management and treasury management institution.

SECTION 5.26 FISCAL YEAR. No Company will, or will permit any Subsidiary to, change its Fiscal Year or the Fiscal Year of its Subsidiaries.

SECTION 5.27 ANTI-TERRORISM LAWS. No Company shall (i) conduct any business or engage in any transaction or dealing with any **Blocked Person or Canadian** Blocked Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person **or Canadian Blocked Person**, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224, the USA Patriot Act or any other Anti-Terrorism Law. Each Credit Party shall deliver to Lenders any certification or other evidence requested from time to time by any Lender in its sole discretion, confirming such Credit Party's compliance with this Section. **Notwithstanding the foregoing, the representations given in this Section 5.27 shall not be made by nor apply to any Person that qualifies as a corporation that is registered or incorporated under the laws of Canada or any province thereof and that carries on business in whole or in part in Canada within the meaning of Section 2 of the Foreign Extraterritorial Measures (United States) Order, 1992 passed under the Foreign Extraterritorial Measures Act (Canada) in so far as such representations would result in a violation of or conflict with the Foreign Extraterritorial Measures Act (Canada) or any similar law.**

SECTION 5.28 ~~[RESERVED]~~**DORMANT SUBSIDIARY**~~.~~

. The Credit Parties will not permit the Dormant Subsidiary to own any assets or maintain any operations. No later than December 31, 2022, the Credit Parties shall have either (a) provided the Agent evidence, in form and substance satisfactory to the Agent, that the Dormant Subsidiary has been amalgamated into Excell Canada and no longer exists as a separate entity, or (b) caused the Dormant Subsidiary to have executed and delivered to the Agent a joinder and assumption agreement to this Agreement, in form and substance satisfactory to the Agent, which agreement shall make the Dormant Subsidiary a Credit Party hereunder.

SECTION 5.29 OTHER BUSINESSES. Each Company will not, and will not permit any of its Subsidiaries to, engage in any business other than the business in which they are currently engaged or any other businesses reasonably related or incidental thereto.

SECTION 5.30 ACCOUNTING CHANGES. No Company will, or will permit any of its Subsidiaries to, make or permit any change in its accounting policies or financial reporting practices and procedures, except changes in accounting policies which are required or permitted by GAAP and changes in financial reporting practices and procedures which are required or permitted by GAAP or recommended by Borrowers' accountants, in each case as to which Borrowers shall have delivered to the Agent prior to the effectiveness of any such change a report prepared by a Financial Officer of Borrowers describing such change and explaining in reasonable detail the basis therefor and effect thereof. In the event any "Accounting Changes" (as defined below) shall occur and such changes affect financial covenants, standards or terms in this Agreement, then the Credit Parties, the Lenders and the Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the financial condition of the Credit Parties, shall be the same after such Accounting Changes as if such Accounting Changes had not been made, and until such time as such an amendment shall have been executed and delivered by the Borrowers, the Required Lenders and Agent (a) all financial covenants, standards and terms in this Agreement shall be calculated and/or construed as if such Accounting Changes had not been made, and (b) Borrowers shall prepare footnotes to the financial statements required to be delivered hereunder that show the differences between the financial statements required to be delivered hereunder (which reflect such Accounting Changes) and the basis for calculating financial covenant compliance (without reflecting such Accounting Changes). For the purposes of this
Section 5.30, "Accounting Changes" shall mean changes in accounting principles required or permitted by Borrowers' GAAP and implemented by Borrowers.

SECTION 5.31 SPECULATIVE TRANSACTIONS. No Company will enter into any Hedge Agreement, except (a) Hedge Agreements entered into to hedge or mitigate risks to which any Company has actual exposure, and (b) Hedge Agreements entered into in order to cap, collar or exchange interest rates (from floating rate to fixed rate, from one floating rate to another floating rate or otherwise) with respect to any interest bearing liability or investment of any Company. In no event shall any Company enter into any Hedge Agreement for speculative purposes.

SECTION 5.32 SUBSIDIARY RESTRICTIONS. No Company will, or permit any Subsidiary to, enter into, or be otherwise subject to, any contract or agreement (including its certificate of incorporation or formation, **articles,** by-laws, limited liability company operating agreement or partnership agreement) which limits the amount of or otherwise imposes restrictions on (i) the payment of dividends or distributions by any Subsidiary to Borrowers or any other Subsidiary, (ii) the payment by any Subsidiary of any indebtedness owed to Borrowers or any other Subsidiary, (iii) the making of loans or advances by any Subsidiary to Borrowers or any other Subsidiary, (iv) the transfer by any Subsidiary of its property or assets to Borrowers or any other Subsidiary, (v) the merger or consolidation of any Subsidiary with or into Borrowers or any other Subsidiary, or (vi) the guaranty by any Subsidiary of Borrowers' indebtedness under the Loan Documents; provided that (a) the foregoing shall not apply to restrictions and conditions imposed by law or by the Loan Documents, (b) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or asset pending such sale, provided such restrictions and conditions apply only to the Subsidiary or asset that is to be sold and such sale is permitted hereunder, (c) clause (iv) of the foregoing shall not apply to customary provisions in leases, licenses and other contracts restricting the assignment, licensing, subletting, leasing thereof or otherwise granting a Lien on the assets subject thereto, (d) the foregoing shall not apply to restrictions set forth in the Indebtedness described in paragraph 5.8(b), (e) the foregoing shall not apply to customary provisions in joint venture agreements expressly permitted hereunder and applicable solely to such joint venture, (f) the foregoing shall not apply to restrictions contained in any non-material agreement in effect at the time a Person becomes a Subsidiary of Borrowers so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary of Borrowers, (g) the foregoing shall not apply to restrictions that arise in connection with cash or other deposits permitted hereunder and limited to such cash or deposit, and (h) the foregoing shall not apply to restrictions on cash earnest money deposits in favor of sellers in connection with acquisitions not prohibited hereunder.

SECTION 5.33 INTERCOMPANY OBLIGATIONS. Pay or permit to be paid any payables or loans owing from a Credit Party to a Company that is not a Credit Party (the "Subsidiary Payables"), unless (a) such payments are made in the ordinary course of business and consistent with past practice, (b) no Event of Default has occurred and is continuing and Agent has not delivered a notice prohibiting such payments, and (c) not less than 90 days have elapsed since the later to occur of (i) the date of the invoice with respect thereto, and (ii) the date on which such sale related to such applicable Subsidiary Payable has been fully completed. As of the **Third Amendment** Closing Date, the amount of all Subsidiary Payables is set forth on Schedule 5.33.

SECTION 5.34 PAYMENT LIMITATIONS. No Company will enter into or become subject to any contractual restriction on the payment of the Secured Debt.

SECTION 5.35 MODIFICATIONS TO CERTAIN MATERIAL DOCUMENTS. Without the prior written consent of the Required Lenders, the Companies shall not permit any amendment, restatement, waiver or other modification of any of the Southwest Acquisition Documents or any of the Excell Acquisition Documents.

ARTICLE VI. SECURITY

SECTION 6.1 SECURITY INTEREST IN COLLATERAL. In consideration of and as security for the full and complete payment of all of the Secured Debt, each Credit Party hereby creates and provides in favor of Agent for the benefit of the Secured Creditors, and grants to Agent for the benefit of the Secured Creditors, a security interest in and an assignment of the Collateral of such Credit Party. The "Collateral" of any Credit Party shall mean, collectively,

(a) all Accounts, all Chattel Paper, all Deposit Accounts, all Documents **(including "documents of title" as defined in the PPSA)**, all Equipment, all fixtures, all General Intangibles~~,~~ **(including "intangibles" as defined in the PPSA)**, all Instruments, all Inventory, all Investment Property, all letters of credit, all Letter of Credit Rights, all Receivables, all Intellectual Property, all Assigned Contracts and all Supporting Obligations in which such Credit Party now has or hereafter acquires any rights or any power to transfer rights;

(b) all Commercial Tort Claims in which such Credit Party now has rights or any power to transfer rights and which are described on Schedule 7.4 hereto, as may be amended from time to time;

(c) all property, tangible or intangible, in which such Credit Party now has or hereafter acquires any rights or any power to transfer rights and which now or hereafter is in the control (by Document or otherwise) or possession of the Secured Creditors and Agent or any of them or is owed by the Secured Creditors and Agent or any of them to such Credit Party, including, without limitation, any Cash Collateral Account and all other Deposit Accounts; and

(d) all accessions to and Products of all or any part of the goods hereinbefore described, all replacements and substitutions for, and all additions to, and all Proceeds of, all or any part of the property described in the foregoing clauses (a), (b), and (c) or any other accessions, Products, replacements, substitutions, additions, or Proceeds in which such Credit Party now has or hereafter acquires any rights or any power to transfer rights.

Notwithstanding anything herein to the contrary, in no event shall the Lien granted under this Section 6.1 attach to or be deemed to be created in any Excluded Property.

SECTION 6.2 AFTER ACQUIRED PROPERTY. As to any property that would be included among the Collateral of any Credit Party on the date hereof but for the fact that such property does not presently exist or the fact that such Credit Party does not presently have any rights in such property or any power to transfer rights therein, such property shall be included among the Collateral of such Credit Party, and Agent's security interest in such property shall automatically attach thereto, immediately when such property comes into existence and such Credit Party acquires any rights therein or any rights to transfer rights therein, in each case without the making or doing of any further or other act or thing. If, at any time after the date hereof, any Credit Party shall acquire any rights or any power to transfer rights in any Commercial Tort Claim, or if the UCC **or PPSA** shall be amended to include within its scope any property that, prior to giving effect to such amendment, would not be included among the Collateral of such Credit Party, then, and in each such case, such Credit Party shall forthwith notify Agent and shall execute and deliver to Agent (or otherwise authenticate if Agent shall require) such security agreements and other writings or records as Agent shall require, each in form and substance reasonably satisfactory to Agent, for the purpose of granting in favor of Agent, for the benefit of the Secured Creditors, as security for the Secured Debt, a perfected first priority security interest in and assignment of such Commercial Tort Claim or other property and all proceeds thereof, free and clear of any Lien other than any in favor of Agent. Upon the granting of such security interest, such Commercial Tort Claim or other property, as the case may be, and all Proceeds thereof shall be deemed to be included among the Collateral of such Credit Party. No Credit Party shall open any Commodity Account, Deposit Account, or Securities Account, other than any petty cash accounts, payroll accounts, or trust accounts, unless, prior to or concurrently with the opening thereof, such Credit Party and the Person by which or with which such Commodity Account, Deposit Account or Securities Account, as the case may be, is to be maintained shall have entered into a control agreement in form and substance satisfactory to Agent.

SECTION 6.3 COLLECTIONS AND RECEIPT OF PROCEEDS BY THE CREDIT PARTIES. Prior to the exercise by Agent and the Lenders of their rights under Article IX of this Agreement, both (i) the lawful collection and enforcement of all of each Credit Party's Receivables, and (ii) the lawful receipt and retention by each Credit Party of all Proceeds of all of such Credit Party's Receivables and Inventory shall be as the agent of the Lenders. Following notice from Agent to a Borrower after the occurrence and during the continuance of an Event of Default, a Cash Collateral Account shall be opened by each Credit Party at the main office of Agent and substantially all such lawful collections of such Credit Party's Receivables and such Proceeds of such Credit Party's Receivables and Inventory shall be remitted daily by such Credit Party to Agent in the form in which they are received by such Credit Party, either by mailing or by delivering such collections and Proceeds to Agent, appropriately endorsed for deposit in the Cash Collateral Account. No Credit Party shall commingle such collections or Proceeds with any of such Credit Party's other funds or property, but shall hold such collections and Proceeds separate and apart therefrom upon an express trust for Agent for the benefit of the Secured Creditors. Agent may, in its sole discretion, at any time and from time to time, apply all or any portion of the account balance in the Cash Collateral Account as a credit against the Secured Debt in accordance with the provisions of Section 2.3(b) hereof. If, as a result of collections or Proceeds, a credit balance exists in favor of the a Credit Party and no Event of Default has occurred and is continuing, such credit balance shall be disbursed on a daily basis to an interest bearing Deposit Account reasonably acceptable to Agent maintained by such Credit Party which shall be subject to a control agreement consistent with the provisions of this sentence, in form and substance satisfactory to the Agent, but prior to the occurrence of an Event of Default which is continuing, the funds within which may be withdrawn by such Credit Party. For the avoidance of doubt, after the occurrence of an Event of Default which is continuing, any funds then in such account shall not be subject to withdrawal by any Credit Party but shall be remitted to the Cash Collateral Account on a daily basis for application on a daily basis to the Secured Debt in accordance with Section 2.3(b) hereof. If any remittance shall be dishonored, or if, upon final payment, any claim with respect thereto shall be made against Agent on its warranties of collection, Agent may charge the amount of such item against the Cash Collateral Account or any other Deposit Account maintained by a Credit Party with Agent or with any other Lender, and, in any event, retain the same and such Credit Party's interest therein as additional security for the Secured Debt. Agent may, in its sole discretion, at any time and from time to time, release funds from the Cash Collateral Account to the applicable Credit Party for use in such Credit Party's business. The balance in the Cash Collateral Account may be withdrawn by the Credit Parties upon termination of this Agreement and payment in full of all of the Secured Debt. Following notice from Agent to a Borrower after the occurrence and during the continuance of an Event of Default, each Credit Party shall cause substantially all remittances representing collections and Proceeds of Collateral to be mailed to a lock box selected by Agent, to which Agent shall have access for the processing of such items in accordance with the provisions, terms and conditions of Agent's customary lock box agreement.

Agent shall at all times have the rights and remedies of a secured party under the UCC **and the PPSA**, in addition to the rights and remedies of a secured party provided elsewhere within this Agreement, in any other writing executed by any Credit Party or otherwise provided by law. Agent, or Agent's designated agent, is hereby constituted and appointed each Credit Party's attorney-in-fact with authority and power to endorse any and all instruments, documents, and chattel paper upon such Credit Party's failure to do so. Such authority and power, being coupled with an interest, shall be (a) irrevocable until all of the Secured Debt is paid, (b) exercisable by Agent at any time and without any request upon any Credit Party by Agent to so endorse, and (c) exercisable in Agent's name or any Credit Party's name. Each Credit Party hereby waives presentment, demand, notice of dishonor, protest, notice of protest, and any and all other similar notices with respect thereto, regardless of the form of any endorsement thereof. Neither Agent nor the Secured Creditors shall be bound or obligated to take any action to preserve any rights therein against prior parties thereto.

SECTION 6.4 COLLECTIONS AND RECEIPT OF PROCEEDS BY AGENT. Each Credit Party hereby constitutes and appoints Agent, or Agent's designated agent, as such Credit Party's attorney-in-fact to exercise, at any time, all or any of the following powers which, being coupled with an interest, shall be irrevocable until the complete and full payment of all of the Secured Debt:

(a) after the occurrence of an Event of Default and during the continuance thereof, to receive, retain, acquire, take, endorse, assign, deliver, accept, and deposit, in Agent's name or such Credit Party's name, any and all of such Credit Party's cash, instruments, chattel paper, documents, Proceeds of Receivables, Proceeds of Inventory, collection of Receivables, and any other writings relating to any of the Collateral;

(b) after the occurrence of an Event of Default and during the continuance thereof, to transmit to Account Debtors, on any or all of such Credit Party's Receivables, notice of assignment to Agent for the benefit of the Secured Creditors thereof and Agent's, for the benefit of the Secured Creditors, security interest therein and to request from such Account Debtors at any time, in Agent's name or in such Credit Party's name, information concerning such Credit Party's Receivables and the amounts owing thereon;

(c) after the occurrence of an Event of Default and during the continuance thereof, to transmit to purchasers of any or all of such Credit Party's Inventory, notice of Agent's security interest therein, and to request from such purchasers at any time, in Agent's name or in such Credit Party's name, information concerning such Credit Party's Inventory and the amounts owing thereon by such purchasers;

(d) after the occurrence of an Event of Default and during the continuance thereof, to notify and require Account Debtors on such Credit Party's Receivables and purchasers of such Credit Party's Inventory to make payment of their indebtedness directly to Agent;

(e) after the occurrence of an Event of Default and during the continuance thereof, to take or bring, in Agent's name or such Credit Party's name, all steps, actions, suits, or proceedings deemed by Agent necessary or desirable to effect the receipt, enforcement, and collection of the Collateral; and

(f) to accept all collections in any form relating to the Collateral, including remittances which may reflect deductions, and to deposit the same, into such Credit Party's Cash Collateral Account or, at the option of Agent, to apply them as a payment against the Secured Debt in accordance with Section 2.3(b) hereof.

SECTION 6.5 USE OF INVENTORY AND EQUIPMENT. Unless otherwise prohibited by Agent and the Required Lenders after an Event of Default shall have occurred and be continuing, each Credit Party may (a) retain possession of and use its Inventory and Equipment in any lawful manner not inconsistent with this Agreement or with the terms, conditions, or provisions of any policy of insurance thereon; (b) sell or lease its property consisting solely of Inventory in the ordinary course of business and other property as expressly permitted under this Agreement; provided, however, that a sale or lease in the ordinary course of business does not include a transfer in partial or total satisfaction of an Indebtedness, except for transfers in satisfaction of partial or total purchase money prepayments by a buyer in the ordinary course of such Credit Party's business; and (c) use and consume any raw materials or supplies, the use and consumption of which are necessary or desirable in order to carry on such Credit Party's business.

SECTION 6.6 ULC LIMITATION. Notwithstanding any provisions to the contrary contained in this Agreement or any other Loan Document, as regards each applicable Credit Party who is a registered and beneficial owner of Pledged ULC Shares, such Credit Party owns and will remain so until such time as such Pledged ULC Shares are fully and effectively transferred into the name of Agent or any other person on the books and records of such ULC. Nothing in this Agreement or any other Loan Document is intended to or shall constitute Agent or any person other than a Credit Party to be a member or shareholder of any ULC until such time as written notice is given to the applicable Credit Party and all further steps are taken so as to register Agent or other person as holder of the Pledged ULC Shares. The granting of the pledge and security interest pursuant to Section 6.1 or in any other Loan Document does not make Agent a successor to any Credit Party as a member or shareholder of any ULC, and neither Agent nor any of its respective successors or assigns hereunder shall be deemed to become a member or shareholder of any ULC by accepting this Agreement or any other Loan Document or exercising any right granted herein unless and until such time, if any, when Agent or any successor or assign expressly becomes a registered member or shareholder of any ULC. Each applicable Credit Party shall be entitled to receive and retain for its own account any dividends or other distributions if any, in respect of the Collateral, and shall have the right to vote such Pledged ULC Shares and to control the direction, management and policies of the ULC issuing such Pledged ULC Shares to the same extent as such Credit Party would if such Pledged ULC Shares were not pledged to Agent or to any other person pursuant hereto. To the extent any provision herein or in any other Loan Document would have the effect of constituting Agent to be a member or shareholder of any ULC prior to such time, such provision shall be severed herefrom and therefrom and ineffective with respect to the relevant Pledged ULC Shares without otherwise invalidating or rendering unenforceable this Agreement or any other Loan Document or invalidating or rendering unenforceable such provision insofar as it relates to Collateral other than Pledged ULC Shares. Notwithstanding anything herein or in any other Loan Document to the contrary (except to the extent, if any, that Agent or any of its successors or assigns hereafter expressly becomes a registered member or shareholder of any ULC), neither Agent nor any of its respective successors or assigns shall be deemed to have assumed or otherwise become liable for any debts or obligations of any ULC. Except upon the exercise by Agent or other persons of rights to sell or otherwise dispose of Pledged ULC Shares or other remedies following the occurrence and during the continuance of an Event of Default, each applicable Credit Party shall not cause or permit, or enable any ULC in which it holds Pledged ULC Shares to cause or permit, Agent to: (a) be registered as member or shareholder of such ULC; (b) have any notation entered in its favor in the share register of such ULC; (c) be held out as member or shareholder of such ULC; (d) receive, directly or indirectly, any dividends, property or other distributions from such ULC by reason of Agent or other person holding a security interest in the Pledged ULC Shares; or (e) act as a member or shareholder of such ULC, or exercise any rights of a member or shareholder of such ULC, including the right to attend a meeting of such ULC or vote the shares of such ULC.

ARTICLE VII. REPRESENTATIONS AND WARRANTIES

Each Credit Party hereby represents and warrants, as applicable, that the statements set forth in this Article VII are true, correct and complete.

SECTION 7.1 EXISTENCE; SUBSIDIARIES; FOREIGN QUALIFICATION; CAPITALIZATION. Each Company is a corporation or limited liability company duly organized, validly existing, and in good standing (or good standing equivalent) under the laws of its ~~state~~**jurisdiction** of organization and as of the date hereof is duly qualified and authorized to do business and is in good standing (or good standing equivalent) as a foreign organization in the jurisdictions set forth opposite its name on Schedule 7.1 hereto, which are all of the states or jurisdictions where the character of its property or its business activities makes such qualification necessary, except where the failure to so qualify will not cause or result in a Material Adverse Effect. Except as set forth in Schedule 7.1 hereto, no Company has, at any time during the period of five (5) consecutive years ending on the **Third Amendment Closing** ~~d~~**D**ate ~~of this Agreement~~, used or done business under, or been known among creditors by, any name other than the name of such Company set forth in such Company's Formation Documents. Schedule 7.1 sets forth as of the **Third Amendment** Closing Date all fictitious names and "DBAs" utilized by the Companies as of the date hereof. Schedule 7.1 hereto sets forth, as of the **Third Amendment** Closing Date, each Company, each Person that is an owner of such Company's Capital Stock, its name as set forth in its Formation Documents, its ~~state~~**jurisdiction** of organization, its organizational identification number (or if none a statement to that effect), its relationship to Borrowers, including the percentage of Capital Stock owned by a Company or the percentage of Capital Stock of a Company owned by it and its principal place of business. As of the **Third Amendment Closing** ~~d~~**D**ate ~~hereof~~, none of the Credit Parties have outstanding any interests or securities convertible or exchangeable for any of its Capital Stock or containing any profit participation features, and does not have outstanding any rights or options to subscribe for or to purchase its Capital Stock or any stock appreciation rights or phantom stock plans, except as set forth on Schedule 7.1. Schedule 7.1 accurately sets forth the following, as of the **Third Amendment Closing** ~~d~~**D**ate ~~hereof~~, with respect to all outstanding options and rights to acquire any of the Credit Parties' Capital Stock: (i) the total number of shares (or equivalent) issuable upon exercise of all outstanding options; (ii) the range of exercise prices for all such outstanding options; (iii) the number of shares (or equivalent) issuable, the exercise price and the expiration date for each such outstanding option; and (iv) with respect to all outstanding options, warrants and rights to acquire such Credit Party's Capital Stock, the holder, the number of shares (or equivalent) covered, the exercise price and the expiration date. None of the Credit Parties are subject to any obligation (contingent or otherwise) to repurchase, redeem, retire or otherwise acquire any Capital Stock or any warrants, options or other rights to acquire its Capital Stock, except as set forth on Schedule 7.1. None of the Credit Parties have violated any applicable federal ~~or~~, state**, provincial or territorial** securities laws in connection with the offer, sale or issuance of any of its Capital Stock.

SECTION 7.2 AUTHORITY. Each Company has the corporate or equivalent right and power and is duly authorized and empowered to enter into, execute and deliver the Loan Documents to which it is a party and to perform and observe the provisions of the Loan Documents. The Loan Documents to which each Company is a party are the valid and binding obligations of such Company, enforceable against such Company in accordance with their respective terms, subject to the effects of (a) ~~bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally~~**Debtor Relief Laws** and (b) general equitable principles (regardless of whether enforcement is sought in equity or at law). The execution, delivery and performance of the Loan Documents will not conflict with nor result in any breach in any of the provisions of, or constitute a default under, or result in the creation of any Lien (other than the Permitted Liens) upon any assets or property of any Company under the provisions of, such Company's Organizational Documents or any material agreement.

SECTION 7.3 COMPLIANCE WITH LAWS. Borrower has filed all reports required to be filed by it under the Exchange Act. Except as would not reasonably be expected to result in a Material Adverse Effect, each Company:

(a) holds all permits, certificates, licenses, orders, registrations, franchises, authorizations, and other approvals from federal, state, local, and foreign governmental and regulatory bodies necessary for the conduct of its business and is in compliance with all applicable laws relating thereto, except where the failure to obtain such permits, certificates, licenses, orders and registrations could not reasonably be expected to result in a Material Adverse Effect;

(b) is in compliance with all federal, state, **provincial, territorial, municipal,** local, or foreign applicable statutes, rules, regulations, and orders including, without limitation, those relating to environmental protection, occupational safety and health, and equal employment practices; and

(c) is not in violation of or in default under any agreement to which it is a party or by which its assets are subject or bound.

SECTION 7.4 LITIGATION AND ADMINISTRATIVE PROCEEDINGS. No Company has any rights in or any power to transfer rights in any Commercial Tort Claim except for any such claim described on Schedule 7.4 to this Agreement or in any security agreement executed and delivered to Agent by such Company after the date of this Agreement pursuant to this Agreement or another Related Writing. Except (i) as of the **Third Amendment** Closing Date, as disclosed on Schedule 7.4 hereto, as to any of which, if determined adversely, could not reasonably be expected to have a Material Adverse Effect, and (ii) subsequent to the **Third Amendment** Closing **Date**, as could not reasonably be expected to result in a Material Adverse Effect, there are (a) no lawsuits, actions, investigations, or other proceedings pending or, to the knowledge of each Company, threatened in writing against any Company or in respect of which any Company may have any liability, in any court or before any governmental authority, arbitration board, or other tribunal, (b) no orders, writs, injunctions, judgments, or decrees of any court or government agency or instrumentality to which any Company is a party or by which the property or assets of any Company are bound, and (c) no grievances, disputes, or controversies outstanding with any union or other organization of the employees of any Company or, to the knowledge of each Company, threats of work stoppage, strike, or pending demands for collective bargaining.

SECTION 7.5 LOCATION. Schedule 7.5 hereto sets forth, for each Company as of the **Third Amendment Closing** ~~d~~**D**ate ~~hereof~~:

(a) the location of its chief executive offices existing during the period of four (4) consecutive months ending upon and including the date of this Agreement;

(b) each location at which any Company has maintained, at any time during the period of five (5) consecutive years ending upon and including the date of this Agreement, a place of business, and each location at which any Credit Party has kept any goods or any records concerning its Receivables during such period; and

(c) the name and address of each Person (other than a Company) having possession of any goods of any Company, and a description of the goods in such Person's possession.

Each Person set forth in Schedule 7.5 hereto pursuant to clause (c) of this Section 7.5 has acknowledged in writing, in form and substance reasonably satisfactory to Agent, that among other things, it holds possession of such Company's goods for the sole benefit of Agent, except to the extent that obtaining such acknowledgement has been waived by Agent.

SECTION 7.6 TITLE TO ASSETS. Each Company has good title to and ownership of all property it purports to own, which property is free and clear of all Liens, except Permitted Liens.

SECTION 7.7 LIENS AND SECURITY INTERESTS. On and after the Closing Date, except for (i) the Permitted Liens, (ii) any agreement relating to Indebtedness of the type permitted by Section 5.8(b) hereof and (iii) any lease, license, contract, property rights or agreement of the type permitted by the last paragraph of Section 6.1, (a) there is no financing statement outstanding covering any personal property of any Company; (b) there is no mortgage **or deeds of hypothec** outstanding covering any real property of any Company; (c) no real or personal property of any Company is subject to any security interest or Lien of any kind; and (d) Agent, for the benefit of the Lenders, has a valid and enforceable first priority security interest in the Collateral. No Company has entered into any contract or agreement that exists on or after the Closing Date that would prohibit Agent or the Lenders from acquiring a security interest, mortgage or other Lien on, or a collateral assignment of, any of the property or assets of any Company other than contracts and agreements (x) in respect of Capital Leases, (y) resulting in purchase money security interests and (z) in respect of the lease or licensing of intellectual property and other rights permitted hereunder.

SECTION 7.8 INVESTMENT ACCOUNTS. Schedule 7.8 hereof sets forth, as of the **Third Amendment Closing ~~d~~Date** ~~hereof~~, for each Company, the name of each Person by which there is maintained, or with which there is maintained, any Commodity Account, Deposit Account, or Securities Account in which such Company has rights or the power to transfer rights and the title and account number of each such Commodity Account, Deposit Account or Securities Account.

SECTION 7.9 REAL PROPERTIES. Schedule 7.9 hereof sets forth, as of the **Third Amendment Closing ~~d~~Date** ~~hereof~~ the address or tax parcel number of each parcel of real property owned or leased by any Company. Each Company further represents and warrants that with respect to each parcel of such real property, except as would not reasonably be expected to result in a Material Adverse Effect,

(a) such parcel has all required public utilities, and means of access (both physical and legal) between such parcel and public highways;

(b) the use and accessory uses of such parcel do not violate (i) any laws, ordinances or regulations (including subdivision, zoning, building, environmental protection and wetland protection laws), or (ii) any building permits, restrictions of record, or agreements affecting such parcel or any part thereof;

(c) no zoning authorizations, approvals or variances, and no other right to construct or use of such parcel is to any extent dependent upon or related to any real estate other than another parcel of a Company's real property;

(d) all consents, licenses and permits and all other authorizations or approvals required for operation of such parcel as contemplated have been obtained on and as of the **Third Amendment** Closing Date, and all laws relating to the operation of such improvements have been complied with;

(e) the lawful use and operation of such parcel does not require any variances or special use permits;

(f) such parcel is taxed separately without regard to any other property, and for all purposes such parcel may be mortgaged, conveyed and otherwise dealt with as an independent parcel;

(g) no Company has entered into any leases, subleases or other arrangements for occupancy of space within such parcel, other than the leases described in Schedule 7.9 hereof, and Borrowers has delivered to Agent a true, correct and complete copy of each lease, sublease, or other arrangement so described;

(h) each lease, sublease, or other arrangement in Schedule 7.9 hereof, is in full force and effect, and, except as disclosed in Schedule 7.9 hereof, or as otherwise disclosed to Agent in writing after the date hereof, there is not continuing any default on the part of any such each lease, sublease, or other arrangement; and

(i) to any Company's knowledge, no building or other improvements encroach upon any property line, building line, setback line, side yard line or any recorded or visible easement (or other easement of which any Company is aware or has reason to believe may exist) with respect to such parcel, except as shown in the survey delivered in connection herewith.

SECTION 7.10 LETTERS OF CREDIT. The Companies do not have, as of the date hereof, any letters of credit under which any Company is a beneficiary.

SECTION 7.11 TAX RETURNS. All federal, state**, provincial, territorial** and material local tax returns and other material reports required by law to be filed in respect of the income, business, properties and employees of each Company have been filed and all taxes, assessments, fees and other governmental charges that are shown thereon to be due and payable have been paid, except as otherwise permitted herein. The provision for taxes on the books of each Company is adequate in all material respects for all years not closed by applicable statutes and for the current fiscal year.

SECTION 7.12 ENVIRONMENTAL LAWS. Each Company is in compliance with any and all Environmental Laws, including, without limitation, all Environmental Laws in all jurisdictions in which any Company owns or operates, or has owned or operated, a facility or site, arranges or has arranged for disposal or treatment of hazardous substances, solid waste or other wastes, accepts or has accepted for transport any hazardous substances, solid waste or other wastes or holds or has held any interest in real property or otherwise except where the failure to comply with such Environmental Laws does not and would not reasonably be expected to cause or result in a Material Adverse Effect. No litigation or proceeding arising under, relating to or in connection with any Environmental Law is pending or, to the knowledge of each Company, threatened, against any Company that relates to, any real property or leased property in which any Company holds or has held an interest except for such litigation or proceedings that do not and would not reasonably be expected to cause or result in a Material Adverse Effect. No release, threatened release or disposal of hazardous substances, hazardous waste, solid waste or other substances or wastes is occurring, or has occurred (other than those that are currently being cleaned up in accordance with Environmental Laws), on, under or to any real property in which any Company holds any interest in violation of any Environmental Law except for such releases or disposals that do not and would not reasonably be expected to cause or result in a Material Adverse Effect. As used in this Section, "litigation or proceeding" means any demand, claim, notice, suit, suit in equity, action, administrative action, investigation or inquiry whether brought by any governmental authority, private Person or otherwise.

SECTION 7.13 CONTINUED BUSINESS. Except for the termination of business relationships upon the completion of services performed by any Company in the ordinary course of business, there exists no actual, pending, or, to any Credit Party's knowledge, any threatened termination, cancellation or limitation of, or any material modification or material change in the business relationship of any Company and any material customer or material supplier, or any group of customers or suppliers, whose purchases or supplies, individually or in the aggregate, are material to the business of any Company, and, to any Credit Party's knowledge, there exists no present condition or state of facts or circumstances that would materially affect adversely any Company in any respect or prevent a Company from conducting such business or the transactions contemplated by this Agreement in substantially the same manner in which it was previously conducted.

SECTION 7.14 EMPLOYEE BENEFITS PLANS. Schedule 7.14 hereto identifies as of the **Third Amendment Closing ~~d~~Date ~~hereof~~** each ERISA Plan **and Canadian Pension Plan** sponsored or maintained by a Company. Except as would not reasonably be expected to have a Material Adverse Effect: (a) no ERISA Event has occurred or is expected to occur with respect to an ERISA Plan; (b) payment has been made of all amounts which a Controlled Group member is required, under applicable law or under the governing documents, to have been paid as a contribution to or a benefit under each ERISA Plan; (c) the liability of each Controlled Group member with respect to each ERISA Plan has been fully funded based upon reasonable and proper actuarial assumptions, has been fully insured, or has been fully reserved for on its financial statements to the extent required by GAAP; and (d) to our knowledge, no changes have occurred or are expected to occur that would cause an increase in the cost of providing benefits under any ERISA Plan. Except as would not reasonably be expected to have a Material Adverse Effect, with respect to each ERISA Plan that is intended to be qualified under Code Section 401(a): (i) there has been no non-compliance by the ERISA Plan and any associated trust with the applicable requirements of Code Section 401(a), (ii) the ERISA Plan and any associated trust have been amended to comply with all such requirements as currently in effect, other than those requirements for which a retroactive amendment can be made within the "remedial amendment period" available under Code Section 401(b) (as extended under Treasury Regulations and other Treasury pronouncements upon which taxpayers may rely), (iii) the ERISA Plan and any associated trust have received a favorable determination letter from the Internal Revenue Service stating that the ERISA Plan qualifies under Code Section 401(a), that the associated trust qualifies under Code Section 501(a) and, if applicable, that any cash or deferred arrangement under the ERISA Plan qualifies under Code Section 401(k), unless the ERISA Plan was first adopted at a time for which the above-described "remedial amendment period" has not yet expired, (iv) the ERISA Plan currently satisfies the requirements of Code Section 410(b), without regard to any retroactive amendment that may be made within the above-described "remedial amendment period", and (v) no contribution made to the ERISA Plan is subject to an excise tax under Code Section 4972. Except as would not reasonably be expected to have a Material Adverse Effect, with respect to any Pension Plan, the "accumulated benefit obligation" of Controlled Group members with respect to the Pension Plan (as determined in accordance with Statement of Accounting Standards No. 87, "Employers' Accounting for Pensions") does not exceed the fair market value of Pension Plan assets. Except as would not reasonably be expected to have a Material Adverse Effect, no Controlled Group Member has or has had in the past, an obligation to contribute to a Multiemployer Plan.

To the extent applicable, Excell Canada and the other Credit Parties is in compliance with the requirements of the Pension Benefits Act (Ontario) and other federal or provincial laws with respect to each (i) Canadian Pension Plan, except where the failure to comply would not reasonably be expected to have a Material Adverse Effect, and (ii) Canadian Defined Benefit Plan. No fact or situation that may reasonably be expected to result in a Material Adverse Effect exists in connection with any Canadian Pension Plan or Canadian Defined Benefit Plan. No Canadian Pension Event has occurred. Neither the Canadian Guarantor nor any other Loan Parties has a Canadian Defined Benefit Plan. The Financial Services Regulatory Authority of Ontario has not issued any default or other breach notices in respect of any Canadian Defined Benefit Plan. No lien has arisen, choate or inchoate, in respect of any Canadian Guarantor or their Subsidiaries or their property in connection with any Canadian Pension Plan (save for contribution amounts not yet due).

SECTION 7.15 CONSENTS OR APPROVALS. No material consent, approval or authorization of, or filing, registration or qualification with, any governmental authority or any other Person is required to be obtained or completed by any Company in connection with the execution, delivery or performance of any of the Loan Documents, that has not already been obtained or completed.

SECTION 7.16 SOLVENCY. Each Credit Party has received consideration that is the reasonable equivalent value of the obligations and liabilities that such Credit Party has incurred to the Lenders. No Credit Party is insolvent as defined in any applicable state or federal statute **and no Canadian Credit Party is an "insolvent person" as such term is defined in the BIA**, nor will Borrowers be rendered insolvent by the execution and delivery of the Loan Documents to Agent and the Lenders. No Credit Party is engaged or about to engage in any business or transaction for which the assets retained by it are or will be an unreasonably small amount of capital, taking into consideration the obligations to Agent and the Lenders incurred hereunder. No Credit Party intend to, nor does it believe that it will, incur debts beyond its ability to pay such debts as they mature.

SECTION 7.17 FINANCIAL STATEMENTS. The December 31, 2016, audited Consolidated financial statements of the Companies and the March 31, 2017, internally prepared Consolidated financial statements of the Companies, furnished to Agent and the Lenders, are true and complete, have been prepared in accordance with GAAP, and fairly present in all material respects the Companies' financial condition as of the dates of such financial statements and the results of their operations for the periods then ending. Since the dates of such statements, there has been no Material Adverse Effect nor any change in any Company's accounting procedures (except as permitted by Section 5.30 hereof).

SECTION 7.18 REGULATIONS. No Company is engaged principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any "margin stock" (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States of America). Neither the granting of any Loan (or any conversion thereof) nor the use of the proceeds of any Loan will violate, or be inconsistent with, the provisions of Regulation U or X of said Board of Governors.

SECTION 7.19 MATERIAL AGREEMENTS. Except as disclosed on Schedule 7.19 hereto, no Company is a party to any contract, agreement, understanding, or arrangement that if violated, breached, or terminated for any reason, would have or would be reasonably expected to have a Material Adverse Effect. Each Credit Party has heretofore delivered or made available to Agent true and complete copies of all Material Contracts to which it is a party or to which it or any of its properties is subject. All Material Contracts are in full force and effect and no material defaults currently exist thereunder.

SECTION 7.20 INTELLECTUAL PROPERTY. Each Company owns, possesses, or has the right to use all of the Intellectual Property necessary for the conduct of its business without, to any Company's knowledge, any conflict with the rights of others. Schedule 7.20 hereto provides, as of the **Third Amendment** Closing Date, a complete and accurate list of all registered Intellectual Property owned by each Company, showing as of the date hereof the jurisdiction in which registered, the registration number, the date of registration and the expiration date.

SECTION 7.21 INSURANCE. Each Company maintains insurance as required by Section 5.1 hereof. Schedule 7.21 hereto sets forth, as of the **Third Amendment** Closing Date, all insurance carried by the Companies, setting forth in detail the amount and type of such insurance.

SECTION 7.22 ACCURATE AND COMPLETE STATEMENTS. Neither the Loan Documents nor any written statement made by any Company in connection with any of the Loan Documents (other than any financial projections or estimates or other forward looking statements as to which no representation or warranty is made or given) contains any untrue statement of a material fact or omits a material fact necessary to make the statements contained therein or in the Loan Documents not misleading. After due inquiry by each Credit Party, there is no known fact that any Company has not disclosed to Agent and the Lenders that has or would have a Material Adverse Effect. The representations and warranties made by the Credit Parties in the Southwest Acquisition Documents, the Excell Acquisition Documents and in any other agreements, instruments or certificates delivered pursuant thereto, are true and correct in all material respects (except where any such representation and warranty is stated as being true only as of a specific date, in which case such representation and warranty was true and correct in all material respects on such date).

To the best knowledge of the Borrowers, the information included in the Beneficial Ownership Certifications most recently provided to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 7.23 DEFAULTS. No Default or Event of Default exists hereunder, nor will any begin to exist immediately after the execution and delivery hereof.

SECTION 7.24 ELIGIBLE ACCOUNTS AND ELIGIBLE INVENTORY. Other than any items which may be deemed ineligible by Agent in the exercise of its reasonable discretion, all of the Eligible Accounts and Eligible Inventory included in the calculation of the Borrowing Base as set forth in each Borrowing Base Certificate now or hereafter furnished to Agent meets, or as of the date stated thereon, will meet all eligibility requirements specified in the definitions of those terms as set forth in Article I hereof.

SECTION 7.25 ANTI-TERRORISM LAWS. No Credit Party nor any Affiliate of any Credit Party, is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

SECTION 7.26 ~~EXECUTIVE ORDER~~**SANCTIONS A**~~N~~**D** ~~13224~~ **EXPORT CONTROL LAWS**. No Credit Party, nor any Affiliate of any Credit Party, or their respective agents acting or benefiting in any capacity in connection with the Loans, Letters of Credit or other transactions hereunder, is any of the following (each a "Blocked Person"):

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

(iii) a Person or entity with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224;

(v) a Person or entity that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list **or a Canadian Blocked Person**; or

(vi) a person or entity who is affiliated or associated with a person or entity listed above.

No Credit Party nor to the knowledge of any Credit Party, any of its agents acting in any capacity in connection with the Loans, Letters of Credit or other transactions hereunder (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person **or Canadian Blocked Person**, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224~~.~~ **or Canadian Economic Sanctions and Export Control Laws. Notwithstanding the foregoing, the representations given in this Section 7.26 shall not be made by nor apply to any Person that qualifies as a corporation that is registered or incorporated under the laws of Canada or any province thereof and that carries on business in whole or in part in Canada within the meaning of Section 2 of the Foreign Extraterritorial Measures (United States) Order, 1992 passed under the Foreign Extraterritorial Measures Act (Canada) in so far as such representations would result in a violation of or conflict with the Foreign Extraterritorial Measures Act (Canada) or any similar law**.

ARTICLE VIII. EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default hereunder:

SECTION 8.1 PAYMENTS. If any of the Companies shall fail to pay (a) any principal of any Loan (including, without limitation, pursuant to the Notes, Section 2.1 hereof and Section 2.7 hereof) when the same shall become due and payable, or (b) any interest on any Loans or any other payment required to be made by the Companies to the Agent or the Lenders under any Loan Document within five (5) Business Days of the date that such payment is due.

SECTION 8.2 SPECIAL COVENANTS. If any Company or any Obligor shall fail or omit to perform and observe Sections 5.1, 5.3, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, 5.13, 5.14, 5.17, 5.18, 5.19, 5.20, 5.21, 5.25, 5.26, 5.27, 5.29, 5.31, 5.32, 5.33, 5.34, 5.35 and 6.3 hereof.

SECTION 8.3 OTHER COVENANTS. If any Company or any Obligor shall fail or omit to perform and observe any agreement or other provision (other than those referred to in this Article VIII) contained or referred to in this Agreement or any Related Writing that is on such Company's or Obligor's part, as the case may be, to be complied with, and such Default shall not have been fully corrected within 30 days after the earlier to occur of (a) the date an executive officer of a Company becomes aware or should have become aware of such Default, or (b) the giving of written notice thereof to Borrowers by Agent or any Lender that the specified Default is to be remedied.

SECTION 8.4 REPRESENTATIONS AND WARRANTIES. If any representation, warranty or statement made in or pursuant to this Agreement or any Loan Document or any other material written factual information (excluding any projections or forward looking information) furnished by any Company or any Obligor to the Lenders or any thereof or any other holder of any Note, shall be false or erroneous in any material respect when made or deemed made (without duplication of any materiality qualifiers).

SECTION 8.5 CROSS DEFAULT. If (a) any Company or any Obligor shall default in the payment of principal or interest due and owing upon any other obligation for borrowed money in excess of the aggregate, for all such obligations for all such Companies and Obligors, of $500,000 beyond any period of grace provided with respect thereto or in the performance or observance of any other agreement, term or condition contained in any agreement under which such obligation is created, if the effect of such default is to allow the acceleration of the maturity of such Indebtedness or to permit the holder thereof to cause such Indebtedness to become due prior to its stated maturity, (b) any default by any Company shall have occurred under the Southwest Acquisition Documents, which such default shall be continuing beyond any period of grace provided with respect thereto; or (c) any default by any Company shall have occurred under the Excell Acquisition Documents, which such default shall be continuing beyond any period of grace provided with respect thereto.

SECTION 8.6 ERISA DEFAULT. The occurrence of one or more ERISA Events **or Canadian Pension Event** that (a) would reasonably be expected to have a Material Adverse Effect, or (b) results in a Lien in excess of $500,000 on any of the assets of any Obligor **(save for contribution amounts not yet due)**.

SECTION 8.7 CHANGE IN CONTROL. If any Change in Control shall occur.

SECTION 8.8 MONEY JUDGMENT. A final judgment or order for the payment of money not fully covered by insurance shall be rendered against any Company or any Obligor by a court of competent jurisdiction, that remains unpaid or unstayed and undischarged for a period (during which execution shall not be effectively stayed) of 45 days after the date on which the right to appeal has expired, provided that the aggregate of all such judgments for all the Obligors exceeds $**7**~~5~~0,000 at any time outstanding.

SECTION 8.9 VALIDITY OF LOAN DOCUMENTS. (a) Any material provision, in the reasonable judgment of Agent, of any Loan Document shall at any time for any reason cease to be valid and binding and enforceable against Borrowers, any Credit Party or any other Obligor; (b) the validity, binding effect or enforceability of any Loan Document against Borrowers, any Credit Party or any Obligor shall be contested by any Company or any other Obligor; (c) Borrowers, any Credit Party or any other Obligor shall deny that it has any or further liability or obligation thereunder; (d) any Loan Document shall be terminated, invalidated or set aside, or be declared ineffective or inoperative or in any way cease to give or provide to Agent and the Lenders the benefits purported to be created thereby; or (e) any Lien purported to be created with respect to the Collateral shall be asserted by any Company not to be, a valid and perfected Lien on the Collateral and of the same effect and priority purported to be created thereby.

SECTION 8.10 NONMONETARY JUDGMENTS. Any nonmonetary judgment or order shall be rendered against any Obligor that would have a Material Adverse Effect and either (i) enforcement proceedings shall have been commenced by any person upon such judgment or order, or (ii) there shall be any period of 60 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

SECTION 8.11 ENCUMBRANCES OF SECURITY DOCUMENTS. Except as specifically agreed to in writing by the Agent, any applicable Loan Document for any reason (other than pursuant to the terms thereof) ceases to create a valid and perfected first priority Lien (subject to Permitted Liens) in any of the Collateral.

SECTION 8.12 [RESERVED].

SECTION 8.13 SOLVENCY. If any Obligor shall (a) discontinue its operations other than as permitted hereunder, (b) generally not pay its debts as such debts become due, (c) make a general assignment for the benefit of creditors, (d) apply for or consent to the appointment of a **receiver, monitor, interim** receiver, a custodian, a trustee, an interim trustee or liquidator of all or a substantial part of its assets, (e) be adjudicated a debtor or have entered against it an order for relief under Title 11 of the United States Code, as the same may be amended from time to time, **or any other Debtor Relief Law** (f) file a voluntary petition in bankruptcy or file a petition or an answer seeking reorganization or an arrangement with creditors or seeking to take advantage of any other ~~law (whether federal or state) relating to relief of d~~**D**ebtor~~s~~ **Relief Law**, or admit (by answer, by default or otherwise) the material allegations of a petition filed against it in any bankruptcy, reorganization, insolvency or other proceeding **or proposal** (whether federal ~~or~~**,** state, **provincial or territorial**) relating to ~~relief of~~**any** ~~d~~**D**ebtor~~s~~ **Relief Laws**, (g) suffer or permit to continue unstayed and in effect for 60 consecutive days any judgment, decree or order entered by a court of competent jurisdiction, that approves a petition seeking its reorganization or appoints a receiver, **interim receiver, monitor,** custodian, trustee, interim trustee or liquidator of all or a substantial part of its assets, or (h) take, or omit to take, any action in order thereby to effect any of the foregoing.

ARTICLE IX. REMEDIES UPON DEFAULT

Notwithstanding any contrary provision or inference herein or elsewhere,

SECTION 9.1 OPTIONAL DEFAULTS. If any Event of Default referred to in Article VIII (other than Section 8.13) hereof shall occur, the Required Lenders shall have the right, in their or its discretion, by directing Agent, on behalf of the Lenders, to give written notice to any Borrower, to:

(a) terminate the Commitments and the credits hereby established, if not previously terminated, and, immediately upon such election, the obligations of the Lenders, and each thereof, to make any further Loan and the obligation of Agent to issue any Letter of Credit hereunder immediately shall be terminated, and/or

(b) accelerate the maturity of all of the Secured Debt (if the Secured Debt is not already due and payable), whereupon all of the Secured Debt shall become and thereafter be immediately due and payable in full without any presentment or demand and without any further or other notice of any kind, all of which are hereby waived by each Credit Party.

SECTION 9.2 AUTOMATIC DEFAULTS. If any Event of Default referred to in Section 8.13 hereof shall occur:

(a) all of the Commitments and the credits hereby established shall automatically and immediately terminate, if not previously terminated, and no Lender thereafter shall be under any obligation to grant any further Loan, nor shall Agent be obligated to issue any Letter of Credit hereunder, and

(b) the principal of and interest then outstanding on all Notes, and all of the Secured Debt to the Lenders, shall thereupon become and thereafter be immediately due and payable in full (if the Secured Debt is not already due and payable), all without any presentment, demand or notice of any kind, which are hereby waived by each Credit Party.

SECTION 9.3 LETTERS OF CREDIT. If the maturity of the Loans is accelerated pursuant to Section 9.1 or 9.2 hereof, Borrowers shall immediately deposit with Agent, as security for Borrowers', any Credit Party's and any other Obligor's obligations to reimburse Agent and the Lenders for any then outstanding Letters of Credit, cash equal to 105% of the sum of the aggregate undrawn balance of any then outstanding Letters of Credit. Agent and the Lenders are hereby authorized, at their option, to deduct any and all such amounts from any deposit balances then owing by any Lender to or for the credit or account of any Company, as security for Borrowers', any Credit Party's and any other Obligor's obligations to reimburse Agent and the Lenders for any then outstanding Letters of Credit.

SECTION 9.4 OFFSETS. If there shall occur or exist any Event of Default, each Lender shall have the right at any time to set off against, and to appropriate and apply toward the payment of, any and all Secured Debt then owing by any Credit Party to that Lender (including, without limitation, any participation purchased or to be purchased pursuant to Section 9.5 hereof), whether or not the same shall then have matured, any and all deposit balances and all other
Indebtedness then held or owing by that Lender to or for the credit or account of any Credit Party, all without notice to or demand upon any Credit Party or any other Person, all such notices and demands being hereby expressly waived by each Credit Party. Any such amounts set off by such Lender shall be delivered to the Agent to be applied in accordance with Section 2.3(b) hereof.

SECTION 9.5 EQUALIZATION PROVISION. Each Lender agrees with the other Lenders that if it, at any time, shall obtain any Advantage over the other applicable Lenders or any thereof in respect of the Applicable Debt (except under Article III hereof), it shall purchase from the other applicable Lenders, for cash and at par, such additional participation in the Debt as shall be necessary to nullify the Advantage. If any such Advantage resulting in the purchase of an additional participation as aforesaid shall be recovered in whole or in part from the Lender receiving the Advantage, each such purchase shall be rescinded, and the purchase price restored (but without interest unless the Lender receiving the Advantage is required to pay interest on the Advantage to the Person recovering the Advantage from such Lender) Ratably to the extent of the recovery. Each Lender further agrees with the other Lenders that if it at any time shall receive any payment for or on behalf of Borrowers on any Indebtedness owing by Borrowers to that Lender by reason of offset of any deposit or other Indebtedness, it will apply such payment first to any and all Applicable Debt owing by Borrowers to that Lender (including, without limitation, any participation purchased or to be purchased pursuant to this Section or any other Section of this Agreement). Borrowers agree that any Lender so purchasing a participation from the other Lenders or any thereof pursuant to this Section may exercise all its rights of payment (including the right of set off) with respect to such participation as fully as if such Lender was a direct creditor of Borrowers in the amount of such participation.

SECTION 9.6 COLLATERAL. Upon the occurrence and during the continuance of an Event of Default, Agent, at the direction of the Required Lenders, may require any Credit Party to assemble the Collateral, which such Credit Party agrees to do, and make it available to Agent at a reasonably convenient place to be designated by Agent. Upon the occurrence and during the continuance of an Event of Default, Agent, at the direction of the Required Lenders, may, with or without notice to or demand upon any Credit Party and with or without the aid of legal process, make use of such force as may be necessary to enter any premises where the Collateral, or any thereof, may be found and to take possession thereof (including anything found in or on the Collateral that is not specifically described in this Agreement, each of which findings shall be considered to be an accession to and a part of the Collateral) and for that purpose may pursue the Collateral wherever the same may be found, without liability for trespass or damage caused thereby to any Credit Party. After any delivery or taking of possession of the Collateral, or any thereof, pursuant to this Agreement, then, with or without resort to any Credit Party personally or any other Person or property, all of which each Credit Party hereby waives, and upon such terms and in such manner as Agent may deem advisable, Agent, in its discretion, may sell, assign, transfer and deliver any of the Collateral at any time, or from time to time. No prior notice need be given to any Credit Party or to any other Person in the case of any sale of Collateral which Agent determines to be perishable or to be declining speedily in value or which is customarily sold in any recognized market, but in any other case Agent shall give such Credit Party not fewer than ten (10) days prior notice of either the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition thereof is to be made. Each Credit Party waives advertisement of any such sale and (except to the extent specifically required by the preceding sentence) waives notice of any kind in respect of any such sale. At any such public sale, Agent or the Lenders may purchase the Collateral, or any part thereof, free from any right of redemption, all of which rights such Credit Party hereby waives and releases. After paying all claims, if any, secured by Liens having precedence over this Agreement, Agent shall apply any payments received on the Secured Debt and the net proceeds of each such sale to or toward the payment of the Secured Debt, whether or not then due, in such order and by such division as set forth in Section 2.3(b) hereof. Any excess, to the extent permitted by law, shall be paid to the Credit Parties, and the Credit Parties shall remain liable for any deficiency. Upon the occurrence and during the continuance of an Event of Default, Agent shall at all times have the right to obtain new appraisals of any Credit Party or the Collateral, the cost of which shall be paid by the Credit Parties. If Agent sells, leases, licenses, or otherwise disposes of any Collateral of any Credit Party on credit, then, and in each such case, Borrowers will be credited only with payments actually received by Agent and, if any Person obligated to make any payment for any Collateral of any Credit Party does not make such payment when due, Agent may thereafter sell, lease, license, or otherwise dispose of such Collateral of such Credit Party. In connection with any sale or other disposition of any Collateral of any Credit Party, Agent, shall have the right, but no duty, to disclaim warranties of title, possession, quiet enjoyment, and the like, and Agent shall have the right to comply with any applicable requirements of law (whether federal, state, local, or otherwise), and no such disclaimer or compliance shall be considered to have adversely affected the commercial reasonableness of any such sale or other disposition.

SECTION 9.7 APPOINTMENT OF RECEIVER. Upon the occurrence and during the continuance of an Event of Default, Agent shall be entitled, to make application to the United States District Court for the Northern District of New York or any other applicable court of competent jurisdiction, for the immediate appointment of a receiver for all or part of the Collateral or the real property, whether such receivership is incidental to a proposed sale of the Collateral or the real property, pursuant to the Uniform Commercial Code**, PPSA** or otherwise. Each Credit Party hereby irrevocably consents to the appointment of such a receiver without bond, to the full extent permitted by applicable statute or law as a matter of strict right and without any requirement of any notice to any Credit Party and without regard to the adequacy of the Collateral or the real property for the repayment of the ~~Obligations~~**Secured Debt** or the solvency of any Borrower or any Obligor. Each Credit Party hereby further waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Agent. Nothing herein shall be construed to deprive Agent or any Lender of any other right, remedy or privilege Agent or any Lender may now have under the law to have a receiver appointed. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Collateral or the real property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances.

ARTICLE X. THE AGENT

The Lenders authorize KeyBank and KeyBank hereby agrees to act as agent for the Lenders in respect of this Agreement upon the terms and conditions set forth elsewhere in this Agreement, and upon the terms and conditions set forth below. Except as to Section 10.10 in connection with the appointment of a successor Agent, it is understood that this Article X shall not be intended to confer any rights, powers, privileges or benefits upon any Obligor, but is intended solely to establish the rights, powers and duties of the Agent and the Lenders.

SECTION 10.1 APPOINTMENT AND AUTHORIZATION. Each Lender hereby irrevocably appoints and authorizes Agent to take such action as agent on its behalf and to exercise such powers hereunder as are delegated to Agent by the terms hereof, together with such powers as are reasonably incidental thereto. Neither Agent, its Affiliates nor any of their respective directors, officers, attorneys or employees shall be liable for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct. In no event shall Agent be liable for punitive, special, consequential, incidental, exemplary or other similar damages.

SECTION 10.2 NOTE HOLDERS. Agent may treat the payee of any Note as the holder thereof until written notice of transfer shall have been filed with it, signed by such payee and in form satisfactory to Agent.

SECTION 10.3 CONSULTATION WITH COUNSEL. Agent may consult with legal counsel selected by it and shall not be liable for any reasonable action taken or suffered in good faith by it in accordance with the opinion of such counsel.

SECTION 10.4 DOCUMENTS. Agent shall not be under any duty to examine into or pass upon the validity, effectiveness, genuineness or value of any Loan Documents or any other Related Writing furnished pursuant hereto or in connection herewith or the value of any collateral obtained hereunder, and Agent shall be entitled to assume that the same are valid, effective and genuine and what they purport to be.

SECTION 10.5 AGENT AND AFFILIATES. With respect to the Loans, Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not Agent, and Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with any Company or any Affiliate thereof.

SECTION 10.6 KNOWLEDGE OF DEFAULT. It is expressly understood and agreed that Agent shall be entitled to assume that no Default or Event of Default has occurred, unless Agent has been notified by a Lender in writing that such Lender believes that a Default or Event of Default has occurred and is continuing and specifying the nature thereof.

SECTION 10.7 ACTION BY AGENT. So long as Agent shall be entitled, pursuant to Section 10.6 hereof, to assume that no Default or Event of Default shall have occurred and be continuing, Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights that may be vested in it by, or with respect to taking or refraining from taking any action or actions that it may be able to take under or in respect of, this Agreement. Agent shall incur no liability under or in respect of this Agreement by acting upon any notice, certificate, warranty or other paper or instrument believed by it to be genuine or authentic or to be signed by the proper party or parties, or with respect to anything that it may do or refrain from doing in the reasonable exercise of its judgment, or that may seem to it to be necessary or desirable in the premises, except for any liability arising from Agent’s gross negligence or willful misconduct.

SECTION 10.8 NOTICES, DEFAULT, ETC. In the event that Agent shall have acquired actual knowledge of any Default or Event of Default, Agent shall promptly notify the Lenders and shall take such action and assert such rights under this Agreement as the Required Lenders shall direct and Agent shall inform the other Lenders in writing of the action taken. Agent may take such action and assert such rights as it deems to be advisable, in its discretion, for the protection of the interests of the holders of the Notes.

SECTION 10.9 INDEMNIFICATION OF AGENT. The Lenders agree to indemnify

Agent (to the extent not reimbursed by the Credit Parties) ratably, according to their respective Aggregate Commitment Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against Agent in its capacity as agent in any way relating to or arising out of this Agreement or any Loan Document or any action taken or omitted by Agent with respect to this Agreement or any Loan Document, provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees) or disbursements resulting from Agent's gross negligence, willful misconduct or from any action taken or omitted by Agent in any capacity other than as agent under this Agreement.

SECTION 10.10 SUCCESSOR AGENT. Agent may resign as agent hereunder by giving not fewer than thirty (30) days prior written notice to Borrowers and the Lenders. If Agent shall resign under this Agreement, then either (a) the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders (with the consent of Borrowers so long as an Event of Default has not occurred and which consent shall not be unreasonably withheld), or (b) if a successor agent shall not be so appointed and approved within the thirty (30) day period following Agent's notice to the Lenders of its resignation, then Agent shall appoint a successor agent that shall serve as agent until such time as the Required Lenders appoint a successor agent. Upon its appointment, such successor agent shall succeed to the rights, powers and duties as agent, and the term "Agent" shall mean such successor effective upon its appointment, and the former agent's rights, powers and duties as agent shall be terminated without any other or further act or deed on the part of such former agent or any of the parties to this Agreement.

SECTION 10.11 NATURE OF RELATIONSHIP. Notwithstanding the use of the defined term "Agent," it is expressly understood and agreed that the Agent shall not have any fiduciary responsibilities to any of the Lenders by reason of this Agreement or any other Loan Document and that the Agent is merely acting as the contractual representative of the Lenders with only those duties as are expressly set forth in this Agreement and the other Loan Documents. In its capacity as the Lenders' contractual representative, the Agent (i) does not hereby assume any fiduciary duties to any of the Lenders, (ii) is a "representative" of the Lenders within the meaning of the term "secured party" as defined in the UCC **or the PPSA, as applicable**, and (iii) is acting as an independent contractor, the rights and duties of which are limited to those expressly set forth in this Agreement and the other Loan Documents. Each of the Lenders, for itself and on behalf of its Affiliates, hereby agrees not to assert any claim against the Agent on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims each such Person hereby waives.

SECTION 10.12 NATURE OF DUTIES. The duties of Agent shall be mechanical and administrative in nature. Nothing in this Agreement or any of the Loan Documents, express or implied, is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Loan Documents except as expressly set forth herein or therein. Without limitation of the foregoing, neither the Agent nor any of its directors, officers, agents, attorneys or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (a) any statement, warranty or representation made in connection with any Loan Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements of any Obligor under any Loan Document, including, without limitation, any agreement by an Obligor to furnish information directly to each Lender; (c) the satisfaction of any condition specified in Article IV, except receipt of items required to be delivered solely to the Agent; (d) the existence or possible existence of any Default or Event of Default; (e) the validity, enforceability, effectiveness, sufficiency or genuineness of any Loan Document or any other instrument or writing furnished in connection therewith; (f) the value, sufficiency, creation, perfection or priority of any Lien in any Collateral; or (g) the financial condition of the Borrowers or any Credit Party or of any other Company. The Agent shall have no duty to disclose to the Lenders information that is not required to be furnished by the Credit Parties to the Agent at such time, but is voluntarily furnished by the Credit Parties to the Agent (either in its capacity as Agent or in its individual capacity).

SECTION 10.13 NO RELIANCE ON AGENT'S CUSTOMER IDENTIFICATION PROGRAM. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with Borrowers, Borrowers' Affiliates or its agents, the Loan Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any record-keeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or such other laws.

SECTION 10.14 COLLATERAL MATTERS. Each Lender agrees that any action taken by Agent with respect to the Collateral in accordance with the provisions of this Agreement or the Loan Documents, and the exercise by Agent of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all Lenders. Lenders hereby irrevocably authorize Agent, at its option and in its discretion, to release any Lien granted to or held by Agent upon any Collateral (i) upon termination of the Commitments, the payment in full of all Secured Debt and the satisfaction of all other obligations (other than those obligations surviving indefinitely pursuant to Section 11.18 hereof to the extent no claims giving rise thereto have been asserted); (ii) constituting property being sold or disposed of if Borrowers certify to Agent that the sale or disposition is made in compliance with the provisions of this Agreement, including, without limitation, Section 5.12 hereof (and Agent may rely conclusively on any such certificate, without further inquiry); (iii) constituting property in which a Credit Party did not own any interest at the time the Lien was granted or at any time thereafter; (iv) in connection with any foreclosure sale or other disposition of Collateral after the occurrence and during the continuation of an Event of Default; or (v) if approved, authorized or ratified in writing by Agent at the direction of all Lenders in accordance with Section 11.3 hereof. Upon request by Agent at any time, Lenders will confirm in writing Agent's authority to release particular types or items of Collateral pursuant hereto. Agent shall have no obligation whatsoever to any Lender or to any other Person to assure that the Collateral exists or is owned by any Credit Party or is cared for, protected or insured or has been encumbered or that the Liens granted to Agent herein or pursuant to this Agreement or the other Related Writings have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of its rights, authorities and powers granted or available to Agent in this Section 10.14 or in any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, Agent may act in any manner it may deem appropriate, in its sole discretion, but consistent with the provisions of this Agreement, including given Agent's own interest in the Collateral as a Lender and that Agent shall have no duty or liability whatsoever to any Lender.

Without limiting the powers of the Agent, for the purposes of holding any hypothec granted to the Attorney (as defined below) pursuant to the laws of the Province of Québec to secure the prompt payment and performance of any and all Banking Services Obligations by any Credit Party, each of the Secured Creditors hereby irrevocably appoints and authorizes the Agent and, to the extent necessary, ratifies the appointment and authorization of the Agent, to act as the hypothecary representative of the creditors as contemplated under Article 2692 of the Civil Code of Québec (in such capacity, the "Attorney"), and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Attorney under any related deed of hypothec. The Attorney shall: (a) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney pursuant to any such deed of hypothec and applicable law, and (b) benefit from and be subject to all provisions hereof with respect to the Agent mutatis mutandis, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Secured Creditors and Credit Parties. Any person who becomes a Secured Creditors shall, by its execution of an Assignment and Assumption Agreement, be deemed to have consented to and confirmed the Attorney as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Secured Creditor, all actions taken by the Attorney in such capacity. The substitution of the Agent pursuant to the provisions of this Section 10.10 shall also constitute the substitution of the Attorney.

SECTION 10.15 AUTHORIZATION TO ENTER INTO THE LOAN DOCUMENTS. Agent is hereby irrevocably authorized by each of the Lenders to execute and deliver the Loan Documents and any other Related Writing on behalf of each of the Lenders and to take such action and exercise such powers under the Loan Documents and any other Related Writing as Agent considers appropriate; provided, however, that Agent shall not amend the Loan Documents or any other Related Writing or consent to any waiver of its provisions unless such amendment or waiver is agreed to in writing by the Required Lenders (or all the Lenders if required by Section 11.3 hereof). Each Lender acknowledges and agrees that it will be bound by the terms and conditions of the Loan Documents and the Related Writings upon the execution and delivery thereof by Agent.

ARTICLE XI. MISCELLANEOUS

SECTION 11.1 LENDERS' INDEPENDENT INVESTIGATION. Each Lender, by its signature to this Agreement, acknowledges and agrees that Agent has made no representation or warranty, express or implied, with respect to the creditworthiness, financial condition, or any other condition of any Company or with respect to the statements contained in any information memorandum furnished in connection herewith or in any other oral or written communication between Agent and such Lender. Each Lender represents that it has made and shall continue to make its own independent investigation of the creditworthiness, financial condition and affairs of the Companies in connection with the extension of credit hereunder, and agrees that Agent has no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto (other than such notices as may be expressly required to be given by Agent to the Lenders hereunder), whether coming into its possession before the granting of the first Loans or the issuing of the first Letter of Credit hereunder or at any time or times thereafter.

SECTION 11.2 NO WAIVER; CUMULATIVE REMEDIES. No omission or course of dealing on the part of Agent, any Lender or the holder of any Note in exercising any right, power or remedy hereunder or under any of the Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or under any of the Loan Documents. The remedies herein provided are cumulative and in addition to any other rights, powers or privileges held by operation of law, by contract or otherwise.

SECTION 11.3 AMENDMENTS, CONSENTS. Except for actions expressly permitted to be taken by Agent, no amendment, modification, termination, or waiver of any provision of any Loan Document nor consent to any variance therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Anything herein to the contrary notwithstanding, unanimous consent of the Lenders shall be required with respect to (a) except in connection with an increase of the Revolving Credit Commitment pursuant to Section 2.5(b), any increase in the Commitment hereunder, (b) the extension of maturity of the Loans, the scheduled payment date of principal or interest thereunder (other than with respect to a mandatory prepayment under Section 2.7), or the payment of commitment or other fees or amounts payable hereunder, (c) any reduction in the rate of interest on the Loans, or in any amount of principal or interest due on any Loan, or the payment of commitment or other fees hereunder or any change in the manner of application of any payments made by Borrowers or any Credit Party to the Lenders hereunder, (d) any change in Section 2.3(b) hereof, the percentage voting requirement, voting rights, or the Required Lenders definition in this Agreement, (e) except as provided in Section 10.14 hereof, the release of any Guarantor of Payment or all or substantially all of the Collateral, (f) any amendment to this Section 11.3 or Section 9.5 hereof, (g) any amendment to the definition of Revolving Credit Commitment or any defined term used therein, or (h) any amendment to this Agreement that would cause a Lender to be obligated to make Revolving Loans in excess of its share of the Revolving Credit Commitment. Notice of amendments or consents ratified by the Lenders hereunder shall promptly be forwarded by Borrowers to all Lenders. Each Lender or other holder of a Note shall be bound by any amendment, waiver or consent obtained as authorized by this Section, regardless of its failure to agree thereto. For purposes of this Section 11.3, with respect to any Lender which makes a non-pro rata assignment as contemplated by Section 11.10(b)(ii) hereof, any Approved Fund of such Lender or any Affiliate of such Lender that becomes bound by this Agreement by virtue of such a non-pro rata assignment shall, by becoming so bound, be deemed to have irrevocably appointed such Lender as such Person's agent for purposes of signing any amendment, modification or termination of, or any waiver or consent under or in connection with this Agreement or any other Related Writing, and such Person shall have no right individually to approve any such amendment, modification, termination, waiver or consent. Each such Lender, by becoming bound by this Agreement, shall be deemed to have irrevocably accepted its appointment as agent for such purposes, and each Lender agrees to exercise all powers of such Lender in its capacity as agent of such Person in a manner that is consistent with the manner in which such Lender exercises its individual rights under this Agreement and the other Related Writings.

SECTION 11.4 NOTICES. All notices, requests, demands and other communications provided for hereunder shall be in writing and, if to a Credit Party, mailed or delivered to such Credit Party, addressed to such Credit Party at the address specified on the signature pages of this Agreement, if to a Lender, mailed or delivered to it, addressed to the address of such Lender specified on the signature pages of this Agreement, or, as to each party, at such other address as shall be designated by such party in a written notice to each of the other parties. All notices, statements, requests, demands and other communications provided for hereunder shall be given by overnight delivery or first class mail with postage prepaid by registered or certified mail return receipt requested, addressed as aforesaid, except that all notices hereunder shall not be effective until received or delivery refused.

SECTION 11.5 COSTS, EXPENSES AND TAXES. Each Credit Party agrees to pay on demand all documented Related Expenses and all other costs and expenses of Agent, including, but not limited to, (a) administration (including field examinations), travel and out of pocket expenses, including but not limited to reasonable attorneys' fees and expenses, of Agent in connection with the preparation, negotiation and closing of the Loan Documents and Related Writings and the administration of the Loan Documents and Related Writings, the collection and disbursement of all funds hereunder and the other instruments and documents to be delivered hereunder; (b) extraordinary expenses of Agent in connection with the administration of the Loan Documents and Related Writings and the other instruments and documents to be delivered hereunder, (c) the reasonable fees and out of pocket expenses of special counsel for the Lenders, with respect to the foregoing, and of local counsel, if any, who may be retained by said special counsel with respect thereto, (d) the hiring or retention (with the consultation of Borrowers during such times when no Event of Default exists) of any third party consultant deemed necessary by Agent and the Lenders to protect and preserve the Collateral, and (e) costs of settlement incurred by Agent after the occurrence of an Event of Default, including but not limited to (1) costs in enforcing any obligation or in foreclosing against the Collateral or other security or exercising or enforcing any other right or remedy available by reason of such Event of Default, (2) costs in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or in any insolvency or bankruptcy proceeding **or proposal**, (3) costs of commencing, defending or intervening in any litigation or in filing a petition, complaint, answer, motion or other pleadings in any legal proceeding relating to any Credit Party and related to or arising out of the transactions contemplated hereby or by any of the Loan Documents, (4) costs of taking any other action in or with respect to any suit or proceeding (whether in bankruptcy or otherwise) (other than a suit among the Lenders to which no Company is a party), (5) costs of protecting, preserving, collecting, leasing, selling, taking possession of, or liquidating any of the Collateral, (6) costs in connection with attempting to enforce or enforcing any lien on or security interest in any of the Collateral or any other rights under the Loan Documents, or (7) costs incurred in connection with meeting with any Credit Party to discuss such
Event of Default and the course of action to be taken in connection therewith. In addition, each Credit Party shall pay reasonable attorneys' fees and reasonable fees of other professionals, all lien search and title search fees, all title insurance premiums, all filing and recording fees, all reasonable travel expenses and any and all stamp and other similar taxes and fees payable or determined to be payable in connection with the execution and delivery of the Loan Documents, and the other instruments and documents to be delivered hereunder, and agrees to hold Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes or fees unless such delay or omission is the result of the gross negligence or the willful misconduct of Agent or any Lender. All of the foregoing will be part of the obligations, payable within five (5) Business Days of demand (unless any of the foregoing are to be paid at closing), shall be accompanied by reasonably detailed invoices, and shall be secured by the Collateral and other security for the Secured Debt. The obligations described in this Section 11.5 will survive any termination of this Agreement or the restructuring of the financing arrangements.

SECTION 11.6 INDEMNIFICATION. Each Credit Party agrees to defend, indemnify and hold harmless Agent and the Lenders (and their respective Affiliates, officers, directors, attorneys, agents and employees) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including reasonable attorneys' fees) or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against Agent or any Lender in connection with any investigative, administrative or judicial proceeding (whether or not such Lender or Agent shall be designated a party thereto) or any other claim by any Person relating to or arising out of any Loan Document or any actual or proposed use of proceeds of the Loans or any of the Secured Debt, or any activities of any Company or any Obligor or any of their respective Affiliates; provided that neither any Lender nor Agent shall have the right to be indemnified under this Section for its own gross negligence or willful misconduct. All obligations provided for in this Section 11.6 shall survive any termination of this Agreement. Notwithstanding anything to the contrary contained herein or in any Related Writing, neither Agent nor any Lender, nor any agent or attorney for any of them, shall be liable to any Credit Party or any Company (or any Affiliate of any such Person) for indirect, punitive, exemplary or consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Secured Debt or as a result of any transaction contemplated under this Agreement or any Related Writing.

SECTION 11.7 OBLIGATIONS SEVERAL; NO FIDUCIARY OBLIGATIONS. The obligations of the Lenders hereunder are several and not joint. Nothing contained in this Agreement and no action taken by Agent or the Lenders pursuant hereto shall be deemed to constitute the Lenders a partnership, association, joint venture or other entity. No default by any Lender hereunder shall excuse the other Lenders from any obligation under this Agreement; but no Lender shall have or acquire any additional obligation of any kind by reason of such default. The relationship between the Credit Parties and the Lenders with respect to the Loan Documents and the Related Writings is and shall be solely that of debtor and creditors, respectively, and neither Agent nor any Lender has any fiduciary obligation toward any Credit Party with respect to any such documents or the transactions contemplated thereby.

SECTION 11.8 EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. The delivery of a facsimile or pdf or other electronic counterpart shall be effective as an original counterpart.

SECTION 11.9 BINDING EFFECT; ASSIGNMENT. This Agreement shall become effective when it shall have been executed by each Borrower, Agent and by each Lender and thereafter shall be binding upon and inure to the benefit of Borrowers, the Credit Parties, Agent and each of the Lenders and their respective successors and assigns, except that no Credit Party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of Agent and all of the Lenders.

SECTION 11.10 LENDER ASSIGNMENTS/PARTICIPATIONS.

(a) No Lender may assign or, otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the applicable Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $3,000,000, unless each of Agent and, so long as no Event of Default has occurred and is continuing, Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed); (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned; provided, however, that no Lender shall be prohibited from assigning all or a portion of its rights and obligations among separate loan facilities on a non-pro rata basis to any Affiliate or Approved Fund of such Lender subject to the provisions of Section 11.3 hereof; (iii) any assignment of a Revolving Credit Commitment must be approved by Agent unless the Person that is the proposed assignee is itself a Lender with a Revolving Commitment (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and (iv) the parties to each assignment shall execute and deliver to Agent an Assignment and Assumption, together with, unless such assignment is to a Lender or an Affiliate of a Lender, a processing and recordation fee of $3,500, and the Eligible Assignee, if it shall not be a Lender, shall deliver to Agent an Administrative Questionnaire. Subject to acceptance and recording thereof by Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Article III and Sections 11.5, and 11.6 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Agent, acting solely for this purpose as an agent of Borrowers, shall maintain at its address set forth on the signature page to this Agreement a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and Borrowers, Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Lender may at any time, without the consent of, or notice to, any Credit Party or Agent, sell participations to any Person (other than a natural Person or any Credit Party or any of Borrowers' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Credit Parties, Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver with respect to any provision which requires the unanimous consent of Lender pursuant to Section 11.3 hereof. Subject to paragraph (e) of this Section, Borrowers agree that each Participant shall be entitled to the benefits of Article III and Sections 11.5 and 11.6 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.4 as though it were a Lender, provided such Participant agrees to be subject to Section 9.5 as though it were a Lender.

(e) A Participant shall not be entitled to receive any greater payment under Article III or Section 11.5 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrowers' prior written consent.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Each Lender or assignee or Participant of a Lender that is not incorporated under the laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA Patriot Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to the Agent the certification, or, if applicable, recertification, certifying that such bank is not a "shell" and certifying to other matters as required by Section 313 of the USA Patriot Act and the applicable regulations: (1) on the Closing Date and (2) at such other times as are required under the USA Patriot Act.

(h) Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

SECTION 11.11 SUBSTITUTION OF LENDERS. In the event that (a) Borrowers receive a claim from any Lender for material compensation under Article III hereof at a time when (i) no Default or Event of Default exists hereunder, and (ii) no other Lender has demanded such compensation, (b) any Lender is a Defaulting Lender, or (c) in the event a Lender fails to consent to an amendment or waiver requested under Section 11.3 hereof at a time when Agent has approved such amendment or waiver (any such Lender referred to in clause (a), (b) or (c) above, an "Affected Lender"), Borrowers may require, at their expense, any such Affected Lender to assign, at par plus accrued interest and fees, without recourse, all of its interest, rights and obligations hereunder (including all its Commitments and the Loans and any other amounts at any time owing to it hereunder and under the other Loan Documents) to a Designated Lender; provided, however, that (i) such assignment shall not conflict with or violate any law, rule or regulation or order of any court or other governmental authority, (ii) Borrowers shall have received the written consent of the Agent to such assignment (which such consent shall not be unreasonably withheld), (iii) Borrowers shall have paid to the Affected Lender all monies (together with amounts due such Affected Lender under Section 2.4 hereof as if the Loans owing to it were prepaid rather than assigned), and (iv) the assignment is entered into in accordance with the other requirements of Section 11.10 hereof (provided any assignment fees and reimbursable expenses due thereunder shall be paid by Borrowers). In the event that any Lender is a Defaulting Lender, such Lender shall not be entitled to vote and shall not be included in such calculation, and shall not be entitled to receive any fees otherwise payable to such Lender hereunder.

SECTION 11.12 SEVERABILITY OF PROVISIONS; CAPTIONS; ATTACHMENTS.Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. The several captions to Sections and subsections herein are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement. Each schedule or exhibit attached to this Agreement shall be incorporated herein and shall be deemed to be a part hereof.

SECTION 11.13 INVESTMENT PURPOSE. Each of the Lenders represents and warrants to Borrowers that it is entering into this Agreement with the present intention of acquiring any Note issued pursuant hereto for investment purposes only and not for the purpose of distribution or resale, it being understood, however, that each Lender shall at all times retain full control over the disposition of its assets.

SECTION 11.14 ENTIRE AGREEMENT. This Agreement, any Note and any other Loan Document or other agreement, document or instrument attached hereto or executed on or as of the Closing Date integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral representations and negotiations and prior writings with respect to the subject matter hereof.

SECTION 11.15 GOVERNING LAW; SUBMISSION TO JURISDICTION. This Agreement, each of the Notes and any Related Writing shall be governed by and construed in accordance with the laws of the State of New York and the respective rights and obligations of the Credit Parties and the Lenders shall be governed by New York law, without regard to principles of conflict of laws. Each Credit Party hereby irrevocably submits to the non-exclusive jurisdiction of any New York state or federal court, over any action or proceeding arising out of or relating to this Agreement, the Secured Debt or any Related Writing, and each Credit Party hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York state or federal court. Each Credit Party, on behalf of itself and its Subsidiaries, hereby irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue in any action or proceeding in any such court as well as any right it may now or hereafter have to remove such action or proceeding, once commenced, to another court on the grounds of FORUM NON CONVENIENS or otherwise. Each Credit Party agrees that a final, nonappealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

SECTION 11.16 LEGAL REPRESENTATION OF PARTIES. The Loan Documents were negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement or any other Loan Document to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

SECTION 11.17 SURVIVAL OF REPRESENTATIONS. All representations and warranties made herein or in any other Loan Document or in certificates given pursuant hereto or thereto shall survive the execution and delivery of this Agreement and the other Loan Documents, and shall continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

SECTION 11.18 SURVIVAL OF INDEMNITIES. All indemnities of Agent and the Lenders and other provisions relative to the reimbursement to the Lenders of amounts sufficient to protect the yield of the Lenders with respect to the Loans and Letters of Credit, including, but not limited to, Article III, Section 11.5 and 11.6 hereof, shall survive the termination of this Agreement and the other Loan Documents and the payment in full of the Secured Debt.

SECTION 11.19 PRESS RELEASES AND RELATED MATTERS. Each Credit Party hereby authorizes and consents to the publication by each Lender of customary advertising materials relating to the transactions contemplated by this Agreement and the other Loan Documents using such Credit Party’s name, product photographs, logos and/or trademarks but not prior to Ultralife’s filing of this Agreement with the SEC pursuant to the Exchange Act. Each of Agent, each Lender, and each Credit Party agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of Agent, any Lender, any Credit Party or their respective Affiliates or referring to this Agreement or any of the other Loan Documents without the prior written consent of each such other Person unless (and only to the extent that) Agent, each Lender, such Credit Party or such Affiliate, as applicable, is required to do so under law and then, in any event, such Credit Party or such Affiliate will consult with such Person before issuing such press release or other public disclosure, provided that so long as there are no material changes in the form or substance of such press releases or public disclosure, such written consent will be deemed to cover multiple dates, publications or other dissemination of the information.

SECTION 11.20 JOINT AND SEVERABILITY; BORROWING AGENCY. Each Borrower states and acknowledges that: (i) pursuant to this Agreement, Borrowers desire to utilize their borrowing potential on a consolidated basis to the same extent possible as if they were merged into a single corporate entity and that this Agreement reflects the establishment of credit facilities which would not otherwise be available to such Borrower if each Borrower were not jointly and severally liable for payment of the obligations; (ii) it has determined that it will benefit specifically and materially from the advances of credit contemplated by this Agreement; (iii) it is both a condition precedent to the obligations of Agent and the Lenders hereunder and a desire of Borrowers that each Borrower execute and deliver to Agent and the Lenders this Agreement; and (iv) Borrowers have requested and bargained for the structure and terms of and security for the advances contemplated by this Agreement.

Each Borrower shall be liable for all amounts due to Agent and the Lenders from any Borrower under this Agreement, regardless of which Borrower actually receives Loans or other extensions of credit hereunder or the amount of such Loans received by any Borrower or the manner in which Agent or the Lenders accounts for such Loans or other extensions of credit on its books and records (without limiting the foregoing, each Borrower shall be liable for the Loans made to each other Borrower). Each Borrower's obligations with respect to Loans made to it, and each Borrower's obligations arising as a result of the joint and several liability of such Borrower hereunder, with respect to Loans made to another Borrower hereunder, shall be separate and distinct obligations, but all such obligations shall be primary obligations of such Borrower.

Each Borrower's obligations arising as a result of the joint and several liability of such Borrower hereunder with respect to Loans or other extensions of credit made to another Borrower hereunder shall, to the fullest extent permitted by law, be unconditional irrespective of (i) the validity or enforceability, avoidance or subordination of the obligations of any other Borrower or of any promissory note or other document evidencing all or any part of the obligations of any other Borrower, (ii) the absence of any attempt to collect the obligations from any other Borrower, any other guarantor, or any other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance or granting of any indulgence by Agent or any Lender with respect to any provision of any instrument evidencing the obligations of any other Borrower, or any part thereof, or any other agreement now or hereafter executed by any other Borrower and delivered to Agent or any Lender, (iv) the failure by Agent or any Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the obligations of any other Borrower, (v) Agent or any Lender's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the United States Bankruptcy Code **or any similar Debtor Relief Law**, (vi) any borrowing or grant of a security interest by any other Borrower, as debtor-in-possession under Section 364 of the United States Bankruptcy Code **or any other Debtor Relief Law**, (vii) the disallowance of all or any portion of Agent or any Lender's claim for the repayment of the obligations of any other Borrower under Section 502 of the United States Bankruptcy Code **or any other Debtor Relief Law**, or (viii) any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor or of any other Borrower. With respect to each Borrower's obligations arising as a result of the joint and several liability of such Borrower hereunder with respect to Loans or other extensions of credit made to any Borrower hereunder, such Borrower waives, until the Secured Debt shall have been paid in full and this Agreement shall have been terminated, any right of subrogation, reimbursement, exoneration, indemnity, contribution or any remedy which such Borrower now has or may hereafter have against any other Borrower or any Obligor, and any benefit of, and any right to participate in, any security or collateral (including the Collateral) given to Agent or any Lender to secure payment of the Secured Debt or any other liability of any other Borrower to Agent or any Lender.

Each Borrower agrees if such Borrower's joint and several liability hereunder, or if any Liens securing such joint and several liability, would, but for the application of this sentence, be unenforceable under applicable law, such joint and several liability and each such Lien shall be valid and enforceable to the maximum extent that would not cause such joint and several liability or such Lien to be unenforceable under applicable law, and such joint and several liability and such Lien shall be deemed to have been automatically amended accordingly at all relevant times.

Upon the occurrence and during the continuance of any Event of Default, Agent and the Lenders may proceed directly and at once, without notice, against a Borrower to collect and recover the full amount, or any portion of the obligations, without first proceeding against any other Borrower or any other Person, or against any security or collateral for the obligations. Each Borrower consents and agrees that neither Agent nor any Lender shall be under any obligation to marshal any assets in favor of such Borrower or against or in payment of any or all of the obligations.

Borrowers are obligated to repay the obligations as joint and several obligors under this Agreement. To the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the obligations constituting Loans made to another Borrower hereunder or other obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and, be reimbursed by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's "Allocable Amount" (as defined below) and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (i) rendering such Borrower "insolvent" within the meaning of Section 101(31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA") **or any other Debtor Relief Law**, (ii) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the United States Bankruptcy Code, Section 4 of the UFTA **or any other Debtor Relief Law**, or (iii) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the United States Bankruptcy Code or Section 4 of the UFTA, ~~or~~ Section 5 of the UFCA **or any other Debtor Relief Law**. All rights and claims of contribution, indemnification and reimbursement under this Section shall be subordinate in right of payment to the prior payment in full of the obligations. The provisions of this Section shall, to the extent expressly inconsistent with any provision in any Loan Document, supersede such inconsistent provision.

Each of the Borrowers hereby appoints Borrowing Agent as its as its agent for all purposes relevant to this Agreement, including the requesting of Loans, the giving and receipt of notices and execution and delivery of all documents, instruments and certificates contemplated herein and all modifications hereto. Any acknowledgment, consent, direction, certification or other action which might otherwise be valid or effective only if given or taken by all of the Borrowers acting singly, shall be valid and effective if given or taken only by Borrowing Agent, whether or not any of the other Borrowers joins therein.

The handling of this credit facility as a co-borrowing facility with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to Borrowers and at their request. Neither Agent nor any Lender shall incur liability to Borrowers as a result thereof. To induce Agent and the Lenders to do so and in consideration thereof, each Borrower hereby indemnifies Agent and the Lenders and holds Agent and the Lenders harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against Agent or any Lender by any Person arising from or incurred by reason of the handling of the financing arrangements of Borrowers as provided herein, reliance by Agent or any Lender on any request or instruction from Borrowing Agent or any other action taken by Agent or any Lender with respect to this Section except due to willful misconduct or gross negligence of the Agent or any Lender.

SECTION 11.21 EXCLUDED SWAP OBLIGATIONS; KEEPWELL.

(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN ANY OTHER LOAN DOCUMENT, ANY EXCLUDED SWAP OBLIGATIONS SHALL BE EXCLUDED FROM (X) THE DEFINITION OF "SECURED DEBT", "DEBT" OR "OTHER DEBT" (OR ANY EQUIVALENT DEFINITION) CONTAINED HEREIN OR IN ANY OTHER GUARANTY OF THE SECURED DEBT AND NO EXCLUDED SWAP OBLIGATIONS SHALL BE GUARANTEED PURSUANT TO ANY SUCH GUARANTEE AND (Y) THE DEFINITION OF "SECURED DEBT" OR "DEBT" (OR ANY EQUIVALENT DEFINITION) CONTAINED IN ANY LOAN DOCUMENT, AND NO LIEN GRANTED PURSUANT TO ANY LOAN DOCUMENT SHALL SECURE ANY EXCLUDED SWAP OBLIGATIONS.

(b) Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under this Agreement in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 11.21 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 11.21, or otherwise under this Agreement, as it relates to such other Credit Party, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the payment in full of the Secured Debt, termination of the Commitments and expiration or cancellation of all Letters of Credit. Each Qualified ECP Guarantor intends that this Section 11.21 constitute, and this Section 11.21 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

SECTION 11.22 ACKNOWLEDGMENT AND CONSENT TO BAIL-IN OF EEA FINANCIAL INSTITUTIONS. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 11.23 JURY TRIAL WAIVER. CREDIT PARTIES, AGENT AND EACH OF THE LENDERS WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG CREDIT PARTIES, AGENT AND THE LENDERS, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS AGREEMENT OR ANY NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED THERETO. THIS WAIVER SHALL NOT IN ANY WAY AFFECT, WAIVE, LIMIT, AMEND OR MODIFY AGENT'S OR ANY LENDER'S ABILITY TO PURSUE REMEDIES PURSUANT TO ANY PROVISION CONTAINED IN ANY NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT AMONG CREDIT PARTIES, AGENT AND THE LENDERS, OR ANY THEREOF.

SECTION 11.24 CANADIAN ANTI-MONEY LAUNDERING LEGISLATION. Each Credit Party acknowledges that, pursuant to the Canadian Anti-Money Laundering & AntiTerrorism Legislation and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws (collectively, including any guidelines or orders thereunder, "AML Legislation"), the Lenders may be required to obtain, verify and record information regarding the Credit Parties and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Credit Parties, and the transactions contemplated hereby. Each Credit Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of the Lender, in order to comply with any applicable AML Legislation, whether now or hereafter in existence. If the Agent has ascertained the identity of any Credit Party or any authorized signatories of any Credit Party for the purposes of applicable AML Legislation, then the Agent, (i) shall be deemed to have done so as an agent for each Secured Creditor, and this Agreement shall constitute a "written agreement" in such regard between each Secured Creditor and the Agent within the meaning of the applicable AML Legislation; and (ii) shall provide to each Secured Creditor copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

SECTION 11.25 JUDGMENT CURRENCY. If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the "Original Currency") into another currency (the "Second Currency"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the Lender could purchase in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. Each Borrower agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date the Lender receives payment of any sum so adjudged to be due hereunder in the Second Currency, the Lender may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, each Borrower agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify the Lender against such loss. The term "rate of exchange" in this Section 9.23 means the spot rate at which the Lender, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase.

ARTICLE XII. GUARANTY

SECTION 12.1 GUARANTY. Each Credit Party **(other than Excell Canada)** hereby unconditionally guaranties the full and prompt payment and performance when due, whether by acceleration or otherwise, and at all times thereafter, of any and all present and future Secured Debt of any type or nature of any Credit Party to Agent and the Lenders arising under or related to this Agreement or any other Loan Document and/or any one or more of them, whether due or to become due, matured or unmatured, liquidated or unliquidated, or contingent or noncontingent, including obligations of performance as well as obligations of payment, including interest on any of the foregoing whether accruing before or after any bankruptcy or insolvency case**, proposal** or proceeding involving any Credit Party or any other Person and, if interest on any portion of such obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, including such interest as would have accrued on any such portion of such obligations if such case or proceeding had not commenced, and further agrees to pay all expenses (including reasonable attorneys' fees and legal expenses) paid or incurred by Agent in endeavoring to collect any of the foregoing, or any part thereof, and in enforcing the obligations of such Credit Party (collectively, the "Liabilities").

Each Credit Party **(other than Excell Canada)** agrees that, in the event of the dissolution, bankruptcy or insolvency of any Credit Party, or the inability or failure of any Credit Party to pay debts as they become due, or an assignment by Borrowers for the benefit of creditors, or the commencement of any case or proceeding in respect of Borrowers under any ~~bankruptcy, insolvency or similar~~**Debtor Relief** ~~l~~**L**aws, and if such event shall occur at a time when any of the Liabilities may not then be due and payable, such Credit Party will pay to Agent, for the benefit of the Lenders, forthwith the full amount which would be payable hereunder by such Credit Party if all Liabilities were then due and payable.

This Guaranty shall in all respects be a continuing, absolute and unconditional guaranty of payment and performance (and not of collection), and shall remain in full force and effect (notwithstanding, without limitation, the dissolution of any Credit Party).

SECTION 12.2 GUARANTORS' OBLIGATIONS UNCONDITIONAL. The covenants and agreements of each Credit Party set forth in this Guaranty of Payment shall be primary obligations of such Credit Party, and such obligations shall be continuing, absolute and unconditional, shall not be subject to any counterclaim, setoff, deduction, diminution, abatement, recoupment, suspension, deferment, reduction or defense (other than full and strict compliance by Credit Party with its obligations hereunder), whether based upon any claim that any Credit Party or any other Person may have against Agent, any Lender or any other Person or otherwise, and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by, any circumstance or condition whatsoever (whether or not Borrowers or other Company shall have any knowledge or notice thereof) including, without limitation:

(a) Any amendment, modification, addition, deletion, supplement or renewal to or of or other change in the Liabilities or this Agreement or the other Loan Documents or any related instrument or agreement, or any other instrument or agreement applicable thereto or to any of the parties to such agreements, or to any Collateral, or any furnishing or acceptance of additional security for, guaranty of or right of offset with respect to, any of the Liabilities; or the failure of any security or the failure of Agent or any Lender to perfect or insure any interest in any Collateral;

(b) Any failure, omission or delay on the part of any Credit Party, Agent or any Lender to conform or comply with any term of any instrument or agreement referred to in subsection (a) above;

(c) Any waiver, consent, extension, indulgence, compromise, release or other action or inaction under or in respect of any instrument, agreement, guaranty, right of offset or security referred to in subsection (a) above or any obligation or liability of any Credit Party, Agent or any Lender, or any exercise or non-exercise by Agent or any Lender of any right, remedy, power or privilege under or in respect of any such instrument, agreement, guaranty, right of offset or security or any such obligation or liability;

(d) Any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to any Credit Party, Agent, any Lender or any other Person or any of their respective properties or creditors, or any action taken by any trustee**, monitor** or receiver or by any court in any such proceeding;

(e) Any limitation on the liability or obligations of any Person under this Agreement and the other Loan Documents or any other related instrument or agreement, the Liabilities, any collateral security for the Liabilities, or any other guaranty of the Liabilities or any discharge, termination, cancellation, frustration, irregularity, invalidity or unenforceability, in whole or in part, of any of the foregoing, or any other agreement, instrument, guaranty or security referred to in subsection (a) above or any term of any thereof;

(f) Any merger or consolidation of Borrowers or any other Credit Party into or with any Person or any sale, lease or transfer of any of the assets of Borrowers or any other Credit Party to any other Person;

(g) Any change in the ownership of any of the equity interests of any Borrower or any other Credit Party or any entity change in Borrowers or any other Credit Party; or

(h) Any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing and any other circumstance that might otherwise constitute a legal or equitable defense or discharge of the liabilities of any Credit Party or surety or that might otherwise limit recourse against any Credit Party.

The obligations of each Credit Party set forth herein constitute the full recourse obligations of such Credit Party, enforceable against it to the full extent of all its assets and properties.

Without limiting the provisions of Section 12.1 hereof, each Credit Party waives any and all notice of the creation, renewal, extension or accrual of any of the Liabilities and notice of or proof of reliance by Agent and the Lenders upon this Guaranty of Payment or acceptance of this Guaranty of Payment, and the Liabilities, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guaranty of Payment. Each Credit Party unconditionally waives, to the extent permitted by law: (a) acceptance of this Guaranty of Payment and proof of reliance by Agent and the Lenders hereon; (b) notice of any of the matters referred to in the foregoing subsections (a) through (h) hereof, or any right to consent or assent to any thereof; (c) all notices that may be required by statute, rule or law or otherwise, now or hereafter in effect, to preserve intact any rights against any Credit Party, including without limitation, any demand, presentment, protest, proof or notice of nonpayment under this Agreement or any other Loan Document or any related instrument or agreement; (d) any right to the enforcement, assertion or exercise against any Credit Party of any right, power, privilege or remedy conferred in this Agreement, any other Loan Document or any related instrument or agreement or otherwise; (e) any requirement of diligence on the part of any Person; (f) any requirement of Agent or any Lender to take any action whatsoever, to exhaust any remedies or to mitigate the damages resulting from a default under this Agreement, any other Loan Document or any related instrument or agreement; (g) any notice of any sale, transfer or other disposition by any Person of any right under, title to or interest in this Agreement, any other Loan Document or any related instrument or agreement relating thereto or any Collateral for the Liabilities; and (h) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge, release or defense of a guarantor or surety, or that might otherwise limit recourse against a Credit Party.

Without limiting the foregoing, each Credit Party hereby absolutely, unconditionally and irrevocably waives and agrees not to assert or take advantage of any defense based upon an election of remedies by Agent or any Lender, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or impairs any right of subrogation of such Credit Party or the right of such Credit Party to proceed against any Person for reimbursement or both.

Each Credit Party agrees that this Guaranty of Payment shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Borrower or any other Credit Party is rescinded or must be otherwise restored by Agent or any Lender, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

SECTION 12.3 SUBORDINATION.

(a) Subordination to Senior Obligations.

(i) Each Credit Party hereby covenants and agrees that, as provided herein, all indebtedness, intercompany charges and other sums owing and claims of any nature whatsoever owed to such Credit Party by any other Credit Party ("Intercompany Obligations"), the payment of the principal of and interest thereon and any lien or security interest therefor are hereby expressly made subordinate and subject in right of payment to this Agreement or the prior payment in full of: (A) all Secured Debt and all other obligations now or hereafter incurred by any of the Credit Parties under this Agreement or any of the other Loan Documents, (B) interest thereon (including, without limitation, any such interest accruing subsequent to the filing by or against any of the Credit Parties of any proceeding brought under ~~Chapter 11 of the Bankruptcy Code~~**any Debtor Relief Law**, whether or not such interest is allowed as a claim pursuant to the provisions of such ~~Chapter~~**Debtor Relief Law**), and (C) all fees, expenses, indemnities and other amounts now or hereafter payable pursuant to or in connection with this Agreement and all other Loan Documents (collectively the "Senior Obligations"), and any lien on any property or asset securing the Senior Obligations.

(ii) No payment or prepayment of any Intercompany Obligations (whether of principal, interest or otherwise) shall be made by any Credit Party at any time prior to the indefeasible payment in full, in cash, of the Senior Obligations, provided that the Credit Parties may make payments (not prepayments) of Intercompany Obligations in the ordinary course of business to the extent that at the time of, and immediately after giving effect to, any such payment, no Default or Event of Default exists.

(b) Payment Over of Proceeds Upon Bankruptcy. In the event of (i) any insolvency or bankruptcy case**, proposal** or proceeding, or any receivership, liquidation, reorganization**, arrangement, compromise, stay of proceeding** or other similar case or proceeding in connection therewith, relative to any Credit Party or to its creditors as such, or to its properties or assets, or (ii) any liquidation, dissolution or other winding-up of any Credit Party, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (iii) any assignment for the benefit of creditors or any other marshaling of assets or liabilities of any Credit Party, then and in any such event the holders of Senior Obligations shall be entitled to receive payment in full of all amounts due on or in respect of Senior Obligations, in cash or in any other manner acceptable to the holders of Senior Obligations, before any Credit Party is entitled to receive any payment or distribution of any kind or character on account of principal of or interest on any Intercompany Obligations of such Credit Party, and to that end the holders of Senior Obligations shall be entitled to receive, for application to the payment thereof, any payment or distribution of assets of such Credit Party of any kind or character including, without limitation, securities that are subordinated in right of payment to all Senior Obligations to substantially the same extent as, or to a greater extent than, as provided in this Guaranty of Payment, that may be payable or deliverable in respect of this Guaranty of Payment in any such case, proceeding, dissolution, liquidation or other winding-up or event referred to in clauses (i) through (iii) above.

(c) Payments to be Held in Trust. In the event that a Credit Party shall receive any payment or distribution of assets of any Credit Party of any kind or character in respect of the Intercompany Obligations in contravention of the foregoing Subsection (b), then and in such event such payment or distribution shall be received and held by such Credit Party in trust for Agent, and shall be paid over and delivered forthwith to Agent, the trustee in bankruptcy, receiver, **interim receiver, monitor,** liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Credit Party in trust for the holders of the Senior Obligations, and for application to the payment of, all Senior Obligations remaining unpaid, to the extent necessary to pay all Senior Obligations in full, in cash or in any other manner acceptable to Agent, after giving effect to any concurrent payment or distribution to or for the Senior Obligations.

(d) Legend. Each Credit Party hereby covenants to cause any instrument from time to time evidencing any Intercompany Obligations to have fixed upon it a legend which reads substantially as follows:

> "This instrument is subject to the terms and conditions of that certain Credit and Security Agreement dated as of May 31, 2017, among the undersigned maker or maker(s), certain of their affiliates, the financial institutions which are now or which hereafter become a party thereto (each, a "Lender" and collectively, the "Lenders"), and KEYBANK NATIONAL ASSOCIATION, as agent for Lenders, which, among other things, contains provisions subordinating such maker's or makers' obligations to the holders of Senior Obligations (as defined in said Agreement), to which provisions the holder of this instrument, by acceptance hereof, agrees."

(e) No Disposition. No Credit Party will sell, assign, pledge, encumber or otherwise dispose of any of the Intercompany Obligations owed to it, provided that such Credit Party may forgive Intercompany Obligations or contribute Intercompany Obligations to a Credit Party.

SECTION 12.4 WAIVER OF SUBROGATION. Each Credit Party hereby irrevocably waives, solely for the benefit of Agent and the Lenders, until the indefeasible repayment in full of the Secured Debt, any claim or other rights which it may now or hereafter acquire that arise from the existence, payment, performance or enforcement of such Credit Party's obligations under this Guaranty of Payment, including any right of subrogation, reimbursement, exoneration, or indemnification, any right to participate in any claim or remedy of Agent and the Lenders against any of the Credit Parties or any of their assets which Agent or any Lender now has or hereafter acquires, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including the right to take or receive from any Credit Party, directly or indirectly, in cash or other property or by set-off or in any manner, payment or security on account of such claim or other rights. If any amount shall be paid to any Credit Party in violation of the preceding sentence and the Liabilities shall not have been indefeasibly paid in cash, such amount shall be deemed to have been paid to such Credit Party for the benefit of, and held in trust for, Agent and the Lenders, and shall forthwith be paid to Agent to be credited and applied pursuant to the terms of this Agreement. Each Credit Party acknowledges that it will receive substantial direct and indirect benefits form the financing arrangements contemplated by this Agreement and that the waiver set forth in this paragraph is knowingly made in contemplation of such benefits.

SECTION 12.5 FRAUDULENT TRANSFER LIMITATION. If, in any action to enforce this Guaranty of Payment or any proceeding to allow or adjudicate a claim under this Guaranty of Payment, a court of competent jurisdiction determines that enforcement of this Guaranty of Payment against any Credit Party for the full amount of the ~~Obligations~~**Secured Debt** is not lawful under, and would be subject to avoidance under, Section 548 of the Bankruptcy Code or any applicable provision of comparable state**, provincial or territorial** law, the liability of such Credit Party shall be limited to the maximum amount lawful and not subject to avoidance under such law.

SECTION 12.6 CONTRIBUTION AMONG GUARANTORS. The Credit Parties desire to allocate among themselves in a fair and equitable manner, their rights of contribution from each other when any payment is made by one of the Credit Parties under this Guaranty of Payment. Accordingly, if any payment is made by a Credit Party under this Guaranty of Payment (a "Funding Guarantor") that exceeds its Fair Share, the Funding Guarantor shall be entitled to a contribution from each other Credit Party in the amount of such other Credit Party's Fair Share

Shortfall, so that all such contributions shall cause each Credit Party's Aggregate Payments to equal its Fair Share. For these purposes:

(a) "Fair Share" means, with respect to a Credit Party as of any date of determination, an amount equal to (i) the ratio of (x) the Adjusted Maximum Amount of such Credit Party to (y) the aggregate Adjusted Maximum Amounts of all Credit Parties, multiplied by (ii) the aggregate amount paid on or before such date by all Funding Guarantors under this Guaranty of Payment.

(b) “Fair Share Shortfall” means with respect to a Credit Party as of any date of determination, the excess, if any, of the Fair Share of such Credit Party over the Aggregate Payments of such Credit Party.

(c) “Adjusted Maximum Amount” means with respect to a Credit Party as of any date of determination, the maximum aggregate amount of the liability of such Credit Party under this Guaranty of Payment, limited to the extent required under Section 12.5 (except that, for purposes solely of this calculation, any assets or liabilities arising by virtue of any rights to or obligations of contribution under this Section 12.6 shall not be counted as assets or liabilities of such Credit Party).

(d) “Aggregate Payments” means, with respect to a Credit Party as of any date of determination, the aggregate net amount of all payments made on or before such date by such Credit Party under this Guaranty of Payment (including, without limitation, under this Section 12.6).

The amounts payable as contributions hereunder shall be determined by the Funding Guarantor as of the date on which the related payment or distribution is made by the Funding Guarantor, and such determination shall be binding on the other Credit Parties absent manifest or demonstrable error. The allocation and right of contribution among the Credit Parties set forth in this Section 12.6 shall not be construed to limit in any way the liability of any Credit Party under this Guaranty.

SECTION 12.7 FUTURE GUARANTORS. Any other Person who may hereafter become a Subsidiary of any Credit Party (other than any Foreign Person) may and shall become bound by the terms and conditions hereof by executing and delivering an joinder and assumption agreement in accordance with the terms of Section 5.22 hereof.

SECTION 12.8 JOINT AND SEVERAL OBLIGATION. This Guaranty of Payment and all liabilities of each Credit Party hereunder shall be the joint and several obligation of each Credit Party and may be freely enforced against each Credit Party, for the full amount of the Liabilities (subject to Section 12.5), without regard to whether enforcement is sought or available against any other Credit Party.

SECTION 12.9 NO WAIVER. No delay in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise of any right or remedy shall preclude other or further exercise thereof, or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this Guaranty of Payment be binding upon Agent and the Lenders except as expressly set forth in a writing duly signed and delivered on their behalf.

[The remainder of this page is intentionally left blank.]

Each of the parties has signed this Agreement as of the day and year first above written.

BORROWERS:

ULTRALIFE CORPORATION

By: _____
Name: Philip A. Fain
Title: Chief Financial Officer and Treasurer

Address: 2000 Technology Parkway
Newark, New York 14513
Attention: Philip A. Fain,
CFO and Treasurer

With a copy to:

2000 Technology Parkway
Newark, New York 14513
Attention: Paul D. Underberg,
General Counsel

And with a copy to:

Brian J. Bocketti, Esq.
Lippes Mathias Wexler Friedman LLP
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202

AGENT AND THE LENDERS:

Address: 726 Exchange Street
Suite 900
Buffalo, NY 14210
Attention: Michael McMahon

KEYBANK NATIONAL ASSOCIATION,
as Agent and as a Lender

By: _____

Name: Michael P. McMahon
Title: Senior Vice President

LENDING INSTITUTIONS	REVOLVING CREDIT COMMITMENT PERCENTAGE	REVOLVING CREDIT COMMITMENT	TERM LOAN COMMITMENT PERCENTAGE	TERM LOAN COMMITMENT	TERM LOAN B COMMITMENT PERCENTAGE	TERM LOAN B COMMITMENT	MAXIMUM AMOUNT
KeyBank National Association	100%	$30,000,000	100%	$8,000,000*	100%	$10,000,000	$48,000,000
Total Commitment Amount	100%	$30,000,000	100%	$8,000,000*	100%	$10,000,000	$48,000,000

*Principal balance is $~~22,255.52~~**0** as of the ~~Second~~**Third** Amendment Closing Date.

EXHIBIT A

REVOLVING CREDIT NOTE

$_____ Newark, New York
May [__], 2017

FOR VALUE RECEIVED, the undersigned, ULTRALIFE CORPORATION, a Delaware corporation ("Ultralife"), each other Person which may be added as a "Borrower" hereto, subsequent to the date hereof (collectively, together with Ultralife, the "Borrowers", and each individually, a "Borrower"), jointly and severally promise to pay, on DEMAND, to the order of _____ ("Lender") at the office of KEYBANK NATIONAL ASSOCIATION, as Agent, 726 Exchange Street, Suite 900, Buffalo, NY 14210, the principal sum of

_____ AND 00/100 ..... DOLLARS

or the aggregate unpaid principal amount of all Revolving Loans made by Lender to Borrowers pursuant to Section 2.1A of the Credit Agreement, whichever is less, in lawful money of the United States of America. As used herein, "Credit Agreement" means the Credit and Security Agreement dated as of even date herewith, among Borrowers, certain other Credit Parties from time to time party thereto, the lenders named therein and KeyBank National Association, as Agent, as the same may from time to time be amended, restated or otherwise modified. Capitalized terms used herein shall have the meanings ascribed to them in the Credit Agreement.

Borrowers also promise to pay interest on the unpaid principal amount of each Revolving Loan from time to time outstanding, from the date of such Revolving Loan until the payment in full thereof, at the rates per annum which shall be determined in accordance with the provisions of Section 2.1A of the Credit Agreement. Such interest shall be payable on each date provided for in such Section 2.1A; provided, however, that interest on any principal portion which is not paid when due shall be payable on demand.

The portions of the principal sum hereof from time to time representing Revolving Loans, and payments of principal of any thereof, shall be shown on the records of Lender by such method as Lender may generally employ; provided, however, that failure to make any such entry shall in no way detract from Borrowers' obligations under this Revolving Credit Note (this "Note").

If this Note shall not be paid at maturity, whether such maturity occurs by reason of lapse of time or demand or by operation of any provision for acceleration of maturity contained in the Credit Agreement, the principal hereof and the unpaid interest thereon shall bear interest, until paid, at a rate per annum equal to the Default Rate. All payments of principal of and interest on this Note shall be made in immediately available funds. In the event of a failure to pay interest or principal, when the same becomes due after giving effect to any applicable grace or cure period, Lender may collect and Borrowers agree to pay a late charge of an amount equal to the greater of $50 or 5% of the amount of such late payment.

This Note is one of the Revolving Credit Notes referred to in the Credit Agreement. Reference is made to the Credit Agreement for a description of the right of the undersigned to anticipate payments hereof, the right of the holder to declare this Note due, and other terms and conditions upon which this Note is issued.

Except as expressly provided in the Credit Agreement, each Borrower expressly waives presentment, demand, protest and notice of any kind.

EACH OF THE UNDERSIGNED WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG BORROWERS, AGENT AND THE LENDERS, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS NOTE, THE CREDIT AND SECURITY AGREEMENT OR ANY OTHER NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED THERETO. THIS WAIVER SHALL NOT IN ANY WAY AFFECT, WAIVE, LIMIT, AMEND OR MODIFY AGENT'S OR ANY LENDER'S ABILITY TO PURSUE REMEDIES PURSUANT TO ANY PROVISION CONTAINED IN ANY NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT AMONG BORROWERS, AGENT AND THE LENDERS, OR ANY THEREOF.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Revolving Credit Note as of the date and year first written above.

ULTRALIFE CORPORATION

By: _____
Print Name: _____
Title: _____

EXHIBIT B

NOTICE OF LOAN

[Date]_____, 20____

KeyBank National Association
726 Exchange Street, Suite 900
Buffalo, NY 14210

Attention:_____

Ladies and Gentlemen:

The undersigned, ULTRALIFE CORPORATION, refers to the Credit and Security Agreement, dated as of May 31, 2017 (as the same may from time to time be amended, restated or otherwise modified, the "Credit Agreement", the terms defined therein being used herein as therein defined), among the undersigned, certain other Credit Parties (as defined in the Credit Agreement) from time to time party thereto, the Lenders (as defined in the Credit Agreement), and KEYBANK NATIONAL ASSOCIATION, as Agent, and hereby gives you notice, pursuant to Section 2.2 of the Credit Agreement that the undersigned hereby requests a Loan under the Credit Agreement, and in connection therewith sets forth below the information relating to the Loan (the "Proposed Loan") as required by Section 2.2 of the Credit Agreement:

(a) The Proposed Loan is a Revolving Loan.

(b) The Business Day of the Proposed Loan is _____, 20__.

(c) The amount of the Proposed Loan is $_____.

(d) The Proposed Loan is to be a ~~Base Rate~~**SOFR** Loan~~____ /Overnight LIBOR Loan ___~~.
~~(Check one.)~~

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Loan:

(i) the representations and warranties contained in each Loan Document are correct in all material respects to the extent not otherwise qualified by a materiality concept, before and after giving effect to the Proposed Loan and the application of the proceeds therefrom, as though made on and as of such date (except to the extent any representation or warranty is stated to relate solely to an earlier date);

(ii) no event has occurred and is continuing, or would result from such Proposed Loan, or the application of proceeds therefrom, that constitutes a Default or Event of Default; and

(iii) the conditions set forth in Section 2.2 and Article IV of the Credit Agreement have been satisfied.

Very truly yours,

ULTRALIFE CORPORATION

By: _____
Name: _____
Title: _____

EXHIBIT C

COMPLIANCE CERTIFICATE

For Fiscal Quarter ended _____

THE UNDERSIGNED HEREBY CERTIFY THAT:

(1) We are the duly elected President and Chief Financial Officer of ULTRALIFE CORPORATION, a Delaware corporation (together with its successors and assigns, the "Borrowing Agent"), which is delivering this Compliance Certificate on its own behalf and on behalf of each other Person which has been added a "Borrower" to the Credit Agreement (collectively, "Borrowers", and each individually, a "Borrower"), in its capacity as Borrowing Agent for the Borrowers under the Credit Agreement (as hereinafter defined);

(2) We are familiar with the terms of that certain Credit and Security Agreement, dated as of May 31, 2017, among the undersigned, certain other Credit Parties (as defined in the Credit
Agreement) from time to time party thereto, the Lenders (as defined in the Credit Agreement), and KEYBANK NATIONAL ASSOCIATION, as Agent (as the same may from time to time be amended, restated or otherwise modified, the "Credit Agreement", the terms defined therein and not otherwise defined in this Certificate being used herein as therein defined), and the terms of the other Loan Documents, and we have made, or have caused to be made under our supervision, a review in reasonable detail of the transactions and condition of Borrowers and its Subsidiaries during the accounting period covered by the attached financial statements;

(3) The review described in paragraph (2) above did not disclose, and we have no knowledge of, the existence of any condition or event that constitutes or constituted a Default or Event of Default, at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate;

(4) The representations and warranties made by Borrowers contained in each Loan Document are true and correct in all material respects to the extent not otherwise qualified by a materiality concept as though made on and as of the date hereof (except to the extent any representation or warranty is stated to relate solely to an earlier date); and

(5) Set forth on Attachment I hereto are calculations of (a) the financial covenants set forth in Sections 5.7 of the Credit Agreement, which calculations show compliance with the terms thereof; and (b) the pricing level set forth in the definition of Applicable Margins, including a calculation of the Senior Leverage Ratio specified therein.

IN WITNESS WHEREOF, we have signed this certificate the _____ day of _____, 20____.

ULTRALIFE CORPORATION

By: _____
Title: _____

And by: _____
Title: _____

EXHIBIT D

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between _____ (the "Assignor") and _____ (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in that certain Credit and Security Agreement (as more fully described below and as the same may from time to time be amended, restated or otherwise modified, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The standard terms and conditions set forth in Annex 1 attached hereto (the "Standard Terms and Conditions") are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other Loan Documents or Related Writings or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____

2. Assignee: _____
and is an Affiliate/Approved Fund of [identify Lender]

3. Borrowers(s): _____

4. Agent: [_____], as the administrative agent under the Credit Agreement

5. Credit Agreement: [The [amount] Credit Agreement dated as of _____ among [name of Borrowers(s)], the Lenders parties thereto, KeyBank National Association, as Agent, and the other agents parties thereto]

6. Assigned Interest:

Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans [to 9 decimals]
	$	$	%
	$	$	%
	$	$	%

[7. Trade Date: _____] [USE ONLY IF THE ASSIGNOR AND THE ASSIGNEE INTEND THAT THE MINIMUM ASSIGNMENT AMOUNT IS TO BE DETERMINED AS OF THE TRADE DATE]

Effective Date: _____ __, 20___ [TO BE INSERTED BY AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

By: _____
Title: _____

ASSIGNEE

And by: _____
Title: _____

[Consented to and – add if Agent consent required] Accepted:

[_____], as Agent

By: _____
Title: _____

[Consented to:] [ADD ONLY IF CONSENT REQUIRED PURSUANT TO CREDIT AGREEMENT]

BORROWERS:

[_____]

By: _____
Title: _____

[_____]

By: _____
Title: _____

ANNEX 1

STANDARD TERMS AND CONDITIONS FOR

ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document or Related Writing, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrowers, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrowers, any of its Subsidiaries of Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.3 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Agent or any other Lender; and (b) agrees that (i) it will, independently and without reliance on the Agent, the Assignor or any other Lender, and (v) if it is a Foreign Person, attached to the Assignment and Assumption is any documentation required to be delivered by it (or by any Foreign Person that is a Participant) pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued [to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date or prior to, on or after the Effective Date. The Assignor and Assignee shall make all appropriate adjustments in payment or with respect to the making of this assignment directly between themselves.] [CHOOSE OPTION BASED ON AGENT'S SYSTEM]

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT E

BORROWING BASE CERTIFICATE

See attached.

EXHIBIT E

TERM NOTE

$_____ Newark, New York
May [__], 2019

FOR VALUE RECEIVED, the undersigned, ULTRALIFE CORPORATION, a Delaware corporation ("Ultralife"), SOUTHWEST ELECTRONIC ENERGY CORPORATION, a Texas corporation ("Southwest"), CLB, INC., a Texas corporation ("CLB"), each other Person which may be added as a "Borrower" hereto, subsequent to the date hereof (collectively, together with Ultralife, CLB, and Southwest, the "Borrowers", and each individually, a "Borrower"), jointly and severally promise to pay to the order of _____ ("Lender") at the office of KEYBANK NATIONAL ASSOCIATION, as Agent, 726 Exchange Street, Suite 900, Buffalo, NY 14210, the principal sum of

_____ AND 00/100 ..... DOLLARS

in lawful money of the United States of America at such times, in such amounts and in such manner as provided in Section 2.1B of the Credit Agreement or such earlier time as a prepayment is required pursuant to the Credit Agreement. As used herein, "Credit Agreement" means the Credit and Security Agreement dated as of even date herewith, among Borrowers, certain other Credit Parties from time to time party thereto, the lenders named therein and KeyBank National Association, as Agent, as the same may from time to time be amended, restated or otherwise modified. Capitalized terms used herein shall have the meanings ascribed to them in the Credit Agreement.

Borrowers also promise to pay interest on the unpaid principal amount of the Term Loan from time to time outstanding, from the date of the Term Loan until the payment in full thereof, at the rates per annum which shall be determined in accordance with the provisions of Section 2.1B of the Credit Agreement. Such interest shall be payable on each date provided for in such Section 2.1B; provided, however, that interest on any principal portion which is not paid when due shall be payable on demand.

The portions of the principal sum hereof from time to time representing the Term Loan, and payments of principal of either thereof, shall be shown on the records of Lender by such method as Lender may generally employ; provided, however, that failure to make any such entry shall in no way detract from Borrowers' obligations under this Note.

If this Note shall not be paid at maturity, whether such maturity occurs by reason of lapse of time or by operation of any provision for acceleration of maturity contained in the Credit Agreement, the principal hereof and the unpaid interest thereon shall bear interest, until paid, at a rate per annum equal to the Default Rate. All payments of principal of and interest on this Note shall be made in immediately available funds. In the event of a failure to pay interest or principal, when the same becomes due after giving effect to any applicable grace or cure period, Lender may collect and Borrowers agree to pay a late charge of an amount equal to the greater of $50 or 5% of the amount of such late payment.

This Note is one of the Term Notes referred to in the Credit Agreement. Reference is made to the Credit Agreement for a description of the right of the undersigned to anticipate payments hereof, the right of the holder hereof to declare this Note due prior to its stated maturity, and other terms and conditions upon which this Note is issued.

Except as expressly provided in the Credit Agreement, each Borrower expressly waives presentment, demand, protest and notice of any kind.

EACH OF THE UNDERSIGNED WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG BORROWERS, AGENT AND THE LENDERS, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS NOTE, THE CREDIT AND SECURITY AGREEMENT OR ANY OTHER NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED THERETO. THIS WAIVER SHALL NOT IN ANY WAY AFFECT, WAIVE, LIMIT, AMEND OR MODIFY AGENT'S OR ANY LENDER'S ABILITY TO PURSUE REMEDIES PURSUANT TO ANY PROVISION CONTAINED IN ANY NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT AMONG BORROWERS, AGENT AND THE LENDERS, OR ANY THEREOF.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Term Note as of the date and year first written above.

ULTRALIFE CORPORATION

By: _____
Print Name: _____
Title: _____

SOUTHWEST ELECTRONIC ENERGY CORPORATION

By: _____
Print Name: _____
Title: _____

CLB, INC.

By: _____
Print Name: _____
Title: _____

EXHIBIT F

TERM NOTE B

$_____ Newark, New York
December [__], 2021

FOR VALUE RECEIVED, the undersigned, ULTRALIFE CORPORATION, a Delaware corporation ("Ultralife"), SOUTHWEST ELECTRONIC ENERGY CORPORATION, a Texas corporation ("Southwest"), CLB, INC., a Texas corporation ("CLB"), ULTRALIFE EXCELL HOLDING CORP., a Delaware corporation ("UEHC"), ULTRALIFE CANADA HOLDING CORP., a Delaware corporation ("UCHC"), EXCELL BATTERY CORPORATION USA, a Texas corporation ("Excell USA"), each other Person which may be added as a "Borrower" hereto, subsequent to the date hereof (collectively, together with Ultralife, Southwest, CLB, UEHC, UCHC and Excell USA, the "Borrowers", and each individually, a "Borrower"), jointly and severally promise to pay to the order of _____ ("Lender") at the office of KEYBANK NATIONAL ASSOCIATION, as Agent, 726 Exchange Street, Suite 900, Buffalo, NY 14210, the principal sum of

_____ AND 00/100 ..... DOLLARS

in lawful money of the United States of America at such times, in such amounts and in such manner as provided in Section 2.1C of the Credit Agreement or such earlier time as a prepayment is required pursuant to the Credit Agreement. As used herein, "Credit Agreement" means the Credit and Security Agreement dated as of May 31, 2017, among Borrowers, certain other Credit Parties from time to time party thereto, the lenders named therein and KeyBank National Association, as Agent, as the same may from time to time be amended, restated or otherwise modified. Capitalized terms used herein shall have the meanings ascribed to them in the Credit Agreement.

Borrowers also promise to pay interest on the unpaid principal amount of the Term Loan B from time to time outstanding, from the date of the Term Loan B until the payment in full thereof, at the rates per annum which shall be determined in accordance with the provisions of Section 2.1C of the Credit Agreement. Such interest shall be payable on each date provided for in such Section 2.1C; provided, however, that interest on any principal portion which is not paid when due shall be payable on demand.

The portions of the principal sum hereof from time to time representing the Term Loan B, and payments of principal of either thereof, shall be shown on the records of Lender by such method as Lender may generally employ; provided, however, that failure to make any such entry shall in no way detract from Borrowers' obligations under this Note.

If this Note shall not be paid at maturity, whether such maturity occurs by reason of lapse of time or by operation of any provision for acceleration of maturity contained in the Credit Agreement, the principal hereof and the unpaid interest thereon shall bear interest, until paid, at a rate per annum equal to the Default Rate. All payments of principal of and interest on this Note shall be made in immediately available funds. In the event of a failure to pay interest or principal, when the same becomes due after giving effect to any applicable grace or cure period, Lender may collect and Borrowers agree to pay a late charge of an amount equal to the greater of $50 or 5% of the amount of such late payment.

This Note is one of the Term Notes B referred to in the Credit Agreement. Reference is made to the Credit Agreement for a description of the right of the undersigned to anticipate payments hereof, the right of the holder hereof to declare this Note due prior to its stated maturity, and other terms and conditions upon which this Note is issued.

Except as expressly provided in the Credit Agreement, each Borrower expressly waives presentment, demand, protest and notice of any kind.

EACH OF THE UNDERSIGNED WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG BORROWERS, AGENT AND THE LENDERS, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS NOTE, THE CREDIT AND SECURITY AGREEMENT OR ANY OTHER NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED THERETO. THIS WAIVER SHALL NOT IN ANY WAY AFFECT, WAIVE, LIMIT, AMEND OR MODIFY AGENT'S OR ANY LENDER'S ABILITY TO PURSUE REMEDIES PURSUANT TO ANY PROVISION CONTAINED IN ANY NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT AMONG BORROWERS, AGENT AND THE LENDERS, OR ANY THEREOF.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Term Note B as of the date and year first written above.

BORROWERS:

ULTRALIFE CORPORATION

By: _____
Name: Philip A. Fain
Title: Chief Financial Officer and Treasurer

SOUTHWEST ELECTRONIC ENERGY CORPORATION

By: _____
Name: Linda S. Saunders
Title: Vice President of Finance

CLB, INC.

By: _____
Name: Linda S. Saunders
Title: Vice President of Finance

ULTRALIFE EXCELL HOLDING CORP.

By: _____
Name: [_____]
Title: [_____]

ULTRALIFE CANADA HOLDING CORP.

By: _____
Name: [_____]
Title: [_____]

EXCELL BATTERY CORPORATION USA

By: _____
Name: [_____]
Title: [_____]

CREDIT AND SECURITY AGREEMENT

AMONG

KEYBANK NATIONAL ASSOCIATION,

as "Agent"

and

Those lending institutions set forth on Schedule 1 hereto

as "Lenders"

and

ULTRALIFE CORPORATION

and

Each other Person which from time to time becomes a Borrower hereunder

as "Borrowers"

and

Certain other Credit Parties from time to time party hereto

May 31, 2017

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Exhibit 21

SUBSIDIARIES

We have a 100% ownership interest in ABLE New Energy Co., Limited, incorporated in Hong Kong, which has a 100% ownership interest in ABLE New Energy Co., Ltd, incorporated in the People's Republic of China.

Through our ownership interest in Ultralife UK LTD, we have a 100% controlling interest in Accutronics, Ltd., also incorporated in the United Kingdom.

We have a 100% ownership interest in Ultralife Batteries (UK) LTD, incorporated in the United Kingdom.

We have 100% ownership interest in Southwest Electronic Energy Corporation and its wholly owned subsidiary, CLB, Inc. (collectively "SWE"), both incorporated in Texas.

We have 100% ownership interest in Ultralife Excell Holding Corp., a Delaware corporation, which has 100% ownership interest in Excell Battery Corporation USA, a Texas corporation, and 100% ownership interest in Ultralife Canada Holding Corp., a Delaware corporation, which has 100% ownership interest in Excell Battery Canada ULC, a British Columbia unlimited liability corporation.

We have a 51% ownership interest in Ultralife Batteries India Private Limited, incorporated in India.

We have a 100% ownership interest in Ultralife Energy Services Corporation, incorporated in Florida.

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-136737, 333-136738, 333-155347, 333-155349, 333-179235, 333-203037, 333-258107) and Form S-3 (Registration No. 333-254846) of our report dated March X, 2023, relating to the consolidated financial statements of Ultralife Corporation appearing in this Annual Report on Form 10-K for the year ended December 31, 2022.

/s/ Freed Maxick CPAs, P.C.

Rochester, New York
March 31, 2023

Exhibit 31.1

I, Michael E. Manna, certify that:

1. I have reviewed this annual report on Form 10-K of Ultralife 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 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: March 31, 2023

/s/ Michael E. Manna
Michael E. Manna
President and Chief Executive Officer

Exhibit 31.2

I, Philip A. Fain, certify that:

1. I have reviewed this annual report on Form 10-K of Ultralife 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 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: March 31, 2023

/s/ Philip A. Fain
Philip A. Fain
Chief Financial Officer and Treasurer

Exhibit 32

Section 1350 Certification

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 ("Section 906"), Michael E. Manna and Philip A. Fain, the President and Chief Executive Officer and Chief Financial Officer and Treasurer, respectively, of Ultralife Corporation, certify that (i) the Annual Report on Form 10-K for the year ended December 31, 2022 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Ultralife Corporation.

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

Date: March 31, 2023

/s/ Michael E. Manna
Michael E. Manna
President and Chief Executive Officer

Date: March 31, 2023

/s/ Philip A. Fain
Philip A. Fain
Chief Financial Officer and Treasurer

This certification is being furnished as required by Rule 13a-14(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code, and shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that Section. This certification shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that we specifically incorporate this certification by reference.