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

FORM 10-Q

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

For the quarterly period ended 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: 001-35159

THERMON GROUP HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

27-2228185

(I.R.S. Employer Identification No.)

7171 Southwest Parkway, Building 300, Suite 200, Austin, Texas 78735

(Address of principal executive offices) (zip code)

(512) 690-0600

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	THR	New York Stock Exchange

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

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

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

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

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

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

As of February 1, 2023, the registrant had 33,503,561 shares of common stock, par value \$0.001 per share, outstanding.

THERMON GROUP HOLDINGS, INC.
QUARTERLY REPORT
FOR THE QUARTER ENDED DECEMBER 31, 2022
TABLE OF CONTENTS

	<u>Page</u>
PART I — FINANCIAL INFORMATION	
<u>Item 1. Financial Statements (Unaudited)</u>	
<u>Condensed Consolidated Balance Sheets as of December 31, 2022 and March 31, 2022</u>	<u>2</u>
<u>Condensed Consolidated Statements of Operations and Comprehensive Income/(Loss) for the three and nine months ended December 31, 2022 and 2021</u>	<u>3</u>
<u>Condensed Consolidated Statements of Equity for the three and nine months ended December 31, 2022 and 2021</u>	<u>4</u>
<u>Condensed Consolidated Statements of Cash Flows for the nine months ended December 31, 2022 and 2021</u>	<u>6</u>
<u>Notes to Condensed Consolidated Financial Statements</u>	<u>7</u>
<u>Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>20</u>
<u>Item 3. Quantitative and Qualitative Disclosures About Market Risk</u>	<u>31</u>
<u>Item 4. Controls and Procedures</u>	<u>32</u>
PART II — OTHER INFORMATION	
<u>Item 1. Legal Proceedings</u>	<u>33</u>
<u>Item 1A. Risk Factors</u>	<u>33</u>
<u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	<u>33</u>
<u>Item 3. Defaults Upon Senior Securities</u>	<u>33</u>
<u>Item 4. Mine Safety Disclosures</u>	<u>33</u>
<u>Item 5. Other Information</u>	<u>33</u>
<u>Item 6. Exhibits</u>	<u>33</u>
<u>EXHIBIT INDEX</u>	<u>34</u>
<u>SIGNATURE</u>	<u>35</u>

PART I — FINANCIAL INFORMATION

Item 1. Financial Statements

Thermon Group Holdings, Inc.

Condensed Consolidated Balance Sheets *(Dollars in thousands, except share and per share data)*

	December 31, 2022 (Unaudited)	March 31, 2022
Assets		
Current assets:		
Cash and cash equivalents	\$ 35,363	\$ 41,445
Accounts receivable, net of allowances of \$3,344 and \$2,177 as of December 31, 2022, and March 31, 2022, respectively	92,380	95,305
Inventories, net	91,418	71,650
Contract assets	16,597	19,626
Prepaid expenses and other current assets	15,981	11,786
Income tax receivable	1,469	4,626
Total current assets	<u>\$ 253,208</u>	<u>\$ 244,438</u>
Property, plant and equipment, net of depreciation and amortization of \$67,024 and \$63,954 as of December 31, 2022, and March 31, 2022, respectively	61,039	66,039
Goodwill	221,195	212,754
Intangible assets, net	96,162	94,908
Operating lease right-of-use assets	10,377	10,534
Deferred income taxes	778	1,211
Other non-current assets	7,336	6,785
Total assets	<u>\$ 650,095</u>	<u>\$ 636,669</u>
Liabilities		
Current liabilities:		
Accounts payable	\$ 30,003	\$ 33,567
Accrued liabilities	28,234	26,971
Current portion of long-term debt	10,219	7,929
Borrowings under revolving credit facility	24,500	—
Contract liabilities	9,780	8,010
Lease liabilities	3,506	3,624
Income taxes payable	3,570	897
Total current liabilities	<u>\$ 109,812</u>	<u>\$ 80,998</u>
Long-term debt, net	97,574	120,431
Deferred income taxes	12,531	17,943
Non-current lease liabilities	9,642	9,659
Other non-current liabilities	9,032	8,434
Total liabilities	<u>\$ 238,591</u>	<u>\$ 237,465</u>
Commitments and contingencies (Note 10)		
Equity		
Common stock: \$0.001 par value; 150,000,000 authorized; 33,495,287 and 33,364,722 shares issued and outstanding at December 31, 2022 and March 31, 2022, respectively	\$ 33	\$ 33
Preferred stock: \$0.001 par value; 10,000,000 authorized; no shares issued and outstanding	—	—
Additional paid in capital	238,399	234,549
Accumulated other comprehensive loss	(56,423)	(38,906)
Retained earnings	229,495	203,528
Total equity	<u>\$ 411,504</u>	<u>\$ 399,204</u>
Total liabilities and equity	<u>\$ 650,095</u>	<u>\$ 636,669</u>

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

Thermon Group Holdings, Inc.

Condensed Consolidated Statements of Operations and Comprehensive Income/(Loss) (Unaudited)
(Dollars in thousands, except share and per share data)

	Three Months Ended December 31, 2022	Three Months Ended December 31, 2021	Nine Months Ended December 31, 2022	Nine Months Ended December 31, 2021
Sales	\$ 122,110	\$ 100,613	\$ 318,109	\$ 253,090
Cost of sales	71,660	59,866	184,508	154,084
Gross profit	50,450	40,747	133,601	99,006
Operating expenses:				
Selling, general and administrative expenses	30,889	22,099	83,046	66,820
Deferred compensation plan expense/(income)	464	292	(499)	610
Amortization of intangible assets	2,367	2,187	7,072	6,613
Restructuring and other charges/(income)	2,668	—	2,668	(414)
Income/(loss) from operations	14,062	16,169	41,314	25,377
Other income/(expenses):				
Interest expense, net	(1,877)	(842)	(4,120)	(5,029)
Other income/(expense)	659	(627)	(592)	(3,517)
Income/(loss) before provision for income taxes	12,844	14,700	36,602	16,831
Income tax expense/(benefit)	4,419	3,430	10,637	5,424
Net income/(loss)	<u>\$ 8,425</u>	<u>\$ 11,270</u>	<u>\$ 25,965</u>	<u>\$ 11,407</u>
Comprehensive income/(loss):				
Net income/(loss)	\$ 8,425	\$ 11,270	\$ 25,965	\$ 11,407
Foreign currency translation adjustment	5,403	(413)	(17,560)	(3,843)
Other miscellaneous income/(loss)	(75)	(96)	43	(109)
Comprehensive income/(loss)	<u>\$ 13,753</u>	<u>\$ 10,761</u>	<u>\$ 8,448</u>	<u>\$ 7,455</u>
Net income/(loss) per common share:				
Basic	\$ 0.25	\$ 0.34	\$ 0.78	\$ 0.34
Diluted	\$ 0.25	\$ 0.33	\$ 0.77	\$ 0.34
Weighted-average shares used in computing net income/(loss) per common share:				
Basic	33,493,540	33,340,000	33,457,048	33,292,614
Diluted	33,879,733	33,658,104	33,756,218	33,481,964

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

Thermon Group Holdings, Inc.

Condensed Consolidated Statements of Equity (Unaudited)
(Dollars in thousands)

	Common Stock Outstanding	Common Stock	Additional Paid- in Capital	Retained Earnings/ (Loss)	Accumulated Other Comprehensive Income/(Loss)	Total
Balances at March 31, 2022	33,364,722	\$ 33	\$ 234,549	\$ 203,528	\$ (38,906)	\$ 399,204
Issuance of common stock as deferred compensation to employees	30,352	—	—	—	—	—
Issuance of common stock as deferred compensation to executive officers	64,294	—	—	—	—	—
Issuance of common stock as deferred compensation to directors	8,766	—	—	—	—	—
Stock compensation expense	—	—	1,193	—	—	1,193
Repurchase of employee stock units on vesting	—	—	(552)	—	—	(552)
Net income/(loss)	—	—	—	6,556	—	6,556
Foreign currency translation adjustment	—	—	—	—	(5,152)	(5,152)
Other	—	—	—	1	2	3
Balances at June 30, 2022	<u>33,468,134</u>	<u>\$ 33</u>	<u>\$ 235,190</u>	<u>\$ 210,085</u>	<u>\$ (44,056)</u>	<u>\$ 401,252</u>
Issuance of common stock as deferred compensation to employees	5,544	—	—	—	—	—
Issuance of common stock as deferred compensation to directors	9,930	—	—	—	—	—
Stock compensation expense	—	—	1,251	—	—	1,251
Repurchase of employee stock units on vesting	—	—	(34)	—	—	(34)
Net income/(loss)	—	—	—	10,984	—	10,984
Foreign currency translation adjustment	—	—	—	—	(17,811)	(17,811)
Other	—	—	—	—	116	116
Balances at September 30, 2022	<u>33,483,608</u>	<u>\$ 33</u>	<u>\$ 236,407</u>	<u>\$ 221,069</u>	<u>\$ (61,751)</u>	<u>\$ 395,758</u>
Issuance of common stock as deferred compensation to employees	512	—	—	—	—	—
Issuance of common stock as deferred compensation to directors	11,167	—	—	—	—	—
Stock compensation expense	—	—	1,994	—	—	1,994
Repurchase of employee stock units on vesting	—	—	(2)	—	—	(2)
Net income/(loss)	—	—	—	8,425	—	8,425
Foreign currency translation adjustment	—	—	—	—	5,403	5,403
Other	—	—	—	1	(75)	(74)
Balances at December 31, 2022	<u>33,495,287</u>	<u>\$ 33</u>	<u>\$ 238,399</u>	<u>\$ 229,495</u>	<u>\$ (56,423)</u>	<u>\$ 411,504</u>

	Common Stock Outstanding	Common Stock	Additional Paid- in Capital	Retained Earnings/ (Loss)	Accumulated Other Comprehensive Income/(Loss)	Total
Balances at March 31, 2021	33,225,808	\$ 33	\$ 231,322	\$ 183,436	\$ (35,919)	\$ 378,872
Issuance of common stock in exercise of stock options	8,100	—	97	—	—	97
Issuance of common stock as deferred compensation to employees	23,858	—	—	—	—	—
Issuance of common stock as deferred compensation to executive officers	42,326	—	—	—	—	—
Issuance of common stock as deferred compensation to directors	7,368	—	—	—	—	—
Stock compensation expense	—	—	1,178	—	—	1,178
Repurchase of employee stock units on vesting	—	—	(548)	—	—	(548)
Net income/(loss)	—	—	—	(340)	—	(340)
Foreign currency translation adjustment	—	—	—	—	4,195	4,195
Other	—	—	—	—	(64)	(64)
Balances at June 30, 2021	<u>33,307,460</u>	<u>\$ 33</u>	<u>\$ 232,049</u>	<u>\$ 183,096</u>	<u>\$ (31,788)</u>	<u>\$ 383,390</u>
Issuance of common stock as deferred compensation to employees	10,687	—	—	—	—	—
Issuance of common stock as deferred compensation to executive officers	7,344	—	—	—	—	—
Issuance of common stock as deferred compensation to directors	8,352	—	—	—	—	—
Stock compensation expense	—	—	1,246	—	—	1,246
Repurchase of employee stock units on vesting	—	—	(14)	—	—	(14)
Net income/(loss)	—	—	—	477	—	477
Foreign currency translation adjustment	—	—	—	—	(7,625)	(7,625)
Other	—	—	(1)	1	51	51
Balances at September 30, 2021	<u>33,333,843</u>	<u>\$ 33</u>	<u>\$ 233,280</u>	<u>\$ 183,574</u>	<u>\$ (39,362)</u>	<u>\$ 377,525</u>
Issuance of common stock as deferred compensation to employees	52	—	—	—	—	—
Issuance of common stock as deferred compensation to directors	8,004	—	—	—	—	—
Stock compensation expense	—	—	275	—	—	275
Net income/(loss)	—	—	—	11,270	—	11,270
Foreign currency translation adjustment	—	—	—	—	(413)	(413)
Other	—	—	—	(1)	(96)	(97)
Balances at December 31, 2021	<u>33,341,899</u>	<u>\$ 33</u>	<u>\$ 233,555</u>	<u>\$ 194,843</u>	<u>\$ (39,871)</u>	<u>\$ 388,560</u>

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

Thermon Group Holdings, Inc.

Condensed Consolidated Statements of Cash Flows (Unaudited)
(Dollars in thousands)

	Nine Months Ended December 31, 2022	Nine Months Ended December 31, 2021
Operating activities		
Net income/(loss)	\$ 25,965	\$ 11,407
Adjustments to reconcile net income/(loss) to net cash provided by/(used in) operating activities:		
Depreciation and amortization	14,557	15,349
Amortization of deferred debt issuance costs	230	495
Loss on extinguishment of debt	—	2,569
Impairment of property, plant, and equipment	367	—
Stock compensation expense	4,438	2,699
Deferred income taxes	(4,186)	(878)
Reserve for uncertain tax positions, net	36	58
(Gain)/loss on long-term cross currency swap	—	(1,391)
Remeasurement (gain)/loss on intercompany balances	134	(556)
Loss on sale of business, net of cash surrendered	—	310
Changes in operating assets and liabilities:		
Accounts receivable	1,145	(15,471)
Inventories	(18,047)	(6,137)
Contract assets	4,447	(6,287)
Other current and non-current assets	(695)	(3,293)
Accounts payable	(4,066)	15,221
Accrued liabilities and non-current liabilities	1,433	(824)
Income taxes payable and receivable	5,847	475
Net cash provided by/(used in) operating activities	\$ 31,605	\$ 13,746
Investing activities		
Purchases of property, plant and equipment	(5,173)	(2,920)
Sale of rental equipment	163	235
Cash paid for acquisitions, net of cash acquired	(35,299)	—
Net cash provided by/(used in) investing activities	\$ (40,309)	\$ (2,685)
Financing activities		
Proceeds from Term Loan A	—	140,425
Proceeds from revolving credit facility	34,500	15,959
Payments on long-term debt and revolving credit facility	(27,121)	(171,862)
Issuance costs associated with revolving line of credit and long term debt	—	(1,248)
Proceeds from exercise of stock options	—	97
Repurchase of employee stock units on vesting	(588)	(562)
Payments on finance leases	(62)	(96)
Net cash provided by/(used in) financing activities	\$ 6,729	\$ (17,287)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(754)	(821)
Change in cash, cash equivalents and restricted cash	(2,729)	(7,047)
Cash, cash equivalents and restricted cash at beginning of period	43,931	42,450
Cash, cash equivalents and restricted cash at end of period	\$ 41,202	\$ 35,403

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

Thermon Group Holdings, Inc.

Notes to Condensed Consolidated Financial Statements (Unaudited)
(Dollars in thousands, except share and per share data)

1. Basis of Presentation

Thermon Group Holdings, Inc. and its direct and indirect subsidiaries are referred to collectively as “we,” “our,” or the “Company” herein. We are one of the largest providers of highly engineered industrial process heating solutions for process industries. We offer a full suite of products (heating units, heating cables, temporary power solutions, tubing bundles, industrial heating blankets and chillers), services (engineering, installation and maintenance services) and software (design optimization and wireless and network control systems) required to deliver comprehensive solutions to some of the world's largest and most complex projects.

Our condensed consolidated financial statements are prepared in conformity with generally accepted accounting principles in the United States (“GAAP”) and the requirements of the United States Securities and Exchange Commission (“SEC”) for interim financial information. Accordingly, the accompanying condensed consolidated financial statements do not include all disclosures required for full annual financial statements and should be read in conjunction with our audited consolidated financial statements and notes thereto for the fiscal year ended March 31, 2022 (“fiscal 2022”). In our opinion, the accompanying condensed consolidated financial statements reflect all adjustments considered necessary to present fairly our financial position at December 31, 2022 and March 31, 2022, and the results of our operations for the three and nine months ended December 31, 2022 and 2021.

Impact of the COVID-19 Pandemic and General Economic Environment

The COVID-19 pandemic and the measures being taken to address and limit the spread of the virus have adversely affected the economies and financial markets of many countries, resulting in an economic downturn that negatively impacted, and may continue to negatively impact, global demand for our products and services. We are still experiencing effects of lockdowns in certain parts of Asia, which are impacting our results in our Asia-Pacific (“APAC”) segment. The effect of loosening pandemic restrictions outside of APAC, along with pent-up demand from periods of stagnant lockdown and uncertainty have combined to strengthen customer demand from most regions we serve, especially in North America. During periods of the pandemic we have experienced, and may experience in the future, a decline in the demand of our products and services or disruptions in raw materials or labor required for manufacturing that has in the past, and may in the future, materially and negatively impact our business, financial condition, results of operation and overall financial performance. We have experienced increased costs across our global supply chain as we focus on meeting growing demand from our customers. In certain circumstances, we have had issues with a lack of availability of certain raw materials as well as increases in costs of our raw materials due to: use of alternate suppliers, higher freight costs, increased lead times, and expedited shipping. We have also had to increase our inventory of certain items to ensure availability in the face of supply chain disruptions. We continue to monitor the pandemic restrictions and other effects the pandemic may have on our business.

On April 11, 2020, the Canadian government officially enacted the Canadian Emergency Wage Subsidy (the “CEWS”) for the purposes of assisting employers in financial hardship due to the COVID-19 pandemic and of reducing potential layoffs of employees.

We recorded no transactions related to CEWS for the three and nine months ended December 31, 2022. We recorded \$99 and \$1,448 related to CEWS to “Cost of sales” in our condensed consolidated statement of operations for the three and nine months ended December 31, 2021. We recorded \$4 and \$504 related to CEWS to “Selling, general and administrative expenses” in our condensed consolidated statement of operations for the three and nine months ended December 31, 2021. We anticipate no benefit from the CEWS program in the fiscal year ending March 31, 2023 (“fiscal 2023”), as the program ended in October 2021.

Use of Estimates

Generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported period. While management has based its assumptions and estimates on the facts and circumstances existing at December 31, 2022, actual results could differ from those estimates and affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities and the corresponding revenues and expenses as of the date of the financial statements. The operating results for the three and nine months ended December 31, 2022, are not necessarily indicative of the results that may be achieved for fiscal 2023.

Restricted Cash and Cash Equivalents

The Company maintains restricted cash related to certain letter of credit guarantees and performance bonds securing performance obligations. The following table provides a reconciliation of cash, cash equivalents, and restricted cash included in prepaid expenses and other current assets and restricted cash included in other non-current assets reported within the condensed consolidated balance sheets that sum to the total of the same such amounts shown in the statements of cash flows.

	December 31, 2022	December 31, 2021
Cash and cash equivalents	\$ 35,363	\$ 32,566
Restricted cash included in prepaid expenses and other current assets	5,813	2,496
Restricted cash included in other non-current assets	26	341
Total cash, cash equivalents, and restricted cash shown in the statements of cash flows	<u>\$ 41,202</u>	<u>\$ 35,403</u>

Amounts shown in restricted cash included in prepaid expenses and other current assets and other non-current assets represent those required to be set aside by a contractual agreement, which generally contain cash deposits pledged as collateral on performance bonds and letters of credit. Additionally, due to the uncertain nature of whether we can repatriate certain funds from our Russian subsidiary, we have classified \$3,084 of the cash and cash equivalents held in our Russian subsidiary as restricted cash and included the related balance in prepaid expenses and other current assets. Amounts shown in restricted cash in other non-current assets represent such agreements that require a commitment term longer than one year.

Recent Accounting Pronouncements

Business Combinations - In October 2021, the FASB issued Accounting Standards Update, ("ASU") 2021-08 - *Accounting for Contract Assets and Contract Liabilities from Contracts with Customers* (ASC 805). ASU 2021-08 requires an acquirer in a business combination to recognize and measure contract assets and contract liabilities (deferred revenue) from acquired contracts using the revenue recognition guidance in Topic 606. Under this "Topic 606 approach," the acquirer applies the revenue model as if it had originated the contracts. This is a departure from the current requirement to measure contract assets and contract liabilities at fair value. The ASU is effective for all public business entities in annual and interim periods with fiscal years starting after December 15, 2022, and early adoption is permitted. We are still evaluating this ASU and will consider early adoption with future acquisitions, if any.

2. Acquisition

Powerblanket

On May 31, 2022 (the "Acquisition Date"), Thermon Holding Corp., as buyer, acquired 100% of the issued and outstanding equity interests of Powerblanket ("Powerblanket") from Glacier Capital LLC, as seller (the "Acquisition"). Powerblanket is a leading North American supplier of heated blankets built upon patented heat spreading technology and portable industrial chillers. The Acquisition increases our exposure to growing industrial and commercial end-markets through its freeze protection, temperature control and flow assurance solutions. We have integrated Powerblanket into our United States and Latin America ("US-LAM") reportable segment. From the period May 31, 2022 to December 31, 2022, Powerblanket contributed \$11,848 in Sales and \$1,302 in Net income/(loss) to our consolidated operating results. For the three months ended December 31, 2022, Powerblanket contributed \$7,881 in Sales and \$2,000 in Net income/(loss) to our consolidated operating results.

The initial purchase price for the Acquisition was \$35,000, subject to an adjustment for net working capital acquired at closing. Subsequent to the Acquisition Date, and commensurate with the purchase agreement, we increased the purchase price by \$299 for net working capital acquired. We financed the Acquisition through the use of our Revolving Credit Facility as well as cash on hand. Powerblanket's revenue structure does not result in material contract assets or liabilities.

Acquisition Costs

In accordance with GAAP, costs incurred to complete the Acquisition are expensed as incurred. Total acquisition costs, which represent transaction costs, legal fees, and third-party professional fees were \$278, of which \$126 were incurred in the nine months ended December 31, 2022. No acquisition costs were incurred in the three months ended December 31, 2022. Acquisition costs are reflected in "Selling, general and administrative expenses" in our condensed consolidated statement of operations and comprehensive income/(loss).

Purchase Price Allocation

We have accounted for the Acquisition according to the business combinations guidance found in ASC 805 - *Business Combinations*, henceforth referred to as acquisition accounting. Acquisition accounting requires, among other things, that assets acquired and liabilities assumed be recognized at their fair values as of the acquisition date. We used primarily Level 2 inputs to allocate the purchase price to the major categories of assets and liabilities shown below, with the exception of the contract-

based intangible asset, which was valued using Level 3 inputs. The carrying values of inventories, property, plant and equipment as well as leased assets approximated their respective fair values. During the measurement period, if new information is obtained about facts and circumstances that existed as of the Acquisition Date that, if known, would have resulted in revised estimated values of those assets or liabilities as of that date, we will revise the preliminary purchase price allocation. The effect of measurement period adjustments to the estimated fair values will be reflected as if the adjustments had been completed on the Acquisition Date. The impact of all changes that do not qualify as measurement period adjustments will be included in current period earnings.

Purchase Price Allocation

	Amortization Period (years)	Fair Value
Accounts receivable		\$ 1,267
Inventories		3,545
Property, plant and equipment		391
Other current assets		290
Other non-current assets		954
Intangibles:		
Customer relationships	9.8	3,301
Trademarks	9.8	3,397
Contract-based	5.0	1,280
Developed technology	15.8	5,189
Goodwill		18,620
Total fair value of assets acquired		\$ 38,234
Accounts payable		(1,098)
Accrued liabilities		(637)
Other liabilities		(1,200)
Total fair value of liabilities acquired		\$ (2,935)
Purchase Price		\$ 35,299

Unaudited Pro Forma Financial Information

The following unaudited pro forma results of operations assume that the Acquisition occurred at the beginning of the periods presented. These unaudited pro forma results are presented for informational purposes only and are not necessarily indicative of what the actual results of operations would have been if the Acquisition had occurred at the beginning of the periods presented, nor are they indicative of future results of operations. The pro forma results presented below are adjusted for the removal of acquisition and other related costs of \$286 which were incurred in our first fiscal quarter ended June 30, 2022.

<i>in thousands, unaudited</i>	Three Months Ended December 31, 2022	Three Months Ended December 31, 2021	Nine Months Ended December 31, 2022	Nine Months Ended December 31, 2021
Sales	\$ 122,110	\$ 107,443	\$ 319,973	\$ 265,350
Net Income/(loss)	8,425	12,623	25,588	13,438

3. Fair Value Measurements

Fair Value

We measure fair value based on authoritative accounting guidance, which defines fair value, establishes a framework for measuring fair value, and expands on required disclosures regarding fair value measurements.

Inputs are referred to as assumptions that market participants would use in pricing the asset or liability. The use of inputs in the valuation process are categorized into a three-level fair value hierarchy.

- Level 1 — uses quoted prices in active markets for identical assets or liabilities we have the ability to access.
- Level 2 — uses observable inputs other than quoted prices in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.
- Level 3 — uses one or more significant inputs that are unobservable and supported by little or no market activity, and that reflect the use of significant management judgment.

Financial assets and liabilities with carrying amounts approximating fair value include cash and cash equivalents, accounts receivable, accounts payable, accrued expenses and other current liabilities. The carrying amount of these financial assets and liabilities approximates fair value because of their short maturities. At December 31, 2022 and March 31, 2022, no assets or liabilities were valued using Level 3 criteria, except for those acquired in our recent acquisition of Powerblanket, discussed in Note 2, "Acquisition."

Information about our financial assets and liabilities is as follows:

	December 31, 2022		March 31, 2022		Valuation Technique
	Carrying Value	Fair Value	Carrying Value	Fair Value	
Financial Assets					
Deferred compensation plan assets	\$ 6,020	\$ 6,020	\$ 5,391	\$ 5,391	Level 1 - Active Markets
Foreign currency contract forwards assets	80	80	105	105	Level 2 - Market Approach
Financial Liabilities					
Outstanding borrowings from revolving line of credit	\$ 24,500	\$ 24,500	\$ —	\$ —	Level 1 - Active Markets
Outstanding principal amount of senior secured credit facility	108,279	108,521	129,000	128,355	Level 2 - Market Approach
Deferred compensation plan liabilities	5,416	5,416	4,837	4,837	Level 1 - Active Markets
Foreign currency contract forwards liabilities	76	76	—	—	Level 2 - Market Approach

At December 31, 2022 and March 31, 2022, the fair value of our long-term debt is based on market quotes available for issuance of debt with similar terms. As the quoted price is only available for similar financial assets, the Company concluded the pricing is indirectly observable through dealers and has been classified as Level 2.

Additionally, we acquired certain assets and liabilities as disclosed in Note 2, "Acquisition" at fair value according to purchase price accounting.

Deferred Compensation Plan

The Company provides a non-qualified deferred compensation plan for certain highly compensated employees where payroll contributions are made by the employees on a pre-tax basis. Included in "Other non-current assets" in the condensed consolidated balance sheets at December 31, 2022 and March 31, 2022 were \$6,020 and \$5,391, respectively, of deferred compensation plan assets held by the Company. Deferred compensation plan assets (mutual funds) are measured at fair value on a recurring basis based on quoted market prices in active markets (Level 1). The Company has a corresponding liability to participants of \$5,416 and \$4,837 included in "Other non-current liabilities" in the condensed consolidated balance sheets at December 31, 2022 and March 31, 2022, respectively. Deferred compensation plan expense/(income) is included as such in the condensed consolidated statement of operations, and therefore is excluded from "Selling, general and administrative expenses." Deferred compensation plan expense/(income) was \$464 and \$292 for the three months ended December 31, 2022 and 2021, respectively, and \$(499) and \$610 for the nine months ended December 31, 2022 and 2021, respectively. Expenses and income from our deferred compensation plan were offset by unrealized gains and losses for the deferred compensation plan included in "Other income/expense" on our condensed consolidated statements of operations and comprehensive income/(loss). Our unrealized losses and (gains) on investments were \$(484) and \$(314), respectively, for the three months ended December 31, 2022 and 2021, respectively, and \$450 and \$(620) for the nine months ended December 31, 2022 and 2021, respectively.

Trade Related Foreign Currency Forward Contracts

We transact business in various foreign currencies and have established a program that primarily utilizes foreign currency forward contracts to address the risk associated with the effects of certain foreign currency exposures. Under this program, increases or decreases in our foreign currency exposures are offset by gains or losses on the forward contracts to mitigate foreign currency transaction gains or losses. These foreign currency exposures arise from intercompany transactions as well as third party accounts receivable or payable that are denominated in foreign currencies. Our forward contracts generally have terms of 30 days. We do not use forward contracts for trading purposes or designate these forward contracts as hedging instruments pursuant to ASC 815. We adjust the carrying amount of all contracts to their fair value at the end of each reporting period and unrealized gains and losses are included in "Other income/expense" on our condensed consolidated statements of operations and comprehensive income/(loss). These gains and losses are designed to offset gains and losses resulting from

settlement of receivables or payables by our foreign operations which are settled in currency other than the local transactional currency. The fair value is determined by quoted prices from active foreign currency markets (Level 2). Fair value amounts for such forward contracts on our condensed consolidated balance sheets are either classified as accounts receivable, net or accrued liabilities depending on whether the forward contract is in a gain (accounts receivable, net) or loss (accrued liabilities) position. Our ultimate realized gain or loss with respect to currency fluctuations will depend on the currency exchange rates and other factors in effect as the contracts mature. As of December 31, 2022 and March 31, 2022, the notional amounts of forward contracts were as follows:

Notional amount of foreign currency forward contracts by currency

	December 31, 2022	March 31, 2022
Euro	\$ 1,000	\$ —
Canadian Dollar	—	4,000
South Korean Won	—	2,250
Mexican Peso	1,500	—
Australian Dollar	—	1,000
Total notional amounts	<u>\$ 2,500</u>	<u>\$ 7,250</u>

Foreign currency gains or losses related to our forward contracts in the accompanying condensed consolidated statements of operations and comprehensive income/(loss) were a gain of \$102 and a loss of \$(637) in the three months ended December 31, 2022 and 2021, respectively, and losses of \$610 and \$(861) for the nine months ended December 31, 2022 and 2021, respectively. Gains and losses from our forward contracts were offset by transaction gains or losses incurred with the settlement of transactions denominated in foreign currencies. For the three months ended December 31, 2022 and 2021, our net foreign currency transactions resulted in a gain of \$193 and losses of \$(949), respectively, and losses of \$(140) and \$(1,634) in the nine months ended December 31, 2022 and 2021.

4. Restructuring and Other Charges/(Income)

Impairment and other charges/(income)

In the third quarter of fiscal 2023, we identified a triggering event in our EMEA reportable segment. Given the continuing depressed economic conditions resulting from the Russo-Ukrainian war, including sanctions related thereto, the Company conducted a strategic assessment of its operations in its Russian subsidiary and we concluded that there was uncertainty in whether the Company could realize significant future economic benefits. Therefore, we recorded a total charge of \$8,334 in the three months ended December 31, 2022. The charges were comprised of the following:

Charge	Financial statement impact	Amount
Increase in Current Expected Credit Loss, or "CECL," allowance for credit loss for certain accounts receivable	Accounts receivable, net; Selling, general and administrative expenses	\$ 835
Increase in inventory reserves	Inventories, net; Cost of sales	4,831
Contract asset adjustment	Contract assets; Restructuring and other charges/(income)	327
Prepaid expenses and other current assets adjustment	Prepaid expenses and other current assets, Income tax receivable; Restructuring and other charges/(income)	1,477
Impairment of Property, plant and equipment, net	Property, plant and equipment, net; Restructuring and other charges/(income)	367
Impairment of Operating lease right-of-use assets	Operating lease right-of-use assets; Restructuring and other charges/(income)	389
Impairment of Other non-current assets	Deferred income taxes, Other non-current assets; Restructuring and other charges/(income)	108
		<u>\$ 8,334</u>

All charges described above were recorded in our Europe, Middle East and Africa ("EMEA") reportable segment, with the exception of \$241 of cost of sales from an increase in inventory reserves in our Canada reportable segment. Additionally,

we reclassified \$3,084 of cash in our Russian subsidiary to restricted cash due to the uncertain nature of whether we can repatriate certain funds from our Russian subsidiary.

The Company will continue to evaluate sales to international customers with a presence in the Russian Federation and engage in those sales to the extent permissible with various international sanctions.

Please refer to Note 7, "Goodwill and Other Intangible Assets," for more information on impairment, and Note 14, "Subsequent Events," for more information regarding the Company's operations in the Russian Federation.

Fiscal 2022 charges/(income)

In the nine months ended December 31, 2021, we recorded \$(03) for severance-related activity in our Canadian segment, which was recorded to "Restructuring and other charges/(income)" in our condensed consolidated statements of operations and comprehensive income/(loss). Additionally, we recorded \$(311) in cash receipts related to receivables existing prior to the sale of our South Africa business, which was completed in fiscal 2021.

Restructuring and other charges/(income) by reportable segment were as follows:

	Three Months Ended December 31, 2022	Three Months Ended December 31, 2021	Nine Months Ended December 31, 2022	Nine Months Ended December 31, 2021
United States and Latin America	\$ —	\$ —	\$ —	\$ (46)
Canada	—	—	—	(186)
Europe, Middle East and Africa ⁽¹⁾	2,668	—	2,668	(182)
Asia-Pacific	—	—	—	—
	<u>\$ 2,668</u>	<u>\$ —</u>	<u>\$ 2,668</u>	<u>\$ (414)</u>

(1) - these charges relate to the Company's Russian subsidiary and were included in "Restructuring and other charges/(income)" on our condensed consolidated statement of operations and comprehensive income/(loss). See the section labeled "Impairment and other charges/(income)" above for a full detail of charges.

5. Net Income/(Loss) per Common Share

The reconciliations of the denominators used to calculate basic and diluted net income/(loss) per common share for the three and nine months ended December 31, 2022 and 2021, respectively, are as follows:

	Three Months Ended December 31, 2022	Three Months Ended December 31, 2021	Nine Months Ended December 31, 2022	Nine Months Ended December 31, 2021
<i>Basic net income/(loss) per common share</i>				
Net income/(loss)	\$ 8,425	\$ 11,270	\$ 25,965	\$ 11,407
Weighted-average common shares outstanding	33,493,540	33,340,000	33,457,048	33,292,614
Basic net income/(loss) per common share	<u>\$ 0.25</u>	<u>\$ 0.34</u>	<u>\$ 0.78</u>	<u>\$ 0.34</u>
<i>Diluted net income/(loss) per common share</i>				
Net income/(loss)	\$ 8,425	\$ 11,270	\$ 25,965	\$ 11,407
Weighted-average common shares outstanding	33,493,540	33,340,000	33,457,048	33,292,614
Common share equivalents:				
Stock options	7,858	271	2,545	1,660
Restricted and performance stock units	378,335	317,833	296,625	187,690
Weighted average shares outstanding – dilutive ⁽¹⁾	33,879,733	33,658,104	33,756,218	33,481,964
Diluted net income/(loss) per common share	<u>\$ 0.25</u>	<u>\$ 0.33</u>	<u>\$ 0.77</u>	<u>\$ 0.34</u>

(1) For the three months ended December 31, 2022 and 2021, 28,499 and 45,099 equity awards, respectively and for the nine months ended December 31, 2022 and 2021, 39,517 and 139,843 equity awards, respectively, were not included in the calculation of diluted net income/(loss) per common share, as they would have had an anti-dilutive effect.

The number of common share equivalents, which includes options and both restricted and performance stock units, is computed using the treasury stock method. With regard to the performance stock units, we assume that the associated performance targets will be met at the target level of performance for purposes of calculating diluted net income/(loss) per common share until such time that it is probable that actual performance will be above or below target.

6. Inventories

Inventories consisted of the following:

	December 31, 2022	March 31, 2022
Raw materials	\$ 60,605	\$ 41,389
Work in process	5,483	6,294
Finished goods	32,601	25,802
	98,689	73,485
Valuation reserves	(7,271)	(1,835)
Inventories, net	\$ 91,418	\$ 71,650

7. Goodwill and Other Intangible Assets

The carrying amount of goodwill by operating segment as of December 31, 2022, is as follows:

	United States and Latin America	Canada	Europe, Middle East and Africa	Asia-Pacific	Total
Balance as of March 31, 2022	\$ 62,725	\$ 122,318	\$ 19,087	\$ 8,624	\$ 212,754
Goodwill acquired ⁽¹⁾	18,620	—	—	—	18,620
Foreign currency translation impact	—	(9,465)	(714)	—	(10,179)
Balance as of December 31, 2022	\$ 81,345	\$ 112,853	\$ 18,373	\$ 8,624	\$ 221,195

(1) - Refer to Note 2, "Acquisition," for more information on the goodwill acquired through our recent acquisition of Powerblanket.

Goodwill is tested for impairment on an annual basis and between annual tests if indicators of potential impairment exist. We perform a qualitative analysis to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill. If required, we also perform a quantitative analysis using the income approach, based on discounted future cash flows, which are derived from internal forecasts and economic expectations, and the market approach, which is based on market multiples of guideline public companies. The most significant inputs in the Company's quantitative goodwill impairment tests are projected financial information, the weighted average cost of capital and market multiples for similar transactions. Our annual impairment test is performed during the fourth quarter of our fiscal year.

In the fourth quarter of fiscal 2022, we identified the disruptions to our business from the ongoing Russo-Ukrainian war as an indicator of potential impairments in our EMEA reporting unit. We performed our annual goodwill, intangible and tangible impairment assessments including our indefinite life trademarks. Based on the goodwill impairment assessment, there was no impairment of goodwill, intangible or tangible assets or our indefinite life trademarks as of the respective reporting periods.

In the third quarter of fiscal 2023, we identified a triggering event in our EMEA reportable segment. The depressed economic conditions resulting from the Russo-Ukrainian war as well as the related sanctions were contributing factors in our decision to test our EMEA reportable segment under ASC 350 and ASC 360. Based on the results of our quantitative goodwill impairment assessment, there was no impairment of goodwill or intangible assets. We did, however, segregate our Russian subsidiary as a new asset group for long-lived asset impairment-testing purposes and determined that the assets relating to our Russian subsidiary were not recoverable under ASC 360. We recorded an impairment charge of \$756, which includes Property, plant and equipment, net as well as Operating lease right-of-use assets. Refer to Note 4, "Restructuring and Other Charges/(Income)," for more information.

Separately, in the first quarter of fiscal 2023, we added \$18,620 of goodwill as part of our recent acquisition of Powerblanket, which is discussed further in Note 2, "Acquisition." The newly acquired goodwill is allocated to our US-LAM segment. We believe the goodwill acquired in this recent acquisition represents synergies from combining operations in addition to the already identifiable assets. We anticipate being able to deduct goodwill for tax purposes.

We will continue to monitor our reporting units' goodwill and asset valuations and test for potential impairments, as appropriate. If overall economic conditions, our key end markets, or factors specific to the Company deteriorate significantly, it could negatively impact the Company's future impairment tests.

Our total intangible assets consisted of the following:

	Gross Carrying Amount at December 31, 2022	Accumulated Amortization	Net Carrying Amount at December 31, 2022	Gross Carrying Amount at March 31, 2022	Accumulated Amortization	Net Carrying Amount at March 31, 2022
Products	\$ 61,510	\$ (31,780)	\$ 29,730	\$ 66,669	\$ (29,445)	\$ 37,224
Trademarks	47,288	(1,888)	45,400	45,222	(1,517)	43,705
Developed technology	14,831	(6,297)	8,534	9,946	(5,933)	4,013
Customer relationships	113,041	(102,105)	10,936	113,413	(103,900)	9,513
Certifications	439	—	439	453	—	453
Contract-based	1,280	(157)	1,123	—	—	—
Total	\$ 238,389	\$ (142,227)	\$ 96,162	\$ 235,703	\$ (140,795)	\$ 94,908

8. Accrued Liabilities

Accrued current liabilities consisted of the following:

	December 31, 2022	March 31, 2022
Accrued employee compensation and related expenses	\$ 17,529	\$ 16,235
Accrued interest	472	277
Customer prepayments	74	405
Warranty reserves	931	557
Professional fees	3,001	2,540
Sales taxes payable	2,633	2,758
Other ⁽¹⁾	3,594	4,199
Total accrued current liabilities	\$ 28,234	\$ 26,971

(1) - Included in Other are accrued warranty-related costs of \$ 1,996 and \$2,523, respectively, associated with the operational execution of a US-LAM project that was completed previously.

9. Debt

Long-term debt consisted of the following:

	December 31, 2022	March 31, 2022
Variable Rate Term Loan A due September 2026, net of deferred debt issuance costs of \$486 and \$640 as of December 31, 2022, and March 31, 2022, respectively	\$ 107,793	\$ 128,360
Less current portion	(10,219)	(7,929)
Total long-term debt	\$ 97,574	\$ 120,431

Senior Secured Credit Facilities

On September 29, 2021, Thermon Group Holdings, Inc., as a credit party and a guarantor, Thermon Holding Corp. (“THC” or the “U.S. Borrower”) and Thermon Canada Inc. (the “Canadian Borrower” and together with THC, the “Borrowers”), as borrowers, entered into an Amended and Restated Credit Agreement (the “Credit Agreement”) with several banks and other financial institutions or entities from time to time (the “Lenders”) and JPMorgan Chase Bank, N.A., as Administrative Agent (the “Agent”), which was further amended on November 19, 2021.

The Credit Agreement is an amendment and restatement of that certain Credit Agreement dated October 30, 2017 by and among Borrowers, the lenders party thereto and JPMorgan Chase Bank, N.A. as administrative agent (the “Prior Credit Agreement”), and provides for the following credit facilities described below (collectively, the “Facilities”).

- Revolving Credit Facility: A USD \$100,000 five-year secured revolving credit facility made available to the U.S. Borrower. The Revolving Credit Facility includes sub-limits for letters of credit and swing-line loans (the “Revolving Credit Facility”).
- U.S. Term Loan Facility: A USD \$80,000 five-year secured term loan A (the “U.S. Term Loan”) made available to the U.S. Borrower (the “U.S. Term Loan Facility”); and

- Canadian Term Loan Facility: A CAD \$76,182 five-year term loan A (the “Canadian Term Loan” and, together with the U.S. Term Loan, the “Term Loans”) made available to the Canadian Borrower (the “Canadian Term Loan Facility,” and together with the U.S. Term Loan Facility, the “Term Loan Facilities”).

Proceeds of the Facilities were used at closing to repay and refinance the Borrowers’ existing indebtedness under the Prior Credit Agreement and pay all interest, fees and expenses related thereto, and thereafter are expected to be used for working capital and general corporate purposes.

The Credit Agreement allows for incremental term loans and incremental revolving commitments in an amount not to exceed USD \$00,000.

Maturity and Repayment

Each of the Facilities terminates on September 29, 2026. Commencing January 1, 2022, each of the Term Loans will amortize as set forth in the table below, with payments on the first day of each January, April, July and October, with the balance of each Term Loan Facility due at maturity.

Installment Dates	Original Principal Amount
January 1, 2022, through October 1, 2022	1.25 %
January 1, 2023, through October 1, 2024	1.88 %
January 1, 2025, through July 1, 2026	2.50 %

Guarantees

The U.S. Term Loan and the obligations of the U.S. Borrower under the Revolving Credit Facility are guaranteed by the Company and all of the U.S. Borrower’s current and future wholly owned domestic material subsidiaries (the “U.S. Subsidiary Guarantors”), subject to certain exceptions. The Canadian Term Loan is guaranteed by the Company, the U.S. Borrower, the U.S. Subsidiary Guarantors and each of the wholly owned Canadian material subsidiaries of the Canadian Borrower, subject to certain exceptions.

Security

The U.S. Term Loan and the obligations of the U.S. Borrower under the Revolving Credit Facility are secured by a first lien on all of the assets of the Company, the U.S. Borrower and the U.S. Subsidiary Guarantors, including 100% of the capital stock of the U.S. Subsidiary Guarantors and 65% of the capital stock of the first tier material foreign subsidiaries of the Company, the U.S. Borrower and the U.S. Subsidiary Guarantors, subject to certain exceptions. The Canadian Term Loan is secured by a first lien on all of the assets of the Company, the U.S. Borrower, the U.S. Subsidiary Guarantors, the Canadian Borrower and the material Canadian subsidiaries of the Canadian Borrower, including 100% of the capital stock of the Canadian Borrower’s material Canadian subsidiaries.

Interest Rates and Fees

The U.S. Borrower will have the option to pay interest on the U.S. Term Loan and borrowings under the Revolving Credit Facility at a base rate, plus an applicable margin, or at a rate based on LIBOR plus an applicable margin. The Canadian Borrower will have the option to pay interest on the Canadian Term Loan at a prime rate, plus an applicable margin, or at a rate based on the Canadian Dollar Offered Rate, or "CDOR," plus an applicable margin.

Under the applicable Facilities, the margin for base rate loans and Canadian prime rate loans is 62.5 basis points and the applicable margin for LIBOR loans and CDOR loans is 162.5 basis points; provided that, following the completion of one full fiscal quarter after the closing date, the applicable margins will be determined based on a leverage-based performance grid.

In addition to paying interest on outstanding principal under the Revolving Credit Facility, the U.S. Borrower is required to pay a commitment fee in respect of unutilized revolving commitments of 0.25% per annum, provided that, following the completion of one full fiscal quarter after the closing date, the commitment fee will be determined based on a leverage-based performance grid.

Voluntary Prepayment

The Borrowers will be able to voluntarily prepay the principal of the loans outstanding under each of the Facilities without penalty or premium (subject to breakage fees) at any time in whole or in part.

Mandatory Prepayment

Each Borrower is required to repay its respective Term Loan with certain asset sale and insurance proceeds and certain debt proceeds.

Debt Issuance Costs

In the second quarter of fiscal 2022, we incurred fees to third parties in connection with our entry into the Credit Agreement described above. The debt issuance costs of \$1,265 were capitalized and will be amortized over the life of the Credit Agreement. Additionally, we recognized a loss on debt extinguishment of \$2,569, which was recorded to Other income/(expense) on our condensed consolidated statements of operations and comprehensive income/(loss).

Financial Covenants

In connection with the Credit Agreement, the Company is required, on a consolidated basis, to maintain certain financial covenant ratios. On the last day of any period of four fiscal quarters ending during a period set forth below, the Company must maintain a consolidated leverage ratio that does not exceed the ratios for such period set forth below (each of which ratios may be increased by 0.50:1.00 for each of the four fiscal quarters following certain acquisitions at the election of the U.S. Borrower):

<u>Fiscal Quarter Ending</u>	<u>Consolidated Leverage Ratio</u>
September 30, 2021, through September 30, 2022	3.75:1.00
December 31, 2022, and each fiscal quarter thereafter	3.50:1.00

In addition, on the last day of any period of four fiscal quarters ending on or after September 30, 2021, the Company must maintain a consolidated fixed charge coverage ratio of not less than 1.25:1.00. As of December 31, 2022, we were in compliance with all financial covenants of the Credit Agreement and there is no material uncertainty about our ongoing ability to comply with our covenants.

Other Covenants

The Credit Agreement contains restrictive covenants (in each case, subject to certain exclusions) that limit, among other things, the ability of the Company and its subsidiaries (including the Borrowers) to:

- incur additional indebtedness;
- grant liens;
- make fundamental changes;
- sell assets;
- make restricted payments;
- enter into sales and leasebacks;
- make investments;
- prepay certain indebtedness;
- enter into transactions with affiliates; and
- enter into restrictive agreements.

The covenants are subject to various baskets and materiality thresholds, with certain of the baskets to the restrictions on the repayment of subordinated or unsecured indebtedness, restricted payments and investments being available only when the Company's pro forma leverage ratios are less than a certain level.

The Credit Agreement contains certain customary representations and warranties, affirmative covenants and events of default, including, among other things, payment defaults, breach of representations and warranties, covenant defaults, cross-defaults to certain indebtedness, certain events of bankruptcy, certain events under ERISA, judgment defaults, actual or asserted failure of any guaranty or security documents to be in full force and effect and change of control. If such an event of default occurs, the Agent will be entitled to take various actions, including the termination of the commitment for the Revolving Credit Facility, the acceleration of amounts due under the Credit Agreement and certain other actions that a secured creditor is customarily permitted to take following a default.

At December 31, 2022, we had \$24,500 in outstanding borrowings under the Revolving Credit Facility. We had \$73,655 of available borrowing capacity thereunder after taking into account the borrowing base and \$1,845 of outstanding letters of credit and the outstanding borrowings under the Revolving Credit Facility as of December 31, 2022. The Term Loans bear interest at the LIBOR rate or CDOR rate, as applicable, in each case plus an applicable margin dictated by our leverage

ratio (as described above). The interest rates on the Term Loan Facilities on December 31, 2022 were 5.93% for the Canadian Term Loan Facility, 5.42% for the U.S. Term Loan Facility, and 5.63% for the U.S. Revolving Credit Facility. Interest expense has been presented net of interest income on our condensed consolidated statements of operations and comprehensive income/(loss).

10. Commitments and Contingencies

Legal Proceedings and Other Contingencies

We are involved in various legal and administrative proceedings that arise from time to time in the ordinary course of doing business. Some of these proceedings may result in fines, penalties or judgments being assessed against us, which may adversely affect our financial results. In addition, from time to time, we are involved in various disputes, which may or may not be settled prior to legal proceedings being instituted and which may result in losses in excess of accrued liabilities, if any, relating to such unresolved disputes. As of December 31, 2022, management believes that adequate reserves have been established for any probable and reasonably estimable losses. Expenses related to litigation reduce operating income. We do not believe that the outcome of any of these proceedings or disputes would have a significant adverse effect on our financial position, long-term results of operations, or cash flows. It is possible, however, that charges related to these matters could be significant to our results of operations or cash flows in any one reporting period.

In January 2020, the Company received service of process in a class action application in the Superior Court of Quebec, Montreal, Canada related to certain heating elements previously manufactured by THS and incorporated into certain portable construction heaters sold by certain manufacturers. The Company believes this claim is without merit and intends to vigorously defend itself against the claim. While the Company continues to dispute the allegations, in March 2021, it reached an agreement in principle with the plaintiff and other defendants to resolve this matter without admitting to any liability; such agreement remains subject to the agreement of the parties on the terms of a definitive settlement agreement. Settlement of this matter on the agreed terms will require the Company to contribute an amount that would not have a material impact on the Company's consolidated financial position, results of operations or cash flows. The settlement is subject to, among other things, approval by the Superior Court.

Letters of Credit and Bank Guarantees

At December 31, 2022, the Company had in place letter of credit guarantees and performance bonds securing certain performance obligations of the Company. These arrangements totaled \$29,742. Of this amount, \$1,259 is secured by cash deposits at the Company's financial institutions and an additional \$1,845 represents a reduction of the available amount of the Company's short-term and long-term revolving lines of credit. In addition to the arrangements totaling \$29,742, our Indian subsidiary also has \$4,383 in non-collateralized customs bonds outstanding to secure the Company's customs and duties obligations in India.

11. Revenue

Disaggregation of Revenue

We disaggregate our revenue from contracts with customers by geographic location, as well as revenues recognized at point in time and revenues recognized over time, as we believe these best depict how the nature, amount, timing and uncertainty of our revenue and cash flows are affected by economic factors.

Revenue recognized at a point-in-time based on when control transitions to the customer is generally related to our product sales. Point-in-time revenue does not typically require engineering or installation services. Revenue recognized over time occurs on our projects where engineering or installation services, or a combination of the two, are required. We recognize revenue related to such projects in a systematic way that reflects the transfer of goods or services, or a combination of goods and services, to the customer.

Disaggregation of revenues from contracts with customers for the three and nine months ended December 31, 2022 and 2021 is as follows:

	Three Months Ended December 31, 2022			Three Months Ended December 31, 2021		
	Revenues recognized at point in time	Revenues recognized over time	Total	Revenues recognized at point in time	Revenues recognized over time	Total
United States and Latin America	\$ 34,762	\$ 24,988	\$ 59,750	\$ 19,695	\$ 30,132	\$ 49,827
Canada	32,725	10,446	43,171	25,358	5,696	31,054
Europe, Middle East and Africa	6,643	4,582	11,225	7,896	5,041	12,937
Asia-Pacific	4,268	3,696	7,964	4,654	2,141	6,795
Total revenues	\$ 78,398	\$ 43,712	\$ 122,110	\$ 57,603	\$ 43,010	\$ 100,613

	Nine Months Ended December 31, 2022			Nine Months Ended December 31, 2021		
	Revenues recognized at point in time	Revenues recognized over time	Total	Revenues recognized at point in time	Revenues recognized over time	Total
United States and Latin America	\$ 82,627	\$ 70,150	\$ 152,777	\$ 50,565	\$ 52,360	\$ 102,925
Canada	83,512	26,638	110,150	64,490	16,938	81,428
Europe, Middle East and Africa	17,811	12,993	30,804	21,218	23,148	44,366
Asia-Pacific	15,565	8,813	24,378	15,810	8,561	24,371
Total revenues	\$ 199,515	\$ 118,594	\$ 318,109	\$ 152,083	\$ 101,007	\$ 253,090

Performance Obligations

At December 31, 2022, revenues associated with our open performance obligations totaled \$164,653. Within this amount, approximately \$14,276 will be earned as revenue in excess of one year. We expect to recognize the remaining revenues associated with unsatisfied or partially satisfied performance obligations within 12 months.

Contract Assets and Liabilities

As of December 31, 2022 and March 31, 2022, contract assets were \$16,597 and \$19,626, respectively. There were no losses recognized on our contract assets for the nine months ended December 31, 2022 and 2021, except as described in Note 4, "Restructuring and Other Charges/(Income)." As of December 31, 2022 and March 31, 2022, contract liabilities were \$9,780 and \$8,010, respectively. The majority of contract liabilities at March 31, 2022 will be recognized as revenue in fiscal 2023. We typically recognize revenue associated with our contract liabilities within 12 months.

12. Income Taxes

Our effective income tax rate was 29.1% and 32.2% for the nine months ended December 31, 2022 and 2021, respectively. In connection with the strategic assessment related to our Russian subsidiary, the Company released accrued withholding taxes on earning repatriations for a discrete tax benefit of \$1,033 during the nine months ended December 31, 2022. We do not expect to generate further tax benefits in Russia. During the nine months ended December 31, 2021, the Company recorded discrete tax expenses of \$301 related to withholding taxes in Canada and \$430 related to an increase in withholding tax rate in our Russian subsidiary.

As of December 31, 2022, we have established a long-term liability for uncertain tax positions in the amount of \$943. As of December 31, 2022, the tax years for the fiscal years ended March 31, 2017 through March 31, 2022, remain open to examination by the major taxing jurisdictions.

13. Segment Information

We maintain four reportable segments based on four geographic countries or regions in which we operate: (i) United States and Latin America ("US-LAM"), (ii) Canada, (iii) Europe, Middle East and Africa ("EMEA") and (iv) Asia-Pacific ("APAC"). Within our four reportable segments, our core products and services are focused on the following markets: chemical and petrochemical, oil, gas, power generation, commercial, food and beverage, rail and transit, and other, which we refer to as our "key end markets." We offer a full suite of products (heating units, heating cables, industrial heating blankets and related products, temporary power solutions and tubing bundles), services (engineering, installation and maintenance services)

and software (design optimization and wireless and network control systems) required to deliver comprehensive solutions to some of the world's largest and most complex projects. Profitability within our segments is measured by operating income. Profitability can vary in each of our reportable segments based on the competitive environment within the region, the level of corporate overhead, such as the salaries of our senior executives and the level of research and development and marketing activities in the region, as well as the mix of products and services. For purposes of this note, revenue is attributed to individual countries or regions on the basis of the physical location and jurisdiction of organization of the subsidiary that invoices the material and services.

Total sales to external customers, inter-segment sales, depreciation expense, amortization expense, income from operations, property, plant and equipment, net and total assets for each of our four reportable segments are as follows:

	Three Months Ended December 31, 2022	Three Months Ended December 31, 2021	Nine Months Ended December 31, 2022	Nine Months Ended December 31, 2021
Sales to External Customers:				
United States and Latin America	\$ 59,750	\$ 49,827	\$ 152,777	\$ 102,925
Canada	43,171	31,054	110,150	81,428
Europe, Middle East and Africa	11,225	12,937	30,804	44,366
Asia-Pacific	7,964	6,795	24,378	24,371
	<u>\$ 122,110</u>	<u>\$ 100,613</u>	<u>\$ 318,109</u>	<u>\$ 253,090</u>
Inter-Segment Sales:				
United States and Latin America	\$ 10,041	\$ 8,588	\$ 32,783	\$ 29,424
Canada	5,386	2,616	12,042	7,555
Europe, Middle East and Africa	279	295	935	1,137
Asia-Pacific	749	313	1,561	930
	<u>\$ 16,455</u>	<u>\$ 11,812</u>	<u>\$ 47,321</u>	<u>\$ 39,046</u>
Depreciation Expense:				
United States and Latin America	\$ 1,113	\$ 1,396	\$ 3,700	\$ 4,331
Canada	1,096	1,245	3,396	3,967
Europe, Middle East and Africa	94	101	283	305
Asia-Pacific	35	43	106	133
	<u>\$ 2,338</u>	<u>\$ 2,785</u>	<u>\$ 7,485</u>	<u>\$ 8,736</u>
Amortization Expense:				
United States and Latin America	\$ 588	\$ 295	\$ 1,587	\$ 885
Canada	1,724	1,858	5,354	5,624
Europe, Middle East and Africa	21	23	62	71
Asia-Pacific	34	11	69	33
	<u>\$ 2,367</u>	<u>\$ 2,187</u>	<u>\$ 7,072</u>	<u>\$ 6,613</u>
Income/(Loss) from Operations:				
United States and Latin America	\$ 8,338	\$ 6,728	\$ 26,055	\$ 4,832
Canada	13,005	7,312	25,781	15,136
Europe, Middle East and Africa	(5,963)	2,026	(7,526)	6,464
Asia-Pacific	1,142	683	2,888	3,107
Unallocated:				
Stock compensation	(1,994)	(275)	(4,438)	(2,698)
Public company costs	(466)	(305)	(1,446)	(1,464)
	<u>\$ 14,062</u>	<u>\$ 16,169</u>	<u>\$ 41,314</u>	<u>\$ 25,377</u>

	December 31, 2022	March 31, 2022
Property, Plant and Equipment, Net:		
United States and Latin America	\$ 30,325	\$ 31,919
Canada	27,830	30,686
Europe, Middle East and Africa	2,312	2,796
Asia-Pacific	572	638
	<u>\$ 61,039</u>	<u>\$ 66,039</u>
Total Assets:		
United States and Latin America	\$ 270,565	\$ 241,421
Canada	286,847	296,459
Europe, Middle East and Africa	58,394	67,608
Asia-Pacific	34,289	31,181
	<u>\$ 650,095</u>	<u>\$ 636,669</u>

Capital expenditures for our reportable segments were as follows:

	Three Months Ended December 31, 2022	Three Months Ended December 31, 2021	Nine Months Ended December 31, 2022	Nine Months Ended December 31, 2021
Capital Expenditures:				
United States and Latin America	\$ 350	\$ 171	\$ 1,773	\$ 811
Canada	1,042	566	3,042	1,833
Europe, Middle East and Africa	65	92	197	223
Asia-Pacific	102	36	161	53
	<u>\$ 1,559</u>	<u>\$ 865</u>	<u>\$ 5,173</u>	<u>\$ 2,920</u>

14. Subsequent Events

As a result of the continued impact of the Russo-Ukrainian war, including sanctions related thereto, the Company conducted a strategic assessment of its operations in the Russian Federation, and, on January 31, 2023, the board of directors of the Company (the "Board") authorized the Company to withdraw from its operations in the Russian Federation (the "Russia Exit") through a planned disposition of its Russian subsidiary. Consequently, in addition to the loss described in Note 4, "Restructuring and Other Charges/(Income)," the Company could recognize an additional \$4 million to \$7 million of loss. We expect to complete the Russia Exit by the first quarter of our fiscal 2024, subject to the receipt of regulatory approval by the government of the Russian Federation and certain lenders under the Company's Facilities.

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

Introduction and Special Note Regarding Forward-Looking Statements

Management's discussion and analysis of our financial condition and results of operations is provided as a supplement to the unaudited condensed consolidated financial statements and accompanying notes thereto for the three and nine months ended December 31, 2022 and 2021 to help provide an understanding of our financial condition, changes in our financial condition and results of our operations. In this quarterly report, we refer to the three month periods ended December 31, 2022 and 2021 as "Interim 2023" and "Interim 2022," respectively. Accordingly, we refer to the nine-month periods ended December 31, 2022 and 2021 as "YTD 2023" and "YTD 2022," respectively. The following discussion should be read in conjunction with, and is qualified in its entirety by reference to, our unaudited condensed consolidated financial statements and related notes included in Item 1 above.

This quarterly report includes forward-looking statements within the meaning of the U.S. federal securities laws in addition to historical information. These forward-looking statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, without limitation, statements regarding our industry, business strategy, plans, goals and expectations concerning our market position, future operations, margins, profitability, capital expenditures, liquidity and capital resources and other financial and operating information. When used in this discussion, the words "anticipate," "assume," "believe," "budget," "continue," "contemplate," "could," "should," "estimate," "expect," "intend," "may," "plan," "possible," "potential," "predict," "project," "will," "would," "future," and similar terms and phrases are intended to identify forward-looking statements in this quarterly report.

Forward-looking statements reflect our current expectations regarding future events, results or outcomes. These expectations may or may not be realized. Some of these expectations may be based upon assumptions, data or judgments that prove to be incorrect. In addition, our business and operations involve numerous risks and uncertainties, many of which are beyond our control, which could result in our expectations not being realized or otherwise materially affect our financial condition, results of operations and cash flows. These forward-looking statements include, but are not limited to, statements regarding: (i) our plans to strategically pursue emerging growth opportunities, including strategic acquisitions, in diverse regions and across industry sectors; (ii) our plans to secure more new facility project bids; (iii) our ability to generate more facility maintenance, repair and operations or upgrades or expansions revenue, from our existing and future installed base; (iv) our ability to timely deliver backlog; (v) our ability to respond to new market developments and technological advances; (vi) our expectations regarding energy consumption and demand in the future and its impact on our future results of operations; (vii) our plans to develop strategic alliances with major customers and suppliers; (viii) our expectations that our revenues will increase; (ix) our belief in the sufficiency of our cash flows to meet our needs for the next year; (x) our ability to integrate acquired companies and successfully divest certain businesses, including our Russia business; (xi) our ability to successfully achieve synergies from acquisitions; and (xii) our ability to make required debt repayments.

Actual events, results and outcomes may differ materially from our expectations due to a variety of factors. Although it is not possible to identify all of these factors, they include, among others, (i) the outbreak of a global pandemic, including the current pandemic (COVID-19 and its variants); (ii) general economic conditions and cyclicality in the markets we serve; (iii) future growth of energy, chemical processing and power generation capital investments; (iv) our ability to operate successfully in foreign countries; (v) our ability to successfully develop and improve our products and successfully implement new technologies; (vi) competition from various other sources providing similar heat tracing and process heating products and services, or alternative technologies, to customers; (vii) our ability to deliver existing orders within our backlog; (viii) our ability to bid and win new contracts; (ix) the imposition of certain operating and financial restrictions contained in our debt agreements; (x) our revenue mix; (xi) our ability to grow through strategic acquisitions; (xii) our ability to manage risk through insurance against potential liabilities (xiii) changes in relevant currency exchange rates; (xiv) tax liabilities and changes to tax policy; (xv) impairment of goodwill and other intangible assets; (xvi) our ability to attract and retain qualified management and employees, particularly in our overseas markets; (xvii) our ability to protect our trade secrets; (xviii) our ability to protect our intellectual property; (xix) our ability to protect data and thwart potential cyber-attacks; (xx) a material disruption at any of our manufacturing facilities; (xxi) our dependence on subcontractors and third-party suppliers; (xxii) our ability to profit on fixed-price contracts; (xxiii) the credit risk associated to our extension of credit to customers; (xxiv) our ability to achieve our operational initiatives; (xxv) unforeseen difficulties with expansions, relocations, or consolidations of existing facilities; (xxvi) potential liability related to our products as well as the delivery of products and services; (xxvii) our ability to comply with foreign anti-corruption laws; (xxviii) export control regulations or sanctions; (xxix) changes in government administrative policy; (xxx) the current geopolitical instability in Russia and Ukraine and related sanctions by the U.S. and Canadian governments and European Union; (xxxi) environmental and health and safety laws and regulations as well as environmental liabilities; and (xxxii) climate change and related regulation of greenhouse gases and (xxxiii) those factors listed under Item 1A, "Risk Factors" included in our Annual Report on Form 10-K for the fiscal year ended March 31, 2022, filed with the Securities and Exchange Commission (the "SEC") on May 26, 2022, and in any subsequent Quarterly Reports on Form 10-Q, Current Reports on Form 8-K or other filings that we have filed or may file with the SEC. Any one of these factors or a combination of these factors could materially affect our future results of operations and could influence whether any forward-looking statements contained or incorporated by reference in this quarterly report ultimately prove to be accurate.

Our forward-looking statements are not guarantees of future performance, and actual results and future performance may differ materially from those suggested in any forward-looking statements. We do not intend to update these statements unless we are required to do so under applicable securities laws.

Business Overview and Company History

We are one of the largest providers of highly engineered industrial process heating solutions for process industries. For over 65 years, we have served a diverse base of thousands of customers around the world in attractive and growing markets, including chemical and petrochemical, oil and gas, power generation, commercial, rail and transit, and other, which we refer to as our "key end markets." We offer a full suite of products (heating units, heating cables, temporary power solutions, tubing bundles, industrial heating blankets and chillers), services (engineering, installation and maintenance services) and software (design optimization and wireless and network control systems) required to deliver comprehensive solutions to some of the world's largest and most complex projects. With a legacy of innovation and continued investment in research and development, Thermon has established itself as a technology leader in hazardous or classified areas, and we are committed to developing sustainable solutions for our customers. We serve our customers through a global network of sales and service professionals and distributors in more than 30 countries and through our eight manufacturing facilities on three continents. These global capabilities and longstanding relationships with some of the largest multinational oil and gas, chemical processing, power and engineering, procurement and construction ("EPC") companies in the world have enabled us to diversify our revenue streams

and opportunistically access high growth markets worldwide. During YTD 2023 and YTD 2022, approximately 55% and 59%, respectively, of our revenues were generated from outside of the United States.

Revenue. Our revenues are derived from providing customers with a full suite of innovative and reliable process heating solutions, including advanced heating and filtration solutions for industrial and hazardous area applications. Revenue recognized at a point in time based on when control transitions to the customer is generally related to our product sales. Point in time revenue does not typically require engineering or installation services. Revenue recognized over time occurs on our projects where engineering or installation services, or a combination of the two, are required. We recognize revenue related to such projects in a systematic way that reflects the transfer of goods or services, or a combination of goods and services, to the customer.

We maintain four reportable segments based on four geographic countries or regions in which we operate: (i) United States and Latin America ("US-LAM"), (ii) Canada, (iii) Europe, Middle East and Africa ("EMEA"), and (iv) Asia-Pacific ("APAC"). Within our four reportable segments, our core products and services are focused on the following markets: chemical and petrochemical, oil, gas, power generation, commercial, rail and transit, food and beverage, and other, which we refer to as our "key end markets."

We believe that our pipeline of planned projects, in addition to our backlog of signed purchase orders, provides us with some visibility into our future revenue. Historically, we have experienced few order cancellations, and the cancellations that have occurred in the past have not been material compared to our total contract volume or total backlog. The small number of order cancellations is attributable in part to the fact that a large portion of our solutions are ordered and installed toward the end of large project construction. Our backlog at December 31, 2022, was \$164.7 million, as compared to \$156.2 million at March 31, 2022. The timing of recognition of revenue out of backlog is not always certain, as it is subject to a variety of factors that may cause delays, many of which are beyond our control (such as customers' delivery schedules and levels of capital and maintenance expenditures). When delays occur, the recognition of revenue associated with the delayed project is likewise deferred.

Cost of sales. Our cost of sales primarily includes the costs of raw material items used in the manufacturing of our products, costs of ancillary products that are sourced from external suppliers and construction labor cost. Additional costs of revenue include contract engineering costs directly associated to projects, direct labor costs, shipping and handling costs, and other costs associated with our manufacturing/fabrication operations. The other costs associated with our manufacturing/fabrication operations are primarily indirect production costs, including depreciation, indirect labor costs, warranty-related costs, and the costs of manufacturing support functions such as logistics and quality assurance. Key raw material costs include polymers, copper, stainless steel, insulating material, and other miscellaneous parts related to products manufactured or assembled as part of our heat tracing solutions. Raw material costs have been stable in the past; however, we face challenges from time to time with temporary shortages related to the global supply chain issues that have persisted since COVID-19 pandemic in certain raw materials as well as an increase in costs of these materials due to use of alternate suppliers, higher freight costs, increased lead times, expedited shipping and other inflationary factors. We cannot provide any assurance that we will continue to mitigate temporary raw material shortages or be able to pass along such cost increases, including the potential impacts of tariffs or supply chain challenges, to our customers in the future, and if we are unable to do so, our results of operations may be adversely affected.

Operating expenses. Our selling, general and administrative expenses ("SG&A") are primarily comprised of compensation and related costs for sales, marketing, pre-sales engineering and administrative personnel, plus other sales related expenses as well as other costs related to research and development, insurance, professional fees, the global integrated business information system, and provisions for bad debts. In addition, our deferred compensation expense includes a non-qualified deferred compensation plan for certain highly compensated employees where payroll contributions are made by the employees on a pre-tax basis. The expense/income associated with our deferred compensation plan is titled "Deferred compensation plan expense/(income)" on our condensed consolidated statements of operations and comprehensive income/(loss).

Key drivers affecting our results of operations. Our results of operations and financial condition are affected by numerous factors, including those described under the caption "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended March 31, 2022, filed with the SEC on May 26, 2022, and in any subsequent Quarterly Reports on Form 10-Q that we have filed or may file with the SEC, including those described below. These factors include the following:

- **Impact of product mix.** Typically, our customers require our products as well as our engineering and construction services. The level of service and construction needs affect the profit margin for each type of revenue.

We tend to experience lower margins from our design optimization, engineering, installation and maintenance services, which are typically large projects tied to our customers capex budgets and are comprised of more than \$0.5 million in total revenue. For clarity, we will refer to these as "Over time large projects." Our results of operations in recent years have been impacted by the various construction phases of Over time large projects. We are typically designated as the heat tracing provider of choice by the project owner. We then engage with multiple

contractors to address incorporating various heat tracing solutions throughout the overall project. Our largest projects may generate revenue for several quarters. In the early stages of an Over time large project, our revenues are typically realized from the provision of engineering services. In the middle stages, or the material requirements phase, we typically experience the greatest demand for our heat tracing cable, at which point our revenues tend to accelerate. Revenues tend to decrease gradually in the final stages of a project and are generally derived from installation services and demand for electrical panels and other miscellaneous electronic components used in the final installation of heat tracing cable, which we frequently outsource from third-party manufacturers.

Projects which do not require installation and maintenance services are smaller in size and representative of maintenance, repairs and small upgrades necessary to improve efficiency and uptime. These small projects are typically tied to our customers operating expense budgets with improved profit margins, and are generally less than \$0.5 million in total revenue. We will refer to such projects as "Over time small projects."

The most profitable of our sales are derived from selling our heating products, for which we recognize revenue at a point in time. We also tend to experience lower margins from our outsourced products, such as electrical switch gears and transformers, than we do from our manufactured products. Accordingly, our results of operations are impacted by our mix of products and services.

We estimate that Point in time and Over time revenues have each made the following contribution as a percentage of total revenue in the periods listed:

	Three Months Ended December 31, Nine months ended December 31,			
	2022	2021	2022	2021
Point in time	64%	57%	63%	60%
Over time:	36%	43%	37%	40%
<i>Small projects</i>	14%	13%	13%	16%
<i>Large projects</i>	22%	28%	22%	24%

Our Over time revenue includes (i) products and services which are billed on a time and materials basis, and (ii) fixed fee contracts for complex turnkey solutions. For our time and materials service contracts, we recognize revenues as the products and services are provided over the term of the contract and have determined that the stated rate for installation services and products is representative of the stand-alone selling price for those services and products.

Our turnkey projects, or fixed fee projects, offer our customers a comprehensive solution for heat tracing from the initial planning stage through engineering/design, manufacture, installation and final proof-of-performance and acceptance testing. Turnkey services also include project planning, product supply, system integration, commissioning and on-going maintenance. Turnkey solutions, containing multiple deliverables, are customer specific and do not have an alternative use and present an unconditional right to payment, and thus are treated as a single performance obligation with revenues recognized over time as work progresses.

For revenue recognized under fixed fee turnkey contracts, we measure the costs incurred that contribute towards the satisfaction of our performance obligation as a percentage of the total cost of production (the "cost-to-cost method"), and we recognize a proportionate amount of contract revenue, as the cost-to-cost method appropriately depicts performance towards satisfaction of the performance obligation. Changes to the original cost amount may be required during the life of the contract and such estimates are reviewed on a regular basis. Sales and gross profits are adjusted using the cumulative catch-up method for revisions in estimated contract costs. Reviews of estimates have not generally resulted in significant adjustments to our results of operations.

Point in time revenue represents goods transferred to customers at a point in time and is recognized when obligations under the terms of the contract with the customer are satisfied; generally this occurs with the transfer of control upon shipment.

- *Cyclicality of end-users' markets.* Demand for our products and services depends in large part upon the level of capital and maintenance expenditures of our customers and end users, in particular those in the energy, oil, gas, chemical processing and power generation industries, and firms that design and construct facilities for these industries. These customers' expenditures historically have been cyclical in nature and vulnerable to economic downturns. Large projects historically have been a substantial source of revenue growth, and large project revenues tend to be more cyclical than maintenance and repair revenues. A sustained decrease in capital and maintenance spending or in new facility construction by our customers could have a material adverse effect on the demand for our products and services and our business, financial condition and results of operations.

- *Acquisition strategy.* In recent years, we have been executing on a strategy to grow the Company through the acquisition of businesses that are either in the process heating solutions industry or provide complementary products and solutions for the markets and customers we serve. Refer to Note 2, "Acquisition," for more discussion of our recent acquisition.

Recent Developments

As a result of the continued impact of the Russo-Ukrainian war, including sanctions related thereto, the Company conducted a strategic assessment of its operations in the Russian Federation, and, on January 31, 2023, the Board authorized the Company to withdraw from its operations in the Russian Federation (the "Russia Exit"). We expect to execute the Russia Exit by the first quarter of our fiscal 2024. However, the Russia Exit is subject to the receipt of regulatory approval by the government of the Russian Federation and certain lenders under the Company's Facilities. As a result, the timing of the Russia Exit is uncertain. Refer to Note 4, "Restructuring and Other Charges/(Income)" and Note 14, "Subsequent Events" for more information.

On May 31, 2022, our subsidiary Thermon Holding Corp., as buyer, acquired Powerblanket, ("Powerblanket"), from Glacier Capital LLC, as seller (the "Acquisition"). Powerblanket is a leading North American supplier of heated blankets built upon patented heat spreading technology, and portable industrial chillers. The purchase price for the acquisition was \$35.3 million. Refer to Note 2, "Acquisition," for more information.

The COVID-19 pandemic and the measures being taken to address and limit the spread of the virus have adversely affected the economies and financial markets of many countries, resulting in an economic downturn that negatively impacted, and may continue to negatively impact, global demand for our products and services. We are still experiencing effects of lockdowns in Asia, which are impacting our results in our APAC segment. The effect of loosening pandemic restrictions outside of APAC, along with pent-up demand from periods of stagnant lockdown and uncertainty have combined to strengthen customer demand from most regions we serve, especially in North America. During periods of the pandemic we experienced, and we may in the future experience, a decline in the demand of our products and services or disruptions in raw materials or labor required for manufacturing that has in the past, and may in the future, materially and negatively impact our business, financial condition, results of operation and overall financial performance. We continue to monitor the pandemic restrictions and other effects the pandemic may have on our business.

Results of Operations - Three-month periods ended December 31, 2022 and 2021

The following table sets forth our unaudited condensed consolidated statements of operations for the three months ended December 31, 2022 and 2021 and indicates the amount of change and percentage change between periods.

(Dollars in thousands)	Three Months Ended December 31,		Increase/(Decrease)	
	2022	2021	\$	%
Consolidated Statements of Operations Data:				
Sales	\$ 122,110	\$ 100,613	\$ 21,497	21 %
Cost of sales	71,660	59,866	11,794	20 %
Gross profit	50,450	40,747	9,703	24 %
Operating expenses:				
Selling, general and administrative expenses	30,889	22,099	8,790	40 %
Deferred compensation plan expense/(income)	464	292	172	59 %
Amortization of intangible assets	2,367	2,187	180	8 %
Restructuring and other charges/(income)	2,668	—	2,668	nm
Income/(loss) from operations	14,062	16,169	(2,107)	(13)%
Other income/(expenses):				
Interest expense, net	(1,877)	(842)	(1,035)	123 %
Other income/(expense)	659	(627)	1,286	(205)%
Income/(loss) before provision for income taxes	12,844	14,700	(1,856)	(13)%
Income tax expense/(benefit)	4,419	3,430	989	29 %
Net income/(loss)	\$ 8,425	\$ 11,270	\$ (2,845)	(25)%

As a percent of sales:			Change in basis
	2022	2021	points
Gross profit	41.3 %	40.5 %	80 bps
Selling, general and administrative expenses	25.3 %	22.0 %	330 bps
Income/(loss) from operations	11.5 %	16.1 %	-460 bps
Net income/(loss)	6.9 %	11.2 %	-430 bps
Effective tax rate	34.4 %	23.3 %	

Three Months Ended December 31, 2022 (“Interim 2023”) Compared to the Three Months Ended December 31, 2021 (“Interim 2022”)

Revenues. Revenues increased in Interim 2023 primarily due to strong performance in our Canada and US-LAM reportable segments, which grew revenues \$12.1 million, or 39%, and \$9.9 million, or 20%, respectively, compared to Interim 2022. Revenues in these segments were bolstered in part by strong demand in our upstream and downstream Oil and Gas end markets. Additionally, our recent acquisition of Powerblanket in the US-LAM segment contributed \$7.9 million in revenue growth in Interim 2023. In our APAC segment, revenues increased by \$1.2 million, or 17%, compared to Interim 2022. Revenues in APAC benefited from some recovering business activity coming off of the effects of extended COVID-19-related lockdowns in the region. Revenue in our EMEA segment contracted in Interim 2023, with a decline of \$(1.7) million, or (13)%, compared to Interim 2022. Impacting revenue in EMEA were the effects of the Russo-Ukrainian war to our Russian subsidiary, as well as the overall recessionary environment which resulted in fewer projects and less volume and consequently, greater competition. Separately, revenue was negatively impacted in Interim 2023 by foreign exchange rates by \$5.2 million as the U.S. dollar strengthened relative to the Company's foreign currency-denominated operations.

Point in time revenues in Interim 2023 were \$78.4 million, or 64%, of total sales, while Over time revenues were \$43.7 million, or 36%. This compares to 57% Point in time revenues and 43% Over time revenues in Interim 2022. Refer to the "Overview" section above for definitions of Point in time and Over time revenue.

Gross profit and margin. The higher gross profit in Interim 2023 is primarily attributable to strong Point in time and Over time sales in our US-LAM and Canada segments coupled with improved gross margin due to customer price increases and operational efficiencies. These positive drivers were partially offset by \$4.8 million, or 396 bps, associated with the charges in our Russian subsidiary in addition to incremental costs from global supply chain challenges. Refer to Note 4, "Restructuring and Other Charges/(Income)" for more information regarding the charges in our Russian subsidiary.

Selling, general and administrative expenses. The increase in SG&A expenses in Interim 2023 was driven by greater sales activity resulting in higher salaries & benefits, performance-based incentive compensation, sales commissions, as well as increased travel and marketing costs. Additionally, the acquisition of Powerblanket added approximately \$2.0 million of incremental SG&A expenses not present in Interim 2022. SG&A as a percent of sales was 25.3% in Interim 2023 versus 22.0% in Interim 2022. This increase in SG&A as a percent of sales was attributable in part to greater stock compensation expense associated with performance-based shares and higher bad debt expense, which includes \$0.8 million related to the charges in our Russian subsidiary.

Deferred compensation plan expense/(income). The increase in deferred compensation plan expense in Interim 2023 is attributable in part to increases in compensation deferred by certain employees as well as market fluctuations in the underlying balances as compared to Interim 2022. To note, this compensation plan expense/(income) is materially offset in other income/(expense) where the Company records market gains/(losses) on the related investment assets. Refer to Note 3, "Fair Value Measurements," for more information.

Amortization of intangible assets. Amortization of intangible assets in Interim 2023 increased over Interim 2022, as we began to amortize more intangible assets following our acquisition of Powerblanket in the first fiscal quarter of the 2023. Please refer to Note 2, "Acquisition," for more information regarding our acquisition.

Restructuring and other charges/(income). Restructuring and other charges/(income) was \$2.7 million in Interim 2023 and zero in Interim 2022. Refer to Note 4, "Restructuring and Other Charges/(Income)" for more information.

Interest expense, net. The increase in interest expense is primarily due to a higher average interest rate during Interim 2023, which was approximately 5% versus approximately 2% during Interim 2022. See Note 9, "Debt," for additional information on our long-term debt.

Other income/(expense). The increase in other income is primarily due to foreign currency gains, net in Interim 2023 versus losses, net in Interim 2022. The remaining variance is attributable to relatively more gains on the Company's non-qualified deferred compensation plan than in the prior year due to market fluctuations. These gains are materially offset by increased deferred compensation plan expense/(income) as noted above.

Income tax expense/(benefit). Our effective tax rate was 34.4% and 23.3% in Interim 2023 and Interim 2022, respectively. The increase in rate is almost entirely due to the Company's decision to exit its operations in the Russian Federation. During Interim 2023, we recorded a total pretax charge of \$8,334 for which the Company does not anticipate receiving any tax benefits, except for releasing \$1.0 million in Interim 2023 related to estimated withholding taxes at our Russian subsidiary. Refer to Note 12, "Income Taxes," for additional detail.

Net income/(loss). The change in net income/(loss) is explained by the changes noted in the sections above.

Results of Operations - Nine-month periods ended December 31, 2022 and 2021

The following table sets forth our unaudited condensed consolidated statements of operations for the nine months ended December 31, 2022 and 2021, respectively, and indicates the amount of change and percentage change between periods.

(Dollars in thousands)	Nine Months Ended December 31,		Increase/(Decrease)	
	2022	2021	\$	%
Consolidated Statements of Operations Data:				
Sales	\$ 318,109	\$ 253,090	\$ 65,019	26 %
Cost of sales	184,508	154,084	30,424	20 %
Gross profit	133,601	99,006	34,595	35 %
Operating expenses:				
Selling, general and administrative expenses	83,046	66,820	16,226	24 %
Deferred compensation plan expense/(income)	(499)	610	(1,109)	(182)%
Amortization of intangible assets	7,072	6,613	459	7 %
Restructuring and other charges/(income)	2,668	(414)	3,082	(744)%
Income/(loss) from operations	41,314	25,377	15,937	
Other income/(expenses):				
Interest expense, net	(4,120)	(5,029)	909	(18)%
Other income/(expense)	(592)	(3,517)	2,925	(83)%
Income/(loss) before provision for income taxes	36,602	16,831	19,771	117 %
Income tax expense/(benefit)	10,637	5,424	5,213	96 %
Net income/(loss)	\$ 25,965	\$ 11,407	\$ 14,558	128 %
Change in basis points				
As a percent of sales:				
Gross profit	42.0 %	39.1 %	290 bps	
Selling, general and administrative expenses	26.1 %	26.4 %	-30 bps	
Income/(loss) from operations	13.0 %	10.0 %	300 bps	
Net income/(loss)	8.2 %	4.5 %	370 bps	
Effective tax rate	29.1 %	32.2 %		

Nine Months Ended December 31, 2022 ("YTD 2023") Compared to the Nine Months Ended December 31, 2021 ("YTD 2022")

Revenues. Revenue increased in YTD 2023 compared to YTD 2022 due to strong performance in our US-LAM and Canada segments. US-LAM revenue increased \$49.9 million, or 48%, while Canada revenue increased \$28.7 million, or 35%. Revenues in these segments were bolstered in part by strong demand in our upstream and downstream Oil and Gas end markets. Additionally, our recent acquisition of Powerblanket in the US-LAM segment contributed \$12.0 million in revenue growth in YTD 2023. These increases were partly offset by contraction in our EMEA segment, with a decrease in revenue of \$(13.6) million, or (31)%. Revenue in our APAC segment was flat compared to YTD 2022. The ongoing effects of the Russo-Ukrainian war as well as the overall recessionary environment impacted the results in EMEA, while lingering COVID-19 lockdowns and their effects has delayed recovery in APAC. Separately, revenue was negatively impacted in YTD 2023 by foreign exchange rates by approximately, \$11.2 million.

Point in time revenue and Over time revenue comprised 63% and 37% of sales in YTD 2023, respectively, and 60% and 40% in YTD 2022, respectively.

Gross profit and margin. Gross profit increased \$34.6 million on greater sales volumes and greater profitability with gross margin improving by 290 bps. We delivered increased sales in both Over time sales as well as Point in time sales during YTD 2023, while more profitable point in time sales grew as a percent of the mix. Furthermore, YTD 2023 gross margin was augmented by improved gross margin due to customer price increases as well as operational efficiencies. However, these positive drivers were partially offset by \$4.8 million, or 152 bps, associated with the charges in our Russian subsidiary, as well

as incremental costs from global supply chain challenges. Separately, gross margin in YTD 2022 was diluted, in part, by warranty costs associated with the operational execution of a large project in our US-LAM segment that was completed in a prior year, which was somewhat offset by benefits from the Canadian Emergency Wage program ("CEWS"). Refer to Note 1, "Basis of Presentation," for more information on CEWS. Refer to Note 4, "Restructuring and Other Charges/(Income)" for more information regarding the charges in our Russian subsidiary.

Selling, general and administrative expenses. Selling, general and administrative expenses increased \$16.2 million in YTD 2023 compared to YTD 2022 driven by costs associated with greater sales activity resulting in increased salaries and benefits, incentive pay, commissions, travel, and marketing costs. In addition, costs increased in YTD 2023 due to the acquisition of Powerblanket. However, SG&A as a percent of sales decreased by 30 bps, which is attributable to continued sales growth coupled with prudent cost management.

Deferred compensation plan expense/(income). Deferred compensation plan expense/(income) generated income in YTD 2023 due to market fluctuations in the underlying balances owed to employees. This compensation plan expense/(income) is materially offset in other income/(expense) where the Company recorded market gains/(losses) on related investment assets. Refer to Note 3, "Fair Value Measurements," for more information.

Restructuring and other charges/(income). Restructuring and other charges/(income) was \$2.7 million in YTD 2023 and (0.4) million in YTD 2022. Refer to Note 4, "Restructuring and Other Charges/(Income)" for more information.

Amortization of intangible assets. Amortization of intangible assets increased in YTD 2023 as compared to YTD 2022, as we began to amortize more intangible assets following our acquisition of Powerblanket in the first fiscal quarter of the 2023. Activity within these accounts is driven by periodic straight-line amortization of our acquired intangibles.

Interest expense, net. Interest expense, net decreased in YTD 2023 as compared to YTD 2022 due primarily to lower average outstanding principal. Refer to Note 9, "Debt," for more information on our outstanding debt.

Other income/(expense). The decrease in Other income/(expense) in YTD 2023 was primarily due to the debt extinguishment costs recognized in YTD 2022 that were absent in YTD 2023, as well as greater losses, net on foreign currency transactions in YTD 2022. The remaining change is attributable to market fluctuations in the underlying investments associated with our non-qualified deferred compensation plan. These unrealized gains and losses on investments were materially offset by deferred compensation plan expense/(income) as noted above.

Income taxes. Income tax expense was \$10.6 million in YTD 2023 on pre-tax income of \$36.6 million compared to income tax expense of \$5.4 million in YTD 2022 on pre-tax income of \$16.8 million, an increase of \$5.2 million in income tax expense. Our effective tax rate was 29.1% and 32.2% in YTD 2023 and YTD 2022, respectively. The YTD 2023 rate was impacted by the charges in our Russian subsidiary. Specifically, during Interim 2023, we recorded a total pretax charge of \$8,334 for which the Company does not anticipate receiving any tax benefits, except for releasing \$1.0 million in Interim 2023 related to estimated withholding taxes at our Russian subsidiary. During YTD 2022, we recorded discrete tax items totaling \$0.7 million primarily related to withholding taxes in Canada and Russia.

Net income/(loss). The change in net income/(loss) is explained by the changes noted above.

Contingencies

See Note 10, "Commitments and Contingencies," to our unaudited condensed consolidated financial statements included above in Part I, Item 1. Financial Statements (Unaudited) of this quarterly report, which is hereby incorporated by reference into this Item 2.

Liquidity and Capital Resources

Our primary sources of liquidity are cash flows from operations and funds available under our revolving credit facility. Our primary liquidity needs are to finance our working capital, capital expenditures, debt service needs and potential future acquisitions.

At December 31, 2022, we had \$35.4 million in cash and cash equivalents. We manage our global cash requirements by maintaining cash and cash equivalents at various financial institutions throughout the world where we operate. Approximately \$9.4 million, or 27%, of these amounts were held in domestic accounts with various institutions and approximately \$26.0 million, or 73%, of these amounts were held in accounts outside of the United States with various financial institutions. While we require cash needs at our various foreign operations, excess cash is available for distribution to the United States through intercompany dividends or debt reduction in Canada. We had \$3.6 million of cash and cash equivalents held in our Russian subsidiary at December 31, 2022. Due to the uncertain nature of whether we can repatriate certain funds from our Russian subsidiary, \$3.1 million was classified as restricted and therefore, not included in the cash and cash equivalents balance noted above. Please refer to Note 1, "Basis of Presentation," for more information regarding our restricted cash.

Generally, we seek to maintain a cash and cash equivalents balance between \$30.0 and \$40.0 million. We will encounter periods where we may be above or below this range, due to, for example, inventory buildup for anticipated seasonal demand in fall and winter months, related cash receipts from credit sales in months that follow, debt maturities, restructuring activities, larger capital investments, severe and/or protracted economic downturns, acquisitions, or some combination of the above activities. The Company continues to manage its working capital requirements effectively through optimizing inventory levels, doing business with credit-worthy customers, and extending payments terms with its supplier base.

Future Cash Requirements

Our future capital requirements depend on many factors as noted throughout this report. We believe that, based on our current level of operations and related cash flows, plus cash on hand and available borrowings under our revolving credit facility, we will be able to meet our liquidity needs for the next twelve months and the foreseeable future. We had \$24.5 million of borrowings outstanding on our revolving credit facility at December 31, 2022. The \$24.5 million was borrowed to support the acquisition of Powerblanket. Although subject to change and not required by our Credit Facility, we intend to pay back the outstanding balance within the next twelve months. Please refer to Note 2, "Acquisition," for more information regarding our acquisition.

For fiscal 2023, we expect our capital expenditures to approximate 2.0% to 2.5% of revenue. Additionally, we expect to pay \$10.2 million in principal payments on our long-term debt, as well as \$3.5 million related to our leased assets in the next twelve months. See further details in Note 9, "Debt," in Part I, Item 1. Financial Statements (Unaudited) of this quarterly report. We also have payment commitments of \$3.4 million, mostly related to long-term information technology contracts, of which \$2.0 million are due within the next twelve months.

Strategic Investments

Our long term plan includes investments in three key areas as we look to profitably grow the Company beyond its existing installed base.

First, we expect to diversify our revenues into adjacent markets like commercial, food & beverage, transportation and other non-oil and gas industries where we can continue to differentiate our offerings through quality, safety and customer service, while also aligning Therman's strategy around the energy transition toward a more sustainable global economy.

Second, we anticipate a multi-decades investment trend to emerge based on the rapidly increasing desire for industrial customers to electrify equipment to reduce their carbon footprint, which represents an opportunity for the Company. Therman's process heating expertise will be a key factor in a successful, sustainable transition, and we expect to invest in additional resources to quickly respond to changing customer demand.

Finally, we will continue expanding our technology-enabled maintenance solutions, like our recently launched Genesis Network, which helps our customers more efficiently and safely monitor and maintain their heating systems by utilizing our software, analytics, hardware and process heating maintenance expert services.

These three initiatives will include incremental investments, as evidenced by our investment in our legacy business as well as our recent acquisition of Powerblanket, over a multi-year period, that we expect will result in a more diversified, sustainable, and profitable company over time.

Discussion and Analysis of Cash Flows

	Nine months ended December 31,		
	(Dollars in thousands)		
	2022	2021	Increase/(Decrease)
Total cash provided by/(used in):			
Operating activities	\$ 31,605	\$ 13,746	\$ 17,859
Investing activities	(40,309)	(2,685)	(37,624)
Financing activities	6,729	(17,287)	24,016
Free Cash Flow: ⁽¹⁾			
Cash provided by operating activities	\$ 31,605	\$ 13,746	\$ 17,859
Less: Cash used for purchases of property, plant, and equipment	(5,173)	(2,920)	(2,253)
Plus: Sales of rental equipment	163	235	(72)
Free Cash Flow	\$ 26,595	\$ 11,061	\$ 15,534

(1) "Free Cash Flow" is a non-GAAP financial measure, which we define as net cash provided by operating activities less cash used for the purchase of property, plant, and equipment, net of sales of rental equipment and proceeds from sales of land and buildings. Free Cash Flow is one measure management uses internally to assess liquidity. Our calculation may not be comparable to similarly titled measures reported by other companies.

Operating Cash Flows

Operating cash flows increased in YTD 2023 as compared to YTD 2022 primarily due to an increase in net income of \$14.6 million and less investments in net working capital accounts of \$6.4 million, partly offset by relatively less non-cash items of \$3.1 million.

Investing Cash Flows

Cash used in investing increased in YTD 2023 as compared to YTD 2022 primarily due to the acquisition of Powerblanket for \$35.3 million on May 31, 2022. Refer to Note 2, "Acquisition," for more information. Additionally, we increased our capital expenditures by \$2.3 million in YTD 2023 as compared to YTD 2022, mostly for machinery and equipment, including Temporary Power Solutions rental assets, as well as information technology assets.

Financing Cash Flows

Financing cash flows increased in YTD 2023 versus YTD 2022 primarily due to the drawdown on our Revolving Credit Facility in the amount of \$32.0 million, of which we paid back \$7.5 million in YTD 2023. The Revolving Credit Facility borrowings were used to acquire Powerblanket, as mentioned above.

Credit Facilities

On September 29, 2021, Thermon Group Holdings, Inc. (the "Company"), as a credit party and a guarantor, and its subsidiaries Thermon Holding Corp. ("THC" or the "U.S. Borrower") and Thermon Canada Inc. (the "Canadian Borrower" and together with THC, the "Borrowers"), as borrowers, entered into an Amended and Restated Credit Agreement (the "Credit Agreement") with several banks and other financial institutions or entities from time to time (the "Lenders") and JPMorgan Chase Bank, N.A., as Administrative Agent (the "Agent").

The Credit Agreement is an amendment and restatement of that certain Credit Agreement dated October 30, 2017 by and among Borrowers, the lenders time to time party thereto and JPMorgan Chase Bank, N.A. as administrative agent (the "Prior Credit Agreement"), and provides for the credit facilities described in Note 9, "Debt," in Part I, Item 1. Financial Statements (Unaudited) of this quarterly report.

We had \$24.5 million of borrowings outstanding on our Revolving Credit Facility at December 31, 2022.

Other Non-GAAP Financial Measures

In addition to evaluating our cash flow generation based upon operating, investing, and financing activities, the Company believes that the non-GAAP measure used in this section may provide investors and key stakeholders with another important perspective regarding our performance. The Company does not intend for this non-GAAP metric to be a substitute for the related GAAP measure, nor should it be viewed in isolation and without considering all relevant GAAP measurements. Moreover, our calculation may not be comparable to similarly titled measures reported by other companies.

We define “Free Cash Flow” as net cash provided by operating activities less cash used for the purchase of property, plant, and equipment, net of sales of rental equipment as well as proceeds from sales of land and buildings. This metric should not be interpreted to mean the remaining cash that is available for discretionary spending, dividends, share repurchases, acquisitions, or other purposes, as it excludes significant, mandatory obligations, such as principal payments on the Company’s long-term debt facility. Free cash flow is one measure that the Company uses internally to assess liquidity.

Free Cash Flow totaled \$26.6 million for YTD 2023 as compared to \$11.1 million for YTD 2022, the drivers of which are explained above under “Results of Operations.”

Contractual Obligations and Off-Balance Sheet Arrangements

There have been no material changes outside the ordinary course of business in the Company’s contractual obligations during YTD 2023. The Company does not have any off-balance sheet arrangements or any interest in entities commonly referred to as variable interest entities, which include special purpose entities and other structured finance entities. See the Company’s Annual Report on Form 10-K for the fiscal year ended March 31, 2022, filed on May 26, 2022, for further details.

Critical Accounting Policies

Our condensed consolidated financial statements are prepared in conformity with GAAP. The preparation of our financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. See Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates” in our Annual Report on Form 10-K for the fiscal year ended March 31, 2022, filed with the SEC on May 26, 2022, for a discussion of the Company’s critical accounting policies and estimates.

Recent Accounting Pronouncements

See Note 1, “Basis of Presentation,” to our unaudited condensed consolidated financial statements and accompanying notes thereto included above in Item 1. Financial Statements (Unaudited) of this quarterly report for information on recent accounting pronouncements, which is hereby incorporated by reference into this Item 2.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Our primary market risk exposures are the effect of fluctuations in foreign exchange rates, interest rates and commodity prices.

Foreign currency risk relating to operations. We transact business globally and are subject to risks associated with fluctuating foreign exchange rates. Approximately 55% of our YTD 2023 consolidated revenue was generated by sales from our non-U.S. subsidiaries. Our non-U.S. subsidiaries generally sell their products and services in the local currency, but obtain a significant amount of their products from our manufacturing facilities located elsewhere, primarily the United States, Canada and Europe. Significant changes in the relevant exchange rates could adversely affect our margins on foreign sales of products. Our non-U.S. subsidiaries incur most of their expenses (other than intercompany expenses) in their local functional currency. These currencies include the Canadian Dollar, Euro, British Pound, Russian Ruble, Australian Dollar, South Korean Won, Chinese Renminbi, Indian Rupee, Mexican Peso, and Japanese Yen.

During YTD 2023, our largest exposures to foreign exchange rates consisted primarily of the Canadian Dollar, the Euro, and the Russian Ruble. The market risk related to the foreign currency exchange rates is measured by estimating the potential impact of a 10% change in the value of the U.S. dollar relative to the local currency exchange rates. The rates used to perform this analysis were based on a weighted average of the market rates in effect during the relevant period. A 10% appreciation of the U.S. dollar relative to the Canadian dollar would result in a net decrease in net income of \$1.7 million for YTD 2023. Conversely, a 10% depreciation of the U.S. dollar relative to the Canadian dollar would result in a net increase in net income of \$2.0 million for YTD 2023. A 10% appreciation of the U.S. dollar relative to the Euro would result in a \$0.1 million decrease in net income. Conversely, a 10% depreciation of the U.S. dollar relative to the Euro would result in a \$0.1 million net increase in net income for YTD 2023. Given a net loss for our Russian subsidiary in YTD 2023, a 10% appreciation of the U.S. dollar relative to the Ruble would result in a \$0.9 million increase in net income. Conversely, a 10% depreciation of the U.S. dollar relative to the Ruble would result in a net decrease in net income of approximately \$1.1 million for YTD 2023.

The geographic areas outside the United States in which we operate are generally not considered to be highly inflationary. Nonetheless, these foreign operations are sensitive to fluctuations in currency exchange rates arising from, among other things, certain intercompany transactions that are generally denominated in U.S. dollars rather than their respective functional currencies. The net impact of foreign currency transactions on our condensed consolidated statements of operations and comprehensive income/(loss) were losses of \$(0.1) million and \$(1.6) million in YTD 2023 and YTD 2022, respectively.

As of December 31, 2022, we had approximately \$2.5 million in notional forward contracts to reduce our exposure to foreign currency exchange rate fluctuations with respect to currencies. These forward contracts were in place to offset in part the foreign currency exchange risk to intercompany payables due from our foreign operations to be settled in U.S. dollars. As of December 31, 2022, the Company could not secure foreign currency contracts to reduce exposure to the Russian Ruble. See Note 3, "Fair Value Measurements" to our unaudited condensed financial statements included above in Item 1. Financial Statements (Unaudited) of this quarterly report for further information regarding our foreign currency forward contracts.

We estimate that our sales were negatively impacted by \$11.2 million in YTD 2023 when compared to foreign exchange translation rates that were in effect in YTD 2022. Foreign currency impact on revenue is calculated by comparing actual current period revenue in U.S. dollars to the theoretical U.S. Dollar revenue we would have achieved based on the weighted-average foreign exchange rates in effect in the comparative prior periods for all applicable foreign currencies. At each balance sheet date, we translate our assets and liabilities denominated in foreign currency to U.S. dollars. The balances of our foreign equity accounts are translated at their historical value. The difference between the current rates and the historical rates are posted to our currency translation account and reflected in the shareholders' equity section of our condensed consolidated balance sheets. The unrealized effects of foreign currency translations were losses of \$17.6 million and \$3.8 million in YTD 2023 and YTD 2022, respectively. The comparative decrease in YTD 2023 foreign currency translation losses is primarily due to the weakening of the Canadian dollar and Euro relative to the U.S. dollar as compared to YTD 2022. Foreign currency translation gains or losses are reported as part of comprehensive income or loss in the condensed consolidated statements of operations and comprehensive income/(loss). Foreign currency transactions gains and losses are included in net income or loss as part of other income and expense in the condensed consolidated statements of operations and comprehensive income/(loss).

Interest rate risk and foreign currency risk relating to debt. Borrowings under our Term Loan Facilities and the Revolving Credit Facility incur interest expense that is variable in relation to the LIBOR and CDOR rate. As of December 31, 2022, we had \$108.3 million of outstanding principal under our Term Loan Facilities and \$24.5 million in borrowings under the Revolving Credit Facility. The interest rates on the Term Loan Facilities on December 31, 2022 were 5.93% for the Canadian Term Loan Facility, 5.42% for the U.S. Term Loan Facility, and 5.63% for the U.S. Revolving Credit Facility. Based on the outstanding borrowings, a 1% change in the interest rate would result in a \$1.1 million increase or decrease, as applicable, in our annual interest expense.

Commodity price risk. We use various commodity-based raw materials in our manufacturing processes. Generally, we acquire such components at market prices and do not typically enter into long-term purchase commitments with suppliers or hedging instruments to mitigate commodity price risk. As a result, we are subject to market risks related to changes in commodity prices and supplies of key components of our products. Raw material costs have been stable historically; however, in recent periods we have experienced, and may continue to experience, various shortages in certain raw materials as well as an increase in costs of these materials due to: use of alternate suppliers, higher freight costs, increased lead times, and expedited shipping. We cannot provide any assurance that we will continue to mitigate temporary raw material shortages or be able to pass along such cost increases, including the potential impacts of tariffs or supply chain challenges, to our customers in the future, and if we are unable to do so, our results of operations may be adversely affected.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15(b) under the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this quarterly report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this quarterly report, these disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed in the reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

There have been no changes in the Company's internal control over financial reporting during the most recently completed fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II
OTHER INFORMATION

Item 1. Legal Proceedings

See Note 10, "Commitments and Contingencies," to our unaudited condensed consolidated financial statements included above in Part I, Item 1. Financial Statements (Unaudited) of this quarterly report, which is hereby incorporated by reference into this Item 1.

Item 1A. Risk Factors

There have been no material changes from the risk factors previously disclosed in Item 1A of our Annual Report on Form 10-K for the fiscal year ended March 31, 2022, filed with the SEC on May 26, 2022.

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

There were no unregistered sales of our equity securities during the three months ended December 31, 2022.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

On January 31, 2023, the board of directors of the Company amended and restated the Company's bylaws to include language related to Rule 14a-19 as promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended ("Rule 14a-19") and make certain related changes. The changes effected by the amendment and restatement of the Company's bylaws (as so amended and restated, the "Amended and Restated Bylaws") include, without limitation, the following:

- update the advance notice provisions for director nominations requiring stockholders using a universal proxy card to comply with the advance notice requirements of Rule 14a-19;
- require stockholders using a universal proxy card to confirm, upon the Company's request, compliance with Rule 14a-19; and
- provide that the Company will disregard proxies solicited by stockholders using a universal proxy card if such stockholder fails to comply with the requirements of Rule 14a-19.

The Amended and Restated Bylaws are effective January 31, 2023. The foregoing description of the Amended and Restated Bylaws is qualified in its entirety by the full text of the Amended and Restated Bylaws, a copy of which is filed as Exhibit 3.1 hereto and is incorporated by reference herein.

Item 6. Exhibits

See Exhibit Index below for a list of exhibits filed as part of this quarterly report, which Exhibit Index is incorporated herein by reference.

EXHIBIT INDEX

Exhibit Number	Description
3.1	<u>Amended and Restated Bylaws of Thermon Group Holdings, Inc.*</u>
31.1	<u>Certification of Bruce Thames, Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*</u>
31.2	<u>Certification of Kevin Fox, Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*</u>
32.1	<u>Certification of Bruce Thames, Chief Executive Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*</u>
32.2	<u>Certification of Kevin Fox, Chief Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*</u>
101	Interactive Data Files formatted in Inline eXtensible Business Reporting Language (iXBRL) pursuant to Rule 405 of Regulation S-T: (i) the cover page, (ii) Condensed Consolidated Balance Sheets, (iii) Condensed Consolidated Statements of Operations and Comprehensive Income/(Loss), (iv) Condensed Consolidated Statements of Cash Flows and (v) Notes to Condensed Consolidated Financial Statements*
104	Cover Page Interactive Data File (formatted in Inline XBRL and contained in Exhibit 101)*

* Filed herewith

AMENDED AND RESTATED BYLAWS

OF

THERMON GROUP HOLDINGS, INC.

(As adopted January 31, 2023, effective as of January 31, 2023)

ARTICLE I

Offices

Section 1.1 Registered Offices. The registered office of Thermon Group Holdings, Inc. (the "Corporation") in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, County of New Castle. The name of the Corporation's registered agent at such address shall be Corporation Service Company. The registered office and/or registered agent of the Corporation may be changed from time to time by action of the Board of Directors.

Section 1.2 Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

Section 1.3 Books. The books of the Corporation may be kept within or without of the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

Stockholders Meetings

Section 2.1 Annual Meetings.

(a) An annual meeting of stockholders shall be held for the election of directors and the transaction of such other business as may properly be brought before the meeting in accordance with these Bylaws at such date, time and place, if any, as may be fixed by resolution of the Board of Directors of the Corporation from time to time. The Board of Directors may for any reason postpone, adjourn, recess, reschedule or cancel any previously scheduled meeting of stockholders.

(b) Only such business (other than stockholder nominations of directors, which shall be made in compliance with, and shall be exclusively governed by, Section 3.1(a) and Section 3.2) shall be conducted at an annual meeting of stockholders as shall have been properly brought before the meeting. For business to be properly brought before the meeting, it must be (i) authorized by the Board of Directors and specified in the notice, or a supplemental notice, of the meeting, (ii) otherwise brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder of the Corporation who was a stockholder of record both at the time of giving of notice by the stockholder as provided for in this Section 2.1(b) and at the time of the annual meeting of stockholders, who is entitled to vote at the meeting on any such business and who has complied with the notice and other requirements set forth in these Bylaws; clause (iii) shall be the exclusive means for a stockholder to submit such business (other than proposals properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's notice of the meeting, which proposals are not governed by these Bylaws) before an annual meeting of stockholders.

(c) For business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.1(b)(iii), the stockholder must have given timely written notice thereof to the Secretary of the Corporation as hereinafter provided and such proposal must otherwise be a proper subject for action by the

Corporation's stockholders. To be timely, a stockholder's written notice shall set forth all information required under this Section 2.1(c) and shall be delivered or mailed to and received at the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials or a notice of availability of proxy materials (whichever is earlier) for the immediately preceding year's annual meeting; provided, however, that in the event that no annual meeting was held in the previous year or the annual meeting is called for a date that is not within 30 days from the first anniversary of the immediately preceding year's annual meeting date, written notice by a stockholder in order to be timely must be received not earlier than the 120th day before the date of such annual meeting and not later than the later of the 90th day before the date of such annual meeting, as originally convened, or the close of business on the tenth day following the day on which the first public disclosure of the date of such annual meeting was made. In no event shall an adjournment, rescheduling, recess or postponement, or the public disclosure thereof, of an annual meeting commence a new time period (or extend any time period) for the giving of stockholder's notice as described above. A stockholder's notice to the Secretary delivered pursuant to this Section 2.1(c) shall set forth:

(i) as to each matter the stockholder proposes to bring before the meeting, (A) a description of the proposal or business (including the complete text of any resolutions to be presented at the annual meeting, and, in the event that such business includes a proposal to amend these Bylaws, the text of the proposed amendment) desired to be brought before the annual meeting, (B) the reasons for conducting such business at the annual meeting, (C) a complete and accurate description of any material interest in such business of such stockholder or any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the stockholder or the Stockholder Associated Person therefrom, and (D) all other information related to such proposed business that would be required to be disclosed in a proxy statement or other filing required to be made by the stockholder or any Stockholder Associated Person in connection with the solicitation of proxies or consents in support of such proposed business by such stockholder or any Stockholder Associated Person pursuant to Regulation 14A under the Exchange Act;

(ii) to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the proposal of business on the date of such stockholder's notice;

(iii) as to the stockholder giving the notice and any Stockholder Associated Person:

(A) the class or series and number of shares of capital stock or other securities of the Corporation (collectively, "Company Securities"), if any, which are, directly or indirectly, owned beneficially and/or of record by such person, the date(s) on which such Company Securities were acquired and the investment intent of such acquisition(s), and any short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person,

(B) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such person,

(C) a complete and accurate description of any agreement, arrangement or understanding (whether written or oral) (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights with an exercise or conversion privilege or a settlement payment or mechanism at a price related to the Company Securities or with a value derived in whole or in part from the value of the Company Securities, hedging transactions, and borrowed or loaned shares) (a "Derivative Instrument") that has been entered into as of the date of the stockholder's notice or any supplement thereto by, or on behalf of, such stockholder or Stockholder Associated Person (or Proposed Nominee (as defined below)) and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying Company Securities, (including those that the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or Stockholder Associated Person, with respect to Company Securities without regard to whether such transaction is required to be reported on a Schedule 13D in accordance with the Exchange Act) and any other information about such Derivative Instrument that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for the election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, if such Derivative Instruments were treated the same as Company Securities under such requirements;

(D) any rights to dividends from Company Securities owned beneficially by such stockholder or Stockholder Associated Person;

(E) any proportionate interest in Company Securities or Derivative Instruments held, directly or indirectly, by a general or limited partnership or similar entity in which such stockholder or Stockholder Associated Person (A) is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, or (B) is the manager, managing member or, directly or indirectly, beneficially owns an interest in the manager or managing member of a limited liability company or similar entity;

(F) any substantial interest, direct or indirect (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Corporation), by security holdings or otherwise, of such stockholder or Stockholder Associated Person, in the Corporation or any affiliate (as defined below) thereof, other than an interest arising from the ownership of Company Securities where such stockholder or Stockholder Associated Person receives no extra or special benefit not shared on a pro rata basis by all other holders;

(G) a complete and accurate description of all agreements, arrangements or understandings, written or oral, and formal or informal, (A) between or among the stockholder giving the notice and any of the Stockholder Associated Persons or (B) between or among the stockholder giving the notice or any of the Stockholder Associated Persons and any other person or entity (naming each such person or entity) in

connection with or related to the foregoing, including without limitation (x) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder giving the notice or Stockholder Associated Person has the right to vote any Company Securities; (y) any understanding, formal or informal, written or oral, that the stockholder giving the notice or any of the Stockholder Associated Persons may have reached with any stockholder of the Corporation (including their names) with respect to how such stockholder will vote its shares in the Corporation at any meeting of the Corporation's stockholders or take other action in support of any proposal(s), or other action to be taken, by the stockholder giving the notice or any of the Stockholder Associated Persons, and (z) any other agreements that would be required to be disclosed by the stockholder giving the notice or any Stockholder Associated Person or any other person or entity pursuant to Item 5 or Item 6 of a Schedule 13D that would be filed pursuant to the Exchange Act and the rules and regulations promulgated thereunder (regardless of whether the requirement to file a Schedule 13D is applicable to the stockholder giving the notice or any Stockholder Associated Person or other person or entity);

(H) a complete and accurate description of any performance-related fees (other than an asset-based fee) to which any such stockholder or Stockholder Associated Person may be entitled as a result of any increase or decrease in the value of Company Securities or any Derivative Instruments; and

(I) a complete and accurate description of any pending or threatened legal proceeding in which such stockholder or Stockholder Associated Person is a party or participant involving the Corporation or any officer, affiliate or associate (as defined below) of the Corporation; and

(iv) as to the stockholder giving the notice or any Stockholder Associated Person with an interest or ownership referred to in clause (i) or clause (iii) (C) of this Section 2.1(c):

(A) the name and address of such stockholder, as they appear on the Corporation's stock ledger, and the current name and business address, if different, of each such Stockholder Associated Person, and

(B) the investment strategy or objective, if any, of such stockholder and each such Stockholder Associated Person who is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person;

(v) as to the stockholder giving the notice and any Stockholder Associated Person, a description of all arrangements or understandings between such person and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder or such beneficial owner in such business, including any anticipated benefit to the stockholder or such beneficial owner therefrom;

(vi) as to the stockholder giving the notice, a representation that (A) such stockholder (x) is a holder of record of stock of the Corporation entitled to vote at such meeting, (y) intends to

vote such stock at such meeting, and (z) intends to appear in person or by proxy at the annual meeting to bring such business (and/or nominate any Proposed Nominees) before the meeting, and (B) if such stockholder does not appear to present such proposal(s) (or Proposed Nominee(s)) at such meeting, the Corporation need not present such proposal(s) (or Proposed Nominee(s)) for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation;

(vii) as to the stockholder giving the notice and/or any Stockholder Associated Person, a representation whether such person intends or is part of a group which intends (A) to solicit proxies in support of the election of any Proposed Nominee in accordance with Rule 14a-19 under the Exchange Act, (B) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal(s) and/or (C) otherwise to solicit proxies from stockholders in support of such proposal(s); and

(viii) as to the stockholder giving the notice and any Stockholder Associated Person, any other information relating to such stockholder and any Stockholder Associated Person, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest (even if an election contest is not involved) pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. The foregoing notice requirements of this Section 2.1(c) shall be deemed satisfied by a stockholder with respect to business if the stockholder has notified the Corporation of his or her intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation (the information described in clauses (iii) through (viii), the "Proposing Stockholder Information").

Unless otherwise required by law, if a stockholder (or qualified representative) does not appear at the meeting of stockholders to present business proposed by such stockholder pursuant to this Section 2.1(c), such proposed business shall not be transacted, even though proxies in respect of such vote may have been received by the Corporation. No business shall be conducted at any annual meeting except in accordance with the procedures set forth in this paragraph (c). The chairman of the meeting at which any business is proposed by a stockholder shall, if the facts warrant, determine and declare to the meeting that such business was not properly brought before the meeting in accordance with the provisions of this Section 2.1(c), and in such event, the business not properly before the meeting shall not be transacted.

A stockholder providing notice of any proposed business under this Section 2.1(c) shall update such notice, if necessary, so that the information provided or required to be provided in such notice shall continue to be true and correct (i) as of the record date for the meeting and (ii) as of the date that is ten business days prior to the meeting (or any postponement, adjournment or recess thereof), and such update shall be received by the Secretary at the principal executive office of the Corporation not later than five business days after the record date for the meeting (in the case of an update required to be made as of the record date) and not later than seven business days prior to the

date for the meeting, if practicable or, if not practicable, on the first practicable date prior to the meeting or any adjournment, recess or postponement thereof (in the case of an update required to be made as of ten business days prior to the meeting or any adjournment, recess or postponement thereof).

If any information submitted pursuant to this Section 2.1(c) by any stockholder proposing business for consideration at a meeting of stockholders shall be inaccurate in any respect, such information may be deemed not to have been provided in accordance with these Bylaws. Any such stockholder shall notify the Corporation of any inaccuracy or change in any such information within two business days of becoming aware of such inaccuracy or change. Upon written request by the Secretary, the Board of Directors or any committee thereof, any such stockholder shall provide, within seven business days of delivery of such request (or such other period as may be specified in such request), (A) written verification, reasonably satisfactory to the Board of Directors, any committee thereof or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 2.1(c), and (B) a written update of any information (including written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting) submitted by the stockholder pursuant to this Section 2.1(c) as of an earlier date. If a stockholder fails to provide such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with this Section 2.1(c).

Section 2.2 Special Meetings. Special meetings of stockholders may be called only as set forth in the Second Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") of the Corporation. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting.

Section 2.3 Notice of Meetings. A written notice of each annual or special meeting of stockholders shall be given stating the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, such notice of meeting shall be given not less than ten nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, personally, by mail or, to the extent and in the manner permitted by applicable law, electronically. If mailed, such notice shall be deemed to be given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

Section 2.4 Adjournments. Regardless of whether a quorum is present, any annual or special meeting of stockholders may be adjourned from time to time to reconvene at the same or some other place, if any, and notice need not be given of any such adjourned meeting if the date, time and place, if any, thereof and the means of remote communication, if any, by which stockholders and proxyholders may be deemed present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the adjourned meeting in accordance with Section 2.3. If the Board of Directors shall fix a new record date for determination of stockholders entitled to vote at an adjourned meeting, the Board of Directors shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as the record date determined for stockholders entitled to vote at the adjourned meeting.

Section 2.5 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the presence in person or by proxy of the holders of stock having a majority of the votes which could be cast by the holders of all outstanding stock entitled to vote at the meeting shall constitute a quorum at each meeting of stockholders. In the absence of a quorum, the chairman of the meeting or, in the absence of the chairman of the meeting, the stockholders so present, by the affirmative vote of the holders of stock having a majority of the votes which could be cast by all such holders, may adjourn the meeting for any reason from time to time in the manner provided in Section 2.4 of these Bylaws until a quorum is present. If a quorum is present when a meeting is convened, the subsequent withdrawal of stockholders, even though less than a quorum remains, shall not affect the ability of the remaining stockholders lawfully to transact business. In the event a quorum is present at a meeting of the stockholders, only the Board of Directors or the chairman of the meeting may adjourn the meeting for any reason from time to time in the manner provided in Section 2.4 of these Bylaws. If a quorum is present at the original duly organized meeting of stockholders, it shall also be deemed present at an adjourned session of such meeting, unless a new record date is set for the adjourned session.

Section 2.6 Conduct; Remote Communication.

(a) Meetings of stockholders shall be presided over by the Chairman of the Board of Directors unless otherwise designated by the Board of Directors. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman of the meeting, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include or address, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting (iii) maintenance of order and security at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; (vi) limitations on the time allotted to questions or comments by participants; and (g) removing any stockholder or any other individual who refuses to comply with the meeting rules, regulations and procedures as set forth by such chairman of the meeting; (h) conclusion, recess or adjournment of the meeting, regardless of whether a quorum is present in person or by proxy, to a later date and time and at a place announced at the meeting; (i) restricting the use of audio/video recording devices, cell phones and other electronic devices; and (j) complying with any state or local laws and regulations concerning safety and security. The chairman at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such chairman of the meeting should so determine, such chairman of the meeting shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(b) If authorized by the Board of Directors in accordance with these Bylaws and applicable law, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication, (1) participate in a meeting of stockholders and (2) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2.7 Voting.

(a) Except as otherwise provided by the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power on the matter in question.

(b) Voting at meetings of stockholders need not be by written ballot and need not be conducted by inspectors of election unless so required by Section 2.9 of these Bylaws or so determined by the holders of stock having a majority of the votes which could be cast by the holders of all outstanding stock entitled to vote which are present in person or by proxy at such meeting. Unless otherwise provided in the Certificate of Incorporation, directors shall be elected by a plurality of the votes cast in the election of directors. Each other question shall, unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, be decided by the vote of the holders of stock having a majority of the votes which could be cast by the holders of all stock entitled to vote on such question which are present in person or by proxy at the meeting.

(c) Stock of the Corporation standing in the name of another corporation and entitled to vote may be voted by such officer, agent or proxy as the Bylaws or other internal regulations of such other corporation may prescribe or, in the absence of such provision, as the board of directors or comparable body of such other corporation may determine.

(d) Stock of the Corporation standing in the name of a deceased person, a minor, an incompetent or a debtor in a case under Title 11, United States Code, and entitled to vote may be voted by an administrator, executor, guardian, conservator, debtor-in-possession or trustee, as the case may be, either in person or by proxy, without transfer of such shares into the name of the official or other person so voting.

(e) A stockholder whose voting stock of the Corporation is pledged shall be entitled to vote such stock unless on the transfer records of the Corporation the pledgor has expressly empowered the pledgee to vote such shares, in which case only the pledgee, or such pledgee's proxy, may represent such shares and vote thereon.

(f) If voting stock is held of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two

or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (i) if only one votes, such act binds all; (ii) if more than one vote, the act of the majority so voting binds all; and (iii) if more than one votes, but the vote is evenly split on any particular matter each faction may vote such stock proportionally, or any person voting the shares, or a beneficiary, if any, may apply to the Court of Chancery of the State of Delaware or such other court as may have jurisdiction to appoint an additional person to act with the persons so voting the stock, which shall then be voted as determined by a majority of such persons and the person appointed by the Court. If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even split for the purpose of this subsection shall be a majority or even split in interest.

(g) Stock of the Corporation belonging to the Corporation, or to another corporation a majority of the shares entitled to vote in the election of directors of which are held by the Corporation, shall not be voted at any meeting of stockholders and shall not be counted in the total number of outstanding shares for the purpose of determining whether a quorum is present. Nothing in this Section 2.7 shall limit the right of the Corporation to vote shares of stock of the Corporation held by it in a fiduciary capacity.

Section 2.8 Proxies.

(a) Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy filed with the Secretary before or at the time of the meeting. No such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable only if it expressly states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power or unless otherwise made irrevocable by law. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing with the Secretary an instrument in writing revoking the proxy or another duly executed proxy bearing a later date.

(b) A stockholder may authorize another person or persons to act for such stockholder as proxy (i) by executing a writing authorizing such person or persons to act as such, which execution may be accomplished by such stockholder or such stockholder's authorized officer, director, partner, employee or agent (or, if the stock is held in a trust or estate, by a trustee, executor or administrator thereof) signing such writing or causing his or her signature to be affixed to such writing by any reasonable means, including, but not limited to, facsimile signature, or (ii) by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission (each, a "Transmission") to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such Transmission; provided that any such Transmission must either set forth or be submitted with information from which it can be determined that such Transmission was authorized by such stockholder.

(c) Any inspector or inspectors appointed pursuant to Section 2.9 of these Bylaws shall examine Transmissions to determine if they are valid. If no inspector or inspectors are so appointed, the Secretary or such other person or persons as shall be appointed from time to time by the Board of Directors shall examine Transmissions to determine if they are valid. If it is determined that a Transmission is valid, the person or persons making that determination shall specify the information upon which such person or persons relied. Any copy, facsimile telecommunication or other reliable reproduction of such a writing or

Transmission may be substituted or used in lieu of the original writing or Transmission for any and all purposes for which the original writing or Transmission could be used; provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or Transmission.

Section 2.9 Voting Procedures and Inspectors of Elections.

(a) If the Corporation has a class of voting stock that is (i) listed on a national securities exchange, (ii) authorized for quotation on an interdealer quotation system of a registered national securities association or (iii) held of record by more than 2,000 stockholders, the Board of Directors shall, in advance of any meeting of stockholders, appoint one or more inspectors (individually an "Inspector," and collectively the "Inspectors") to act at such meeting and make a written report thereof. The Board of Directors may designate one or more persons as alternate Inspectors to replace any Inspector who shall fail to act. If no Inspector or alternate is able to act at such meeting, the chairman of the meeting shall appoint one or more other persons to act as Inspectors. Each Inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of Inspector with strict impartiality and according to the best of his or her ability.

(b) The Inspectors shall (i) ascertain the number of shares of stock of the Corporation outstanding and the voting power of each, (ii) determine the number of shares of stock of the Corporation present in person or by proxy at such meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period of time a record of the disposition of any challenges made to any determination by the Inspectors, and (v) certify their determination of the number of such shares present in person or by proxy at such meeting and their count of all votes and ballots. The Inspectors may appoint or retain other persons or entities to assist them in the performance of their duties.

(c) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at such meeting. No ballots, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the Inspectors after the closing of the polls unless the Court of Chancery of the State of Delaware upon application by any stockholder shall determine otherwise.

(d) In determining the validity and counting of proxies and ballots, the Inspectors shall be limited to an examination of the proxies, any envelopes submitted with such proxies, any information referred to in paragraphs (b) and (c) of Section 2.8 of these Bylaws, ballots and the regular books and records of the Corporation, except that the Inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by a stockholder of record to cast or more votes than such stockholder holds of record. If the Inspectors consider other reliable information for the limited purpose permitted herein, the Inspectors, at the time they make their certification pursuant to paragraph (b) of this Section 2.9, shall specify the precise information considered by them, including the person or persons from whom such information was obtained, when and the means by which such information was obtained and the basis for the Inspectors' belief that such information is accurate and reliable.

Section 2.10 Fixing Date of Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment or postponement thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall, unless otherwise required by law, be not more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting, unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors in respect of a meeting, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

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

Section 2.11 List of Stockholders Entitled to Vote. The Secretary shall prepare, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, the list shall be open to the examination of any stockholder during the whole time thereof on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

ARTICLE III

Board of Directors

Section 3.1 Election; Resignation; Vacancies.

(a) Only persons who are nominated in accordance with the procedures set forth in this Section 3.1(a) or Section 3.2 shall be eligible for election as directors of the Corporation. Nominations of persons for election to the Board of Directors may be made at a meeting of stockholders by the Board of Directors or by any stockholder of the Corporation who (i) was a stockholder of record of the Corporation (x) at the time the notice provided for in this Section 3.1 is delivered to the Secretary, (y) on the record date for the determination of stockholders entitled to notice of and to vote at the annual meeting and (z) through the date of such annual meeting, (ii) who is entitled to vote at the annual meeting and (iii) who complies with the notice procedures set forth in this paragraph (a). Any nomination by a stockholder must be made by timely written notice to the Secretary as hereinafter provided. To be timely, a stockholder's written notice shall set forth all information required under this Section 3.1(a) and shall be delivered or mailed to and received at the principal executive offices of the Corporation: (i) with respect to an election to be held at an annual meeting of stockholders, not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the date on which the Corporation first mailed its proxy materials or a notice of availability of proxy materials (whichever is earlier) for the immediately preceding year's annual meeting; provided, however, that in the event that no annual meeting was held in the previous year or the annual meeting is called for a date that is not within 30 days from the first anniversary of the immediately preceding year's annual meeting date, written notice by a stockholder in order to be timely must be received not earlier than the close of business on the 120th day before the date of such annual meeting and not later than the later of (x) the close of business on the 90th day before the date of such annual meeting, as originally convened, or the close of business on the tenth day following the day on which the first public disclosure of the date of such annual meeting was made, and (ii) with respect to an election to be held at a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth day following the day on which the first public disclosure of the date of such special meeting was made. The number of nominees a stockholder may nominate for election at the annual meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting. In no event shall the public disclosure of an adjournment or postponement of any annual or special meeting commence a new time period (or extend any time period) for giving of a stockholder notice as described above. A stockholder's notice to the Secretary delivered pursuant to this Section 3.1(a) shall set forth:

(i) as to each person whom the stockholder proposes to nominate for election or re-election as a director (each, a "Proposed Nominee"):

(A) the name, age, business address and residence address of such Proposed Nominee;

(B) the principal occupation and employment of such Proposed Nominee;

(C) the name and address of such Proposed Nominee, if a holder of stock of the Corporation, as it appears on the Corporation's books and records,

(D) a written questionnaire with respect to the background and qualification of such Proposed Nominee completed by the Proposed Nominee in the form required by the Corporation (which form the stockholder shall request in writing from the Secretary and which the Secretary shall provide to such stockholder within ten days of receiving such request);

(E) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such Proposed Nominee being nominated, on the one hand, and the stockholder and any Stockholder Associated Person, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K if the stockholder making the nomination and any Stockholder Associated Person were the "registrant" for purposes of such rule and the Proposed Nominee were a director or executive officer of such registrant;

(F) the information required under Section 2.1(c)(iii)(A)-(C) with respect to the Proposed Nominee; and

(G) all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act and the rules thereunder; and

(ii) as to the stockholder giving the notice and any Stockholder Associated Person, the Proposing Stockholder Information with respect to such person.

Such notice shall be accompanied by a written representation and agreement, in the form required by the Corporation (which form the stockholder shall request in writing from the Secretary and which the Secretary shall provide to such stockholder within ten days of receiving such request), executed by the Proposed Nominee, that such Proposed Nominee (i) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation, including but not limited to with respect to any direct or indirect compensation, reimbursement or indemnification, in connection with service or action as a director that has not been disclosed to the Corporation, (ii) consents to being named as a nominee and to serve as a director if elected, (iii) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such Proposed Nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such Proposed Nominee's ability to comply, if elected as a director of the Corporation, with such Proposed Nominee's fiduciary duties under applicable law and (iv) would, if elected as a director of the Corporation, comply with applicable law of the principal U.S. exchange(s) upon which the stock of the Corporation is traded, all of the applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and

guidelines of the Corporation, as well as the applicable provisions of the Bylaws and the rules and regulations of the Securities and Exchange Commission, and applicable fiduciary duties under state law and, if elected as a director of the Corporation, currently would be in compliance with any such policies and guidelines that have been publicly disclosed; (v) intends to serve a full term if elected as a director of the Corporation; and (vi) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects, and that do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

At the request of the Board of Directors any person nominated by the Board of Directors for election as a director shall furnish to the Secretary (in accordance with any applicable time periods prescribed for delivery of notice under these Bylaws) that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such Proposed Nominee, under the listing standards of each principal securities exchange upon which the stock of the Corporation is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's directors, including those applicable to a director's service on any of the committees of the Board of Directors.

A stockholder providing notice of any nomination of a director under this Section 3.1(a) shall update such notice, if necessary, so that the information provided or required to be provided in such notice shall continue to be true and correct (i) as of the record date for the meeting and (ii) as of the date that is ten business days prior to the meeting (or any postponement, adjournment or recess thereof), and such update shall be received by the Secretary at the principal executive office of the Corporation not later than five business days after the record date for the meeting (in the case of an update required to be made as of the record date) and not later than seven business days prior to the date for the meeting, if practicable or, if not practicable, on the first practicable date prior to the meeting or any adjournment, recess or postponement thereof (in the case of an update required to be made as of ten business days prior to the meeting or any adjournment, recess or postponement thereof).

If any information submitted pursuant to this Section 3.1(a) by any stockholder proposing individuals to nominate for election or reelection as a director at a meeting of stockholders shall be inaccurate in any respect, such information may be deemed not to have been provided in accordance with these Bylaws. Any such stockholder shall notify the Corporation of any inaccuracy or change in any such information within two business days of becoming aware of such inaccuracy or change. Upon written request by the Secretary, the Board of Directors or any committee thereof, any such stockholder shall provide, within seven business days of delivery of such request (or such other period as may be specified in such request), (A) written verification, reasonably satisfactory to the Board of Directors, any committee thereof or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 3.1(a), and (B) a written update of any information (including written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting) submitted by the stockholder pursuant to this Section 3.1(a) as of an earlier date. If a stockholder fails to provide such written verification within such period, the

information as to which written verification was requested may be deemed not to have been provided in accordance with this Section 3.1(a).

Notwithstanding anything in this Section 3.1(a) to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased, and there is no public disclosure of such action at least 90 days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials or a notice of availability of proxy materials (whichever is earlier) for the immediately preceding year's annual meeting, a stockholder's notice required by this Section 3.1(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive office of the Corporation not later than the close of business on the tenth day following the day on which such public disclosure is first made by the Corporation.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 3.1(a). Unless otherwise required by law, if a stockholder (or qualified representative) does not appear at the meeting of stockholders to present a nomination proposed by such stockholder pursuant to this Section 3.1(a), such nomination shall be disregarded, even though proxies in respect of such vote may have been received by the Corporation. The chairman of the meeting at which a stockholder nomination is presented shall, if the facts warrant, determine and declare to the meeting that such nomination was not made in accordance with the procedures prescribed by this Section 3.1(a), and, in such event, the defective nomination shall be disregarded.

Notwithstanding anything herein to the contrary, if (i) any stockholder giving notice of any nomination of a director under this Section 3.1(a) or any Stockholder Associated Person provides notice pursuant to Rule 14a-19(b) under the Exchange Act with respect to any Proposed Nominee and (ii) (A) such stockholder giving the notice or Stockholder Associated Person subsequently either (x) notifies the Corporation that such stockholder giving the notice or Stockholder Associated Person no longer intends to solicit proxies in support of the election or reelection of such Proposed Nominee in accordance with Rule 14a-19(b) under the Exchange Act or (y) fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) under the Exchange Act (or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such stockholder giving the notice or Stockholder Associated Person has met the requirements of Rule 14a-19(a)(3) under the Exchange Act in accordance with the following sentence) and (B) no other stockholder or Stockholder Associated Person that has provided notice pursuant to Rule 14a-19(b) under the Exchange Act with respect to such Proposed Nominee (x) to the Corporation's knowledge based on information provided pursuant to Rule 14a-19 under the Exchange Act or these Bylaws, still intends to solicit proxies in support of the election or reelection of such Proposed Nominee in accordance with Rule 14a-19(b) under the Exchange Act and (y) has complied with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) under the Exchange Act and the requirements set forth in the following sentence, then the nomination of such Proposed Nominee shall be disregarded and no vote on the election of such Proposed Nominee shall occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation). Upon request by the Corporation, if any stockholder giving notice of a director nomination or any Stockholder Associated Person provides notice pursuant to Rule 14a-19(b) under the Exchange Act, such stockholder giving the notice shall deliver to the Secretary, no later than five (5) business days prior to the applicable meeting date, reasonable evidence that the requirements of Rule 14a-19(a)(3) under the Exchange Act have been satisfied.

(b) Resignations

(i) Any director may resign at any time by giving written notice to the Chairman of the Board of Directors, the Chief Executive Officer or the Secretary. A resignation shall take effect when the resignation is delivered to the officer to whom it is directed unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events, without any need for its acceptance. A resignation that is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable.

(ii) Each individual nominated for election as a director of the Corporation who consents to stand for election shall tender an irrevocable resignation in advance of the meeting for the election of directors. Such resignation shall become effective upon a determination by a majority of the remaining directors that (i) the information provided to the Corporation by such individual pursuant to Section 3.1(a) or Section 3.2(f) of these Bylaws, as applicable, was untrue in any material respect or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading or (ii) such individual, or any stockholder or group of stockholders who nominated such individual, shall have breached any obligations owed to the Corporation under these Bylaws.

(c) Any newly created directorship or any vacancy occurring in the Board of Directors for any reason shall be filled as set forth in the Certificate of Incorporation.

Section 3.2 Proxy Access for Director Nominees

(a) Definitions. For purposes of this Section 3.2, the following terms shall have the following meanings:

(i) "Compensation Arrangement" shall mean any direct or indirect compensatory, payment or other financial agreement, arrangement or understanding with any person or entity other than the Corporation, including, without limitation, any agreement, arrangement or understanding with respect to any direct or indirect compensation, reimbursement or indemnification in connection with candidacy, service or action as a nominee or as a director.

(ii) "Eligible Stockholder" shall mean a person who has either (1) been a record holder of the shares of common stock of the Corporation used to satisfy the eligibility requirements in Section 3.2(d) continuously for the required three-year period or (2) provides to the Secretary of the Corporation, within the time period referred to in Section 3.2(e), evidence of continuous Ownership of such shares for such three-year period from one or more securities intermediaries.

(iii) "Maximum Number" shall mean that number of directors constituting the greater of (x) two and (y) 20% of the total number of directors of the Corporation on the last day on which a Nomination Notice may be submitted pursuant to this Section 3.2 (rounded down to the nearest whole number), which number shall be reduced as set forth in Section 3.2(c)(i).

(iv) "Minimum Number" shall mean 3% of the number of outstanding shares of common stock of the Corporation as of the most recent date for which such amount is given in any filing by

the Corporation with the Securities and Exchange Commission prior to the submission of the Nomination Notice.

(v) "Nominating Stockholder" shall mean any Eligible Stockholder or group of up to 20 stockholders (a "Nominator Group") that, collectively as a group, satisfy the requirements to qualify as an Eligible Stockholder, that (1) has (individually and collectively, in the case of a Nominator Group) satisfied all applicable conditions and complied with all applicable procedures set forth in this Section 3.2 (including, without limitation, the timely submission of a Nomination Notice that meets the requirements set forth in this Section 3.2), and (2) has nominated a Stockholder Nominee.

(vi) "Nomination Notice" shall mean all information and documents that a Nominating Stockholder is required to submit to the Secretary of the Corporation pursuant to Section 3.2(f).

(vii) "Own," "Owned" or "Owning" shall mean those outstanding shares of the Corporation's common stock with respect to which a stockholder possesses both:

(A) the full voting and investment rights pertaining to the shares; and

(B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided, that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares:

(1) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, including any short sale;

(2) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell; or

(3) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding capital stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised by either party thereto would have, the purpose or effect of reducing in any manner, to any extent or at any time in the future, such stockholder's or affiliates' full right to vote or direct the voting of any such shares, and/or hedging, offsetting or altering to any degree gain or loss arising from the full economic Ownership of such shares by such stockholder or affiliate, other than any such arrangements solely involving a national or multi-national multi-industry market index.

A stockholder shall "Own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder's ownership of shares shall be deemed to continue during any period in which the stockholder has delegated any voting power over such shares by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. A stockholder's Ownership of shares shall be deemed to continue during any period in which the stockholder has loaned such shares provided that the stockholder has the power to recall such loaned shares within five business days' notice. The terms "Owned," "Owning" and other variations of the word "Own" shall have correlative meanings.

(viii) "Stock Exchange Rules" shall mean the rules of any stock exchange on which the Corporation's securities are traded.

(ix) "Stockholder Nominee" shall mean any person nominated for election pursuant to this Section 3.2.

(x) "Voting Commitment" shall mean any agreement, arrangement or understanding with, and any commitment or assurance to, any person or entity as to how a person, if elected as a director of the Corporation, will act or vote on any issue or question.

(b) Proxy Access at Annual Meeting. Subject to the provisions of this Section 3.2, if expressly requested in the relevant Nomination Notice, the Corporation shall include in its proxy statement for any annual meeting of stockholders:

(i) the name of any Stockholder Nominee, which shall also be included on the Corporation's form of proxy and ballot;

(ii) disclosure about the Stockholder Nominee and the Nominating Stockholder required under the rules of the Securities and Exchange Commission or other applicable law to be included in the proxy statement;

(iii) any statement included by the Nominating Stockholder in the Nomination Notice for inclusion in the proxy statement in support of the Stockholder Nominee's election to the Board of Directors (subject, without limitation, to Section 3.2(g)), if such statement does not exceed 500 words; and

(iv) any other information that the Corporation or the Board of Directors determines, in its discretion, to include in the proxy statement relating to the nomination of the Stockholder Nominee, including, without limitation, any statement in opposition to the nomination, information relating to any Compensation Arrangement and/or Voting Commitment, and any of the information provided pursuant to this Section 3.2.

For the avoidance of doubt, the provisions of this Section 3.2 shall not apply to a special meeting of stockholders, and the Corporation shall not be required to include a director nominee of a stockholder or

group of stockholders in the Corporation's proxy statement form of proxy or ballot for any special meeting of stockholders.

(c) Maximum Number of Stockholder Nominees.

(i) The Corporation shall not be required to include in the proxy statement for an annual meeting of stockholders more Stockholder Nominees than the Maximum Number. In the event that one or more vacancies for any reason occurs on the Board of Directors after the deadline set forth in Section 3.2(e) but before the date of the annual meeting and the Board of Directors resolves to reduce the size of the board in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced. The Maximum Number for a particular annual meeting shall be reduced by:

(A) Stockholder Nominees whose nominations for election at such annual meeting are subsequently withdrawn;

(B) Stockholder Nominees who the Board of Directors itself decides to nominate for election at such annual meeting;

(C) the number of incumbent directors or director candidates (including, without limitation, candidates who are not Stockholder Nominees) that in either case will be included in the Corporation's proxy statement for an annual meeting of stockholders as an unopposed (by the Corporation) nominee pursuant to any agreement, arrangement or other understanding with any stockholder or group of stockholders; and

(D) the number of incumbent directors who had been Stockholder Nominees at any of the preceding two annual meetings of stockholders and whose reelection at the upcoming annual meeting is being recommended by the Board of Directors.

(ii) Any Nominating Stockholder submitting more than one Stockholder Nominee for inclusion in the Corporation's proxy materials pursuant to this Section 3.2 shall rank such Stockholder Nominees based on the order that the Nominating Stockholder desires such Stockholder Nominees to be selected for inclusion in the Corporation's proxy materials. In the event that the number of Stockholder Nominees submitted by Nominating Stockholders pursuant to this Section 3.2 exceeds the Maximum Number, the highest ranking Stockholder Nominee who meets the requirements of this Section 3.2 from each Nominating Stockholder will be selected for inclusion in the Corporation's proxy materials until the Maximum Number is reached, going in order of the amount (largest to smallest) of shares of the stock of the Corporation each Nominating Stockholder Owns, as disclosed in its respective Nomination Notice submitted to the Corporation. This selection process will continue with the next highest ranked nominees as many times as necessary, following the same order each time, until the Maximum Number is reached.

(d) Eligible Stockholders.

(i) An Eligible Stockholder or Nominator Group may submit a nomination in accordance with this Section 3.2 only if the person or group (in the aggregate) has continuously Owned at

least the Minimum Number (as adjusted for any stock splits, stock dividends or similar events) of shares of the Corporation's common stock throughout the three-year period preceding and including the date of submission of the Nomination Notice, and continues to Own at least the Minimum Number of shares through the date of the annual meeting. The following shall be treated as one Eligible Stockholder or one member of a Nominator Group if such Eligible Stockholder or member of a Nominator Group shall provide together with the Nomination Notice documentation that demonstrates compliance with the following criteria:

- (A) funds under common management and investment control;
- (B) funds under common management and funded primarily by the same employer; or
- (C) a "family of investment companies" or a "group of investment companies" (each as defined in the Investment Company Act of 1940, as amended).

For the avoidance of doubt, in the event of a nomination by a Nominator Group, any and all requirements and obligations for a given Eligible Stockholder (including, without limitation, each and every fund or company that comprises the Nominator Group) that are set forth in this Section 3.2, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the Ownership of the Nominator Group in the aggregate. Should any stockholder withdraw from a Nominator Group at any time prior to the annual meeting of stockholders, the Nominator Group shall only be deemed to Own the shares held by the remaining members of the group.

(ii) No stockholder shall be permitted to be in more than one Nominator Group, and if any stockholder appears as a member of more than one Nominator Group, or as a member of a Nominator Group and as a Nominating Stockholder without any such group, such stockholder shall be deemed to be a member of only the Nominator Group that has the largest Ownership position as reflected in the Nomination Notice and is not permitted to act as a Nominating Stockholder separate from such Nominator Group.

(e) Timely Nomination Notice. To be timely, the Nomination Notice shall have been delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not less than 120 nor more than 150 days in advance of the date which is the anniversary of the date the Corporation's proxy statement was released to security holders in connection with the previous year's annual meeting, except where information or documents are required to be provided after the date the Nomination Notice is first submitted, as set forth in this Section 3.2, or, if the date of the applicable annual meeting has been changed by more than 30 days from the date contemplated at the time of the previous year's proxy statement, not less than 90 days before the date of the applicable annual meeting, or, if later, the tenth day following the day on which notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting, whichever occurs first, and in no event shall the adjournment or postponement of an annual meeting, or the announcement thereof, commence a new time period (or extend any time period) for the giving of the Nomination Notice.

(f) Nomination Notice. The Nomination Notice shall consist of, collectively, the following information, documents and agreements which shall, for avoidance of doubt, be compiled, completed and submitted by the Nominating Stockholder or its representatives at its own cost:

(i) documentary evidence in the form of one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite three-year holding period, provided that each such intermediary must be a participant in the Depository Trust Company or an affiliate of a participant in the Depository Trust Company) verifying and certifying that, as of a date within seven calendar days prior to the date of the Nomination Notice, the Nominating Stockholder Owns, and has continuously Owned for the preceding three years, the Minimum Number of shares, and the Nominating Stockholder's agreement to provide, within five business days after the record date for the annual meeting, documentary evidence in the form of written statements from the record holder and intermediaries verifying and certifying the Nominating Stockholder's continuous Ownership of the Minimum Number of shares through the record date;

(ii) an undertaking to provide immediate notice if the Nominating Stockholder ceases to Own the Minimum Number of shares prior to the date of the annual meeting;

(iii) a copy of the Schedule 14N (or any successor form) relating to the Stockholder Nominee, completed and filed with the Securities and Exchange Commission by the Nominating Stockholder as applicable, in accordance with Securities and Exchange Commission rules;

(iv) the written consent of each Stockholder Nominee to being named in the Corporation's proxy statement, form of proxy and ballot as a nominee and to serving as a director if elected;

(v) a written notice of the nomination of such Stockholder Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including, for the avoidance of doubt, each member of a Nominator Group):

(A) the information and other deliverables that would be required to be set forth in a stockholder's notice of nomination pursuant to this Section 3.2, as if the Nominating Stockholder were proposing a director nominee under that section;

(B) to the extent not included in the response to paragraph (1) above, a detailed description of all direct and indirect material compensation and other monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among the Nominating Stockholder, on the one hand, and each Stockholder Nominee, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K (or its successor Item) if the Nominating Stockholder were the "registrant" for purposes of such item and the Stockholder Nominee, were a director or executive officer of such registrant;

(C) a detailed description of all communications by such Nominating Stockholder with any other stockholder or beneficial owner of any securities of the Corporation regarding such Stockholder Nominee;

(D) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;

(E) a representation and warranty that the Nominating Stockholder did not acquire, and is not holding, securities of the Corporation for the purpose or with the effect of influencing or changing control of the Corporation;

(F) a representation and warranty that the Nominating Stockholder has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than such Nominating Stockholder's Stockholder Nominee(s);

(G) a representation and warranty that the Nominating Stockholder has not engaged in and will not engage in a "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act with respect to the annual meeting, other than with respect to such Nominating Stockholder's Stockholder Nominee(s) or any nominee of the Board of Directors;

(H) a representation and warranty that the Nominating Stockholder has not engaged in and will not engage in, other than with respect to such Nominating Stockholder's Stockholder Nominee(s) or any nominee of the Board of Directors, (1) an exempt solicitation as described in Rule 14a-2(b) under the Exchange Act, or (2) any communication, as described in Rule 14a-1(l)(2)(iv) under the Exchange Act, stating how the Nominating Stockholder intends to vote at the annual meeting and the reasons therefore;

(I) a representation and warranty that the Nominating Stockholder will not use or distribute any proxy card other than the Corporation's proxy card in soliciting stockholders in connection with the election of a Stockholder Nominee at the annual meeting;

(J) a representation and warranty that the Stockholder Nominee's candidacy or, if elected, board membership would not violate applicable state or federal law or Stock Exchange Rules;

(K) a representation and warranty that the Stockholder Nominee: (A) qualifies as independent under the Stock Exchange Rules and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the directors; and (B) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to

whether the event is material to an evaluation of the ability or integrity of the Stockholder Nominee;

(L) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in Section 3.2(d);

(M) a representation and warranty that the Nominating Stockholder will continue to satisfy the eligibility requirements described in Section 3.2(d) through the date of the annual meeting;

(N) The details of any position of the Stockholder Nominee as an officer or director of any competitor (that is, any entity that provides products or services that compete with or are alternatives to the principal products produced or services provided by the Corporation or its affiliates) of the Corporation, within the three years preceding the submission of the Nomination Notice;

(O) if desired, a statement for inclusion in the proxy statement in support of the Stockholder Nominee's election to the Board of Directors; provided, that any such statement shall not exceed 500 words and shall fully comply with Section 14 of the Exchange Act; and

(P) in the case of a nomination by a Nominator Group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;

(vi) an executed agreement (which form of agreement shall be provided to the Nominating Stockholder by the Secretary upon written request), which must be submitted within ten days of the Nominating Stockholder's first submission of the Nomination Notice, pursuant to which the Nominating Stockholder (including each member of a Nominator Group) agrees:

(A) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election;

(B) to file any written solicitation or other communication with the Corporation's stockholders relating to one or more of the Corporation's directors or director nominees or any Stockholder Nominee with the Securities and Exchange Commission, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

(C) to assume all liability stemming from any action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder or the Stockholder Nominee nominated by such Nominating Stockholder with the Corporation, its stockholders or any other person, including, without limitation, the Nomination Notice;

(D) to indemnify and hold harmless (jointly with all other members of a Nominator Group, if applicable) the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any action, suit or proceeding (whether threatened, pending or completed), whether legal, judicial administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the Nominating Stockholder or Stockholder Nominee to comply with, or any breach or alleged breach of, its, or his or her, as applicable, obligations, agreements or representations under or pursuant to this Section 3.2, or otherwise arising out of any nomination, solicitation or other activity by any Eligible Stockholder or any member of a Nominator Group in connection with its efforts pursuant to this Section 3.2;

(E) to promptly (and in any event within 48 hours of discovering such misstatement or omission) notify the Corporation and any other recipient of any misstatement or omission if information included in the Nomination Notice, or any other communication by the Nominating Stockholder (including with respect to any member of a Nominator Group) with the Corporation, its stockholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), and promptly notify the Corporation and any other recipient of the information that is required to correct the misstatement or omission; and

(F) in the event that the Nominating Stockholder (including any member of a Nominator Group) has failed to continue to satisfy the eligibility requirements described in Section 3.2(d), to promptly notify the Corporation.

(vii) an executed questionnaire (which form of questionnaire shall be provided to the Nominating Stockholder by the Secretary upon written request), which must be submitted within ten days of the Nominating Stockholder's first submission of the Nomination Notice;

(viii) an executed agreement (which form of agreement shall be provided to the Nominating Stockholder by the Secretary upon written request), which must be submitted within ten days of the Nominating Stockholder's first submission of the Nomination Notice, by the Stockholder Nominee:

(A) to provide to the Corporation such other information as it may reasonably request;

(B) that the Stockholder Nominee has read and agrees, if elected, to serve as a member of the Board of Directors, act as a representative of all of the stockholders of the Corporation while serving as a director, comply with all of the duties of directors under applicable law and adhere to the Corporation's Corporate Governance Principles and Policies on Business Conduct and any other policies and guidelines applicable to directors as well as the rules and regulations of the Securities and Exchange Commission and any Stock Exchange Rules; and

(C) that the Stockholder Nominee is not and will not become a party to (1) any Compensation Arrangement in connection with such person's nomination or candidacy for director and/or such person's service or action as a director of the Corporation that has not been disclosed to the Corporation prior to or concurrently with the Nominating Stockholder's submission of the Nomination Notice, or (2) any Voting Commitment that has not been disclosed to the Corporation prior to or concurrently with the Nominating Stockholder's submission of the Nomination Notice. The information and documents required by this Section 3.2(f) shall be provided with respect to and be executed by the Nominating Stockholder (and each member of a Nominator Group), and provided with respect to the persons specified in Instructions 1 and 2 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Stockholder or any member of a Nominator Group that is an entity. The Nomination Notice shall be deemed submitted on the date on which all the information and documents referred to in this Section 3.2(f) (other than such information and documents required to be provided after the date the Nomination Notice is first submitted) have been delivered to or, if sent by mail, received by the Secretary of the Corporation. The Nominating Stockholder shall further update and supplement the Nominating Notice, if necessary, so that the information provided or required to be provided in such Nomination Notice shall be true and correct as of the record date for the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and any such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof).

(g) Exclusion or Disqualification of Stockholder Nominees.

(i) If, after the deadline for submitting a Nomination Notice as set forth in Section 3.2(e), a Nominating Stockholder becomes ineligible or withdraws its nomination or a Stockholder Nominee becomes ineligible or unwilling to serve on the Board of Directors, whether before or after the mailing of the definitive proxy statement, the Corporation:

(A) shall not be required to include in its proxy statement or on any ballot or form of proxy the Stockholder Nominee or any successor or replacement nominee proposed by the Nominating Stockholder or by any other Nominating Stockholder; and

(B) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Stockholder Nominee will not be included as a Stockholder Nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting.

(ii) Notwithstanding anything to the contrary contained in this Section 3.2, the Corporation may omit from its proxy materials any Stockholder Nominee, and any information concerning such Stockholder Nominee (including a Nominating Stockholder's statement in support), and in such case no vote on such Stockholder Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of the Stockholder Nominee, if:

(A) the Corporation receives a notice that a stockholder intends to nominate a candidate for director at the annual meeting pursuant to the advance notice requirements set forth in this Section 3.2;

(B) the Nominating Stockholder has engaged in a "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act with respect to the annual meeting, other than with respect to such Nominating Stockholder's Stockholder Nominee(s) or any nominee of the Board of Directors;

(C) the Nominating Stockholder has engaged in, other than with respect to such Nominating Stockholder's Stockholder Nominee(s) or any nominee of the Board of Directors, (1) an exempt solicitation as described in Rule 14a-2(b) under the Exchange Act, or (2) any communication, as described in Rule 14a-1(l)(2)(iv) under the Exchange Act, stating how the Nominating Stockholder intends to vote at the annual meeting and the reasons therefore;

(D) the Nominating Stockholder or the designated lead group member of a Nominator Group, as applicable, or any qualified representative thereof, does not appear at the annual meeting to present the nomination submitted in accordance with this Section 3.2;

(E) the Board of Directors, acting in good faith, determines that such Stockholder Nominee's nomination or election to the Board of Directors would result in the Corporation violating or failing to be in compliance with these By-laws or the Corporation's Certificate of Incorporation or any applicable law, rule or regulation to which the Corporation is subject, including the Stock Exchange Rules;

(F) the Stockholder Nominee was nominated for election to the Board of Directors pursuant to this Section 3.2 at one of the Corporation's two preceding annual meetings of stockholders and either withdrew from or became ineligible or unavailable for election at such annual meeting or received a vote of less than 25% of the shares of common stock entitled to vote for such Stockholder Nominee;

(G) the Stockholder Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended; or

(H) the Nominating Stockholder has failed to continue to satisfy the eligibility requirements described in Section 3.2(d), any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or the Nomination Notice omits a material fact necessary to make the statement made not misleading), the Stockholder Nominee becomes unwilling or unable to serve on the Board of Directors or any violation or breach occurs of any of the obligations, agreements, representations or warranties of the Nominating Stockholder or the Stockholder Nominee under this Section 3.2.

(iii) Notwithstanding anything to the contrary contained in this Section 3.2, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the statement in support of the Stockholder Nominee included in the Nomination Notice, if:

(A) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading;

(B) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any individual, Corporation, partnership, association or other entity, organization or governmental authority;

(C) the inclusion of such information in the proxy statement would otherwise violate the Securities and Exchange Commission proxy rules or any other applicable law, rule or regulation; or

(D) the inclusion of such information in the proxy statement would impose a material risk of liability upon the Corporation.

(iv) The Corporation may solicit against, and include in the proxy statement its own statement relating to, any Stockholder Nominee.

(h) Interpretation. The Board of Directors (and any other person or body authorized by the Board of Directors, including, without limitation, the person presiding over the relevant annual meeting) shall have the power and authority to interpret this Section 3.2 and to make any and all determinations necessary or advisable to apply this Section 3.2 to any persons, facts or circumstances, including the power to determine (i) whether one or more stockholders or beneficial owners qualifies as an Eligible Stockholder or Nominator Group, as applicable, (ii) whether a Nomination Notice complies with this Section 3.2, (iii) whether a Stockholder Nominee satisfies the qualifications and requirements in this Section 3.2, and (iv) whether any and all requirements of this Section 3.2 have been satisfied. Any such interpretation or determination adopted in good faith by the Board of Directors (or any other person or body authorized by the Board of Directors, including, without limitation, the person presiding over the relevant annual meeting) shall be binding on all persons, including the Corporation and its stockholders (including any beneficial owners). The person presiding over the meeting shall, if the facts warrant, determine and declare

to the meeting that a nomination was not made in accordance with the foregoing procedures, and the defective nomination shall be disregarded.

Section 3.3 Regular Meetings. Unless otherwise determined by the Board of Directors, a regular annual meeting of the Board of Directors shall be held, without call or notice, immediately after and, if the annual meeting of stockholders is held at a place, at the same place as the annual meeting of stockholders, for the purpose of organizing the Board of Directors, electing officers and transacting any other business that may properly come before such meeting. Additional regular meetings of the Board of Directors may be held without call or notice at such times as shall be fixed by resolution of the Board of Directors.

Section 3.4 Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors, the Chief Executive Officer or the Secretary, and shall be called by any of the aforementioned people at the written request of any two members of the Board of Directors. Notice of a special meeting of the Board of Directors shall be given by the person or persons calling the meeting at least twenty-four (24) hours before the special meeting; provided, however, that if the Chairman of the Board of Directors or the Chief Executive Officer determines in good faith that holding a special meeting of the Board of Directors is necessary or advisable, the Chairman of the Board of Directors or the Chief Executive Officer may provide less than twenty-four (24) hours' notice. The purpose or purposes of a special meeting need not be stated in the call or notice.

Section 3.5 Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors or, in his or her absence, by the Chief Executive Officer, or in his or her absence, by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting. A majority of the directors present at a meeting, whether or not they constitute a quorum, may adjourn such meeting to any other date, time or place without notice other than announcement at the meeting.

Section 3.6 Quorum: Vote Required for Action. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at all meetings of the Board of Directors a majority of the whole Board of Directors shall constitute a quorum for the transaction of business. Unless the Certificate of Incorporation or these Bylaws otherwise provide, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.7 Committees. The Board of Directors may, by resolution, designate one or more committees, including but not limited to an Audit Committee, a Compensation Committee and a Nominating and Governance Committee, each committee to consist of one or more directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members present at any meeting and not disqualified from voting, whether or not a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in these Bylaws or in the resolution of the Board of Directors designating such committee, or an amendment to such resolution, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Section 3.8 Telephonic Meetings. Directors, or any committee of directors designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of conference

telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 3.8 shall constitute presence in person at such meeting.

Section 3.9 Board of Director Action by Written Consent Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing (which may be in counterparts) or by electronic transmission or transmissions, and the written consent or consents or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or such committee. Such filing shall be made in paper form if the minutes of the Corporation are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Such action by written consent or consent by electronic transmission shall have the same force and effect as a unanimous vote of the Board of Directors or of such committee.

Section 3.10 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules not inconsistent with the provisions of law for the conduct of its business. In the absence of such rules, each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to this Article III of these Bylaws.

Section 3.11 Reliance upon Records. Every director, and every member of any committee of the Board of Directors, shall, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors, or by any other person as to matters the director or member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, including, but not limited to, such records, information, opinions, reports or statements as to the value and amount of the assets, liabilities and/or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the Corporation's capital stock might properly be purchased or redeemed.

Section 3.12 Interested Directors. A director who is directly or indirectly a party to a contract or transaction with the Corporation, or is a director or officer of or has a financial interest in any other corporation, partnership, association or other organization which is a party to a contract or transaction with the Corporation, may be counted in determining whether a quorum is present at any meeting of the Board of Directors or a committee thereof at which such contract or transaction is considered or authorized, and such director may participate in such meeting and vote on such authorization to the extent permitted by applicable law, including Section 144 of the General Corporation Law of the State of Delaware.

Section 3.13 Compensation. Unless otherwise restricted by the Certificate of Incorporation, the Board of Directors shall have the authority to fix the compensation of directors. The directors shall be paid their reasonable expenses, if any, of attendance at each meeting of the Board of Directors or a committee thereof and may be paid a fixed sum for attendance at each such meeting and an annual retainer or salary for services as a director or committee member. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.14 Emergency Bylaw. Notwithstanding anything to the contrary in the Certificate of Incorporation or these Bylaws, this Section 3.14 shall be operative during any emergency, resulting from an attack on the United States or on a locality in which the Corporation conducts its business or customarily holds meetings of its Board of Directors or its stockholders, or during any nuclear or atomic disaster or during the existence of any catastrophe, including, but not limited to, an epidemic or pandemic, and a declaration of a national emergency by the United States government, or other similar emergency condition, irrespective of whether a quorum of the Board of Directors or a standing committee thereof can readily be convened for action (an "Emergency").

(a) During any Emergency, any director or officer of the Corporation may call a meeting of the Board of Directors or any committee thereof and notice of the place and time of such meeting of the Board of Directors or any committee thereof may be given only to such directors as may be feasible to reach at the time and by such means as may be feasible at the time and with such advance notice as circumstances permit in the judgment of the person calling the meeting. Neither the business to be transacted nor the purpose of any such meeting need be specified in the notice thereof.

(b) At any meeting of the Board of Directors or any committee thereof, called in accordance with this Section 3.14, the director or directors in attendance at the meeting shall constitute a quorum. Vacancies on the Board of Directors, or any committee thereof, may be filled by a majority vote of the directors in attendance at the meeting. In the event that no directors are able to attend the meeting of the Board of Directors, then the Designated Officers in attendance shall serve as directors for the meeting, without any additional quorum requirement and will have full powers to act as directors of the Corporation for such meeting. For purposes of this Section 3.14, "Designated Officers" means a list of officers of the Corporation who shall be deemed to be directors of the Corporation for purposes of obtaining a quorum during an Emergency if a quorum of directors cannot otherwise be obtained during such Emergency, which officers have been designated by the Board of Directors or a committee thereof, as the case may be, from time to time but in any event prior to such time or times as an Emergency may have occurred. If the Board of Directors or a committee thereof has not approved a list of Designated Officers prior to the Emergency, then the officers of the Corporation in attendance shall serve as directors for the meeting, without any additional quorum requirement and will have full powers to act as directors of the Corporation for such meeting.

(c) No director, officer or employee acting in accordance with this Section 3.14 or otherwise pursuant to Section 110 of the General Corporation Law of the State of Delaware (or any successor section) shall be liable except for willful misconduct.

(d) The Board of Directors, either before or during any Emergency, may, effective in the Emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers so to do. Without limiting any powers or emergency actions that the Board of Directors may take during an Emergency, during an Emergency, the Board of Directors may take any action that it determines to be practical and necessary to address the circumstances of the Emergency including, without limitation, taking the actions with respect to stockholder meetings and dividends as provided in Section 110(i) of the General Corporation Law of the State of Delaware.

(e) At any meeting called in accordance with this Section 3.14(a), the Board of Directors may modify, amend or add to the provisions of this Section 3.14 in order to make any provision that may be practical or necessary given the circumstances of the Emergency.

(f) The provisions of this Section 3.14 shall be subject to repeal or change by further action of the Board of Directors or by action of the stockholders, but no such repeal or change shall modify the provisions of paragraph (c) hereof with regard to action taken prior to the time of such repeal or change.

(g) Nothing contained in this Section 3.14 shall be deemed exclusive of any other provisions for emergency powers consistent with other sections of the General Corporation Law of the State of Delaware which have been or may be adopted by corporations created under the General Corporation Law of the State of Delaware.

ARTICLE IV

Officers

Section 4.1 Executive Officers; Election; Qualification; Term of Office. The Board of Directors shall elect a Chairman of the Board of Directors from among its members and shall elect a Chief Executive Officer and a Chief Financial Officer. The Board of Directors shall also elect a Secretary and may elect a President, one or more Vice Presidents, and one or more Assistant Secretaries. Any number of offices may be held by the same person. Each officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding his or her election, and until his or her successor is elected and qualified or until his or her earlier death, resignation or removal.

Section 4.2 Resignation; Removal; Vacancies. Any officer may resign at any time by giving written notice to the Chairman of the Board of Directors, the Chief Executive Officer or the Secretary. Unless otherwise stated in a notice of resignation, it shall take effect when received by the officer to whom it is directed, without any need for its acceptance. The Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation. A vacancy occurring in any office of the Corporation may be filled for the unexpired portion of the term thereof by the Board of Directors at any regular or special meeting.

Section 4.3 Powers and Duties of Executive Officers. The officers of the Corporation shall have such powers and duties in the management of the Corporation as may be prescribed by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 4.4 Chief Executive Officer. The Chief Executive Officer of the Corporation shall in general supervise and control all of the business affairs of the Corporation, subject to the direction of the Board of Directors. The Chief Executive Officer may execute, in the name and on behalf of the Corporation, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors or a committee thereof has authorized to be executed, except in cases where the execution shall have been expressly delegated by the Board of Directors or a committee thereof to some other officer or agent of the Corporation.

Section 4.5 President. The President shall perform such duties and possess such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer, the President shall perform the duties of the Chief Executive Officer

and, when so performing, shall have all the powers and be subject to all the restrictions upon the office of Chief Executive Officer.

Section 4.6 Chief Financial Officer. The Chief Financial Officer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Chief Financial Officer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Controlling Officer and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all such officer's transactions as Chief Financial Officer and of the financial condition of the Corporation. If required by the Board of Directors, the Chief Financial Officer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office and for the restoration to the Corporation, in case of such person's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 4.7 Secretary. In addition to such other duties, if any, as may be assigned to the Secretary by the Board of Directors, the Chairman of the Board of Directors or the Chief Executive Officer, the Secretary shall (i) keep the minutes of proceedings of the stockholders, the Board of Directors and any committee of the Board of Directors in one or more books provided for that purpose; (ii) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (iii) be the custodian of the records and seal of the Corporation; (iv) affix or cause to be affixed the seal of the Corporation or a facsimile thereof, and attest the seal by his or her signature, to all documents the execution of which under seal is authorized by the Board of Directors; and (v) unless such duties have been delegated by the Board of Directors to a transfer agent of the Corporation, keep or cause to be kept a register of the name and address of each stockholder, as the same shall be furnished to the Secretary by such stockholder, and have general charge of the stock transfer records of the Corporation.

Section 4.8 Assistant Secretaries. Except as may be otherwise provided in these Bylaws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President, if there be one, or any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of such person's disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 4.9 Vice Presidents. Except as may be otherwise provided in these Bylaws, Vice Presidents, if there be any, shall perform such duties and possess such powers as from time to time may be assigned to them by the Board of Directors, the Chief Executive Officer or the President. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other such title.

Section 4.10 Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLE V

Stock Certificates and Transfers

Section 5.1 Certificated and Uncertificated Shares. Shares of the Corporation's stock may be certificated or uncertificated, as provided under Delaware law. All certificates of stock of the Corporation shall be numbered and shall be entered in the books of the Corporation as they are issued. The certificates shall be signed by (i) the Chairman of the Board of Directors, the Chief Executive Officer, the President, if any, or a Vice President, if any, and (ii) the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, and certify the number of shares owned by such holder in the Corporation.

Section 5.2 Signatures. Any signature required to be on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 5.3 Lost Certificates; Issuance of New Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 5.4 Transfers of Stock. Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation only by the record holder of such stock, or by their attorney lawfully constituted in writing, and, in the case of stock represented by a certificate, upon the surrender of the certificate.

Section 5.5 Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten days before the date of such meeting, nor more than sixty days prior to any such other corporate action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 5.6 Beneficial Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

ARTICLE VI

Notices

Section 6.1 Manner of Notice.

(a) Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, whenever notice is required to be given to any stockholder, director or member of any committee of the Board of Directors, such notice may be given by (i) personal delivery, (ii) depositing it, in a sealed envelope, in the United States mails, first class, postage prepaid, addressed, (iii) delivering to a company for overnight or second day mail or delivery, (iv) delivering it to a telegraph company, charges prepaid, for transmission, or by transmitting it via telecopier, or (v) any other reliable means permitted by applicable law (including, subject to Section 6.1(b), electronic transmission) to such stockholder, director or member, either at the address of such stockholder, director or member as it appears on the records of the Corporation or, in the case of such a director or member, at his or her business address; and such notice shall be deemed to be given at the time when it is thus personally delivered, deposited, delivered or transmitted, as the case may be. Such requirement for notice shall also be deemed satisfied, except in the case of stockholder meetings, if actual notice is received orally or by other writing by the person entitled thereto as far in advance of the event with respect to which notice is being given as the minimum notice period required by law or these Bylaws.

(b) Without limiting the foregoing, any notice to stockholders given by the Corporation pursuant to these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation and shall also be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary of the Corporation, the transfer agent or other person responsible for the giving of notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by a form of electronic transmission in accordance with these Bylaws shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network, together with separate notice to the stockholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (iv) if by another form of electronic transmission, when directed to the stockholder.

Section 6.2 Dispensation with Notice.

(a) Whenever notice is required to be given by law, the Certificate of Incorporation or these Bylaws to any stockholder to whom (i) notice of two consecutive annual meetings of stockholders, and all notices of meetings of stockholders to such stockholder during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities of the Corporation during a 12-month period, have been mailed addressed to such stockholder at the address of such stockholder as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting which shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth the then current address of such stockholder, the requirement that notice be given to such stockholder shall be reinstated.

(b) Whenever notice is required to be given by law, the Certificate of Incorporation or these Bylaws to any person with whom communication is unlawful, the giving of such notice to such person shall not be required, and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given.

Section 6.3 Waiver of Notice. Any written waiver of notice, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee or directors need be specified in any written waiver of notice.

ARTICLE VII

Indemnification

Section 7.1 Right to Indemnification.

(a) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by law as in effect on the date of adoption of these Bylaws or as it may thereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture or other enterprise, against any and all liability and loss (including judgments, fines, penalties and amounts paid in settlement) suffered or incurred and expenses reasonably incurred by such person. The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware law. The Corporation shall not be required to indemnify a person in connection with a proceeding initiated by such person, including a counterclaim or crossclaim, unless the proceeding was authorized by the Board of Directors.

(b) For purposes of this Article VII: (i) any reference to "other enterprise" shall include all plans, programs, policies, agreements, contracts and payroll practices and related trusts for the benefit of or relating to employees of the Corporation and its related entities ("employee benefit plans"); (ii) any reference to "fines", "penalties", "liability" and "expenses" shall include any excise taxes, penalties, claims, liabilities and reasonable expenses (including reasonable legal fees and related expenses) assessed against or incurred by a person with respect to any employee benefit plan; (iii) any reference to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation or trustee or administrator of any employee benefit plan which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, beneficiaries, fiduciaries, administrators and service providers; (iv) any reference to serving at the request of the Corporation as a director, officer, employee or agent of a partnership or trust shall include

service as a partner or trustee; and (v) a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" for purposes of this Article VII.

Section 7.2 Prepayment of Expenses. The Corporation shall pay or reimburse the reasonable expenses incurred in defending any proceeding in advance of its final disposition if the Corporation has received an undertaking by the person receiving such payment or reimbursement to repay all amounts advanced if it should be ultimately determined that he or she is not entitled to be indemnified under this Article VII or otherwise.

Section 7.3 Claims. If a claim for indemnification or payment of expenses under this Article VII is not paid in full within 60 days after a written claim therefor has been received by the Corporation, the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

Section 7.4 Non-Exclusivity of Rights. The rights conferred on any person by this Article VII shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 7.5 Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee, partner or agent of another corporation, partnership, joint venture or other enterprise shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture or other enterprise.

Section 7.6 Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article VII shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE VIII

General

Section 8.1 Fiscal year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors. Initially, the fiscal year of the Corporation shall end on March 31 of each year.

Section 8.2 Seal. The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 8.3 Definitions.

(a) For purposes of these Bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(b) For purposes of these Bylaws, "public disclosure" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or comparable national news service, or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(c) For purposes of these Bylaws, a "qualified representative" of a stockholder shall mean a duly authorized officer, manager or partner of such stockholder or a person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders, which writing (or a reliable reproduction thereof) shall be produced at the meeting of stockholders.

(d) For purposes of these Bylaws, "Stockholder Associated Person" of any stockholder means (i) any person acting in concert with such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depository) and (iii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person.

Section 8.4 Exclusive Forum. Unless the Corporation consents in writing to the selection of an alternative forum (an "Alternative Forum Consent"), the Delaware Court of Chancery shall be the sole and exclusive forum for, and shall have exclusive jurisdiction with respect to, (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, stockholder, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, including a claim alleging the aiding and abetting of such a breach of fiduciary duty, (c) any action asserting a claim against the Corporation or any current or former director, officer, stockholder, employee or agent of the Corporation arising out of or relating to any provision of the General Corporation Law of the State of Delaware, the Certificate of Incorporation or these Bylaws, (d) any action asserting a claim related to or involving the Corporation or any director, officer, stockholder, employee or agent of the Corporation that is governed by the internal affairs doctrine of the State of Delaware, or (e) any action asserting an "internal corporate claim" as that term is defined in Section 115 of the General Corporation Law of the State of Delaware; provided, however, that, in the event that the Delaware Court of Chancery lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware. If any action the subject matter of which is within the scope of this Section is filed in a court other than the Delaware Court of Chancery (or any other state or federal court located within the State of Delaware, as applicable) (a "Foreign Action") by or in the name of any stockholder, such stockholder shall be deemed to have notice of and consented to (i) the exclusive personal jurisdiction of the Delaware Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) in connection with any action brought in any such court to enforce this Section and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. The existence of any prior Alternative Forum Consent shall not act as a waiver of the Corporation's ongoing consent right as set forth above in this Section with respect to any current or future actions or claims. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions.

Section 8.5 Amendment of Bylaws. These Bylaws may be altered or repealed, and new Bylaws made, by the majority vote of the whole Board of Directors; provided, however, that a Bylaw adopted by the holders of stock representing a majority of the votes which could be cast by the holders of all outstanding stock that

prescribes the required vote for the election of directors may not be altered by the Board of Directors. The holders of stock representing a majority of the votes which could be cast by the holders of all outstanding stock may make additional Bylaws and may alter and repeal any Bylaws whether adopted by them or otherwise.

**CERTIFICATION PURSUANT TO RULE 13a-14(a) AND RULE 15d-14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Bruce Thames, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Thermon Group Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 2, 2023

By: /s/ Bruce Thames
Name: Bruce Thames
Title: President and Chief Executive Officer

**CERTIFICATION PURSUANT TO RULE 13a-14(a) AND RULE 15d-14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Kevin Fox, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Thermon Group Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 2, 2023

By: /s/ Kevin Fox
Name: Kevin Fox
Title: Senior Vice President, Chief Financial Officer

**CERTIFICATION PURSUANT TO SECTION 1350
OF CHAPTER 63 OF TITLE 18 UNITED STATES CODE**

In connection with the Quarterly Report on Form 10-Q of Thermon Group Holdings, Inc. (the "Company") for the quarterly period ended December 31, 2022 (the "Report"), I, Bruce Thames, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) Information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 2, 2023

By: /s/ Bruce Thames
Name: Bruce Thames
Title: President and Chief Executive Officer

**CERTIFICATION PURSUANT TO SECTION 1350
OF CHAPTER 63 OF TITLE 18 UNITED STATES CODE**

In connection with the Quarterly Report on Form 10-Q of Thermon Group Holdings, Inc. (the "Company") for the quarterly period ended December 31, 2022 (the "Report"), I, Kevin Fox, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) Information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 2, 2023

By: /s/ Kevin Fox
Name: Kevin Fox
Title: Senior Vice President, Chief Financial Officer