



TERMS AND CONDITIONS OF PURCHASE

1. **APPLICABILITY.** These Terms and Conditions of Purchase (the “**Terms**”) and any accompanying purchase order provided by Company constitute an offer (collectively, this “**Offer**”) by Company to purchase from Seller the Work Product identified in this Offer. This Offer consists of the Terms, any accompanying purchase order provided by Company, and any other documents generated by Company and incorporated by Company into such purchase order by specific reference but only to the extent that such other documents are not inconsistent with the Terms. The Offer contains all and the only terms and conditions upon which Company shall purchase Work Product from Seller. Company may withdraw or revoke this Offer at any time prior to Seller’s acceptance. Unless otherwise indicated in writing, this Offer expires thirty (30) days from the date of issuance by Company. Seller authorizes Company to complete such credit checks in respect of Seller as Company may deem appropriate.
2. **ACCEPTANCE AND ACKNOWLEDGEMENT OF OFFER.** Seller’s acceptance of this Offer shall be confirmed by the earlier of Seller: (a) returning a written acknowledgement or confirmation of this Offer; (b) commencing manufacture or delivery of Goods and/or the performance of Services under this Offer; and (c) providing any other written or oral indication to Company that this Offer has been accepted by Seller. Upon such acceptance, this Offer shall form a valid and binding supply contract for the purchase of the Work Product (the “**Order**”) without condition by Seller. Company expressly rejects any additional or different terms or conditions submitted to Company by Seller such as in Seller’s confirmation, acknowledgement, invoice or other documents or which were customary or included in prior dealings between the Parties. Seller acknowledges that any such additional or different terms or conditions shall be deemed material alterations to the Offer and shall not form part of the Order.
3. **MANUFACTURE OF GOODS.** All Work Product consisting of Goods shall be manufactured and/or supplied by Seller. Seller shall ensure that the manufacture, supply, packaging and delivery of Goods shall in all respects be in accordance with the Specifications. Seller shall manage an adequate supply of all parts and materials needed for the manufacture, supply, packaging and delivery of Goods and assume all cost obligations in relation thereto. Where parts and materials needed for the manufacture, supply, packaging and delivery of Goods are listed in an “Approved Manufacturers or Suppliers List” in the Specifications as being sourced with an approved manufacturer or supplier, Seller shall purchase such materials from such approved manufacturer or supplier and assume all cost obligations in relation thereto. Where parts and materials needed for the manufacture, supply, packaging and delivery of Goods are listed in the Specifications as being sourced with Company, it shall purchase such materials from Company and assume all cost obligations in relation thereto. Supplier shall promptly provide Notice to Company if it determines that any such approved parts or materials do not meet the Specifications and, in such a case, Supplier shall not use such parts or materials in the manufacture, supply, packaging or delivery of Goods. Seller shall ensure that the Goods, including their component parts, and their manufacture, supply, packaging and delivery hereunder complies with all applicable laws.
4. **PACKAGING OF GOODS.** All Goods shall be packed for shipment according to Company’s instructions and in a manner sufficient to ensure that the Goods are loaded, transported, unloaded and delivered in an undamaged condition. Company shall not pay or be responsible for any charges for packaging, packing, or returnable containers, unless stated on this Order. Company will not return any packaging material or containers, unless stated on this Order, and any return of such packaging material or containers shall be made at Seller’s expense. All Goods that are hazardous materials shall be marked by Seller with international danger symbols and shall display the name of the material in English. Delivery and other shipping documents must include disclosure of all applicable hazard(s) and emergency response procedures. Such information shall be provided on a material safety data sheet furnished with the Goods that identifies each hazardous material and includes information concerning possible biomedical adverse effects on humans and the environment including carcinogenicity or toxicity.
5. **SHIPMENT OF GOODS.** Unless otherwise stated on this Order, all Goods shall be delivered duty paid (DDP) to the delivery location specified on this Order. Company shall be entitled to specify the carrier to transport the Goods. If requested by Company, Seller shall send electronic Notice of shipment the same day the Goods are shipped. Seller shall provide to Company all shipping documents, including the invoice, packing list, bill of lading, material safety data sheets and any other document necessary to release the Goods to Company when delivered. Unless otherwise stated in this Order, Seller bears all risk of loss or damage to the Goods until the Goods are delivered to the location specified in this Order. Risk of loss or damage to any Goods rejected by Company shall pass back to Seller upon Company providing Notice of such rejection to Seller.
6. **DELIVERY AND PERFORMANCE.** Timely delivery of the Goods and performance of the Services is of the essence. Seller shall deliver the Goods and perform the Services strictly in accordance with the Specifications, including quantities, schedules and other requirements specified in this Order. No act of Company, including acceptance of late deliveries, shall act as a waiver of this Section 6. Seller shall immediately provide Notice to Company of any anticipated or actual delay in Seller’s strict performance of its obligations under this Order. In the event of such delay, Company may cause Seller to deliver the Goods or complete performance of the Services by the most expeditious means, whereupon any additional delivery or other charges in excess of those that would apply for the usual means of delivery or performance shall be borne by Seller. If Seller fails to deliver the Goods in full or complete performance of the Services by the date

required by this Order, then Company may terminate this Order upon Notice to Seller and purchase substitute goods or services elsewhere. Seller shall indemnify and hold harmless Company from and against any losses, claims, damages, costs and expenses, including legal fees, attributable to Seller's failure. Company may return any Goods delivered or refuse to accept the performance of any Services prior to the date required by this Order at Seller's expense and Seller shall redeliver such Goods or perform the Services on the required delivery date.

7. **INSPECTION.** All Work Product ordered by Company is subject to inspection and testing by Company or its representatives, assignees, licensees or customers, at all times, including during the period of manufacture and prior to delivery. Seller shall permit access to its facilities at all reasonable times for such inspection and shall provide all tools, facilities and other assistance reasonably necessary for such inspection, in each case at no cost to Company. Work Product consisting of Goods is also subject to inspection by Company on or after delivery. Company may reject all or any portion of the Work Product if Company determines that it does not conform to the Specifications, the representations, warranties and covenants or the other requirements of this Order or are otherwise defective or inadequate. If Company rejects any portion of the Work Product, Company may exercise, at its sole option, any of the remedies set forth in Section 12 below. Company shall have the same rights of inspection and testing under this Section 7 for any replacement Work Product. Any inspection, payment or other action by Company shall not reduce or otherwise affect Seller's obligations under the Order, including its obligations under any representations, warranties or covenants.
8. **CHANGE ORDERS & ADJUSTMENTS.** Company may, at any time by written change order, change the Specifications, quantities, delivery location, method of shipment, and/or packing of Work Product, authorize additional Work Product and/or change the time for performance of the Services or delivery of the Goods. If any such change results in an increase or decrease in the cost or time required to perform under this Order, Seller shall inform Company by Notice in writing within ten (10) days of receipt of Company's change order. Nothing herein shall excuse Seller from proceeding without delay in the performance of this Order as changed. Seller shall not substitute or change any Work Product ordered by Company without the prior written approval of Company. Company shall not pay for any substitutions or changes that are not approved in writing by Company prior to any substitutions or changes being implemented.
9. **PRICE.** Company shall pay the price for the Work Product specified on this Order. Unless otherwise specified on this Order, the price includes all surcharges, including all costs related to performance, transportation, fuel, raw materials, packaging, packing, returnable containers, insurance and custom duties. Surcharges for tooling or expedited delivery must be included in the original price quote and stated as a separate line item on this Order. No increase in the price or surcharges specified on this Order is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Company. Each Party shall be responsible for its own costs and expenses in connection with this Order, including in authorising, preparing, executing, performing and fulfilling its obligations under this Order, including all fees and expenses of its respective representatives.
10. **TAXES.** Company shall be responsible for any sales, use, rental, personal property, or other similar taxes assessed on Work Product. If Seller is required to collect certain taxes, then such taxes shall be included on the invoice as separate line items; otherwise Company shall pay such taxes directly. Seller shall be liable for all taxes on all income it receives from Company under this Order.
11. **INVOICE & PAYMENT.** Unless otherwise specified on this Order, Seller shall issue invoices within thirty (30) days following the delivery of Goods or completion of the Services. Unless otherwise specified on this Order, Company shall pay all undisputed portions of an invoice within forty five (45) days from the date Company received a correct invoice or the date Company accepted the Work Product, whichever is later. Company shall have no obligation to pay invoiced amounts it disputes in good faith until such dispute is resolved. Company shall notify Seller promptly of any such dispute, and Company and Seller shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue to perform all of its obligations under this Order while Company and Seller work to resolve any such dispute.
12. **WARRANTIES.**
 - (a) Seller represents, warrants and covenants, upon the date of this Order and thereafter on a continuing basis, that: (i) Seller has all necessary corporate power, authority and capacity to enter into and to carry out its obligations under this Order, the consummation of the transactions contemplated by this Order have been duly authorized by all necessary action on its part, this Order constitutes a valid and binding obligation, enforceable against it in accordance with its terms and no approval, consent or authorization of or filing or registration with any governmental authority is required by it for the execution, delivery or performance of this Order; (ii) Work Product consisting of Goods shall be new, free of defects in material and workmanship, merchantable, fit for the purposes expressed in or reasonably inferable from this Order, free and clear of all liens, security interests, and other encumbrances, and conform to applicable specifications, samples, and other data or requirements specified by Company; (iii) such Goods, including the use thereof, and any Practise of Foreground IP or Seller Background IP licensed hereunder does not infringe, violate or constitute a misappropriation of the IP or other rights of any person; (iv) Seller has all rights to assign, transfer and convey Foreground IP and to license Seller Background IP to Company hereunder free and clear of all liens, security interests, and other encumbrances; (v) no claims have been asserted against Seller or any other person alleging that Foreground IP, Seller Background IP licensed hereunder or such Goods or their manufacture infringes, violates or misappropriates the IP or other rights of any person; and (vi) all employees or other individuals who have been involved in the creation or development of any such Foreground IP, Seller Background IP and Goods have, directly or indirectly, assigned or licensed, as the case may be, all of their right, title and interest in and to such subject

matter to Seller and waived any and all authors or moral rights that they may have in any such subject matter consisting of copyrightable works.

- (b) Seller represents, warrants and covenants, upon the date of this Order and thereafter on a continuing basis, that Work Product consisting of Services does not infringe, violate or constitute a misappropriation of the IP or other rights of any person and shall be performed: (i) in a professional and workmanlike manner in accordance with best industry standards of care, skill, and diligence observed by professionals performing similar services; (ii) in strict compliance with all applicable laws; and (iii) strictly in accordance with all requirements and Specifications of this Order. If any of the Services fail to comply with any of these representations, warranties and covenants, Seller shall promptly correct such Services at Seller's expense. If Seller fails to commence such correction within five (5) days of receipt of Notice from Company, Company may, at its sole option, terminate this Order for cause, procure the Services elsewhere, and charge Seller for any loss incurred.
 - (c) If the Work Product does not conform to any of these representations, warranties and covenants, Company may, at its sole option: (i) refuse to accept the Work Product and terminate the entire Order for cause, including any unshipped or incomplete portion of the Order; (ii) retain the Work Product consisting of Goods at a reduced price; (iii) retain such Goods and require correction in place at Seller's sole expense, or (iv) return such Goods and require replacement, correction, credit or refund. Company shall not be required to obtain Seller's permission to return any Goods to Seller that, in Company's reasonable discretion, are not in conformity with any of these representations, warranties and covenants. If Company requires replacement or re-performance of the Work Product, Seller shall, at its sole expense, promptly replace the Work Product and pay for all related expenses, including costs for storage, insurance, and transportation for the return of Goods and the delivery or performance of replacement Work Product. If Seller fails to deliver replacement Work Product within thirty (30) days of Company's request, then Company may replace the Work Product with goods from another source, charge any excess costs to Seller, and terminate this Order for cause.
 - (d) Seller shall not knowingly use or incorporate into the Work Product, the Foreground IP or the Seller Background IP licensed hereunder any IP the use of which would be likely to infringe, violate or misappropriate the IP of any other person. If, in Company's reasonable opinion, the foregoing is likely to infringe, violate or misappropriate the IP of any other person, in addition to the remedies available under the other provisions of this Section 12, Company shall provide Notice to Seller and, at Seller's sole cost, Seller shall after consultation with Company and in compliance with Company's direction as to the course of action and without any effect to or waiver of any right Company may possess at either law or equity, either: (i) procure for Company the right to continue using or enjoying the benefit of the Work Product, the Foreground IP or the Seller Background IP, including obtaining for Company a release from any such infringement, violation or misappropriation; (ii) modify the foregoing so that they do not infringe, violate or misappropriate such other person's IP; or (iii) replace the foregoing with substantially equivalent non-infringing Work Product, but only if any modification or replacement does not adversely affect Company's rights or ability to use or enjoy the benefit of the Work Product, the Foreground IP or the Seller Background IP. If none of these options is reasonably possible, Seller shall refund to Company all amounts paid to Seller for such Work Product, Foreground IP or the Seller Background IP and reimburse Company for reasonable expenses of removal, modification and/or replacement.
 - (e) Seller shall not accept any funding or grants from any other person including any university or educational institution or governmental authority that may affect Company's rights hereunder, Foreground IP, Work Product or any component thereof.
 - (f) All representations, warranties and covenants shall survive delivery, inspection, acceptance of and payment for the Work Product, the assignment of Foreground IP and the licensing of Seller Background IP and shall run to Company and its customers, assignees and licensees. Any applicable statute of limitation begins on the date of Company's discovery of any noncompliance with these representations, warranties and covenants. These representations, warranties, covenants and remedies are cumulative and in addition to any other representation, warranty, covenant, right or remedy provided by law or equity. In the event Company prevails in any legal or administrative action necessary to enforce these representations, warranties, covenants and/or remedies against Seller, Company shall be entitled to recover its legal fees and all costs from Seller. Seller hereby assumes full responsibility and liability resulting from its failure to satisfy these obligations, specifically or in general.
 - (g) Company does not make any representation, warranty, covenant or condition with respect to Company IP and disclaims all representations, warranties, covenants or conditions, express or implied, including any statutory or express or implied conditions and warranties of merchantability, operability and/or fitness for use for a particular purpose.
 - (h) EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 12, NO PARTY MAKES ANY WARRANTY WITH RESPECT TO ANY IP, GOODS OR SERVICES AND EACH PARTY EXPRESSLY DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES OR REPRESENTATIONS.
13. INDEMNITY. Seller shall defend, indemnify, and hold harmless Company, its parents, affiliates, subsidiaries, successors, and assigns, and in each case their respective agents, representatives, directors, officers, shareholders, employees, customers, assignees, licensees and all persons claiming under them ("**Indemnitees**") from and against any and all

personal injury, sickness, disease, death, injury to or destruction of real or personal property, loss of use, theft, misuse, misappropriation, damage, loss, liability, claim, deficiency, action, order, judgment, interest, award, penalty, fine, cost or expense, including reasonable court costs and legal and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and pursuing any insurance providers, in each case arising from or in connection with the Work Product or Seller's performance under this Order, including the acts or omissions of Seller, its agents, employees, representatives, subcontractors, and others under Seller's direction or control including: (a) any non-fulfillment or breach of any representation, warranty, covenant or obligation of Seller contained in this Order (except to the extent such claim arises directly from Seller's strict adherence to any Specifications developed solely by Company); (b) bodily injury, risk of bodily injury, death and property damage caused by such persons; (c) such person's failure to comply with applicable laws including export control laws; and (d) assertions under workers' compensation or similar employee benefit laws made by Seller or any of Seller's agents, employees, representatives, subcontractors, or subcontractors' agents, employees, representatives or subcontractors. Seller shall not enter into any settlement without the Indemnitee's prior written consent. These indemnification obligations shall be in addition to the warranty obligations of Seller and shall not be limited in any way by any insurance Seller is obligated to maintain under this Order.

14. **INSURANCE.** Seller shall, at its own expense, carry and maintain in full force and effect, during the term of this Order and for a period of at least two (2) years following the last date of delivery or performance of Work Product, the following insurance: (a) Workers' Compensation and Employers' Liability Insurance in accordance with all applicable statutory requirements and limits; (b) Commercial General Liability Insurance, including coverage for premises and completed operations, broad form property damage, personal injury liability, and contractual liability, with minimum limits for combined bodily injury and property damage of \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and (c) if Seller is providing Services, Professional Indemnity Insurance coverage in amounts not less than \$1,000,000 for claims in connection with such Services. Certificates of insurance evidencing the coverage required above shall be provided to Company prior to the commencement of the Work. Each certificate shall contain a provision that the insurance coverage shall not be amended or cancelled without thirty (30) days prior Notice to Company. All such insurance policies shall be carried with reputable insurance companies, shall name Company as an additional insured (excluding Workers' Compensation), and shall include a waiver of subrogation by the insurer in favor of Company. Seller's failure to comply with any of the insurance provisions of this Order shall not limit or relieve Seller from any of its obligations under this Order.
15. **LIMITATION OF LIABILITY.** To the maximum extent permitted by law, in no event shall Company or Seller be liable to the other or to any third person or entity with respect to the subject matter of this Order, under any equity, common law, tort, contract, estoppel, negligence, strict liability, warranty, or other theory, for any incidental, special, punitive, exemplary, consequential, or indirect damages, even if the remedies provided for in this order fail for their essential purpose and even if a Party has been advised of the possibility of any of the foregoing damages or the foregoing damages could have been reasonably foreseen. Notwithstanding the foregoing, nothing in this Order will exclude or limit Seller's liability (a) for fraud, gross negligence or willful misconduct; (b) for personal injury or death, or property damage or loss, in each case caused by Seller's negligence; or (c) under Sections 12, 13, 16, 18, 19, 20, 21, 26, 27, 28 or 29.
16. **COMPANY PROPERTY.** Any tools, molds, equipment, materials, powder, ionic conducting membranes (and any materials, specifications, information or technology relating to such membranes, including NaSICON), tooling or other personal property owned by Company and furnished or made available to Seller by or on behalf of Company pursuant to this Order ("**Company Property**") shall at all times remain the property of Company. Seller shall defend, indemnify and hold harmless Company from all liens, security interests and other encumbrances upon Company Property arising from any cause in connection with Seller. Company Property, while in Seller's possession or control, shall be kept in good condition, shall be held at Seller's risk, and shall be kept insured by Seller, at its expense, in an amount equal to the replacement cost with loss payable to Company.
17. **SPECIAL EQUIPMENT.** If the price stated on this Order includes jigs, dies, fixtures, tools, specifications, materials or other special equipment and manufacturing aids used in the Work ("**Special Equipment**"), such Special Equipment shall become the property of Company upon acquisition by Seller. Unless Company provides its prior written consent, Special Equipment shall not be used in the production, manufacture or design of any goods or the performance of any services for anyone other than Company. Special Equipment and any other Company property located at Seller's premises shall be plainly marked, tagged or otherwise adequately identified by Seller as property of Company.
18. **COMPANY SPECIFICATIONS.** Any Specifications or information derived from the Specifications or provided or made available by or on behalf of Company to Seller: (a) shall remain or be, as the case may be, Company's property, and shall be Company IP; (b) shall be kept confidential and shall be Company Confidential Information; (c) shall not be published or disclosed to another person without Company's prior written consent; and (d) shall be returned to Company immediately upon Company's request or upon the earlier of termination or completion of this Order. Any such Specifications or information shall be used solely by Seller in implementing this Order and Seller shall not use such Specifications or information for any other purpose unless agreed to by Company in writing. Company providing Specifications to Seller shall not constitute any grant, option or license to Seller under any IP rights now or hereafter held by Company other than under the license of Company IP provided for in Section 20(a).
19. **TITLE TO AND DELIVERY OF WORK PRODUCT.** Title to Work Product consisting of Goods shall transfer to Company free and clear of all liens, security interests and other encumbrances upon the earlier of Company's full payment for the Goods or delivery of the Goods to the location specified in this Order. Title to all materials, parts, and work-in-process paid by advance or by progress payment by Company shall vest in and remain in Company upon Company's payment. Company shall have full ownership of all personal property rights in such subject matter. Seller shall take all actions and

execute all documents that Company deems reasonably necessary to establish, vest, perfect, effectuate and preserve Company's ownership of such subject matter. Seller shall make prompt written disclosure to Company of all such Goods, Seller Background IP licensed hereunder and Foreground IP, including a complete description thereof. All such Goods shall be "works made for hire" for Company.

20. INTELLECTUAL PROPERTY.

- (a) Company grants to Seller a license to Practise Company IP identified by Company that is necessary for the Work in a manner that complies with this Order. Such license shall: (i) be non-exclusive, royalty free, paid up, terminable, not transferable and without right to sublicense; and (ii) terminate upon the earlier of the termination or expiration of this Order and the completion of the Work. This license of Company IP is granted on a strictly 'as is', 'with all faults' basis.
- (b) Foreground IP shall be legally and beneficially owned exclusively by Company. Seller hereby assigns, transfers and conveys, and agrees to assign, transfer and convey, to Company all of its right, title and interest in Foreground IP as it is created, developed or acquired or otherwise comes into existence. Without limiting the foregoing, any invention or IP first made or conceived by Seller relating to the Work or which is created, generated or derived from or based on the use, evaluation, review or inspection of any Specification, information or data supplied or made available by or on behalf of Company (including Company Confidential Information), shall be the property of Company and Seller shall execute such documents necessary or desired by Company to perfect Company's title thereto.
- (c) Company acknowledges that Seller may own or have the licensed right to use Seller Background IP, including know-how, techniques, modeling, methodology, technology and software tools developed prior to entering into this Order and techniques and concepts that were not conceived or first produced by Seller in the performance of this Order. As between Company and Seller, all rights, title, and interest in Seller Background IP, whether conceived or made by Seller alone or with others, are retained and owned by Seller. Seller grants to Company a license to Practise Seller Background IP with Work Product for the Permitted Purpose and for the Practise of Foreground IP. Such license shall be: (i) exclusive (with respect to the Goods for the Permitted Purpose), royalty free, paid up, non-terminable, perpetual and irrevocable and include the right to sublicense through multiple tiers to any person; (ii) be transferable or sublicensable, in whole or in part, to a successor operator(s) or owner(s) of Company's business or its successors and assigns; and (iii) include, where permitted under applicable laws, the right to pursue claims for the infringement, violation or misappropriation thereof in connection with any claim relating to the infringement, violation or misappropriation of Work Product or Foreground IP.
- (d) Seller shall not challenge Company's right, title, interest in or ownership of Company IP or Foreground IP or attack or contest the validity or enforceability thereof. Seller shall promptly give Notice to Company of any infringement, violation or misappropriation by unauthorized persons of any Company IP or Foreground IP which comes to its attention and shall cooperate and exchange information with Company concerning such infringements, violations or misappropriations. Upon Company's request, Seller shall promptly sign all the documents, licenses, assignments, forms and papers, give testimony or do such other acts as Company deems, in its sole discretion, to be necessary to give effect to this Order. Seller shall, upon the completion of the Work, provide to Company, when requested to do so, an executed assignment document in a form designated by Company which confirms and/or gives effect to the transfer to Company of legal rights in the Foreground IP.
- (e) Seller undertakes that it shall not, either directly or indirectly, commercialize, analyze or reverse engineer (or enable, authorize, permit or acquiesce in any other person's commercialization, analysis or reverse engineering) in any manner any Company IP (including Specifications and Company Confidential Information) or Company Property. Without limiting the foregoing, reverse engineering shall include determining the chemical composition, structure or any other property of the foregoing including any Company Property consisting of powder, ceramics or other materials.

21. CONFIDENTIALITY AND RESTRICTION ON USE. Seller may be exposed, or have access, to information (including confidential and proprietary information) and data belonging to, supplied or made available by or on behalf of Company, including Company IP (including Specifications) and Company Property (the "**Disclosed Information**"). Any Disclosed Information and any information or data created, derived or generated from the review, inspection or evaluation of Disclosed Information shall be "**Company Confidential Information**". Seller undertakes to hold the Company Confidential Information in the strictest confidence and not to disclose, trade or otherwise divulge the Company Confidential Information to any person without the prior written consent of Company. Seller further undertakes to use the Company Confidential Information only to perform the Work for Company in accordance with this Order and for no other purpose. Seller may disclose Disclosed Information to its own employees to the extent that they have a need to know such Disclosed Information for purposes directly concerning the performance of the Work and who are themselves bound by no less restrictive confidentiality obligations and disclosure and use restrictions. Seller shall use at least the same degree of care in safeguarding Company Confidential Information as it uses in safeguarding its own confidential information, but in no event shall less than all due care be exercised. All of the Company Confidential Information shall be and shall at all times remain or be, as the case may be, the property of Company and shall be returned or provided (as applicable) to Company immediately upon Company's request or upon the earlier of the completion of the Work or termination of this Order. Seller may disclose the Disclosed Information without the prior written consent of Company only

to the extent that immediately prior to such disclosure the Disclosed Information: (a) is in the public domain other than through the act or omission of Seller or any person to whom Company Confidential Information is disclosed pursuant to this Order; (b) is lawfully, and without any restrictions as to use or disclosure or any obligation of confidentiality, in the possession of Seller having been acquired from an independent third party, as evidenced by the written records of the Seller, except where the independent third party did not have lawful possession of or the right to disclose such information without restriction or was known to be subject to, or ought reasonably to have been suspected of being subject to, directly or indirectly, an obligation to Company to maintain such information in confidence; or (c) was independently created or developed by Seller without any prior or other inspection or evaluation of, or reference to, Company Confidential Information. Unless otherwise agreed to in writing by Company, any information disclosed by Seller to Company in connection with this Order shall not be deemed confidential or proprietary information and shall be held or used by Company without any restrictions.

22. TERMINATION.

- (a) Company may, at any time upon Notice, suspend or terminate all or any part of this Order without cause or liability. In the event of such termination, Seller shall cease all Work and shall deliver to Company all Company Confidential Information, Work Product, Foreground IP, Specifications, and any materials or information provided by Company to Seller or created by Seller under this Order, whether complete or partially complete. In the event of such termination, Seller's exclusive remedy is payment for the Work Product accepted by Company prior to the effective date of termination. In no event shall the aggregate of the amounts paid by Company under this Order exceed the Order price.
- (b) Either Party may terminate this Order: (i) in the event that the other Party breaches any term of this Order and such breach remains uncured for ten (10) days following Notice by the non-breaching Party; or (ii) immediately if the other Party makes a general assignment for the benefit of creditors, if a *bona fide* petition is filed against either Party under applicable bankruptcy legislation, if either Party is declared or adjudicated bankrupt, if a liquidator, trustee in bankruptcy or any other officer with similar powers is appointed for either Party or if either Party commits an act of bankruptcy or institutes proceedings to be adjudged bankrupt or consents to the institution of such appointment or proceedings. Upon a termination under this Section 22(b) by Company, Seller shall continue to perform under this Order to the extent not terminated, and Company may procure, upon such terms it deems appropriate, goods or services similar to those that were terminated due to default and may recover from Seller any excess costs for such goods or services.
- (c) Termination of this Order shall not relieve or release either Party from any rights, liabilities, or obligations that such Party has accrued prior to the date of such termination and shall be without prejudice to the provisions of Sections 12,13, 16, 18, 19, 20, 21, 37 and this 22(c), which provisions shall survive any termination or expiration of this Order. Without limiting the foregoing: (i) all claims one Party may have against the other Party shall survive the termination or expiration; (ii) Seller shall not use or exploit any Company Property, Foreground IP or Company IP; and (iii) Seller shall return all Company Property, Foreground IP and Company IP in its possession, custody or control to Company. Any termination under this Section 22 shall be without prejudice to any other rights (including any right of indemnity), remedy or relief vested in or to which either Party may otherwise be entitled against the other.

23. NOTICE. All notices hereunder (referred to as a "**Notice**") shall be: (a) in writing, including by email or courier; (b) delivered to the representatives of the Parties at the addresses specified herein; and (c) effective upon receipt, to the addresses specified herein. Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. If the Notice is delivered or transmitted after 5:00 p.m. local time in the place of delivery or receipt or if the day is not a Business Day, then the Notice shall be deemed to have been given and received on the next Business Day. Either Party may at any time, by Notice to the other, change its addresses, email, or facsimile number for the purposes hereof. "**Business Day**" means any day, other than a Saturday, Sunday, a statutory holiday or a civic holiday in the City of Denver, Colorado, USA, and a reference to "days" means calendar days.

24. INTERPRETATION. In this Order: (a) whenever a provision of this Order requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose approval or consent is required shall be conclusively deemed to have withheld its approval or consent; (b) unless otherwise specified, all references to money amounts are to lawful currency of the United States of America; (c) the section headings contained in this Order are for convenient reference only and shall not affect the meaning or interpretation hereof; (d) where the word "including" or "includes" is used in this Order, it means "including (or includes) without limitation"; (e) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day; (f) time shall be of the essence; (g) reference to any Section is to a Section of these Terms; (h) reference to any statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument as from time to time amended, extended or re-enacted; (i) reference to the singular includes the plural and vice versa; and (j) the word "or" is not exclusive.

25. INDEPENDENT LEGAL ADVICE. Each Party represents and warrants to the other Party that such Party has read and fully understands these Terms, and has had an opportunity to review this Order with legal counsel and has executed this Order based upon such Party's own judgement and advice of independent legal counsel (if sought).

26. **COMPLIANCE WITH LAWS.** Seller shall comply with all applicable standards, provisions, and stipulations of all pertinent laws. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits necessary to carry out its obligations under this Order. Seller shall submit to Company all necessary certifications and/or documentation evidencing Seller's compliance with this Section 26.
27. **EXPORT COMPLIANCE.** Seller recognizes that the export, re-export or release (including electronic transfers) of Work Product, Foreground IP and Company IP, may be subject to applicable laws relating to export controls and trade sanctions. Seller shall comply with the applicable import and export laws of the United States of America, Seller's country, and of Canada and with all applicable export licenses and their provisions. Seller shall not furnish, deliver or release any such subject matter to any other person or destination for any use, except with the consent of Company and in full compliance with applicable laws.
28. **GOVERNMENT PRIME CONTRACTS.** If this Order indicates that it is placed under a government contract, all laws relating to such contract shall apply and be in effect. If this Order is under a covered government contract, Seller certifies, to the best of its knowledge and belief, that the neither Seller nor any of its principals are debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any government agency. In the event of Company's termination of this Order under applicable government subcontract termination provisions, Seller's claims must be submitted to Company not later than ninety (90) days from the effective date of termination.
29. **GRATUITIES & BRIBERY.** Seller represents, warrants and covenants that neither it nor any of its employees, agents, or representatives have offered or given any gratuities to Company's employees, agents, or representatives with a view toward securing this Order or securing favorable treatment with respect thereto. In addition, Seller shall, at all times, act in a lawful manner and shall not use monies associated with this Order to bribe government officials and shall comply with all applicable country laws relating to anti-corruption and anti-bribery.
30. **ASSIGNMENT & SUBCONTRACTS.** Seller may not subcontract or delegate any duties, nor assign this Order or any rights or claims under this Order, including monies due or become due, without the prior written approval of Company. Any assignment, subcontract, or delegation without Company's consent shall be null and void. No assignment, delegation, or subcontract shall relieve Seller of any of its obligations under this Order. Company reserves the right to assign all or part of this Order to any parent, subsidiary of parent, subsidiary, affiliate, successor, or related company of Company. This Section 30 shall not apply to Seller's purchases of incidental and standard commercial supplies or raw materials.
31. **ADVERTISING.** No references to Company or references to Company's names, marks, codes, drawings, or Specifications shall be used in any of Seller's advertising, promotional efforts, or any publicity of any kind without Company's prior written permission.
32. **SETOFF.** All claims for money due or to become due from Company shall be subject to deduction or set-off by Company by reason of any counterclaim arising out of this or any other transaction with Seller.
33. **AUDIT.** Seller's records, including accounting records, time sheets, written policies and procedures, test results, reports, correspondence, memoranda, and any other documentation relating to the performance of all Work, shall be open to inspection and subject to audit and copying, during normal working hours, by Company or its representatives to the extent necessary to evaluate claims submitted by Seller, as required by governmental authorities, or as necessary for any other valid business purpose. For the purpose of such audits, inspections, examinations and evaluations, Company or its representative shall have access to such records during the term of this Order and continuing until five (5) years after the completion of all Work.
34. **INDEPENDENT CONTRACTOR.** The rights, duties, obligations and liabilities of the Parties under this Order shall be separate and individual, not joint, or collective, nor joint and several and nothing in this Order shall create any partnership or agency relationship between or among them. Each Party is an independent entity, and neither Party is, nor shall represent itself to be, an employee, agent, partner, fiduciary, joint venturer, co-owner or representative of the other nor shall any Party have any authority or power to act for or to undertake any obligation or responsibility on behalf of the other Party except as provided for herein.
35. **SITE WORK RULES.** Should Seller need to work on a Company site, Seller, and its employees and agents, shall comply with all of Company's policies and rules for that site, including all environmental, health and safety (EHS) policies and rules. Seller must first contact Company's EHS coordinator for the site prior to entering and performing any work on such site.
36. **NON-WAIVER.** Company's failure to insist upon strict performance of any of the provisions contained in this Order or to exercise any of its rights, powers or remedies hereunder, or its delay to do so, shall not constitute a waiver of its rights as set forth in this Order, at law or in equity, or a waiver of any other provisions or subsequent default by Company of any of the terms or conditions in this Order.
37. **FURTHER ASSURANCE.** Seller shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Order, and Seller shall provide such further documents or instruments required by Company as Company may deem reasonably necessary to affect the purpose of this Order and carry out its provisions, whether before or after the date of this Order.

38. SEVERABILITY. If any provision of this Order is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, in whole or in part, such invalidity, illegality or unenforceability shall not affect the other provisions, but such invalid or unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the Parties set forth in this Order.
39. SEVERAL LIABILITY. The term Company as used herein may apply to one or more entities and the singular shall include the plural. If more than one entity is referred to as Company, then their obligations and liabilities shall be several, not joint. Notwithstanding the foregoing, any and all applicable discounts and/or credits shall be based upon the combined forecasts and/or purchases made by all Company entities under this Order.
40. NONEXCLUSIVE ORDER. It is expressly understood and agreed that this Order does not grant to Seller any exclusive privileges or rights and that Company may contract with other suppliers for the same or similar Work Product. Company makes no guarantee or commitment for any minimum or maximum amount of Work Product to be purchased under this Order.
41. REMEDIES. Company's rights and remedies provided in this Order shall be cumulative and in addition to any other rights and remedies available at law or equity.
42. SURVIVAL. All obligations of the Parties which expressly or by their nature survive the termination, expiration, cancellation or assignment of this Order, including restrictions on use and obligations of indemnity, payment, ownership, confidentiality, warranties, limitations of warranties, limitations on damages and actions, non-exclusivity, survival and waiver shall continue in full force and effect subsequent to and notwithstanding such termination, expiration, cancellation or assignment and until they are satisfied or by their nature expire.
43. CHOICE OF LAW, JURISDICTION, & VENUE. This Order and all matters relating to this Order (whether in contract, statute, tort, including negligence, or otherwise), shall be governed by, and construed in accordance with, the laws of the State of Colorado, USA (without giving effect to the choice of law principles thereof). The Parties elect not to be bound by the United Nations Convention on Contracts for the International Sale of Goods. By supplying the Work Product, Seller acknowledges that it is transacting business at Company's principal place of business in Colorado. Company and Seller irrevocably and unconditionally attorn and submit to the exclusive jurisdiction of the courts of the State of Colorado and courts having appellate jurisdiction over such courts for any claims arising out of or relating to this Order and the transactions contemplated thereby. Venue shall be proper in Denver, Colorado.
44. MODIFICATION & MERGER. This Order may be modified only by a written agreement that is expressly designated as an amendment to this Order and is signed by Company and Seller.
45. ENTIRE AGREEMENT. This Order comprises the entire agreement between the Parties pertaining to the Work Product and supersedes all prior or contemporaneous oral and written understandings, agreements, negotiations, representations, warranties, and communications between the Parties. Except as specifically set forth in this Order, there are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Order.
46. LANGUAGE. The Parties confirm that it is their wish that this Order, as well as any other documents relating to this Order such as notices, schedules and authorizations, have been and shall be drawn up in the English language only, and no rule of strict construction shall be applied against any Party. Les signataires confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.
47. COUNTERPARTS. This Order may be executed in separate counterparts and may be executed and delivered by facsimile or electronic mail (including .pdf) and all such executed counterparts and facsimiles together shall constitute one agreement.
48. DEFINITIONS. Company and Seller may be referred to individually in this Order as a "**Party**" or collectively as the "**Parties**". Capitalized terms in this Order shall have the meaning given to such terms in this Order and, whenever used in this Order, the following terms shall have the following meanings:
- (a) "**Company**" means Field Upgrading USA, Inc. and any of its subsidiaries and affiliates.
 - (b) "**Company Confidential Information**" has the meaning given in Section 21.
 - (c) "**Company IP**" means IP that is owned by or licensed to Company prior to the date of this Order or during the term of the Order. Company IP may include IP that was created, developed or acquired independently of the Order and shall include the Specifications.
 - (d) "**Customary Use**" means, in respect of Goods or any component thereof, use according to custom or usual practices associated with the Goods including operation, testing, repair, maintenance, rehabilitation, refurbishment, alteration, modification, improvement, refinement, trouble shooting, display, adaption, expansion,

study, review, transfer of property or possession in, combine, embed or incorporate into other goods or products and/or disposal for scrap.

- (e) **"Document"** or **"Documentation"** means any media on which Information is recorded. For clarity, Documentation includes media consisting of hardware, software and systems on which Information is recorded.
- (f) **"Foreground IP"** means IP that is created, developed or acquired by or on behalf of the Seller in connection with or in the course of the performance of the Work and improvements thereto created, developed or acquired by or on behalf of the Seller at any time after the termination or expiration of this Order.
- (g) **"Goods"** means all goods, including supplies, articles, assemblies, items, materials, products, parts, tools, machinery, equipment, instruments, implements, devices, hardware, software and systems, services and other things to be generated, furnished, delivered, provided, created, developed, acquired, supplied, constructed, fabricated, erected or performed by Seller, including Documentation and spare parts, as set out in, required by, reasonably inferable from or described in this Order. Goods may include Goods provided by Seller resulting from the Seller's performance of the Services.
- (h) **"Information"** means all: trade secrets and other proprietary or confidential information; know-how; information, including any information of a scientific, technical, or business nature such as sales and marketing research, materials, plans, accounting and financial information, personnel records, customer lists, and the like; standards and specifications; conceptions, ideas, innovations, principles, knowledge and discoveries; software and computer programs (including object code and source code); content; technical expertise; research, developmental, demonstration or engineering work; systems, designs, analysis, analytical tools, practices, methods of assessment and techniques; business methods; data and data files including research data; drawings, reports, blueprints and as-built plans and specifications; operating, safety and maintenance manuals; documentation of procedures and processes; training, instruction and maintenance manuals, maintenance information and service records; warranty records, reports, copies of design, user and maintenance documentation and bug lists; metrics and statistics; prototypes, maquettes, models and samples; integrated circuitry topographies and mask works; all other information, methods, processes, formulations, formulae, technical or procedural information; literary works, artistic works, pictorial works, graphic works, musical works, dramatic works, audio visual works, performances, sound recordings and signals, including their content, and any compilations of any of them; and inventions including those that are included in any claim, capable of being reduced to a claim or could have been included as a claim in any patent. Furthermore, Information may be embodied or recorded in or on any Documentation.
- (i) **"Intellectual Property Rights"** means all intellectual property rights as recognized under the laws of the United States of America, Canada and other jurisdictions as applicable, including rights in and to patents, copyright, trademarks, industrial designs, design patents, integrated circuit topographies and mask works whether or not registered or registrable and other rights in intellectual property of the same or similar effect or nature relating to the foregoing and any component thereof throughout the world. For clarity, Intellectual Property Rights shall include all intellectual property rights arising in or relating to Information.
- (j) **"IP"** means Intellectual Property Rights and Information.
- (k) **"Notice"** has the meaning given in Section 23.
- (l) **"Permitted Purpose"** means: (i) for Goods (excluding Documentation), for the Customary Use of such Goods; and (ii) for Documentation (including related Information) for: (A) their use according to custom or usual practices associated with such Documentation including use, reproduction, replication, alteration, modification, improvement, refinement, display, adaption, derivation, expansion, study, review, transfer of property or possession in and/or to combine, embed or incorporate the subject matter described or depicted therein, in whole or in part, into any goods or services; (B) the manufacture of goods or the performance of services which are disclosed in Documentation, including any component thereof by any person including Company or any other person; and (C) the Customary Use of such goods.
- (m) **"Practise"** means to do any act in relation to IP that the owner of the IP has the right to do or to authorize including to use, make, manufacture, produce, have made, manufactured or produced, procure, use, import, export, lease, offer for sale and sell, improve, modify, translate, adapt, refine, derive, combine, incorporate, embed, execute, reproduce, replicate, display, distribute, communicate to the public, make available to the public or perform.
- (n) **"Seller"** means any vendor or company supplying the Work Product to Company pursuant to this Order.
- (o) **"Seller Background IP"** means IP that is owned by or licensed to the Seller prior to the date of this Order or during the term of the Order independently from this Order.

- (p) **"Services"** means all design, engineering, supply, manufacture, procurement, management and other services and work to be provided by Seller as set out in, required by, reasonably inferable from or described in this Order.
- (q) **"Specifications"** means Information provided by or on behalf of Company to Seller pertaining to goods or services. Specifications may include Information pertaining to ionic conducting membranes and any materials, specifications, information or technology relating thereto including NaSICON.
- (r) **"Work"** means the supply of Goods, the performance of Services and the provision of all supervision, labor, equipment and all other things necessary to complete the Goods and Services to be performed by Seller as set out in, required by, reasonably inferable from or described in this Order.
- (s) **"Work Product"** means Goods, Services and any work product developed, derived or created as a result of the Work or otherwise resulting from this Order.