

BALLARD POWER SYSTEMS INC.

and

ZHONGSHAN BROAD-OCEAN MOTOR CO., LTD.

FUEL CELL MODULE ASSEMBLY FRAMEWORK AGREEMENT

as of

February 13, 2017

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FUEL CELL MODULE ASSEMBLY FRAMEWORK AGREEMENT

This Fuel Cell Module Assembly Framework Agreement is made effective as of February 13, 2017

BETWEEN:

BALLARD POWER SYSTEMS INC., a company existing under the laws of British Columbia, having an office at 9000 Glenlyon Parkway, Burnaby, British Columbia, Canada, V5J 5J8

("Ballard")

AND:

ZHONGSHAN BROAD-OCEAN MOTOR CO., LTD., a company existing under the laws of China, having an office at No.3 Shalang Industrial Zone, West District, Zhongshan, 528411, China

("Broad-Ocean")

WHEREAS:

(A) Broad-Ocean and Ballard have entered into a Strategic Collaboration Agreement dated as of July 26, 2016, pursuant to which the Parties agreed to engage in a strategic collaboration regarding fuel cell products for the China market.

(B) The Parties recognize that Broad-Ocean has a unique strategic position and business model in China, including as: (i) a proposed licensee and manufacturer of Ballard-designed fuel cell modules for buses and commercial vehicles; (ii) a proposed provider of bundled solutions for EV-fuel cell hybridization, including Ballard-designed fuel cell modules integrated and optimized with Broad-Ocean EV drivetrains, motors and controls for buses and commercial vehicles; and (iii) an end-customer purchaser of fuel cell buses and commercial vehicles incorporating such modules and drivetrain solutions.

(C) Ballard has designed a 30kW FCveloCity®-MD30 fuel cell module ("**MD30**") and an 85kW FCveloCity®-HD85 fuel cell module ("**HD85**") for bus and other commercial motive applications (together, the MD30 and HD85 are the "**Licensed Modules**").

(D) Broad-Ocean desires to acquire technology transfer and licenses from Ballard to assemble and manufacture MD30 and HD85 fuel cell modules for bus and commercial vehicle applications in the Licensed Territories in China and sell and service such Licensed Modules in the Region (the "**Business**").

(E) Broad-Ocean intends to establish regional fuel cell module assembly companies ("**BO Subsidiaries**") in the Licensed Territories to conduct the Business.

(F) Ballard intends to provide technology transfer and licenses Broad-Ocean and at the request of Broad-Ocean to each of the BO Subsidiaries in support of the Business.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree as follows:

Article 1 INTERPRETATION

Section 1.1 Defined Terms

As used in this Agreement, the following terms have the following meanings:

“Affiliate” of a Party means any other Person that, at any time, directly or indirectly Controls, or is under the Control of, or is under common Control with, such Party.

“Agreement” means this Fuel Cell Module Assembly Framework Agreement (including the Schedules hereto) as the same may be supplemented or amended from time to time.

“Assembly Centers” means the assembly centers that Broad-Ocean may choose to establish in the Licensed Territories in addition to the *[commercially sensitive information redacted]*.

“Assembly Line” means the Licensed Module production line to be established in one or more of the Assembly Centers or the *[commercially sensitive information redacted]* Pilot Line (subject to the grant of one or more Module Assembly License), as Broad-Ocean in its discretion may determine.

“Assumption Deadline” has the meaning set out in Section 12.4(2).

“Balance of Plant” or **“BOP”** means the components, devices, materials, processes and subsystems assembled or designed for assembly around a Fuel Cell Stack, which may include:

- (a) fuel supply subsystem;
- (b) air supply subsystem;
- (c) cooling subsystem;
- (d) ventilation subsystem;
- (e) safety subsystem;
- (f) Fuel Cell Module systems controls;
- (g) power distribution subsystem; and
- (h) Fuel Cell Module system components for mechanical, thermal, noise, vibration, water and electromagnetic compatibility/ electromagnetic interference (EMC/EMI) protection;

which, together with a Fuel Cell Stack, takes fuel and delivers electricity for an application but, for greater certainty, excludes every item included in the definition of Fuel Cell Stack.

“Ballard IPR” means all Intellectual Property Rights relating to Fuel Cell Modules held by Ballard or by any other member of the Ballard Group during the Term.

“Ballard Group” means, at any particular time, Ballard, BDF Holdings and any Person that is an Affiliate of Ballard at such time.

“BDF Holdings” means BDF IP Holdings Ltd., a company existing under the laws of Canada.

“BO Subsidiary” means a company that Broad-Ocean may decide to establish to enter into a Module Assembly License with Ballard to assemble, sell and service Licensed Modules for Bus and Commercial Vehicle applications assembly and **“BO Subsidiaries”** means all of the BO Subsidiaries.

“Branding and Marketing Policy” means the branding and marketing policy appended to the Module Assembly License, as may be reasonably revised from time-to-time (a copy of such revision has been provided to Broad-Ocean and accepted by Broad-Ocean, acting reasonably).

“Broad-Ocean Group” means, at any particular time, Broad-Ocean and any Person that is an Affiliate of Broad-Ocean at such time.

“Bus” means a large motor vehicle, having a long body, equipped with seats or benches for passengers, usually operating as part of a scheduled service, but excluding vehicles consisting of a bus-body attached to the truck cabin of a light-duty or medium-duty truck chassis.

“Business” has the meaning set out in Recital D above.

“Business Day” means any day which is not a Saturday, Sunday, public holiday or a day on which banks are not open for business in Vancouver, Canada or in Beijing, China.

“Claim” means any suit, action, proceeding, claim or demand.

“Commercial Vehicle” means a light-duty, medium-duty or heavy-duty truck used for carrying goods or fare-paying passengers.

“Commissioning” in respect of a Licensed Territory means *[commercially sensitive information redacted]*.

“Confidential Information”, without limiting the generality of the generally accepted meaning of the term, includes all information, details and data relating to this Agreement, the Related Agreements and any Module Assembly License and each Party (including, for this purpose, its subsidiaries), including its assets, operations, methods of operating, customers, affairs, processes, personnel, prospects and plans and including non-published

Intellectual Property Rights, Know-How, business opportunities, and customer, financial, production, scientific and technical data and information, whether written, electronic, digital, graphic, visual, oral or otherwise, as well as samples or specimens thereof, howsoever or whensoever obtained by each Party or Representative thereof, together with all analyses, compilations, notes, data, studies or copies thereof. For the purposes of this Agreement, Confidential Information of Ballard includes all Improvements and such Improvements will not be construed as Confidential Information of Broad-Ocean for the purposes hereof.

“Control” of a corporation, limited liability company, other body corporate or other entity by a Person only occurs, for the purposes of this Agreement, if:

- (a) securities of the corporation, limited liability company, other body corporate or other entity to which are attached 50% or more of the votes that may be cast to elect directors of the corporation, limited liability company, other body corporate or other entity (or other members of the governing body of the corporation, limited liability company, other body corporate or other entity, if it has no board of directors) or other rights to elect a majority of directors or such other members are held, other than by way of security or pledge only, by or for the benefit of that Person, or
- (b) the votes attached to those securities are sufficient, or such rights are sufficient, if exercised, to elect a majority of the directors (or other members of the governing body of the corporation, limited liability company, other body corporate or other entity, if it has no board of directors) of the corporation, limited liability company, other body corporate or other entity.

“Damages” means, whether or not involving a Third Party Claim, any and all loss, liability, cost, claim, interest, fine, penalty, assessment, damages available at law or in equity, expense, including the costs and expenses of any action, application, claim, complaint, suit, proceeding, demand, assessment, judgment, settlement or compromise relating thereto (including the costs, fees and expenses of legal counsel on a full indemnity basis without reduction for tariff rates or similar reductions and all reasonable costs of investigation) or diminution of value, but excluding loss of profits and consequential damages and excluding any contingent liability until it becomes actual.

“Demonstration Purposes” means the Sale of Licensed Modules or Fuel Cell Stacks the predominant purpose of which is the demonstration of the capabilities, suitability or benefits/ advantages of the Licensed Modules to potential customers, in volumes specified in the relevant provision hereunder or as otherwise mutually agreed by the Parties.

“Derivative Modules” means Fuel Cell Modules incorporating any material, composition, component, product or service comprising any of the Licensed IPR or Improvements developed by or for Broad-Ocean or any member of the Licensee Group.

“Dispute” has the meaning set out in Section 14.1.

“Effective Date” has the meaning set out in Section 7.2.

[commercially sensitive information redacted]

“Force Majeure” means an event, condition or circumstance (and the effect thereof) which is not within the reasonable control of the Party claiming Force Majeure and which, by the exercise of due diligence the Party claiming Force Majeure is unable to prevent or overcome, including acts of god, fire, explosion, civil disturbance, war, riot, insurrection, military or guerrilla action, terrorist activity, economic sanction, blockade or embargo, sabotage, flooding, earthquake, drought and action or restraint by the order of any governmental authority (so long as the Party claiming Force Majeure has not applied for or assisted in the application for, and has opposed where and to the extent commercially reasonable, such action or restraint by such governmental authority); provided, however, that a Party’s own lack of funds will not constitute “Force Majeure” in respect of such Party.

“Fuel Cell Module” means an integrated module consisting of:

- (a) one or more Fuel Cell Stacks; and
- (b) the Balance of Plant.

“Fuel Cell Stack” means a proton exchange membrane fuel cell stack and components, devices, materials, processes and subsystems thereof necessary or desirable for the functioning of, and comprising part of, the fuel cell stack, including:

- (a) membrane electrode assemblies;
- (b) plates with flow fields for fuel, oxidant and/or coolant; and
- (c) seals and compression hardware; and may further include:
 - (i) components for mechanical, thermal, noise, vibration, water and electromagnetic compatibility/electromagnetic interference (EMC /EMI) protection; and
 - (ii) electrical and mechanical interfaces.

[commercially sensitive information redacted]

“Group” means the Ballard Group and/or the Broad-Ocean Group as the circumstances may require.

“HKIAC” has the meaning set out in Section 14.4(1).

“Improvements” means all Intellectual Property Rights resulting from Broad-Ocean’s or Licensee’s assembly, sale and servicing of Licensed Modules and any updates, modifications, enhancements and improvements to the Ballard IPR made, discovered or developed by Broad-Ocean, Licensee or their respective Representatives.

“Indemnifying Party” has the meaning set out in Section 12.1.

“Indemnitee” has the meaning set out in Section 12.1.

“Intellectual Property Rights” or **“IPR”** of a Person means that Person’s right, title and interest in and to all inventions (whether or not reduced to practice and whether or not patentable), discoveries, designs, trade secrets, ideas, work, technology, innovations, creations, concepts, development drawings, diagrams, images, specifications and plans, research, analysis, experiments, data, formulas, compounds, compositions, methods, procedures, processes, systems, devices, software (including source code, object code, executables, macros, scripts and libraries), techniques and other forms of intellectual property rights (other than trademarks and trade names), including Patent Rights, copyrights, moral rights, performance rights, industrial design rights and any other registered proprietary rights, which may subsist anywhere in the world, for which a registration, record or similar proprietary right has been obtained or applied for, and further including all applications for registration or issuance of any of the foregoing, all priority and convention rights in any of the foregoing, and all rights to file any such applications, but does not include trademarks or trade names.

“Key Surviving Provisions” has the meaning set out in Section 8.3(3).

“Know-How” of a Person means that Person’s right, title and interest in and to all inventions (whether or not reduced to practice and whether or not patentable), discoveries, designs, trade secrets, ideas, work, technology, know-how, innovations, creations, concepts, development drawings, diagrams, images, specifications and plans, research, analysis, experiments, information, data, formulas, compounds, compositions, methods, procedures, processes, systems, devices and techniques whether or not proprietary or patentable, all to the extent not covered by Intellectual Property Rights, and whether stored or transmitted in oral, documentary, electronic or other form, but does not include trademarks or trade names.

“Lead Representative” has the meaning set out in Section 2.1.

“Licensed IPR” means all Intellectual Property Rights and Know-How relating to Licensed Modules held by Ballard or by any other member of the Ballard Group.

“Licensed Modules” means the 30kW FC*veloCity*®-MD30 fuel cell module (**“MD30”**) and the 85kW FC*veloCity*®-HD85 fuel cell module (**“HD85”**) as currently manufactured and sold by Ballard, and incremental enhancements to them and, for certainty, excludes: (1) Fuel Cell Stacks; and (2) Future Modules.

“Licensed Territory” means *[commercially sensitive information redacted]*; and **“Licensed Territories”** shall mean all three of them.

“Licensee Group” means Broad-Ocean and each of the BO Subsidiaries party to a Module Assembly Licence.

[commercially sensitive information redacted]

“Minimum Annual Royalty” has the meaning set out in Section 5.2(3)(l).

“Module Assembly License” means the license to be granted by Ballard to Broad-Ocean or a BO Subsidiary, as the case may be, in respect of a Licensed Territory as further described in Section 5.2, the form of which will be settled by the Parties on or before the Effective Date, acting reasonably pursuant to Article 7.

“Modules for Demonstration Programs Agreement” means the Modules for Demonstration Programs agreement to be settled by the Parties on or before the Effective Date, acting reasonably pursuant to Article 7.

[commercially sensitive information redacted]

“Notice” has the meaning set out in Section 15.1; and **“Notify”** or **“Notification”** will have corresponding meanings.

“Party” means either of Broad-Ocean and Ballard, and **“Parties”** means both of them.

“PCMLTFA” has the meaning set out in Section 11.2(5).

“Person” means an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or governmental entity, and pronouns have a similarly extended meaning.

[commercially sensitive information redacted]

“Region” means the People’s Republic of China, for the purpose of this Agreement, excluding Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan.

“Related Agreements” has the meaning set out in Section 7.1.

“Related Lead Party” has the meaning set out in Section 12.4(1).

“Representative” with reference to a Party, means any Affiliate of that Party and any director, officer, employee or agent of that Party or of any Affiliate of that Party and (b) with reference to any Subcontractor, means any director, officer, employee or agent of that Subcontractor.

[commercially sensitive information redacted]

“Royalty Module” means *[commercially sensitive information redacted]*.

“Sale” means any sale, lease, transfer or other disposition of a Royalty Module by Broad-Ocean or a BO Subsidiary; and **“Sell”** and **“Sold”** will have equivalent meanings. **“Other disposition of”** includes: (a) Royalty Modules not sold but delivered by Broad-Ocean or a BO Subsidiary to other Persons (other than Royalty Modules delivered to an Affiliate of the Licensee), regardless of the basis of compensation or recovery, if any; (b) Royalty Modules sold or leased by Licensee as components or constituents of other products; and (c) Royalty Modules put into use by Licensee for any purpose other than routine testing and

Demonstration Purposes. A Royalty Module will be considered Sold on the date of delivery; or if put into use by Broad-Ocean or a BO Subsidiary other than routine testing and Demonstration Purposes, the date of first use.

“Sales Taxes” has the meaning set out in Section 6.3.

“Stack JV” means Guangdong Synergy Ballard Hydrogen Power Co., Ltd.

“Stack Supply Agreement” means the Stack Supply agreement to be settled by the Parties on or before the Effective Date, acting reasonably pursuant to Article 7

“Steering Committee Mandate” means the mandate of the committee to be established to serve as a communication channel between Broad-Ocean and Ballard for issues related to the Business, the mandate to be settled by the Parties as provided in Section 7.4.

“Subcontractor” means any Third Party: (a) that a Party engages to carry out work related to the production of a substantial part or whole of the Licensed Modules (but specifically not including suppliers of BOP components in the People’s Republic of China); and (b) in the case of Ballard, carrying out work contemplated in this Agreement.

“Technology Transfer” has the meaning set out in Section 4.3(3)(b).

“Technology Transfer Agreement” means the Technology Transfer agreement to be settled by the Parties on or before the Effective Date, acting reasonably pursuant to Article 7.

“Term” has the meaning set out in Section 8.1.

“Test Stand” has the meaning set out in Section 4.5.

“Test Stand Supply Agreement” means the Test Stand Supply agreement to be settled by the Parties on or before the Effective Date, acting reasonably pursuant to Article 7.

“Third Party” in relation to a Party means a Person that is not an Affiliate of that Party.

“Third Party Claim” has the meaning set out in Section 12.4.

“Third Party License” has the meaning set out in Section 5.3(3).

“Trademarks” means the trademarks adopted and used by Ballard in association with the Licensed Modules, as further described in the Module Assembly License.

“Unmet Demand Condition” has the meaning set out in Section 4.4(4).

“Validation” has the meaning set out in Section 3.2(1)(d).

“Validation License” has the meaning set out in Section 5.1.

“Validation Technology Transfer” has the meaning set out in Section 3.2(2)(c).

“Validation Technology Transfer Agreement” means the Validation Technology Transfer agreement to be settled by the Parties on or before the Effective Date, acting reasonably pursuant to Article 7.

“[commercially sensitive information redacted] Module Assembly License” has the meaning set out in Section 5.4(1).

“[commercially sensitive information redacted] Pilot Line” has the meaning set out in Section 3.1(2).

Section 1.2 Schedule

The following Schedule to this Agreement forms an integral part of this Agreement:

Schedule “A” Licensed Territories

Section 1.3 Gender and Number

Any reference in this Agreement to gender includes all genders. Words importing the singular number only include the plural and vice versa.

Section 1.4 Headings, etc.

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect its interpretation.

Section 1.5 Currency

All references in this Agreement to dollars or to “\$” are expressed in United States currency unless otherwise specifically indicated.

Section 1.6 Certain Phrases, etc.

In this Agreement (i) the words “including”, “includes” and “include” mean “including (or includes or include) without limitation” and (ii) the words “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. Unless otherwise specified, the words “Article”, “Section” and other subdivision followed by a number or “Schedule” mean and refer to the specified Article, Section or other subdivision of, or Schedule to, this Agreement. In the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from but excluding” and the words “to” and “until” each mean “to and including”.

Section 1.7 References to Persons and Agreements

Any reference in this Agreement to a Person includes its legal representatives, successors and permitted assigns. Except as otherwise provided in this Agreement, any reference to this Agreement or any other agreement or document refers to this Agreement or such other agreement or document as the same may have been or may from time to time

be amended, modified, extended, renewed, restated, replaced, supplemented or novated and includes all schedules to it.

Section 1.8 Statutes

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it as it or they may have been, or may from time to time be, amended, re-enacted or replaced.

Section 1.9 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment must be made or such action must be taken on or not later than the next succeeding Business Day.

Section 1.10 General Interpretation

In this Agreement:

- (a) the term “shall” has the same meaning as “will”, and any reference to “shall” is to be construed as “will”;
- (b) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period will be excluded;
- (c) words or abbreviations which have well known or trade meanings are used herein in accordance with their recognized meanings unless otherwise defined;
- (d) unless otherwise specified, “days” means calendar days;
- (e) any rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in the interpretation of this Agreement;
- (f) the terms “hereof”, “hereunder”, “herein”, “hereby”, “hereto”, “thereunder” and similar expressions refer to this Agreement and not to any particular part, section or other portion hereof and include any agreement supplemental hereto; and
- (g) to the extent there is any inconsistency between this Agreement and any of the Schedules attached to this Agreement, the provisions of this Agreement will prevail.

Article 2

LEAD REPRESENTATIVES

Section 2.1 Lead Representatives

- (1) Each of the Parties will appoint a person to be the principal point of contact and coordination (a **“Lead Representative”**). *[commercially sensitive information redacted]*. Any notice or written communication required to be given to a Lead Representative under this Agreement must be in writing, sent by e-mail, mail, personal delivery or courier and addressed as follows:
 - (a) to Ballard’s Lead Representative at:

Ballard Power Systems – Glenlyon
9000 Glenlyon Parkway
Burnaby, B.C. V5J 5J8
Canada

[commercially sensitive information redacted]
 - (b) to Broad-Ocean’s Lead Representative at:

Zhongshan Broad-Ocean Motor Co., Ltd.
No.3 Shalang Industrial Zone, West District
Zhongshan, 528411, China

[commercially sensitive information redacted]
- (2) A Party may elect to change the identity of its Lead Representative at any time, and from time to time, on at least ten (10) Business Days’ Notice to the other Party.

Article 3

PHASE 1

Section 3.1 Definition and Objective

- (1) Phase 1 is intended to start on the Effective Date and end on *[commercially sensitive information redacted]*. The objective of Phase 1 is for Broad-Ocean:
 - (a) to validate the market opportunity, learn the assembly process, the details and specifications of the products and other information necessary to set up Assembly Lines, including but not limited to manufacturing and quality control processes;
 - (b) *[commercially sensitive information redacted]*;
 - (c) validate and improve the assembly process;

- (d) testing and optimization of the assembly and factory acceptance testing processes;
 - (e) *[commercially sensitive information redacted]*;
 - (f) begin assembly of Licensed Modules;
 - (g) *[commercially sensitive information redacted]*; and
 - (h) other purposes as may be approved by Ballard, acting reasonably.
- (2) During Phase 1, Broad-Ocean (either directly or through a BO Subsidiary) intends first to set-up a pilot Assembly Line for Licensed Modules in *[commercially sensitive information redacted]* ("*[commercially sensitive information redacted]* **Pilot Line**") to carry out the objectives set out in Section 3.1(1) above, including but not limited to learning the assembly process, quality processes, and considering rapid cost-reduction opportunities. The Parties acknowledge that the *[commercially sensitive information redacted]* Pilot Line is not intended to assemble Licensed Modules for commercial sale and distribution, except if the *[commercially sensitive information redacted]* Module Assembly License option set out in Section 5.4 is exercised.
- (3) Broad-Ocean has provisionally selected *[commercially sensitive information redacted]* as the third Licensed Territory. Broad-Ocean may designate a different territory as the third Licensed Territory by providing Notice to Ballard within 3 months from the signing date of this Agreement.

Section 3.2 Phase 1 Activities

- (1) During Phase 1, Broad-Ocean will (directly or through a BO Subsidiary):
- (a) engage with the local governments, and bus and commercial vehicle OEMs, to establish demonstration programs with prototype Buses and Commercial Vehicles for use in one or more of the Licensed Territories to promote market adoption;
 - (b) purchase up to 200 Licensed Modules from Ballard for the initial demonstration programs referred to in (a) above, on the terms and conditions set out in the Modules for Demonstration Programs Agreement, *[commercially sensitive information redacted]*;
 - (c) build the *[commercially sensitive information redacted]* Pilot Line in compliance with all requirements of Ballard relating to the assembly of Licensed Modules pursuant to Ballard's quality standards and policies to be appended to the Module Assembly License, and as may be reasonably revised from time-to-time (provided that a copy of such revision has been provided to Broad-Ocean and accepted by Broad-Ocean, acting reasonably) and provide Ballard with such evidence of such compliance as Ballard reasonably requests;

- (d) operate the *[commercially sensitive information redacted]* Pilot Line solely to validate the market opportunity, learn the assembly process, the details and specifications of the products and other information necessary to set up Assembly Lines, including but not limited to manufacturing and quality control processes, to consider rapid cost-reduction opportunities and localization activities (including discussion with engineers and personnel of local suppliers), validate and improve the assembly process, testing and optimization of the assembly and factory acceptance testing processes, building sample and pilot builds and ancillary supporting activities, the establishment of programs for Buses and Commercial Vehicles incorporating Licensed Modules for Demonstration Purposes, begin assembling of Licensed Modules and limited supply of Licensed Modules for Demonstration Purposes and other purposes as may be approved by Ballard, acting reasonably (“**Validation**”);
 - (e) Sell up to *[commercially sensitive information redacted]* Licensed Modules for Demonstration Purposes in the Region, provided that Broad-Ocean, acting reasonably and in good faith, gives Ballard Notice of the Sale, *[commercially sensitive information redacted]*; and
 - (f) after Validation, either (1) transfer the *[commercially sensitive information redacted]* Pilot Line to one of the Licensed Territories and make such improvements to it as may be required to build the first production Assembly Line for Licensed Modules; or (2) keep, maintain and continue with the *[commercially sensitive information redacted]* Pilot Line for the purposes set out in this Article 3 and/or exercise the option to acquire the *[commercially sensitive information redacted]* Module Assembly License pursuant to Section 5.4 below.
- (2) During Phase 1, Ballard will:
- (a) supply up to *[commercially sensitive information redacted]* Licensed Modules to Broad-Ocean or a BO Subsidiary for Bus and Commercial Vehicle demonstration programs in the Region , as set out in Section 3.2(1)(a), on the terms and conditions set out in the Modules for Demonstration Programs Agreement, *[commercially sensitive information redacted]*;
 - (b) supply Test Stands for the *[commercially sensitive information redacted]* Pilot Line, as set out in Section 4.5; and
 - (c) provide technology transfer to Broad-Ocean or a BO Subsidiary to support Validation of the *[commercially sensitive information redacted]* Pilot Line, including documentation and engineering support related to workshop and facilities design, module assembly, production support, factory acceptance testing, troubleshooting, module integration and module service training solely for the purposes of supporting Validation of the Zhongshan Pilot Line by Broad-Ocean or a BO Subsidiary, provide essential documents and technical assistance for localization activities for all Licensed Module contents

except for Fuel Cell Stacks (“**Validation Technology Transfer**”) on the terms and conditions set out in the Validation Technology Transfer Agreement.

Article 4

PHASE 2

Section 4.1 Definition and Objective

Phase 2 is intended to start on the Effective Date and will end [*commercially sensitive information redacted*] after the Effective Date. During Phase 2, Broad-Ocean intends to conduct the Business and assemble and manufacture Licensed Modules in the Licensed Territories and sell such Licensed Modules in the Region. For clarification, Phase 1 and Phase 2 may overlap at the discretion of Broad-Ocean and the ending of Phase 2 hereunder will not in any way affect the term as provided for in each of the Module Assembly License (as defined below) that may be executed by Broad-Ocean or a BO Subsidiary and Ballard, as the case may be.

Section 4.2 BO Subsidiaries

- (1) During Phase 2, Broad-Ocean will:
 - (a) directly or incorporate a BO Subsidiary (alone or with one or more other shareholders) to build an Assembly Line in one or more of the Licensed Territories for sale of Licensed Modules in the Region or after the grant of any one of the Module Assembly License(s), use the [*commercially sensitive information redacted*] Pilot Line to assemble Licensed Modules for sale into one or more of the Licensed Territories, as provided in Section 5.4 and as deemed appropriate by Broad-Ocean, provided that Broad-Ocean is and remains the majority shareholder and Controls each such BO Subsidiary at all times; and
 - (b) be responsible for the operation and management of each BO Subsidiary for so long as it assembles Licensed Modules.

Section 4.3 Assembly Line Support

In support of setting up the Assembly Line to achieve Commissioning in a Licensed Territory:

- (1) Broad-Ocean will, and will ensure that each BO Subsidiary will (as the case may be):
 - (a) secure and prepare sites for the Business for each Assembly Line, as required;
 - (b) obtain and install all testing, production and other equipment needed for the Business;
 - (c) obtain all licenses or permits or other governmental authorizations necessary for the Business;

- (d) comply with all requirements of Ballard relating to the assembly of Licensed Modules pursuant to Ballard's quality standards and policies to be appended to the Module Assembly License, and as may be reasonably revised from time-to-time (provided that a copy of such revision has been provided to Broad-Ocean and accepted by Broad-Ocean, acting reasonably) and provide Ballard with such evidence of such compliance as Ballard reasonably requests and comply with the Branding and Marketing Policy; and provide Ballard with such evidence of such compliance as Ballard reasonably requests; and
 - (e) grant to Ballard and its respective representatives a license to enter its facilities during normal business hours, without prior notice, to observe the Business for purposes of supporting Commissioning and exercise such rights and perform such obligations as Ballard has pursuant to this Agreement.
- (2) Broad-Ocean and the BO Subsidiaries (as the case may be) may use Subcontractors to perform any of the work contemplated in this Agreement, provided the Subcontractors are part of the Broad Ocean Group and Broad-Ocean or the BO Subsidiary (as the case may be) will give Ballard prior notice of who the Subcontractors are and the work being performed by the Subcontractors. For clarification, this provision does not apply to or restrict Broad-Ocean and the BO Subsidiaries (as the case may be) to obtain services from or buy products from suppliers of BOP components in the People's Republic of China or to achieve localization.
- (3) Ballard will:
 - (a) supply Test Stands to Broad-Ocean or the BO Subsidiaries (as the case may be), as set out in Section 4.5; and
 - (b) provide technology transfer to Broad-Ocean or the BO Subsidiaries (as the case may be) to support Commissioning of each of the Assembly Lines, including documentation and engineering support related to workshop and facilities design, module assembly, production support, factory acceptance testing, troubleshooting, module integration and module service training ("**Technology Transfer**"). The Technology Transfer to Broad-Ocean or each BO Subsidiary will be on the terms set out in, and will be evidenced by a Technology Transfer Agreement for each Licensed Territory.
- (4) Broad-Ocean and Ballard will together, acting reasonably, confirm Commissioning has been achieved in respect of a Licensed Territory in accordance with the terms of the specific Module Assembly License (as defined below).

Section 4.4 Ballard Product Supply

- (1) Ballard will supply to Broad-Ocean or a BO Subsidiary (as the case maybe) Fuel Cell Stacks for integration into Licensed Modules, on the terms and conditions set out in the Stack Supply Agreement. Broad-Ocean and/or the BO Subsidiary will sign the Stack Supply Agreement with Ballard, or a Fuel Cell Stack supply agreement with

the Stack JV on substantially the same terms as the Stack Supply Agreement (unless Broad-Ocean otherwise agrees), as the case may be, on the date when the Module Assembly License is entered into in respect of a Licensed Territory.

- (2) Broad-Ocean acknowledges and agrees that Ballard intends to assign its supply and service obligations under the Stack Supply Agreement to its Chinese joint-venture company, the Stack JV, as soon as practicable after the Stack JV is commissioned and fully operational and producing Fuel Cell Stacks meeting Ballard's specifications and quality standards.
- (3) Broad-Ocean will, and will cause each BO Subsidiary, to (a) exclusively acquire Royalty Modules *[commercially sensitive information redacted]* that incorporate Fuel Cell Stacks manufactured by Ballard or the Stack JV (as applicable) for integration in Buses or Commercial Vehicles in the Licensed Territories and (b) exclusively assemble Licensed Modules for integration in Buses or Commercial Vehicles in the Licensed Territories, *[commercially sensitive information redacted]*.
- (4) Notwithstanding Section 4.4(3), if Ballard or the Stack JV (as applicable) is unable to meet:
 - (a) Broad-Ocean's bona fide market requirements for Fuel Cell Stacks or Fuel Cell Modules for use in Buses or Commercial Vehicles in the Licensed Territories during the Term; or
 - (b) Broad-Ocean's production requirements for such Fuel Cell Stacks or Fuel Cell Modules for use in Buses or Commercial Vehicles in the Licensed Territories during the Term,

in each case after the expiry of six months from the date Broad-Ocean provides such requirements to Ballard in writing (in English) (an "**Unmet Demand Condition**") , then Broad-Ocean and each BO Subsidiary may acquire or assemble Fuel Cell Modules from or based on technology of any other Person as Broad-Ocean deems appropriate in the particular Licensed Territory. Broad-Ocean will, acting reasonably and in good faith, provide Ballard with relevant supporting documents demonstrating that Fuel Cell Stacks or Fuel Cell Modules from a Person other than Ballard or the Stack JV (as applicable) are able to meet such requirements, provided that Broad-Ocean will not be required to breach any confidentiality obligation owed to any third party. For clarity, under no circumstances will Broad-Ocean or a BO Subsidiary integrate Fuel Cell Stacks from a Person other than Ballard or the Stack JV (as applicable) in Licensed Modules.

- (c) If after the occurrence of an Unmet Demand Condition, Ballard is subsequently able to meet the market requirements or production requirement (as applicable), then Ballard will Notify Broad-Ocean and provide Broad-Ocean with relevant supporting documents demonstrating that Ballard can now meet the Unmet Demand Condition and upon receipt of such Notice by Broad-Ocean, the Parties will meet and discuss, in good faith, and determine whether there is still any opportunity for Broad-Ocean or the

BO Subsidiary, as the case may be, to purchase such Fuel Cell Stacks or reconsider assembling Fuel Cell Modules that are subject of the Unmet Demand Condition from or with Ballard in the future. For clarification purposes, notwithstanding anything hereunder, in no circumstance will Ballard, Broad-Ocean or any BO Subsidiaries be under any obligation to terminate or modify arrangements that they have already put in place or enter into in respect of Fuel Cell Stacks or Fuel Cell Modules following the occurrence of an Unmet Demand Condition.

Section 4.5 Test Stand Supply

Ballard will supply factory acceptance testing fixtures ("**Test Stands**") to Broad-Ocean or each of the BO Subsidiaries (as the case may be) on the terms and conditions set out in the Test Stand Supply Agreement. Ballard will initially supply Broad-Ocean or each BO Subsidiary (as the case may be) with two (2) Test Stands, one for the MD30 and one for the HD85, with the number of additional Test Stands to be determined for each Assembly Line based on the expected throughput of that Assembly Line. Ballard will provide to Broad-Ocean on the Effective Date the specifications of the Test Stands.

Section 4.6 Further Licensed Module Supply

- (1) At the request of Broad-Ocean or a BO Subsidiary, Ballard will sell Licensed Modules to Broad-Ocean and all such Sales shall be *[commercially sensitive information redacted]*.
- (2) If Broad-Ocean or a BO Subsidiary purchases more than *[commercially sensitive information redacted]* Licensed Modules from Ballard, then each purchased Licensed Module in excess of *[commercially sensitive information redacted]* will be deemed to be a Licensed Module Sold for the purposes of this Agreement and the relevant Module Assembly License.

Article 5 IPR LICENSING

Section 5.1 Grant of Validation License

- (1) Ballard hereby grants to Broad-Ocean a non-exclusive, royalty-free, non-sublicensable, non-transferrable license (but noting that Broad-Ocean may transfer and assign the license to a BO Subsidiary set up to run the *[commercially sensitive information redacted]* Pilot Line) to use all of Ballard's IPR necessary or relevant to enable Broad-Ocean or the BO Subsidiary, using Fuel Cell Stacks supplied by Ballard, to assemble, test and service Licensed Modules solely for the purpose of the Validation of the *[commercially sensitive information redacted]* Pilot Line and for the purpose as set out in Article 3 above (the "**Validation License**").
- (2) The Validation License will terminate on earlier of (a) the *[commercially sensitive information redacted]* anniversary of the Effective Date and (b) the first day after the Effective Date when there ceases to be a Module Assembly License in force.

Section 5.2 Grant of Module Assembly Licenses

- (1) On the Effective Date, Ballard will grant to Broad-Ocean three (3) licenses (each a “**Module Assembly License**”), one for each of the three Licensed Territory, to use all of Ballard’s IPR (excluding Ballard IPR relating to Fuel Cell Stacks) necessary or relevant to enable the licensee, to assemble, offer to sell, sell and service Licensed Modules for Bus and Commercial Vehicle applications on terms as described in Section 5.2. The Module Assembly License will be non-assignable, non-sublicensable and royalty-bearing and have a term ending *[commercially sensitive information redacted]* from the Effective Date.
- (2) In consideration for entering into the three (3) Module Assembly Licenses, Broad-Ocean will pay to Ballard the amount of \$3,600,000 within twenty (20) Business Days from the date when the parties confirm in writing that the conditions set out in Section 7.2(1), (2) and (3) are satisfied.
- (3) The Module Assembly License will provide that:
 - (a) for each Licensed Territory, the Assembly Center will be within the relevant Licensed Territory;
 - (b) Broad-Ocean will have the right to transfer the Module Assembly License to a BO Subsidiary on or before the earlier of *[commercially sensitive information redacted]*;
 - (c) on the date of (i) the assembly of *[commercially sensitive information redacted]* Licensed Modules at the Assembly Center in a relevant Licensed Territory or (ii) the Sale of *[commercially sensitive information redacted]* Licensed Modules in a relevant Licensed Territory (regardless of the location of production of the Licensed Modules), Broad-Ocean or the BO Subsidiary will pay to Ballard *[commercially sensitive information redacted]* under the Module Assembly License for that relevant Licensed Territory;
 - (d) Broad-Ocean will use all commercially reasonable efforts or cause the BO Subsidiary to use all commercially reasonable efforts (if applicable) (including but not limited to taking into account market conditions and costs situations) to achieve Commissioning or Sale of *[commercially sensitive information redacted]* Licensed Modules, as the case may be, as soon as practicable and Ballard will use all commercially reasonable efforts to support Broad-Ocean in achieving such Commissioning or development of the market in the Licensed Territories;
 - (e) if, in a particular Licensed Territory, none of (i) Commissioning, (ii) the Sale of *[commercially sensitive information redacted]* Licensed Modules, or (iii) the payment by Broad-Ocean to Ballard of the amounts that would be owing on the Sale of *[commercially sensitive information redacted]* Licensed Modules in the Licensed Territory, is achieved by Broad-Ocean or a BO Subsidiary within

two years of the Effective Date, then the Module Assembly License for the particular Licensed Territory will terminate;

- (f) Broad-Ocean or a BO Subsidiary may Sell Licensed Modules anywhere in the Region;
- (g) Broad-Ocean or the BO Subsidiary (if applicable) will also pay to Ballard another *[commercially sensitive information redacted]* under the relevant Module Assembly License in respect of a Licensed Territory on the date that is 6 months after the date of the payment of *[commercially sensitive information redacted]* specified above;
- (h) Subject to the Existing Rights and payment of the Minimum Annual Royalty, for a period of 5 years from the Effective Date, Ballard will not grant rights to any Third Party to assemble Licensed Modules in any of the Licensed Territories provided that the Module Assembly License in that Licensed Territory has not become non-exclusive or been terminated pursuant to the terms thereof, and, after the expiry of such *[commercially sensitive information redacted]* period, Ballard and Broad-Ocean or the BO Subsidiary will negotiate in good faith to extend the assembly exclusivity period;
- (i) if Broad-Ocean or any BO Subsidiary (if applicable) begins (i) acquiring Fuel Cell Modules other than Royalty Modules *[commercially sensitive information redacted]* that incorporate Fuel Cell Stacks manufactured by Ballard or the Stack JV (as applicable) in the Licensed Territories for integration in Buses and Commercial Vehicles or (ii) assembling Fuel Cell Modules other than Licensed Modules for integration in Buses or Commercial Vehicles in the Licensed Territories, then Ballard may grant rights to one or more Third Parties to assemble Licensed Modules in the particular Licensed Territory;
- (j) in anticipation of the Licensee Group achieving an aggregate Sales volume of more than *[commercially sensitive information redacted]* Royalty Modules during the *[commercially sensitive information redacted]* period following the Effective Date (the “**Initial Discount Period**”), the royalty rate (set out below) for Royalty Modules will be set at the greater than *[commercially sensitive information redacted]* unit price level. At the expiry of the Initial Discount Period, if the cumulative volume of Royalty Modules Sold does not exceed *[commercially sensitive information redacted]* Royalty Modules, Broad-Ocean will pay Ballard the difference between:
 - (i) the sum of:
[commercially sensitive information redacted]; and
 - (ii) the total royalties already paid by Broad-Ocean and the BO Subsidiaries during the Initial Discount Period for the Royalty Modules.

Broad Ocean and Ballard agree that they will re-negotiate the royalty structure payable by the Licensee Group for Royalty Modules after the Initial Discount Period. Within three months of the earlier of (iii) the Licensee Group Selling *[commercially sensitive information redacted]* Royalty Modules and (iv) *[commercially sensitive information redacted]* years after the Effective Date, the Steering Committee will meet and, with the Steering Committee members acting in good faith, provide a joint recommendation on the royalty structure payable by the Licensee Group for Royalty Modules for the following five-year period. Broad Ocean and Ballard agree that each of them will take all actions within their power to either accept and implement the joint recommendation by the Steering Committee referred to above or to otherwise reach agreement on the royalty structure payable by the Licensee Group for Royalty Modules after the Initial Discount Period.

- (k) The Parties will set out the details in relation to the obligation to pay royalty in the Module Assembly Licence. The royalty rate for each Royalty Module Sold to be set out in the Module Assembly Licence, including Derivative Modules (for which the royalty will be calculated on a proportionate basis using such Royalty Module power output), will be as follows:

[commercially sensitive information redacted]

- (l) Broad-Ocean will pay, or ensure that the Licensee Group pays, to Ballard a minimum royalty ("**Minimum Annual Royalty**") for each calendar year during the term of the Module Assembly License(s), starting in calendar year *[commercially sensitive information redacted]*
- (4) The Module Assembly License will be in a form to be settled by the Parties on or before the Effective Date, acting reasonably pursuant to Article 7.

Section 5.3 *[Commercially Sensitive Information Redacted]*

Section 5.4 *[Commercially Sensitive Information Redacted]* **Module Assembly License Option**

- (1) Notwithstanding Section 3.2(1), the Parties acknowledge that Broad-Ocean may decide to supply Licensed Modules assembled at the *[commercially sensitive information redacted]* Pilot Line to any of the Licensed Territories. If Broad-Ocean provides Notice to Ballard prior to the *[commercially sensitive information redacted]* of the Effective Date, Ballard will grant to Broad-Ocean a license at no additional cost to Broad-Ocean (the "*[commercially sensitive information redacted]* **Module Assembly License**") on the terms set out in, and will be evidenced by, the Module Assembly License, except that:
 - (a) The *[commercially sensitive information redacted]* Module Assembly License will be limited to the manufacture and Sale of *[commercially sensitive information redacted]* Licensed Modules per year; and

- (b) Licensed Modules assembled at the *[commercially sensitive information redacted]* Pilot Line may only be exported into and Sold in the Licensed Territories.
- (2) The Sale of Licensed Modules in each Licensed Territory that were exported from the *[commercially sensitive information redacted]* Pilot Line will be counted towards the number of Royalty Modules triggering the payments described in Section 5.2(3) in respect of that Licensed Territory.
- (3) For greater certainty, the *[commercially sensitive information redacted]* Module Assembly License will not affect Broad-Ocean or a BO Subsidiary's obligation to pay amounts otherwise payable pursuant to the Validation Technology Transfer Agreement or a Module Assembly License.

Article 6

PAYMENTS

Section 6.1 Method of Making Payments

- (1) In this Article 6, all references to this Agreement include the Schedule thereto.
- (2) All payments made under this Agreement will be by wire transfer of immediately available funds in United States dollars to such account as is notified to the payor's Lead Representative by the payee on not less than thirty (30) Business Days written notice.
- (3) All payments to be made to Ballard under this Agreement will initially be made to the following account:

[commercially sensitive information redacted]

Section 6.2 Failure to Pay When Due

Any amount payable under this Agreement and not remitted when due will remain due and interest will accrue on the overdue amount (both before and after judgment) at a rate per annum equal to the prime rate charged by the Royal Bank of Canada plus *[commercially sensitive information redacted]* from the date payment is due until the date payment is made. The foregoing will be without prejudice to any of the rights or other remedies of Ballard against Broad-Ocean accrued or accruing under this Agreement.

Section 6.3 Taxes

- (1) The Parties acknowledge that the payments listed in Article 6 do not include any applicable Canadian taxes (including but not limited to commodity, sales, retail, use, goods and services, harmonized, value added, excise and similar taxes (the "**Sales Taxes**"), other than taxes in the nature of a tax on income or capital). If Broad-Ocean determines after seeking professional advice that such Sales Taxes are payable, Broad-Ocean will or will cause the BO Subsidiary to pay all Sales Taxes for which it is liable under law and Ballard will be responsible for remitting all Sales Taxes to the

relevant Canadian revenue authorities. The Parties will take all reasonable measures to ensure a reduction of or exemption from, as the case may be, such Sales Taxes. If Ballard is legally required to remit any tax to the tax or revenue authorities in respect of any such Sales Taxes, Ballard will within a reasonable amount of time after making such deduction, furnish Broad-Ocean with copies of any tax certificate or other documentation evidencing such remittance.

- (2) The Parties also acknowledge that the payments listed in Article 6 do not include any applicable Chinese taxes (including but not limited to commodity, sales, retail, use, goods and services, harmonized, value added, excise and similar taxes, other than taxes in the nature of a tax on income or capital) *[commercially sensitive information redacted]*.
- (3) The Parties will take all reasonable measures to ensure a reduction of or exemption from, as the case may be, taxes which might become payable in connection with this Agreement, including without limitation, *[commercially sensitive information redacted]*.

If Broad-Ocean is legally required to withhold and remit any tax to the tax or revenue authorities in respect of any payment to Ballard, Broad-Ocean will promptly notify Ballard of such withholding and, within a reasonable amount of time after making such deduction, furnish Ballard with copies of any tax certificate or other documentation evidencing such withholding.

Article 7

EFFECTIVE DATE

Section 7.1 Best Efforts to Settle Related Agreements

Broad-Ocean and Ballard agree that they will use commercially reasonable efforts to negotiate and settle the form of the following agreements on or before *[commercially sensitive information redacted]*, 2017 (together the “**Related Agreements**”):

- (1) *[commercially sensitive information redacted]* Module Assembly License;
- (2) Module Assembly License;
- (3) Modules for Demonstration Programs Agreement;
- (4) Validation Technology Transfer Agreement;
- (5) Technology Transfer Agreement;
- (6) Stack Supply Agreement; and
- (7) Test Stand Supply Agreement.

Section 7.2 Effective Date

The Effective Date under this Agreement will be the date when all of the following are satisfied:

- (1) the Parties confirm in writing that the form of the Related Agreements have been definitively agreed upon by the Parties, acting reasonably;
- (2) this Agreement together with its Schedule and the Related Agreements have been approved by the required internal approval process of Broad-Ocean;
- (3) this Agreement together with its Schedule and the Related Agreements have been approved by the board of directors of Ballard; and
- (4) Ballard has received payment of the amounts due pursuant to Section 5.2(2).

Each of Broad-Ocean and Ballard covenants to immediately notify the other Party in writing when and if the approval contemplated under Section 7.2(2) and Section 7.2(3) as applicable are obtained and each Party will use reasonable efforts to keep the other Party informed as to the progress of obtaining such approval. Upon the receipt of written notification of the satisfaction of the last of the items referred to below and provided that at time the implementation of this Agreement and the transactions contemplated hereunder are not prohibited by any judgement, court decision, decree or order of any description issued by a court, tribunal, stock exchange, regulatory authority or other government regulator having power and jurisdiction over either of the Party, the Parties will sign a confirmation in writing confirming the Effective Date (the “**Effective Date**”).

Section 7.3 Long Stop Date

If the Effective Date does not occur on or before *[commercially sensitive information redacted]* or such later date as the Parties may in writing agree, this Agreement will be terminated without any further action by either Party.

Section 7.4 Steering Committee Mandate

The Parties, acting reasonably and in good faith, will work together to settle the Steering Committee Mandate within 90 days of the Effective Date.

Article 8 TERM AND TERMINATION

Section 8.1 Term

This Agreement will be in force and effect from the date hereof until the *[commercially sensitive information redacted]* of the Effective Date, unless terminated earlier pursuant to this Agreement or extended by the mutual agreement of the Parties (the “**Term**”). The Parties agree that notwithstanding any other provision hereof, the expiry of the Term or the termination of this Agreement will in no way shorten, affect or in any other

way result in the termination of any of the Module Assembly Licenses or the *[commercially sensitive information redacted]* Module Assembly License, if granted, or any other Related Agreements and all incorporation of terms in such Related Agreements from this Agreement will continue to be effective and operative pursuant to the terms of the Related Agreements.

Section 8.2 Termination

- (1) Either Party may terminate this Agreement:
 - (a) at any time on at least twenty (20) Business Days' prior Notice, if the other Party is in material breach of any of its material obligations, covenants or responsibilities under this Agreement, provided that this Agreement will not terminate if the other Party either cures any such breach within twenty (20) Business Days or, for breaches other than non-payment of amounts due under the Agreement, commences and diligently continues good faith efforts to cure, mitigate or compensate for such breach and such breach is in fact fully cured, mitigated or compensated for within four (4) Months of such Notice; or
 - (b) at any time on Notice, if the other Party:
 - (i) institutes proceedings to be adjudicated a bankrupt or consents to the filing of a bankruptcy proceeding against it;
 - (ii) files a petition or answers or consents, or takes other proceedings, seeking reorganization, readjustment, arrangement, composition or similar relief under any law available for the protection of bankrupt or insolvent debtors;
 - (iii) consents to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy;
 - (iv) is voluntarily liquidated or wound up; or
 - (v) otherwise takes any action that acknowledges its insolvency.
- (2) Without limiting the generality of Section 8.2(1)(a), Ballard may terminate this Agreement on Notice if Broad-Ocean or a BO Subsidiary (as the case maybe):
 - (a) fails to make any payments when due and payable pursuant to this Agreement, after expiry of reasonable demand and notice period and without legitimate reason;
 - (b) fails to Commission at least one Assembly Line before the second anniversary of the Effective Date;
 - (c) uses Fuel Cell Stacks from any other Person other than Ballard or the Stack JV, as the case may be, for integration in Licensed Modules;

- (d) in the absence of an Unmet Demand Condition (in case if the Parties are in dispute as to whether there is an Unmet Demand Condition, this termination provision will only apply if it has been finally determined under Article 14 that there is an absence of an Unmet Demand Condition), assembles Fuel Cell Modules other than Licensed Modules in one or more Licensed Territories for use in Buses or Commercial Vehicles; or
 - (e) disassembles or attempts to reverse-engineer any Ballard Fuel Cell Stack or permits the same to be disassembled or reverse-engineered, or otherwise making any mis-use, infringing or unauthorized use of any of the Ballard IPR.
- (3) Without limiting the generality of Section 8.2(1)(a), Broad-Ocean or a BO Subsidiary may terminate this Agreement on Notice if:
- (a) Ballard fails to grant the Validation License or a Module Assembly License;
 - (b) Ballard grants one or more licenses to assemble Licensed Modules in violation of Section 5.2(3)(h) or Ballard is in breach of the representation, warranty and covenant in Section 11.3(12);
 - (c) Ballard is in material breach or non-performance of its obligations under this Agreement or any Module Assembly License if and when granted, after expiry of reasonable demand and notice period and without legitimate reason; or
 - (d) Any Person is successful in obtaining an injunction or order from court with relevant jurisdiction that (i) adversely affect the enjoyment by Broad-Ocean or BO Subsidiaries of their rights under this Agreement, any of the Module Assembly Licenses or the *[commercially sensitive information redacted]* Module Assembly License; or (ii) restrict or adversely affect the ability of Ballard to supply or sell Fuel Cell Stacks or Fuel Cell Modules to Broad-Ocean; or (iii) validates a Claim by any Person that all or any portion of the Licensed IPR or Trademarks or their use, commercialization, or other activities licensed under this Agreement or any of the Module Assembly Licenses or the *[commercially sensitive information redacted]* Module Assembly License, or any portion thereof, infringes, violates or misappropriates a Third Party Intellectual Property Rights.
- (4) This Agreement will automatically terminate if the Effective Date has not occurred by *[commercially sensitive information redacted]* (unless the Parties agree otherwise).

Section 8.3 Survival – General

- (1) Any termination or expiry of this Agreement for any reason will be without prejudice to the rights of either Party against the other Party accrued or accruing under this Agreement prior to its termination or expiry.

- (2) Termination of this Agreement by either Party will not act as a waiver of any breach of this Agreement and will not act as a release of either Party from any liability for breach of such Party's obligations under this Agreement. Any termination or expiry of this Agreement will not affect the rights and obligations of the Parties under any other agreement between the Parties, including but not limited to the Related Agreements.
- (3) The following rights and obligations of the Parties will survive the termination or expiry of this Agreement:
 - (a) the various rights and obligations of the Parties contained in the following provisions (the "**Key Surviving Provisions**") of this Agreement:
 - (i) the indemnities in Article 12;
 - (ii) the limitations in Article 13;
 - (iii) the obligations of Ballard and Broad-Ocean in Section 6.3 (Taxes);
 - (b) any provisions of this Agreement reasonably and demonstrably required for the interpretation, construction or enforcement of the Key Surviving Provisions, including the provisions of Article 1 (Interpretation), Article 12 (Indemnification), Article 13 (Limitation and Release), Article 14 (Dispute Resolution) and Article 15 (Miscellaneous);
 - (c) the provisions of Article 10 (Confidentiality) will continue in effect until all Confidential Information falls within one or more of the exceptions in Section 10.1(3), (4), (5) or (6);
 - (d) any provisions of this Agreement which, by their explicit and specific terms, must be, or can only be, performed in whole or in part following the termination or expiry of this Agreement; and
 - (e) the provisions of this Section 8.3 which governs the survival of provisions generally following the termination or expiry of this Agreement; and
- (4) any provisions of this Agreement which survive the termination or expiry of this Agreement, including the Key Surviving Provisions, will remain in full force and effect between the Parties notwithstanding such termination or expiry, will be performed by the Parties in accordance with their terms and will terminate or expire (i) as may be mutually agreed by the Parties in writing, and acting at their sole discretion, and/or (ii) as may be expressly permitted or provided for in accordance with their terms.

Article 9

FORCE MAJEURE

Section 9.1 Consequences of Force Majeure

During the occurrence of an event of Force Majeure, the obligations of the Party affected by such event of Force Majeure, to the extent and for the period that such obligations are not performed as a result of such event of Force Majeure, will be suspended, and such Party will not be considered to be in breach or default hereunder, for the period of such occurrence. The suspension of performance will be of no greater scope and of no longer duration than is required by the event of Force Majeure. No obligation of either Party that arose before the event of Force Majeure causing the suspension of performance will be excused as a result of the event of Force Majeure.

Section 9.2 Notice of Force Majeure and Time Limits Extended

A Party whose obligations under this Agreement are affected by an event of Force Majeure will give the other Party prompt Notice of the particulars of the event of Force Majeure and its expected duration. Subject to Section 9.3, all time limits imposed by this Agreement will be extended by a period equivalent to the period of delay resulting from such event of Force Majeure.

Section 9.3 Elimination of Force Majeure

A Party whose obligations under this Agreement are affected by an event of Force Majeure will use all commercially reasonable efforts to eliminate the event of Force Majeure and to remedy its inability to perform its obligations under this Agreement, but nothing herein will require the Party to question or test the validity of any law, rule, regulation or order of any government or government body or to perform its obligations if an event of Force Majeure renders performance impossible.

Section 9.4 Continuation of Force Majeure

If an event of Force Majeure continues for more than sixty (60) days and materially adversely affects the ability of a Party to perform its obligations hereunder, the Parties will use all commercially reasonable efforts to adapt the requirements of this Agreement and each other agreement contemplated in this Agreement in a manner that achieves to the greatest extent possible the economic, legal and commercial objectives of the Parties as evidenced in this Agreement, and the other agreements contemplated in this Agreement, and, if they do not agree on the manner in which such requirements should be adapted within a further seven (7) Business Days, each Party may require the matter to be determined in accordance with Article 14.

Article 10

CONFIDENTIALITY

Section 10.1 Confidentiality Obligations

Each Party will, and will cause the members of its Group and its and their Representatives to, keep all Confidential Information of the other Party confidential and will not use or disclose such Confidential Information to any Person except to the extent:

- (1) such use or disclosure is expressly permitted or contemplated pursuant to this Agreement or any agreement contemplated herein, and in such circumstances under terms of confidentiality, non-use and non-disclosure consistent with and no less stringent than the terms of this Section 10.1;
- (2) such use or disclosure is required by applicable law or the rules of any regulatory organization or stock exchange to which the disclosing Party is subject, after being so advised by competent legal counsel having considered the facts and any ability to redact or otherwise limit such use or disclosure permitted at law, and in any event if Ballard is to make any securities filing relating to this Agreement, Ballard will avoid disclosing any Confidential Information to the maximum extent permitted by law and Ballard will provide Broad-Ocean with a copy of the proposed disclosure in advance of filing and will in good faith consult with Broad-Ocean and take into consideration and reflect reasonable comments provided by Broad-Ocean in respect of such proposed disclosure;
- (3) such information can be shown, by the written records of the receiving Party, to already have been known to it at the time that it was disclosed to or obtained by it and which was not obtained directly or indirectly from the other Party or any member of its Group;
- (4) such information is in the public domain other than as a result of a breach of this Agreement or any agreement contemplated in this Agreement; provided that particular information will not be considered to be in the public domain merely because such particular information is contained within, or consolidated with, more general information which itself is in the public domain;
- (5) such information has been disclosed to the receiving Party by a Third Party who was under no duty of confidentiality with respect to such Confidential Information at the time it was so disclosed to the receiving Party;
- (6) such information is independently developed by the receiving Party or an Affiliate thereof without using any Confidential Information of the other Party;
- (7) such use or disclosure is required pursuant to a final order or judgment of a court of competent jurisdiction and in such case the Parties will cooperate with one another to obtain an appropriate protective order or other reliable assurance that the confidentiality of such Confidential Information will be maintained; or

- (8) that the other Party has given its prior written consent thereto.

Section 10.2 Confidentiality and Third Parties

- (1) Each Party will cause any Third Party to which it delegates or subcontracts any of its obligations under this Agreement (as may be permitted under this Agreement) to enter into a written agreement under which it agrees to be bound by the terms of Section 10.1 (or terms that are substantially the same as those in Section 10.1).
- (2) Neither Party will disclose any Confidential Information to any employee or of it or any member of its Group unless such employee has entered into a written agreement under which he or she agrees to be bound by the terms of Section 10.1 or has entered into an employment agreement requiring him or her to observe substantially similar confidentiality obligations.
- (3) A Party will, as soon as reasonably practicable following a request therefor, provide to the other Party a Certification of or Declaration of that Party, signed by a senior officer of that Party, confirming that such Party has complied with this Section 10.2 and has obtained all appropriate contractual confirmations and agreements required under this Section 10.2.

Section 10.3 Publicity and the Content of this Agreement and Related Agreements

Each Party will not, and will ensure that the members of its Group, and its and their Representatives do not, release, publish, advertise or in any other way disclose the existence of or the content of this Agreement, the agreements and instruments entered into pursuant to this Agreement or the transactions contemplated hereunder and thereunder to any Third Party, including any news media organization, without the prior consent of the other Party, except to the extent provided for under Section 10.1. Following the initial public disclosure of or relating to this Agreement, the Parties will be entitled to publicly refer to the existence of this Agreement and will each use commercially reasonable efforts to consult with the other Party and co-ordinate their approach to the on-going and periodic use of publicity and advertising material relating to the matters contemplated in this Agreement.

Section 10.4 Treatment of Confidential Information

Each Party acknowledges that the Confidential Information of the other Party consists in part of information vital to the business and commercial prospects of that other Party and that such information is the special, valuable and unique property of that other Party and would not normally be disclosed to it. Accordingly, each Party agrees to use all commercially reasonable efforts to protect such Confidential Information and keep it confidential using a standard of care no less than the degree of care that such Party would be reasonably expected to employ for its own similar Confidential Information, but in any event no less than reasonable care. Ballard will: (a) physically and electronically secure the work space, computer equipment, physical and electronic records, and laboratory facilities of each Ballard Group member; and (b) enter into agreements with Subcontractors which require each Subcontractor to perform equivalent obligations.

Section 10.5 Equitable Remedies

In the event of a violation, contravention, breach or threatened breach of this Article 10 by a Party, the other Party will be entitled to both temporary and permanent injunctive relief. The right of a Party to injunctive relief will be in addition to any and all other remedies available to it and will not be construed to prevent it from pursuing, either consecutively or concurrently, any and all other legal or equitable remedies available to it including the recovery of monetary damages.

Section 10.6 No Waiver by Virtue of Non-Exercise of Rights

No failure or delay by a Party or any representatives of a Party in exercising any right, power or privilege under this Article 10 will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder. No provision of this Article 10 may be waived or amended nor any consent given except in writing signed by a duly authorized officer of each Party so waiving or consenting.

Section 10.7 Prior Confidentiality Agreement

The provisions contained in this Article 10 will take effect on the date of this Agreement, at which time they will supersede the terms and conditions contained in the confidentiality agreement between Broad-Ocean and Ballard dated [*commercially sensitive information redacted*], and the terms and conditions contained in the confidentiality agreement between Broad-Ocean and Ballard dated [*commercially sensitive information redacted*] will be of no force or effect in respect of information provided on or after the date of this Agreement. The Parties acknowledge and agree that all Confidential Information provided by either Party to the other prior to the Effective Date of this Agreement will be governed by, and will be held subject to the provisions of, this Agreement, including the confidentiality provisions of this Article 10.

Article 11

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 11.1 Mutual Representations and Warranties

Each Party represents and warrants to the other that:

- (1) The execution and delivery of this Agreement and the performance by it of the transactions contemplated hereby have been duly authorized by all necessary corporate action and will not violate (a) such Party's certificate of incorporation or by-laws, (b) any agreement, instrument or contractual obligation to which such Party is bound in any material respect, or (c) any order, writ, judgment, injunction, decree, determination or award of any court or governmental agency presently in effect applicable to such Party;
- (2) Assuming due authorization, execution and delivery on the part of the other Party, this Agreement constitutes a legal, valid and binding obligation of such Party,

enforceable against such Party in accordance with its respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law); and

- (3) Its execution, delivery and performance of this Agreement does not violate any law or regulation of any court, governmental entity or administrative or other agency having authority over such Party.

Section 11.2 Broad-Ocean Representations, Warranties and Covenants

Broad-Ocean represents, warrants and covenants to Ballard as follows, and acknowledges that Ballard is relying upon such representations, warranties and covenants in entering into this Agreement:

- (1) Broad-Ocean has been duly constituted and organized and is validly subsisting under the laws of China, and has the corporate power and the capacity to enter into and perform its obligations under this Agreement;
- (2) Broad-Ocean has and will maintain all licenses, permits, registrations and certificates necessary to conduct lawful business activities in the Region and to carry out its obligations under this Agreement;
- (3) Broad-Ocean will conduct all of its activities relating to this Agreement in full compliance with all applicable laws and regulations in the Region;
- (4) Broad-Ocean will not enter into any agreement, contract or arrangement with any government or governmental representative or with any person, firm, corporation or other enterprise imposing any legal obligation or liability of any kind whatsoever on Ballard;
- (5) all funds paid to Ballard hereunder will not represent proceeds of crime for the purposes of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) (the "PCMLTFA") and Broad-Ocean acknowledges that Ballard may in the future be required by law to disclose Broad-Ocean's name and other information, on a confidential basis, pursuant to the PCMLTFA. Broad-Ocean also represents, warrants and covenants that (a) none of the funds to be paid by it to Ballard (i) have been or will be derived from or related to any activity that is deemed criminal under the laws of Canada, the United States of America, or any other jurisdiction, or (ii) are being tendered on behalf of a person or entity who has not been identified to Broad-Ocean, and (b) it will promptly notify Ballard if it discovers that any of the foregoing ceases to be true, and to provide Ballard with appropriate information in connection therewith;
- (6) Broad-Ocean is authorized to represent to its customers and other third parties only such facts about Ballard, its products and product warranties as Ballard itself states in its product descriptions, advertising, promotional materials, warranties or as may

be stated in other non-confidential, written material furnished by Ballard, and Broad-Ocean will not make any false or misleading representations with regard to Ballard or the Licensed Modules;

- (7) Broad-Ocean will not use the name “Ballard Power Systems Inc.”, any trademarks of Ballard or any confusingly similar variation thereof as part of its corporate or business name, or in any other way except as specified in this Agreement. Broad-Ocean agrees that it will not, at any time, directly or indirectly, contest the validity or ownership of any trademark, slogan or logo now or hereafter used by Ballard in connection with its products or any trade name or corporate name now or hereafter used to identify Ballard;
- (8) Subject to the provision in the Module Assembly License, Broad-Ocean will not remove or cover Ballard’s trademark insignia, logos, lettering or identification numbers which are on the products at the time of delivery;
- (9) Broad-Ocean acknowledges that Ballard retains absolutely its entire rights in and to the Ballard IPR that may be used in the manufacture, marketing, sale and service of the Fuel Cell Stacks from time to time. Accordingly, Broad-Ocean and the BO Subsidiaries will not, without Ballard’s prior written consent (which Ballard may arbitrarily withhold) disassemble or reverse-engineer any Fuel Cell Stack or permit the same to be disassembled or reverse-engineered, or otherwise making any misuse, infringing or unauthorized use of any of the Ballard IPR.

Section 11.3 Ballard Representations, Warranties and Covenants

Ballard represents, warrants and covenants to Broad-Ocean, and acknowledges that Broad-Ocean and the other members of the Licensee Group are relying upon such representations, warranties and covenants in entering into this Agreement, that during the Term (unless otherwise specified):

- (1) the Licensed IPR is complete, error-free, has practical applicability, and is effective for the assembly, use and service of Licensed Modules in the Licensed Territories for use as contemplated in the Module Assembly License, provided that the licensee under the Module Assembly License uses the Licensed IPR in full compliance with all specifications and instructions provided by Ballard from time to time;
- (2) Ballard has been duly constituted and organized and is validly subsisting under the laws of British Columbia, and has the corporate power and the capacity to enter into and perform its obligations under this Agreement;
- (3) BDF Holdings has been duly constituted and organized and is validly subsisting under the laws of Canada and has the corporate power and the capacity to own the assets and carry on the business that BDF Holdings is purporting to own or carry on;
- (4) Ballard has and will maintain all licenses, permits, registrations and certificates necessary to carry out its obligations under this Agreement;

- (5) Ballard will conduct all of its activities relating to this Agreement in full compliance with all applicable laws and regulations under this Agreement;
- (6) Ballard will not enter into any agreement, contract or arrangement with any government or governmental representative or with any person, firm, corporation or other enterprise imposing any legal obligation or liability of any kind whatsoever on Broad-Ocean;
- (7) Ballard has sufficient legal and/or beneficial title and ownership of the Licensed IPR and the Trademarks as is necessary to grant the Module Assembly License to Broad-Ocean or the BO Subsidiaries as contemplated under this Agreement, including but not limited to the Licensed IPR and Trademarks registered or owned by BDF Holdings;
- (8) Ballard has sufficient legal and/or beneficial title and ownership of the Intellectual Property Rights and the Trademarks as is necessary to sell the Fuel Cell Stacks, the Fuel Cell Modules, including but not limited to the Licensed Modules, to Broad-Ocean or the BO Subsidiaries as contemplated under this Agreement;
- (9) The Licensed IPR and the Trademarks are free and clear of any financial liens or security interests, except as disclosed by Ballard to Broad-Ocean in writing;
- (10) To Ballard's knowledge, as of the signing date of this Agreement and on the Effective Date, no actions, suits, claims, disputes, or proceedings concerning the Licensed IPR or the Trademarks to be licensed under the Module Assembly License are currently pending or are threatened in writing, that if determined adversely to Ballard would have a material adverse effect on the Licensed Module or would impair Ballard's ability to perform its obligations under this Agreement;
- (11) *[commercially sensitive information redacted]*;
- (12) *[commercially sensitive information redacted]*;
- (13) As of the signing date of this Agreement and on the Effective Date, the execution and delivery of this Agreement and the performance of Ballard's obligations hereunder do not conflict with, violate, or breach or constitute a default or require any consent not already obtained under any contractual obligation or court or administrative order by which Ballard is bound;
- (14) To Ballard's knowledge, as of the signing date of this Agreement and on the Effective Date, use of the Licensed IPR or the Trademarks in accordance with the terms and conditions of this Agreement will not infringe Third Party Intellectual Property Rights in the Region.

Nothing in this Agreement is to be construed as an obligation on Ballard to file any patent application, prosecute any patent application, maintain any patent in force, enforce any patent, or defend any patent against opposition or other challenges by third parties; or the granting by Ballard to Broad-Ocean or BO Subsidiaries as contemplated this Agreement, by

implication, estoppel, or otherwise of any license or right other than as expressly granted herein or under the Module Assembly License, regardless of whether such other right includes a patent which is dominant over or subordinate to any Ballard IPR, including Licensed IPR licensed, under the Module Assembly License.

Article 12 INDEMNIFICATION

Section 12.1 Mutual Indemnification

Each Party (the “**Indemnifying Party**”) will indemnify the other Party and its Representatives (collectively, the “**Indemnitees**”) and save them fully harmless against, and will reimburse them for, any Damages arising from, in connection with or related in any manner whatever to Claims that may result in any way from any accident, injury or damage to person or property or from death of any persons by reason of any act, omission or performance under this Agreement by the Indemnifying Party or its Representatives, except to the extent that the accident, injury, damage or death is due to the gross negligence or willful misconduct of the Indemnitees.

Section 12.2 Indemnification by Broad-Ocean

Broad-Ocean will indemnify the Ballard Indemnitees and save them fully harmless against, and will reimburse them for, any Damages arising from, in connection with or related in any manner whatever to: (a) Claims relating to the exploitation of the Fuel Cell Module technology transferred by Ballard to Broad-Ocean not in accordance with this Agreement or the Module Assembly License, including without limitation the assembly or sale of Fuel Cell Modules by Broad-Ocean or the BO Subsidiaries, or the use of Fuel Cell Modules by Broad-Ocean or any BO Subsidiaries not in accordance with this Agreement or the Module Assembly License; (b) any Broad-Ocean representation or warranty set out in Section 11.1 or Section 11.2 being untrue in any respect when made; and (c) any material breach by Broad-Ocean of its other covenants or obligations expressly set forth in this Agreement; provided however, that the foregoing will not relieve Ballard of any obligations to Broad-Ocean pursuant to any applicable product warranty and its liabilities under Section 12.3 below.

Section 12.3 Indemnification by Ballard

Ballard will indemnify Broad-Ocean and Broad-Ocean Indemnities and save them fully harmless against, and will reimburse them for, any Damages (subject to expansion as set out in Section 13.1) arising from, in connection with or related in any manner whatever to: (a) any Ballard representation or warranty set out in Section 11.1 or Section 11.3 being untrue in any respect; and (b) any material breach by Ballard of its other covenants or obligations expressly set forth in this Agreement.

Section 12.4 Indemnification Procedure

This Section 12.4 will be applicable to any Claim arising under this Agreement made against an Indemnitee by a Third Party (a “**Third Party Claim**”) for which the Indemnitee is entitled to indemnification from the Indemnifying Party pursuant to this Agreement:

- (1) The Indemnitee seeking indemnification under an applicable indemnity provision in this Agreement for a Third Party Claim made, commenced or brought against the Indemnitee by a Third Party and from and against any resulting, associated or related Damages flowing from any such Third Party Claim will, directly or through the Party to which the Indemnitee is related (the “**Related Lead Party**”), Notify the Indemnifying Party in writing of the Third Party Claim within twenty (20) Business Days after receipt by the Indemnitee of Notice of the Third Party Claim. The Notice to the Indemnifying Party will describe with reasonable particularity (to the extent that information is available) the factual basis for the Third Party Claim and, if known, the estimated amount of the Third Party Claim and any indemnified Damages that have been or may be sustained by the Indemnitee in respect thereof. If the Indemnitee does not give Notice to the Indemnifying Party in the aforesaid time frame, then such failure will lessen or limit the Indemnitee’s rights to indemnity hereunder to the extent that the defence of the Third Party Claim was prejudiced by such lack of timely Notice. Following notification of the Indemnifying Party of the Third Party Claim as aforesaid, the Indemnitee will deliver, directly or through the Related Lead Party, reasonably promptly after the Indemnitee’s receipt thereof, copies of all Notices and documents (including court papers) received by the Indemnitee relating to the Third Party Claim.
- (2) The Indemnifying Party will have the right, within twenty (20) Business Days after being so notified (the “**Assumption Deadline**”), to assume the defense, negotiation and (if possible) settlement of such Third Party Claim with counsel reasonably satisfactory to the Indemnitee. In any such proceeding the defense of which the Indemnifying Party will have so assumed, the Indemnitee will have the right to participate therein and retain its own counsel (without otherwise affecting the rights of the Parties under the applicable indemnification provision under this Agreement) at its own expense unless:
 - (a) the Indemnitee and the Indemnifying Party will have mutually agreed to the retention of such counsel;
 - (b) the Indemnitee will have reasonably concluded that there may be one or more legal defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (c) the named parties to any such proceeding (including the pleaded parties) include both the Indemnifying Party and the Indemnitee, and representation of both such parties by the same counsel would be inappropriate in the opinion of the Indemnitee’s counsel, acting reasonably, due to actual or potential differing interests between them;

in any such case, one firm of lawyers separate from the Indemnifying Party's counsel may be retained to represent the Indemnified Parties at the Indemnifying Party's expense. Any settlement of such a Third Party Claim, the defense of which has been assumed by the Indemnifying Party, will not, unless such settlement does not prejudice the Indemnatee in any way, be entered into by the Indemnifying Party without prior written consent of the Indemnatee, which consent will not be unreasonably withheld, conditioned or delayed.

(3) If:

- (a) the Indemnifying Party fails to assume control of the defence, negotiation and (if possible) settlement of any Third Party Claim by the Assumption Deadline pursuant to Section 12.4(2) above; or
- (b) the Indemnifying Party, having elected to assume control of the defence, negotiation and (if possible) settlement of a Third Party Claim, thereafter fails to defend the Third Party Claim within a reasonable time;

the Indemnatee will be entitled to assume such control and will, subject to Section 12.4(4), have the right to contest, settle or pay the amount claimed, except that the Indemnatee in this circumstance is neither authorized nor approved to incorporate into any such contest, settlement or payment any covenant, warranty, representation or admission on the part of the Indemnifying Party. The Indemnifying Party will be liable for and will indemnify the Indemnatee for all Damages relating to such Third Party Claim including all Damages incurred in the course of the Indemnatee contesting and/or settling such Third Party Claim pursuant to this Section.

- (4) Whether or not the Indemnifying Party assumes control of the defence, negotiation and (if possible) settlement of any Third Party Claim, neither the Indemnifying Party nor the Indemnatee will settle, enter any consent order, or make any other compromise or material admission of liability in respect of any Third Party Claim without the written consent of the other such Person, as the case may be (which consent will not be unreasonably withheld, delayed or conditioned) unless the Person from whom such consent is required pursuant to this Section 12.4(4) has provided a written waiver of its rights in respect of the Third Party Claim.
- (5) With respect to all Third Party Claims, the Indemnatee will cooperate in all reasonable respects with the Indemnifying Party in connection with any Third Party Claims and the defense, negotiation and/or settlement thereof. Such cooperation will include the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information reasonably relevant to the applicable Third Party Claim, making applicable Related Parties available on a mutually convenient basis to provide additional information, to provide explanation of any material provided under this Agreement and/or to provide assistance and testimony where same is of material assistance in evaluating, defending, negotiating and/or settling the Third Party Claim. If the Indemnifying Party will have assumed the defense of a Third Party Claim, the Indemnatee will not, without first waiving the

indemnity as to such claim, admit any liability with respect to, or settle, compromise, or discharge, the Third Party Claim, without the Indemnifying Party's prior written consent; provided that admissions of facts which an Indemnatee may reasonably be required to make will not be deemed to be admissions of liability. The Indemnifying Party and the Indemnatee will keep each other fully advised with respect to the status of the defence, negotiation and/or settlement of the Third Party Claim including supplying copies of all relevant documentation reasonably promptly as it becomes available.

- (6) The Parties will cooperate with each other with respect to resolving any Claim or Damages with respect to which one Party is obligated to indemnify the other Party under this Agreement, including by taking reasonable efforts to mitigate or resolve any such Claim and/or Damages.
- (7) Upon payment of the Third Party Claim, the Indemnifying Party will be subrogated to all Claims the Indemnatee may have relating thereto. The Indemnatee will give such further assurances and cooperate with the Indemnifying Party to permit the Indemnifying Party to pursue such subrogated claims as reasonably requested by it.
- (8) If the Indemnifying Party has paid an amount pursuant to the indemnification obligations herein and the Indemnatee will subsequently be reimbursed from any Third Party source in respect of the Third Party Claim, the Indemnatee will promptly pay the amount of the reimbursement (including interest actually received) to the Indemnifying Party, net of taxes required to be paid by the Indemnatee as a result of such payment and plus any taxes saved or recovered by the Indemnatee as a result of such payment.

Section 12.5 Insurance

- (1) Broad-Ocean will obtain and maintain, and cause their respective BO Subsidiaries to obtain and maintain, adequate and customary insurance coverage, including Commercial General Liability insurance and umbrella or excess insurance in respect of the Business. Broad-Ocean will name Ballard as additional insured on the commercial general liability, umbrella or excess insurance in respect of the Business, which insurance will cover risks of loss, damage or injury associated directly or indirectly with Broad-Ocean's business activities. Broad-Ocean will, upon request by Ballard from time to time, provide satisfactory evidence of such coverages.
- (2) Ballard will obtain and maintain adequate customary insurance coverage, including Commercial General Liability insurance and umbrella or excess insurance for selling and supplying Fuel Cell Stacks and Fuel Cell Modules. Ballard will name Broad-Ocean as additional insured on the commercial general liability, umbrella or excess insurance, which insurance will cover risks of loss, damage or injury associated directly or indirectly with Ballard's business activities. Ballard will, upon request by Broad-Ocean from time to time, provide satisfactory evidence of such coverages.

Article 13
LIMITATION AND RELEASE

Section 13.1 Ballard Limitation and Release

- (1) *[commercially sensitive information redacted]*.
- (2) Subject to Subsection (1), Ballard will only be liable to Broad-Ocean for direct Damages suffered by them up to a maximum amount equal to *[commercially sensitive information redacted]* and Broad-Ocean hereby releases Ballard from all other Claims or greater amount. Except as set out in Subsection (1), IN NO EVENT SHALL BALLARD BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, INCLUDING LOST PROFITS, LOST REVENUES, FAILURE TO REALIZE EXPECTED SAVINGS, OR OTHER INDIRECT COMMERCIAL OR ECONOMIC LOSSES OF ANY KIND, HOWEVER ARISING AND UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER BALLARD HAS BEEN ADVISED ABOUT THE POSSIBILITY OF SUCH DAMAGE OR LOSS AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THIS LIMITATION OF LIABILITY PROVISION APPLIES IN THE AGGREGATE AND NOT ON A PER CLAIM BASIS. THIS LIMITATION OF LIABILITY PROVISION DOES NOT LIMIT A PARTY'S LIABILITY FOR GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT. FOR CLARIFICATION, NONE OF THE PROVISION IN THIS SUBSECTION (2) WILL IN ANY WAY LIMIT, DIMINISH, REDUCE OR ADVERSELY AFFECT BALLARD'S LIABILITY UNDER SUBSECTION (1) ABOVE. Without limiting the generality of the foregoing, Ballard will not be liable for:
- (i) any loss or damage caused by the failure of Broad-Ocean to meet its responsibilities under this Agreement or the Related Agreements;
 - (ii) any loss or damage to any property or for any personal injury or economic loss or damage caused by the connection of a Ballard product to other devices or systems, except where such loss or damage results from or is attributable to defects, failures or other non-conformities of the Ballard product with applicable specifications; or
 - (iii) any loss, damage or injury arising from or as a result of, misuse, abuse, modification or incorrect installation, integration or operation of a Ballard product, or the installation, integration or operation of a Ballard product by persons not authorized by Ballard.

Section 13.2 Broad-Ocean Limitation and Release

- (1) Broad-Ocean will only be liable to Ballard for direct Damages suffered by them up to a maximum amount equal to *[commercially sensitive information redacted]* and Ballard

hereby releases Broad-Ocean from all other Claims or greater amount. IN NO EVENT SHALL BROAD-OCEAN BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, INCLUDING LOST PROFITS, LOST REVENUES, FAILURE TO REALIZE EXPECTED SAVINGS, OR OTHER INDIRECT COMMERCIAL OR ECONOMIC LOSSES OF ANY KIND, HOWEVER ARISING AND UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER BROAD-OCEAN HAS BEEN ADVISED ABOUT THE POSSIBILITY OF SUCH DAMAGE OR LOSS AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THIS LIMITATION OF LIABILITY PROVISION APPLIES IN THE AGGREGATE AND NOT ON A PER CLAIM BASIS, WHETHER ANY DAMAGES ARE CHARACTERIZED IN TORT, NEGLIGENCE, CONTRACT OR OTHER THEORY OF LIABILITY, EVEN IF BROAD-OCEAN HAS BEEN ADVISED, HAD REASON TO KNOW, OR SHOULD REASONABLY HAVE KNOWN, OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND IRRESPECTIVE OF ANY FAILURE OF ESSENTIAL PURPOSE OF A LIMITED REMEDY. THIS LIMITATION OF LIABILITY PROVISION APPLIES IN THE AGGREGATE AND NOT ON A PER CLAIM BASIS. Without limiting the generality of the foregoing, Broad-Ocean will not be liable for any loss or damage caused by the failure of Ballard to meet its responsibilities under this Agreement or the Related Agreements.

Article 14

DISPUTE RESOLUTION

Section 14.1 Settling Disputes

If at any time a dispute, claim, question or difference arises out of or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement (a “**Dispute**”), a Party that wishes that the issue be considered further will give Notice to the other Party requiring that such issue or dispute be decided pursuant to this Article 14.

Section 14.2 Referral to Senior Officers

If Notice is given pursuant to Section 14.1, a Party may ask a designated senior officer of each of the Parties forthwith to initiate discussions with one another with a view to settling the Dispute. For this purpose, the designated senior officer of Broad-Ocean will be its President and the designated senior officer of Ballard will be its President and CEO, unless otherwise Notified from time to time.

Section 14.3 Decision Binding

A decision reached by such senior officers and communicated by them in writing to the Parties will be binding on the Parties and will be implemented.

Section 14.4 Submission to Arbitration

- (1) If the senior officers are not able to resolve a Dispute within 30 days of the date of the Notice delivered pursuant to Section 14.1, then the Party that wishes to initiate the arbitration of the Dispute will be entitled to refer the Dispute to arbitration and the Dispute shall be referred to and finally resolved by arbitration conducted at the Hong Kong International Arbitration Centre (“HKIAC”) in accordance with the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted in accordance with such Rules.
- (2) The arbitration tribunal shall consist of three arbitrators, one appointed by Broad-Ocean, one appointed by Ballard, and the third arbitrator (who shall be the presiding arbitrator) appointed by agreement between the Parties, or if the Parties cannot agree, by agreement between the aforementioned two arbitrators, or if the aforementioned two arbitrators cannot agree, by the Chairman of HKIAC. If either Broad-Ocean or Ballard or the two arbitrators first appointed by the Parties fail to appoint an arbitrator within the earlier of (a) 30 days or (b) the time specified in the relevant Article of the HKIAC Administered Arbitration Rules, then the Chairman of HKIAC shall make such appointment.
- (3) The place of arbitration shall be Hong Kong and the arbitration shall be conducted in English.
- (4) Except as otherwise required by law, the Parties and the arbitrator(s) will maintain as confidential all information or documents obtained during the arbitration process, including the resolution of the dispute.
- (5) The arbitrators will not have the power to grant provisional and conservatory measures including injunctions, restraining orders and specific performance, and each Party reserves its right to apply for such remedies to any ordinary court of competent jurisdiction, in which case such Party may apply directly to such court without complying with (1).

Section 14.5 Arbitration Award

Any arbitration award will be in writing, in the English language, and will contain the reasons for the award as well as a decision regarding payment of costs by the Parties. The non-prevailing Party will reimburse the prevailing Party for all reasonable legal costs resulting from the arbitration.

Section 14.6 Acceptance and Implementation

The Parties will accept as final and binding, and proceed in good faith diligently to implement, the award or decision of the arbitrator(s) pursuant to Section 14.5. Each Party irrevocably and unconditionally (i) consents to the jurisdiction of any such arbitration proceeding and waives any objection that it may have to personal jurisdiction or the laying of venue of any such proceeding; and (ii) knowingly and voluntarily waives its rights to

have disputes tried and adjudicated by a judge and jury except as otherwise expressly provided herein.

Article 15 MISCELLANEOUS

Section 15.1 Notices

Any notice required to be given regarding the matters contemplated by this Agreement (a “**Notice**”) must be in writing in English, sent by e-mail, mail, personal delivery, courier or facsimile and addressed as follows:

(a) to Broad-Ocean at:

c/o Zhongshan Broad-Ocean Motor Co., Ltd.
No.3 Shalang Industrial Zone, West District
Zhongshan, 528411, China

Attention: Mr. Dongyun Xue

Telephone: +86- 760-88555306

Email: xuedongyun@broad-ocean.com

with a copy to:

McCarthy Tétrault LLP
Suite 2400
745 Thurlow Street
Vancouver BC V6E 0C5

Attention: Joyce Lee

Telephone: +1 (604) 643-7128

Facsimile: +1 (604) 622-5628

Email: jlee@mccarthy.ca

(b) to Ballard at:

Ballard Power Systems Inc.
9000 Glenlyon Parkway
Burnaby, British Columbia V5J 5J8
Canada

Attention: Corporate Secretary

Telephone: +1 (604) 454-0900

Facsimile: +1 (604) 412-4700

Email: CorporateSecretary@ballard.com

with a copy to:

Stikeman Elliott LLP
1700 – 666 Burrard Street
Vancouver, British Columbia V6C 2X8
Canada

Attention: John Anderson

Telephone: +1 (604) 631-1307
Facsimile: +1 (604) 681-1825
Email: janderson@stikeman.com

A Notice is deemed to be given and received (i) if sent by mail, on the fifth Business Day following the date of mailing, if the date of mailing is a Business Day and the mailing was effected before 4:00 p.m. (local time in the place of mailing), (ii) if sent by e-mail, personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made before 4:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day, or (iii) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party. The Party sending any Notice has the burden of proving delivery and receipt of any such Notice.

Section 15.2 Further Assurances

The Parties further covenant and agree that they will execute such further agreements, assurances, papers and documents and perform or cause to be done and performed such further and other acts and things that may be necessary or desirable from time to time in order to give full effect to this Agreement and every part hereof.

Section 15.3 Expenses

Except as otherwise contemplated in this Agreement, each Party will bear its own costs and expenses (including legal and accounting fees and travel expenses) incurred in connection with the preparation, execution, delivery and performance of this Agreement.

Section 15.4 Time of the Essence

Time is of the essence in this Agreement.

Section 15.5 Status

Nothing contained in this Agreement will be deemed in any way or for any purpose to constitute any Party a partner of the other. Each Party will remain as an independent legal entity and be responsible for its own rights and responsibilities under this Agreement. However, the Parties will cooperate with each other closely on the issues stipulated in this Agreement.

Section 15.6 Third Party Beneficiaries

The Parties intend that this Agreement will not benefit or create any right or cause of action in favour of, any Person, other than the Parties. No Person, other than the Parties to this Agreement, is entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum.

Section 15.7 Amendments

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by both Parties.

Section 15.8 Waiver

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.

Section 15.9 Entire Agreement

This Agreement together with all the schedules constitutes the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties with respect to such transactions including the provisions of the term sheet dated *[commercially sensitive information redacted]* made between Broad-Ocean and Ballard. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, including implied warranties or conditions of merchantability or fitness for a particular purpose, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement together with all the schedules. The Parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

Section 15.10 Successors and Assigns

- (1) This Agreement becomes effective when executed by all of the Parties. After that time, it will be binding upon and enure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.
- (2) Neither this Agreement nor any of the rights or obligations under this Agreement, including any right to payment, may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. Any purported assignment or transfer contrary to this Subsection (2) will be null and void and of no effect.

Section 15.11 Severability

If any provision of this Agreement is determined to be illegal, invalid or unenforceable, by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

Section 15.12 Governing Law

This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of Hong Kong, without reference to provisions concerning conflicts of laws. The provisions of the United Nations Convention on Contracts for the Sale of Goods are hereby excluded. Subject to Article 14, the Parties irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of Hong Kong and courts having appellate jurisdiction thereover for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated thereby. It is the intent of the Parties that the laws of the Hong Kong apply in all circumstances notwithstanding any applicable legislation, rule, interpretation, custom or practice of or in Hong Kong relating to the choice or conflicts of laws, or to the attornment by any Party to any particular jurisdiction, that would oust, preclude, or otherwise limit the right of the Parties to interpret this Agreement under, the laws of Hong Kong.

Section 15.13 Counterparts

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

Section 15.14 Remedies Cumulative

Unless otherwise expressly stated in this Agreement, the remedies provided in this Agreement are neither exclusive nor mutually exclusive, and subject to the limitation of liability provisions in this Agreement, the Parties will be entitled to any and all such remedies, and any and all other remedies that may be available to the Parties at law or in equity, by statute or otherwise, individually or in any combination thereof.

[Remainder of page intentionally left blank. Signature page(s) follow.]

The Parties have duly executed this Agreement.

**ZHONGSHAN BROAD-OCEAN MOTOR
CO., LTD.**

By: “Charles Lu”
Charles Lu
Chairman & CTO

BALLARD POWER SYSTEMS INC.

By: “Randall MacEwen”
Randall MacEwen
President and CEO

By: “Tony Guglielmin”
Tony Guglielmin
VP and CFO

Schedule "A"
Licensed Territories

[commercially sensitive information redacted]