IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
ASCEND ELEMENTS, INC. *et al.*,[1]	)	Case No. 26-90440 (CML)
Debtors.	)	(Jointly Administered)

LIMITED OBJECTION AND RESERVATION OF RIGHTS OF POWERTECH WATER, INC., D/B/A ELECTRAMET WITH RESPECT TO SALE OF DEBTORS' COVINGTON, GEORGIA ASSETS

Creditor and contract counterparty, PowerTech Water, Inc. d/b/a ElectraMet ("**PowerTech**"), hereby interposes this Limited Objection and Reservation of Rights (the "**Objection**") with respect to the proposed sale by the above-captioned debtors (collectively, the "**Debtors**") of their Covington, Georgia "**Assets**", as that term is defined in the *Notice of (I) Designation of R3 Lithium, Inc. as Successful Bidder for the Debtor's Covington, Georgia Assets and (II) Cancellation of Auction with Respect to Such Assets* filed on June 20, 2026 [Doc. 487] (the "**Sale Notice**"). In support of this Objection, PowerTech respectfully states as follows:

PRELIMINARY STATEMENT

PowerTech is party to two separate sets of agreements with the Debtors pursuant to which (i) PowerTech manufactured and delivered to the Debtors' Covington, Georgia and Hopkinsville, Kentucky facilities certain water purifications systems for use by the Debtors in their production process; and (ii) PowerTech agreed to provide cartridge filter service and software functionality for those water purification systems pursuant to a nonexclusive license to use those cartridges and software which at all times remain the property of PowerTech. PowerTech's agreements with the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each of Debtor's federal tax identification number are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309) (collectively, the "**Debtors**").

Debtors expressly provide that the cartridges and software are the property of PowerTech and that the Debtors have no rights in the cartridges or the software other than the right to use them in connection with the operation of purification system subject to the terms of PowerTech's agreements with the Debtors.

The PowerTech-manufactured purification system at the Debtors' Covington, Georgia facility is operational and contains PowerTech's cartridges. PowerTech is filing this Objection to protect its rights in its cartridges and software which are not property of the estate and cannot be sold by the Debtors in connection with the proposed sale. PowerTech does not necessarily oppose the sale, but opposes it only to the extent that the Debtors might seek to improperly include PowerTech's property in the sale. In addition, while there is no indication that the proposed purchaser intends to take an assignment of PowerTech's agreements with the Debtors, by this Objection PowerTech's seeks to reserve all of its rights in connection with any such assignment. If PowerTech's agreements are not assumed and assigned in connection with the proposed sale, PowerTech should be allowed to disable the software and be given access to the Debtors' Covington, Georgia facility to recover its cartridges prior to the closing of the sale.

FACTUAL AND PROCEDURAL BACKGROUND

1. On or around January 18, 2024, PowerTech and Debtor Ascend Elements, Inc. ("**Ascend**") entered into a Master Services Agreement (the "**Georgia MSA**") for the Debtors' Covington, Georgia facility (the "**Georgia Facility**"). A true and correct copy of the Georgia MSA and related attachments is attached hereto as **Exhibit 1** and is listed at line 2.725 in Debtor's Schedule G [Doc. 357].[2]

[2] PowerTech and Debtor entered into a similar agreement (the "**Kentucky MSA**") for Debtor's Hopkinsville, Kentucky facility (the "**Kentucky Facility**").

2. In connection with the Georgia MSA, the parties on or about January 29, 2024 entered into an "Equipment Purchase Agreement" (the "**Georgia EPA**") whereby PowerTech agreed to manufacture, transport, commission, test, and install—and Ascend agreed to purchase—an ElectraMet Equipment Skid (the "**System**"). A true and correct copy of the Georgia EPA is attached hereto as **Exhibit 2**.

3. Under the Georgia MSA, PowerTech leases to Ascend all necessary cartridges, equipment, and remote monitoring services for the System (collectively, the "**Equipment**") to be used *only* at the Georgia Facility. *See* Georgia MSA, §§ 1, 6, Ex. A. Ascend is granted a limited, non-exclusive right to possess and use the cartridges, along with a non-exclusive, non-transferable software license for the embedded ElectraLink software. *Id*. at §§ 1, 5, 9, 16. Unlike the System, Debtor takes no ownership interest in the Equipment, nor any intellectual property contained therein. In Section 20 of the Georgia MSA, Ascend expressly acknowledges that PowerTech "is the owner of all right, title, and interest in and to the Equipment (*including all software embedded in the Equipment* . . .), . . . and all other intellectual property related to the Equipment, including without limitation patents, designs, mask works, trademarks, know-how and other proprietary rights . . ." *Id*. at § 20 (emphasis added).

4. The Georgia MSA requires Ascend to operate, manage, and supervise the Equipment in accordance with PowerTech's specifications, and obligates PowerTech to provide ongoing technical support. Georgia MSA, §§ 1, 4-6, 9. The Georgia MSA expressly prohibits Ascend from, among other things, modifying, altering, reverse-engineering, or disassembling the Equipment, embedded software, or related components, and from allowing a third-party to do so. *Id*. at § 20. Finally, Ascend is expressly prohibited from assigning, subletting, renting, or otherwise

hiring out the Equipment—or the Georgia MSA as a whole—to any third-party without the prior written consent of PowerTech. *Id*. at § 16.

5. On April 9, 2026 (the "**Petition Date**"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). [Doc. 1].

6. That same day, the Debtors filed their *Motion for Entry of an Order (I) Authorizing the Debtors to Reject the Initial Lease and Certain Executory Contracts, (II) Authorizing the Abandonment of Certain Personal Property, if any, (III) Approving and Establishing Procedures to Reject Executory Contracts and Expired Leases, and (IV) Granting Related Relief* [Doc. 8] (the "**First-Day Rejection Motion"**), pursuant to which the Debtors sought to reject the Kentucky MSA and related addendum, effective as of the Petition Date. [*See* Doc. 8, ¶¶ 1, 14]. In that motion, the Debtors clarified that, "[f]or the avoidance of doubt, the PowerTech Hopkinsville MSA relates solely to Ascend's Hopkinsville, Kentucky Facility." [*See* Doc. 8, p. 2, n.3].

7. On April 17, 2026, the Court entered its *Order (A) Approving Bid Procedures, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing, and (D) Granting Related Relief* [Doc. 120] (the "**Sale Procedures Order**).

8. The Court on May 18, 2026, denied the Debtors' request for post-petition financing and related relief through entry of the *Order Denying Emergency Motion* [Doc. 334].

9. On May 27, 2026, the Debtors filed their *First Notice of Rejection of Certain Executory Contracts and Unexpired Leases (and the Abandonment of Property)* [Doc. 408] (the "**First Rejection Notice**"). The First Rejection Notice included PowerTech, but *only* as to the Kentucky MSA and related Addendum. [*See* Doc 408, Ex. 1]. The First Rejection Notice makes

no mention of the Georgia Facility, Georgia MSA, or any other PowerTech agreements or PowerTech owned or manufactured equipment at the Georgia Facility.

10. On June 20, 2026, the Debtors filed the Sale Notice stating that they intend to sell the Assets at the Georgia Facility to R3 Lithium, Inc. (the "**Purchaser**"). The term "Assets" as used in the Sale Notice is defined to include "all of [Debtor]'s right, title, and interest in and to the assets of the Business," and then goes on to expressly include "Leased Real Property", "all Contracts to which Seller is a party that support, facilitate, or relate to the Business and the other Acquired Assets or any Assumed Liabilities", "all Documents relating to any of the Acquired Assets", and "all tangible assets (including Equipment and IT Assets)" among other items. *See* Asset Purchase Agreement (the "**APA**"), § 1.1(a)—(e).

11. Neither PowerTech, the Georgia MSA nor the Equipment are specifically mentioned anywhere in the APA or the Sale Notice. To date, the Debtors have not expressly indicated whether they intend to assume or reject the Georgia MSA.

12. As of the Petition Date, Ascend owed PowerTech not less than $634,830.00 in respect of services and rights provided under the Georgia MSA. Since the Petition Date, the Debtors have incurred not less than an additional $90,170 in respect of the Georgia MSA. Thus, PowerTech's cure claim in connection with any proposed assumption and assignment of the Georgia MSA is not less than $725,000.00.

LEGAL ARGUMENT

A. The Proposed Sale Cannot Include PowerTech's Equipment That is Not Property of the Bankruptcy Estate.

Section 363 of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease . . . property of the estate." *Hartford Underwriters Inc. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 8, 120 S.Ct. 1942, 1948 (2000) (quoting 11 U.S.C. § 363(b)(1)). And so,

by definition, "[o]nly that which came into the estate might be sold from the estate." *In re Mirant Corp.*, 389 B.R. 481, 493 (Bankr. N.D. Tex. 2008) ("It is counter-intuitive to suggest that authority to sell property free of interests includes the ability to sell an interest in real property free of the underlying fee holder's ownership rights."). Property in which the debtor holds no equitable interest cannot be "property of the estate" for these purposes. *See* 11 U.S.C. § 541(d); *In re Hendrick*, 45 B.R. 965, 968 (Bankr. M.D. La. 1985) (property owned by debtor's children was not property of the estate).

Under the Georgia MSA, Ascend *leased* the Equipment, including the cartridges, and has a possessory interest in those items but no ownership interest which it could sell pursuant to section 363 of the Bankruptcy Code. Debtor purchased and owns *only* the System, as provided in the Georgia EPA. *See* Ex. 2, Georgia EPA. But the Equipment that makes the System function is owned by and belongs to PowerTech. *See* Ex. Georgia MSA. The Georgia MSA confirms "[Ascend] shall not acquire any right, title or interest in or to the Cartridges, except for the right to possess and use the Cartridges . . ." (*id.* at § 1), "[u]pon expiration or termination of this Agreement, [Ascend] shall return the Cartridges . . ." (*id.* at § 3), and that "[PowerTech] is the ***owner of all right, title and interest*** in and to the Equipment . . . and that ***[Ascend] shall obtain no right whatsoever*** in the [PowerTech property] . . ." (*id.* at § 20 (emphasis added)).

Because the Equipment is *not* property of the estate, it cannot be sold pursuant to Section 363. *In re Mirant Corp.*, 389 B.R. at 493. Thus, the Purchaser can obtain possessory rights in the Equipment *only* if the Georgia MSA were assumed and assigned to the Purchaser under Section 365 of the Bankruptcy Code. The Debtors have not sought such an assignment, nor has PowerTech's consent to such an assignment been requested. Consequently, PowerTech is entitled

to the return of its Equipment, including the cartridges, prior to the closing of the proposed sale of the Assets to the Purchaser.

B. Debtors Cannot Assume and Assign the Georgia MSA Without PowerTech's Consent.

Section 365(c)(1) of the Bankruptcy Code provides that:

> The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—
>
> (1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and
>
> (B) such party does not consent to such assumption or assignment.

Put another way, Section 365(c)(1) provides that an executory contract may not be assumed or assigned "if applicable law excuses the [creditor] from accepting performance from an assignee and if the [creditor] does not consent to assignment." *Pension Benefit Guaranty Corp. v. Braniff Airways, Inc. (In re Braniff Airways)*, 700 F.2d 935, 943 (5th Cir. 1983).

The holder of a copyright has the exclusive right to authorize others to use or distribute the copyrighted work. 17 U.S.C. § 106; *see Engenium Sols., Inc. v. Symphonic Techs., Inc.*, 924 F. Supp.2d 757, 789 (S.D. Tex. 2013). As a result, and notwithstanding applicable bankruptcy law, "copyright law excuse[s] [the copyright holder] from accepting performance from a party other than [the original licensee]." *In re Sunterra Corp*., 361 F.3d 257, 262 (4th Cir. 2004), *accord In re Mirant Corp*., 440 F.3d 238, 248 (5th Cir. 2006). Accordingly, executory contracts containing protected copyrights and intellectual information cannot be assumed or assigned under 11 U.S.C. § 365(c)(1) unless PowerTech consents. *See id*. PowerTech has not consented.

"A contract is executory 'if performance remains due to some extent on both sides.'" *In re Chesapeake Energy Corp.*, 622 B.R. 274, 280 (Bankr. S.D. Tex. 2020). The Georgia MSA is, without a doubt, an executory contract. PowerTech has ongoing obligations to provide services

related to the Equipment, remote monitoring, technical support, and other maintenance. Simultaneously, Ascend has ongoing payment obligations, along with duties to ensure proper use, management, and supervision of the Equipment. The Georgia MSA additionally imposes mutual indemnity and confidentiality obligations on the parties.

In order to assume an executory contract, a party must cure all monetary defaults. *See* 11 U.S.C. § 365(b)(1)(A) ("[i]f there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee—cures or provides adequate assurance that the trustee will promptly cure, such default. . . ."); *see also In re Eldercare Props.*, 405 B.R. 816, 829 (Bankr. S.D. Tex. 2006) (party assuming executory contract must "cure[], or provide adequate assurance that it will promptly cure its defaults . . ."). As noted above, PowerTech is owed not less than $725,000.00 to cure the current amounts owed under the Georgia MSA.

Beyond monetary cure, any assignment must provide "adequate assurance of future performance . . ." by the assignee. *See* 11 U.S.C. § 365(b)(1)(C); *see also In re PRK Enterprises, Inc.*, 235 B.R. 597 (Bankr. E.D. Tex. 1999). Debtor has not provided PowerTech with any assurances that the Purchaser would be able to perform Ascend's obligations under the Georgia MSA were it assumed and assigned to the Purchaser.

For these reasons and to the extent that the Debtors or the Purchaser intend for the Sale Notice to include PowerTech's Equipment and an assumption and assignment of the Georgia MSA, PowerTech objects to any purported sale of its Equipment and reserves all of its rights with respect to any assumption and assignment of the Georgia MSA, including its rights under Section 365(c) of the Bankruptcy Code. If the Georgia MSA will not be assumed and assigned, PowerTech requests that it be allowed to disable the software and recover its Equipment, including the cartridges, from the Georgia Facility prior to the closing of the proposed sale of the Assets to the Purchaser.

WHEREFORE, for the reasons stated above, PowerTech hereby objects to any proposed sale that would (i) transfer, sell, or dispose of PowerTech's leased Equipment which is not property of the bankruptcy estate; (ii) assume and assign the Georgia MSA without PowerTech's consent as required by Bankruptcy Code Section 365(c); (iii) assume and assign the Georgia MSA without paying PowerTech's cure claim in full as required by Bankruptcy Code Section 365(b)(1); or (iv) assume and assign the Georgia MSA without providing PowerTech with adequate assurance of future performance as required by Bankruptcy Code Section 365(b)(1)(C).

Dated: June 25, 2026

Respectfully submitted,

MITBY PACHOLDER JOHNSON PLLC

By: *Steven J. Mitby*

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ATTORNEYS FOR POWERTECH WATER, INC., D/B/A ELECTRAMET

300350411v4

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the foregoing instrument on June 25, 2026 as required under the Fed. R. Bank. P. via the Court's electronic filing system.

Steven J. Mitby
Steven J. Mitby

EXHIBIT 1

ElectraMet

MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT (this "Agreement") is made as of this 18th day of January, 2024 ("Effective Date"), by and between POWERTECH WATER, INC., d/b/a ElectraMet a Delaware corporation, having a principal place of business at 749 West Short Street, Lexington, Kentucky 40508 ("Company") and ASCEND ELEMENTS, INC., a Delaware Corporation, having a principal place of business at 78 Barnum Rd, Devens, MA 01434 ("Customer").

WHEREAS Customer desires to receive from Company, and Company desires to render to Customer, various services as set forth on Exhibit A (collectively, the "Services"), upon the terms and conditions set forth herein.

NOW, THEREFORE, Company and Customer, intending to be legally bound, mutually agree that the terms and conditions of this Agreement shall apply to all Services (referenced in Exhibit A the Services Schedule) received by Customer from Company after the Effective Date hereof until such time as this Agreement is terminated pursuant to the terms hereof.

1. Cartridge Service. Upon execution of this Agreement, Company agrees to provide Customer the Cartridges Service set forth on the Services Schedule attached hereto as Exhibit A. This Cartridge Service shall commence upon Acceptance of the Equipment the Cartridges are to be installed in and used with. Acceptance shall be as defined in the separate Equipment Purchase Agreement ("Equipment Purchase Agreement") for said Equipment. Once Cartridges are delivered at Customer's site, Customer agrees to immediately take control, possession, and management (except as otherwise set forth herein), of the Cartridges for the duration set forth on the applicable Services Schedule on the terms and conditions set forth in this Agreement. Customer shall assume complete responsibility at all times for the Cartridges under all applicable laws and shall further keep the Cartridges free of all liens or encumbrances and other security interests of any kind. Customer shall not acquire any right, title or interest in or to the Cartridges, except for the right to possess and use the Cartridges as provided herein, subject to the earlier termination of such right as provided herein. The Company may request to inspect the Cartridges at any time with at least one-week prior notice during Customer's regular business hours. Such request to review the Cartridges, unless requested by Customer, is subject to the approval of Customer and both teams shall coordinate the visit based the availability of required personnel.

2. Refurbished Cartridges. Notwithstanding anything contrary in this Agreement, if refurbished cartridges are planned for use per the Services Schedule, Customer acknowledges and agrees that the use of refurbished cartridges is subject to certain unforeseen risks, including without limitation, the refurbished cartridges causing increased replacement frequency (each, a "Refurbished Event"). In the event of a Refurbished Event, Customer acknowledges and agrees that the use of new cartridges may become required, which will result in an increase in costs to Customer. Customer agrees to pay such increased costs in accordance with the terms of the Agreement.

3. Return of Cartridges. Upon termination or expiration of this Agreement, Customer shall return the Cartridges to the location at which the initial installation occurred, or such other place as may be agreed to by Company in writing. Customer shall be responsible for the payment of and any and all damages incurred with respect to the Cartridges during the Term set forth in the Services Schedule, and for any and all repairs necessary to place the Cartridges in the same condition as when delivered, reasonable wear and tear excepted and otherwise in the condition required by this Agreement.

4. ElectraLink Service. Company shall provide the ElectraLink Service set forth on the applicable Services Schedule attached hereto as Exhibit A. Company shall not be responsible for disruptions to this service beyond its control. Such disruptions could include but are not limited to: loss of data connection from cellular, WiFi or other connection; or outages of our third-party controlled cloud-based servers and software.

5. Software Licenses. All Company provided Software shall be governed by Company's End User License Agreement which is attached hereto as Exhibit B and incorporated herein by reference. Company shall not be responsible for disruptions to these Software licenses beyond its control. Such disruptions could include but are not limited to: loss of data connection from cellular, Wi-Fi or other connection; or outages of our third-party

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controlled cloud-based servers and software. In case of any disruption, Company must apply all commercially reasonable efforts to resolve issues within a reasonable period of time given the nature of the disruption.

6. Technical Support. Company shall provide the Technical Support Services set forth in the Services Schedule in Exhibit A.

7. Fees, Taxes and Late Charges. Customer is required to pay all undisputed invoices in a timely manner in accordance with the payment terms stated in Exhibit A. If any undisputed payment due hereunder is not paid on the due date plus a grace period of 30 days to address eventual issues, Customer shall pay Company interest on such undisputed overdue amount equal to the lesser of 1.5% per month or the maximum amount allowed by law. In case any invoice is not paid on due date, both parties should collaborate to address any potential issue that might be causing such delay. Customer shall pay or, if requested by Company, reimburse Company for any and all sales, use, personal property taxes, or other taxes, fees or assessments levied against or imposed upon the Cartridges and Services, its value, use or operation, or levied against or based upon the fees paid or to be paid hereunder. Customer's obligation (without prior notice or demand) to pay undisputed Monthly Service Fees and all other undisputed amounts due hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment, or reduction, unless otherwise agreed and documented in writing by both parties.

8. Limited Warranties. Company warrants that it shall perform the Services in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services and that all Services shall be performed in accordance with the Services Schedule attached hereto as Exhibit A. EXCEPT AS OTHERWISE PROVIDED HEREIN, CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY HAS NOT MADE, AND HEREBY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTY AS TO MERCHANTABILITY, FITNESS FOR ANY PURPOSE OR USE, DESIGN OR CONDITION OF THE CARTRIDGES, QUALITY OF MATERIAL OR WORKMANSHIP, OR AS TO ANY OTHER MATTER WHATSOEVER RELATING TO THE CARTRIDGES OR SERVICES. CUSTOMER AGREES THAT CUSTOMER ACCEPTS THE CARTRIDGES "AS IS".

9. Lawful Use; Records. Customer shall use the Cartridges only in its business and in compliance with all laws, rules, and regulations of any jurisdiction where the Cartridges are used or located. Customer assumes all responsibility for any and all licenses, titles, permits and other certificates as may be required by law or otherwise for Customer's lawful operation of the Cartridges. Customer represents and warrants to Company at all times that (i) Customer has the right and ability to enter into this Agreement; and (ii) this Agreement constitutes a valid, legal, and binding obligation and agreement of Customer, enforceable against Customer in accordance with its terms. Customer shall use and operate the Cartridges in a careful and prudent manner for the purposes and in the manner intended to be used, in strict compliance with any and all instructions provided by the Company.

10. Alterations. Customer shall not make or suffer any changes, alterations or improvements to the Cartridges and shall not permit the Cartridges to go or remain out of Customer's possession without the written approval of Company and then only to the extent of such approval. Customer shall be liable for and shall pay Company for any loss or damage resulting from changes, alterations or improvements to the Cartridges made without Company's written approval.

11. Damage. Customer shall bear the entire risk of loss, theft, destruction of or damage to the Cartridges from any cause whatsoever ("Loss or Damage"). Customer shall promptly notify Company in writing of any Loss or Damage. No Loss or Damage to any item of Cartridges shall relieve Customer of any obligation with respect to such Cartridges under this Agreement. In the event of Loss or Damage, Customer shall pay Company the full repair or replacement value, whichever is less. If replaced, payment shall be made in accordance with the terms in Exhibit A.

12. Defaults And Remedies. (a) Customer shall be deemed to be in default hereunder upon the occurrence of any of the following events ("Events of Default"): (1) Customer fails to make any undisputed payment due in accordance with the payment terms in this Agreement and fails to cure within 15 days after notification from Company; (2) Customer fails to perform or observe any other term, covenant, or condition of this Agreement and such failure is not cured within 30 days following written notice from Company detailing the failure. Upon

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the occurrence of an Event of Default, Company may declare this Agreement to be in default, and thereafter may exercise any one or more of the following remedies: (i) declare all amounts due and owed by Customer to Company, including any amounts relating to partial monthly periods currently in process, and all other unpaid fees, taxes and charges, for any or all Equipment & Services Schedules under this Agreement immediately due and payable; (ii) repossess, retake and/or retain any or all of the Cartridges free of all rights and claims of Customer without notice, legal process, or judicial intervention, and without releasing Customer of any term, covenant or condition provided herein; (iii) terminate this Agreement with respect to one or more Cartridge & Services Schedules or the entire Agreement. and/or (iv) exercise any other right or remedy available to Company at law or in equity. Company's waiver of any Event of Default shall not constitute a waiver of any other Event of Default or a waiver of any term or condition of this Agreement. Customer shall pay all Company's legal fees and all other costs and expenses incurred by reason of any Event of Default. No right or remedy referred to herein is intended to be exclusive, and each may be exercised concurrently or separately and from time to time. Unless otherwise provided elsewhere in this Agreement, a termination hereunder shall occur only upon written notice by Company to Customer and only with respect to such items of Equipment as Company specifically elects to terminate in such notice due to Event of Default. Except as to such items of Equipment with respect to which there is a termination, this Agreement shall remain in full force and effect and Customer shall be and remain liable for the full performance of all of its obligations hereunder.

13. Term. This Agreement shall remain in full force and effect for so long as there are active Services Schedules outstanding, unless terminated earlier as provided herein. The term shall begin upon the Acceptance as defined in Section 1 (the "Acceptance Date") and end on the last day of the month defined by the Term Length (the "Term Length") as defined in Exhibit A after the Acceptance Date (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement will automatically extend for additional 12-month terms (each, a "Renewal Term", and together with the Initial Term, the "Term"). Customer shall provide notice of non-renewal to the other party not less than 60 days prior to the completion of the then current Term. Renewal Terms will continue in perpetuity or for the maximum periods allowed by law, whichever is lesser.

14. Termination. Either party may terminate this Agreement immediately in the event that (1) a Party breaches this Agreement and such breach remains uncured for a period of thirty (30) days following receipt of written notice from impacted Party regarding such breach; (2) ceases operation without a successor; or (3) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days thereafter).

15. Pricing and Payment Terms. Customer will pay Company for the Services at the prices and upon the terms specified in Exhibit A. The prices stated in Exhibit A shall not change during the Initial Term. Thereafter, Company reserves the right to increase prices for each Renewal Term (annual price increase cap of 3%) as defined in Exhibit A Unless otherwise stated, all prices and payments shall be in U.S. dollars.

16. Assignment; Subleasing. Customer shall not have the right to assign this Agreement or sublet, rent or otherwise hire out the Cartridges to any person, firm, partnership, association or corporation other than Company, without the prior written consent of Company. Company shall not have the right to assign this Agreement without written agreement from Customer, and in the event of such an assignment, the assignee shall acquire all rights and remedies possessed by or available to Company.

17. Indemnification. Each party (as the "indemnifying party") shall indemnify the other party (as the "indemnified party") against, and hold the indemnified party harmless from, any and all claims, actions, damages, obligations, liabilities, liens (including any arising or imposed under the doctrines of strict liability in tort or product liability), and costs and expenses (including attorney's fees), arising from or out of the manufacture, purchase, lease, possession, operation, condition, return, or use of the Cartridges, or by operation of law, excluding however any of foregoing resulting solely from the gross negligence or willful misconduct of the indemnifying party. The provisions of this Section shall survive termination of this Agreement.

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18. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS PARAGRAPH IS INTENDED TO LIMIT OR RESTRICT THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER SECTION 17.

19. Insurance. Customer shall obtain and maintain insurance on or with respect to the Cartridges at its own expense and in the amounts and forms satisfactory to Company. In no event shall any insurance coverage be less than the following: (a) physical damage insurance insuring against loss or damage to the Cartridges in an amount not less than the full replacement value of such Cartridge; and (b) $500,000 combined single limit for bodily injury liability and property damage; and (c) $100,000 property damage liability. Customer shall furnish Company with a certificate of insurance evidencing issuance of such insurance to Customer in at least the minimum amount required herein, naming Company and such other parties designated by Company as additional insured thereunder for liability coverage, and as loss payee for property damage coverage. If Customer fails to provide such insurance, Company shall have the right, but no duty, to obtain such insurance, and Customer shall pay Company all costs thereof.

20. Intellectual Property. Customer acknowledges that Company is the owner of all right, title and interest in and to the Equipment (including any software embedded in the Equipment and any documentation related thereto), all prior and subsequent versions thereof, and all other intellectual property related to the Equipment, including without limitation patents, designs, mask works, trademarks, know-how and other proprietary rights (collectively, the "Company Intellectual Property"), and that, Customer shall obtain no right whatsoever in the Company Intellectual Property except to the extent necessary to use the Company Intellectual Property exclusively in accordance with the Equipment and Services for their intended purpose. Company shall have the right, in its sole discretion, to disclose, publish, and apply for and prosecute to issuance or grant, at its expense, under any applicable international laws or treaties, patent, copyright, design registration, or other intellectual property protection anywhere in the world, in connection with Company Intellectual Property. Customer agrees to use all commercially reasonable efforts and security precautions to protect the Company Intellectual Property from unauthorized access, reproduction or distribution. Customer shall not modify any of the Company Intellectual Property or attempt to reverse engineer, disassemble, or decompile any Company Intellectual Property, translate or create any derivative works, compilations, or collective works related thereto, or apply any process, technique, defeat device, circumvention mechanism or procedure to ascertain or derive the source code to the Company Intellectual Property. As between Customer and Company, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all of its information and data.

21. Confidentiality. All non-public, confidential or proprietary information of a party (as the "disclosing party") ("Confidential Information"), including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, consumer data, or rebates disclosed learned by the other party (as the "receiving party") during its engagement with the disclosing party, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," is confidential, and is solely for the receiving party's use in connection with the performance of this Agreement during the Term, and may not be disclosed or copied unless authorized by the disclosing party in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of receiving Party's breach of this Agreement; (b) is obtained receiving party on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; or (c) receiving party establishes by documentary evidence was in receiving party's possession prior to disclosing party's disclosure hereunder.

22. Expenses. If any legal action or proceeding shall be commenced at any time by either Party in connection with the enforcement of its right under this Agreement, the prevailing party shall be entitled to reimbursement of its reasonable attorneys' fees and costs in connection therewith, in addition to all other relief to which it may be entitled. If Company refers this account to a third party for collections due to Customer's late payment or non-

payment, Company shall be reimbursed for all collection costs, including court costs and reasonable attorneys' fees related thereto.

23. Publicity: Company may not use Customer's name and/or logo in any manner without first obtaining written permission from Customer.

24. Miscellaneous. This Agreement takes effect upon its acceptance and execution by Company, and shall be governed, interpreted and construed under the laws of the State of Delaware. Delaware law shall prevail in the event of any conflict of law without regard to, and without giving effect to, the application of choice of law rules. Time is of the essence with respect to this Agreement. Neither party shall be responsible for delays beyond its control. This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof and supersedes any and all previous agreements between the parties covering the same subject matter. In the event of any conflict or inconsistency between the terms and provisions of this Agreement and the terms and provisions of any Services Schedule, the terms and provisions of this Agreement shall control. This Agreement cannot be amended or altered except by a written instrument signed by both parties. The failure of Company to insist upon the punctual or strict performance of any covenant of Customer hereunder or Company's failure to exercise any right or remedy available under this Agreement shall not constitute a waiver of any subsequent default hereunder or of any subsequent right or remedy of Company. All notices, demands, communications or requests required or permitted to be given under this Agreement shall be sufficiently given if delivered personally, mailed by registered mail, postage prepaid, return receipt requested, or by Federal Express or similar overnight delivery service, at the address specified above. The obligations of the parties under this Agreement which by their nature are intended to survive termination or expiration (including, without limitation Sections 12, 13, 15 and 16) shall survive the termination or expiration of this Agreement for a period of three years. In case any one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

[Remainder of Page Intentionally Left Blank. Signature Page Follows.]

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

CUSTOMER:

ASCEND ELEMENTS, INC.

By: DocuSigned by: 37EC7AE24B9243C...

Print Name: Andrew Aberdale

Title: CFO

1/26/2024

COMPANY:

POWERTECH WATER, INC. d/b/a ElectraMet

By: DocuSigned by: Keith Jacobs C9B63B7AAA73418...

Print Name: Keith Jacobs

Title: CEO

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EXHIBIT A

SERVICES SCHEDULE

Company shall provide to Customer the following described Services, together with all present and future Software upgrades and services (collectively, the "Services") during the term of this agreement, delivery and acceptance of which in good order is hereby acknowledged, upon the terms and conditions described in the Agreement.

The following Process Limits, Services and Terms shall apply to system ("System") to be delivered per the original Equipment Purchase Agreement dated November 8, 2023.

Process Limits

Customer hereby acknowledges and agrees that any usage beyond the Process Limits defined in Table 1 below could reduce the service life of the Cartridges and/or result in additional services and fees beyond those set forth in this Services Schedule.

Stream	Parameter	Units	Min	Max
Feed #1	Flow Volume	gal/min		3.0
	Temperature	°F		100
	pH		4.5	5.5
	Ni, Co & Mn	g/L	70	95
	Copper	mg/L		100
	Potassium	mg/L		5
	Iron	mg/L		5
	Zinc	mg/L		5
	Chromium	mg/L		5
	Calcium	mg/L		5
	Silicon	mg/L		5
	Fluoride	mg/L		4
	Peroxide	mg/L		10
	TSS	mg/L		1
	FOG	mg/L		1
Effluent #1	pH		3	
	Copper	mg/L		2
	Potassium	mg/L		5
	Iron	mg/L		5
	Zinc	mg/L		5
	Chromium	mg/L		5
	Calcium	mg/L		5
	Silicon	mg/L		5

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Stream	Parameter	Units	Min	Max
	Feed-to-Effluent change in concentration for Aluminum, Magnesium, Potassium, Iron, Zinc, Chromium, Calcium, and Silicon	mg/L		3
	Feed-to-Effluent pH Change			-2.5

Table 1. Process Limits

Cartridge Service

Company shall provide Customer the following Cartridges Sets as defined in Table 2. The Cartridge Sets will initially be installed with all new cartridges and then removed and refurbished according to the schedule defined in Table 3.

All New Cartridges shall be guaranteed to deliver the effluent specification presented in Table 1, provided that the feed specifications are met by Customer, for a period of 12 months. In the event a New Cartridge fails to meet this requirement, Company will, at its sole cost and with no additional charge to Customer, replace the failed cartridge with a new one.

All Refurbished Cartridges shall not carry this guarantee and are subject to the terms of Section 2 of this agreement. (Refurbished Cartridges bear the same base Item Number as a New Cartridge, but have an R appended to the first three digits of the item number, e.g. 195R-067-01M).

Item Number	Description	Qty Per Set	# Sets	Total New Qty	New Cartridge Cost (each)
195-067-01M	ElectraMet-M Medium Flow, High Performance	2	1	2	$45,000
195-067-01H	ElectraMet-M High Flow, High Performance	4	1	4	$81,250

Table 2. Cartridge Set Definition

Start of Month	Cartridge Set 1
1	New cartridges installed Skid
12	Removed and returned to factory for refurbishment
12.5	Refurbished cartridges returned (2-week downtime)
24	Removed and returned to factory for refurbishment
24.5	Refurbished cartridges returned (2-week downtime)
36	Completion of Initial Term of contract

Table 3. Cartridge Set Rotation Schedule

Shim Service

Company shall provide Customer the following replacement Shims for the ElectraMet-R cartridges deployed over the Initial Term of this Agreement and every renewal thereafter unless directed otherwise by Customer. Additional shims may be purchased during the Initial Term at the cost shown below.

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Item Number	Description	Qty Per Period	Additional Shims (each)
100-082-B	ElectraMet-R Replacement Shims	10/year	$1,000

Location of Cartridges

Unless otherwise agreed by the Company in writing, the Cartridges shall only be used at the following location(s): 9176 Industrial Drive Northeast, Covington, GA 30014.

ElectraLink Services

Company shall provide Customer the ElectraLink remote monitoring services described below. This service includes a license to use all the related software. The list below includes all services required for the scope of this Agreement. In the event a new Service(s) must be added to the list below, the new Service(s) will be provided at no extra cost to Customer.

Item Number	Item Title	Description
199-201	Data Streaming	Data streaming from the installed Equipment to cloud-based servers. Data is updated once per minute and available in real-time. Data is stored in the cloud.
199-202	Data Visualization	Customized dashboard with web-based access and real-time data streaming
199-203	Data Analytics	Customized process analytics
199-204	Machine Learning	Customized machine learning for process optimization

ElectraMet Software Licenses

Company shall provide Customer the ElectraMet software licenses described below. These licenses include all software patches and upgrades that become available during the Term of this agreement. There will be no cost charged against Company to obtain any of the licenses required for proper use of the equipment supplied by Company to Customer.

Item Number	Item Title	Description
199-100	ElectraMet Automation Firmware	Automation firmware for both the ElectraMet System Controller and individual Module Power Controllers
199-200	ElectraLink Software	Software that streams data from ElectraMet to the cloud and any and all software required for the add-on ElectraLink features

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Technical Support Services

Company shall provide Customer the following Technical Support Services during the Initial Term of this contract and every renewal thereafter unless directed otherwise by Customer.

Item Number	Service Description	Total
199-001	On-Site Cartridge Replacement and Equipment Maintenance Service	2 annual visits, 1 each at the beginning of years 2 and 3
199-002	On-Site Technical Support	480 hours during Initial term; 160 hours in renewal years
199-003	Remote Technical Support	480 hours during initial term; 160 hours in renewal years

Please note the following additional fees may apply:

- Replacement parts required for the Equipment Maintenance Service are:
  - ☒ Additional and will be charged separately.
  - ☐ Included at no extra charge..
- Additional on-site technical support visits may be purchased for $1500 per day plus travel expenses.
- Additional remote technical support time may be purchased for $150 per hour.

Term Length: 36 Months

This term shall commence upon the successful completion of the Site Acceptance Test per the Equipment Purchase Agreement. If Buyer is unable to support the Site Acceptance Test within two (2) weeks of equipment delivery, this MSA term shall commence upon that date.

Monthly Service Fee: $30,230

In exchange for the provision of the Services by the Company identified in this Schedule, Customer agrees to pay the Monthly Service Fee defined herein.

In the event that the Refurbished cartridges fails systematically, and Company has to stop using refurbished cartridges and only use new cartridges, the monthly price to be paid by Customer will be increased from $30,230 to $43,840. From the moment Refurbished Cartridges are replaced by new Cartridges and for every subsequent multiple of 12 months, Customer will have the right, at its sole discretion, to reduce the duration of the agreement to 12 months from the date the price increases.

Payment Terms

Customer agrees to pay all invoices on Net 30-day terms from receipt of a valid invoice. Company will invoice Customer monthly on the first business day of each month, for services provided in the current month. Customer shall email approved invoice complete with proper supporting documentation to APinvoicing@ascendelements.com.

DocuSign Envelope ID: E1E8E99B-0520-4647-9E80-55A19A2FEEB9

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EXHIBIT B
END USER LICENSE AGREEMENT

See attached.

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EULA - Software End User License Agreement

This End User License Agreement, including the Master Equipment and Services Agreement or the Master Services Agreement which by this reference is incorporated herein (this "Agreement"), is a binding agreement between PowerTech Water Inc d/b/a ElectraMet ("Licensor") and the entity identified on the Master Equipment and Services Agreement as the licensee of the Software ("Licensee").

LICENSOR PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY EXECUTING THE MASTER EQUIPMENT AND SERVICES AGREEMENT YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT IF LICENSEE IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, LICENSOR WILL NOT AND DOES NOT LICENSE THE SOFTWARE

TO LICENSEE AND YOU MUST NOT DOWNLOAD THE SOFTWARE OR DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR LICENSEE'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT LICENSEE DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF LICENSOR'S SOFTWARE.

1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

"Authorized Users" means solely those individuals authorized to use

the Software pursuant to the license granted under this Agreement, as set forth on the Master Equipment and Services Agreement.

"Documentation" means user manuals, technical manuals, and any

other materials provided by Licensor, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Software.

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"Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"Licensee" has the meaning set forth in the preamble.

"License Fees" means the license fees, including all taxes thereon, paid or required to be paid by Licensee for the license granted under this Agreement.

"Licensor" has the meaning set forth in the preamble.

"Master Equipment and Services Agreement" means the Master Equipment and Services Agreement executed by or on behalf of Licensee, and accepted by Licensor, for Licensee's subscription to the license for the Software granted under this Agreement.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

"Software" means the software programs for which Licensee is subscribing to as a license, as expressly set forth in the Master Equipment and Services Agreement.

"Term" has the meaning set forth in Section 9.

"Third Party" means any Person other than Licensee or Licensor.

"Update" has the meaning set forth in Section 5(b).

2. License Grant and Scope. Subject to and conditioned upon Licensee's payment of the License Fees and Licensee's strict compliance with all terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable, limited license during the Term to use, solely by and through its Authorized Users, the Software and Documentation, solely as set forth in this Section 2 and subject to all conditions and limitations set forth in Section 3 or elsewhere in this Agreement. This license grants Licensee the right, exercisable solely by and through Licensee's Authorized Users, to::

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(a) Use and run the Software as installed by the Licensor in accordance with this Agreement and the Documentation, solely as set forth in the Documentation and solely for Licensee's internal business purposes.

(b)Use the Documentation solely in support of its licensed use of the Software in accordance herewith. All copies of the Documentation made by Licensee:

(i) will be the exclusive property of Licensor;

(ii) will be subject to the terms and conditions of this Agreement; and

(iii) must include all trademark, copyright, patent, and other Intellectual Property Rights notices contained in the original.

3. Use Restrictions. Licensee shall not, and shall require its Authorized Users not to, directly or indirectly:

(a) use (including make any copies of) the Software or Documentation beyond the scope of the license granted under Section 2;

(b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;

(c) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;

(d) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

(e) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;

(f) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time sharing, service bureau, software as a service, cloud, or other technology or service;

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(g) use the Software or Documentation in, or in association with, the design, construction, maintenance, or operation of any safety critical applications or systems

(h) use the Software or Documentation in violation of any law, regulation, or rule; or

(i) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Licensor's commercial disadvantage.

4. Responsibility for Use of Software. Licensee is responsible and liable for all uses of the Software and Documentation through access thereto provided by Licensee, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by its Authorized Users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.

5. Maintenance and Support.

(a) The license granted hereunder entitles Licensee to the basic software maintenance and support services as defined in the Master Equipment and

Services Agreement,

(i) for term defined said agreement; and

(ii) thereafter, solely if Licensee purchases additional software maintenance and support services.

(b) Maintenance and support services will include provision of such updates, upgrades, bug fixes, patches, and other error corrections (collectively, "Updates") as Licensor makes available via the Electralink service provided in the agreement to all licensees of the Software then entitled to maintenance and support services. Licensor may develop and provide Updates in its sole discretion, and Licensee agrees that Licensor has no obligation to develop any Updates at all or for particular issues. Licensee further agrees that all Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Licensee acknowledges that Licensor will push out updates via an Electralink remote connection. Licensor has no obligation to provide Updates via any other media. Maintenance and support services do not include any new version or new release of the Software that Licensor may issue as a separate or new product, and Licensor may

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determine whether any issuance qualifies as a new version, new release, or Update in its sole discretion.

(c) Licensor has no obligation to provide maintenance and support services, including Updates:

(i) for any but the most current version or release of the Software;

(ii) for any copy of Software for which all previously issued Updates have not been installed;

(iii) if Licensee is in breach under this Agreement; or

(iv) for any Software that has been modified other than by Licensor, or that is being used with any hardware, software, configuration, or operating system not specified in the Documentation.

6. Collection and Use of Information.

(a) Licensee acknowledges that Licensor may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, through:

(i) the provision of maintenance and support services.

(b) Licensee agrees that the Licensor may use such information for any purpose related to any use of the Software by Licensee or on Licensee's equipment, including but not limited to:

(i) improving the performance of the Software or developing Updates;

and

(ii) verifying Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software

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7. Intellectual Property Rights. Licensee acknowledges and agrees that the Software and Documentation are provided under license, and not sold, to Licensee. Licensee does not acquire any ownership interest in the Software or Documentation under this Agreement, or any other rights thereto, other than to use the same in accordance with the license granted and subject to all terms, conditions, and restrictions under this Agreement. Licensor reserves and shall retain its entire right, title, and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software, except as expressly granted to the Licensee in this Agreement. Licensee shall safeguard all Software (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access.
8. Payment. All License Fees and Support Fees are payable in advance in the manner set forth in the Master Equipment and Services Agreement and are non-refundable. Any renewal of the license or maintenance and support services hereunder shall not be effective until the fees for such renewal have been paid in full.
9. Term and Termination.

(a) This Agreement and the license granted hereunder shall remain in effect during the period the agreement is in force for the term set forth on the Master Equipment and Services Agreement or until earlier/until terminated as set forth herein (the "Term").

(b) Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee, breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after Licensor provides written notice thereof.

(c) Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

(d) Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Licensee shall cease using the Software. No expiration or termination shall affect Licensee's obligation to pay all Licensee Fees [and Support Fees] that may have become due before such expiration or termination, or entitle Licensee to any refund, in each case except as set forth in Section Error! Reference source not found.

10. Warranty Disclaimer.

(a) THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE

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LAW, LICENSOR, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

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(a) IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT WILL LICENSOR'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENTOR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND

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OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE LICENSOR PURSUANT TO THIS AGREEMENT.

(c) THE LIMITATIONS SET FORTH IN SECTION 11(a) AND SECTION 11(b) SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

12. Export Regulation. The Software and Documentation may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. The Licensee shall not, directly or indirectly, export, re-export, or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. The Licensee shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any

necessary export license or other governmental approval), prior to exporting, re exporting, releasing, or otherwise making the Software or Documentation available outside the US.

13. US Government Rights. The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the Licensee is the US Government or any contractor therefor, Licensee shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

14. Miscellaneous.

(a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Kentucky without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of Kentucky in each case located in the City of Lexington and Fayette County, and each party irrevocably submits to the [non-]exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

(b) Licensor will not be responsible or liable to Licensee, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil

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disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or

non-availability of electrical power, heat, light, air conditioning, or Licensee equipment, loss and destruction of property, or any other circumstances or causes beyond Licensor's reasonable control.

(c) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Master Equipment and Services Agreement (or to such other address as may be designated by a party from time to time in accordance with this Section 14(c)).

(d) This Agreement, together with the Master Equipment and Services Agreement, all annexes, schedules, and exhibits attached hereto and all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous
understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(e) Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 14(e) is void.

Licensor may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or
performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(f) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

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(g) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(h) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(i) For purposes of this Agreement, (a) the words “include,” “includes,” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Annexes, Schedules, and Exhibits

refer to the Sections of, and Annexes, Schedules, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Master Equipment and Services Agreement [and all Annexes, Schedules, and Exhibits] referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(j) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

EXHIBIT 2

Equipment Purchase Agreement

This Agreement and the acceptance by Buyer of Seller's performance under this Agreement is expressly limited to and made conditional upon the exclusivity of these terms and conditions. Any proposal for additional or different terms or any attempt by Seller to vary, in any degree, any of the terms of this Agreement in connection with Seller's acceptance shall not operate as a rejection of this offer but shall be deemed a material alteration hereof. This offer shall be deemed accepted by Seller under these terms and conditions without any additional or different terms proposed by Seller. The terms and conditions of this Agreement may only be amended by Buyer's specific consent to the change and not by Buyer's full or partial acceptance of performance by Seller hereunder.

THIS EQUIPMENT PURCHASE AGREEMENT is made effective on the last date indicated above the parties' signatures below (the "**Effective Date**") by and between ASCEND ELEMENTS, INC., a corporation duly organized and existing under the laws of the State of Delaware of the United States ("**US**"), with its principal place of business at 78 Barnum Rd, Devens, MA 01434 ("**Buyer**"), and the seller identified below ("**Seller**").

Name (Exact Legal Name) **PowerTech Water, Inc. dba ElectraMet**		**Type of Entity (Individual, LLC, corporation etc.** **Delaware Corporation**	
Street Address **749 W Short St**	**City** **Lexington**	**State** **KY**	**Zip Code** **40508**
Telephone		**Fax Number**	
Contact Name **Cathy Conaty**		**Email Address of Contact** **cathy.conaty@electramet.com**	

1. Agreement to Purchase.

Seller will sell and deliver to Buyer, and Buyer will purchase from Seller, the equipment and any other products, goods, materials, or services (collectively, "**Equipment**") specified in Section A of Appendix I hereto, on the terms and subject to the conditions set forth in this Equipment Purchase Agreement.). This Equipment Purchase Agreement, its Appendixes I, II and III as stated below and any other documentation referenced herein are collectively referred to as the "**Agreement**". In the event of any conflict between the provision of any documents the order of priority and precedence shall be as follows:

a) Provisions as stipulated in this Agreement shall prevail over all other documents.

b) The General Terms and Conditions (the "**Terms and Conditions**") as set forth in Appendix II shall prevail over approved specifications/technical requirements/clarifications/documentation (collectively **"Specifications"**) as set forth in Appendix III.

c) Specifications referenced herein as Appendix III.

d) The Specifications shall take precedence over all Seller's representations and/or submissions and/or proposals and/or unaccepted clarifications.

2. Specifications.

The Specifications shall be as set forth in Appendix III. The Equipment supplied shall conform, meet and/or exceed the Specifications, and meet all applicable industry safety standards,

including Underwriters Laboratories ("UL") standards where applicable and all applicable regulatory requirements, and be fit for its intended purpose.

3. Pricing and Payment Terms.

Buyer will pay Seller for the Equipment at the prices and upon the terms specified in Section A of Appendix I and unless otherwise stated there shall be no additional fees or charges whatsoever. Prices shall be firmed through delivery and no escalation allowed. Prices may only be modified by means of Change Orders. Unless otherwise stated, all prices and payments shall be in U.S. dollars.

Buyer will pay the purchase price to Seller in accordance with the milestone payment schedule specified in Section B of Appendix I.

4. Duty Exemption.

Buyer will be pursuing duty exemption and Seller shall;

a) provide Buyer with all information, documentation necessary as required,
b) execute applicable certificates of delivery and other documents as necessary.

5. Invoicing Instructions.

Seller shall email approved invoice complete with proper supporting documentation to APinvoicing@ascendelements.com. Further guidance on verification requirements and any other procedural requirements will be provided in due course.

6. Delivery Terms.

The delivery terms shall be as specified in Section C of Appendix I and the final destination shall be Buyer's location at 9176 Industrial Drive Northeast, Covington, GA 30014 "Buyer's Location". Time is of the essence and Seller shall comply with all shipment dates and delivery schedules specified in the Agreement thereto without delay (unless such delay is requested by Buyer in writing). Seller shall notify Buyer promptly if any delay in scheduled delivery is anticipated.

7. Milestones.

The parties have agreed to the milestone dates set forth in Section D of Appendix I. The parties may agree to reasonably modify the milestone dates by mutual agreement.

8. Equipment Installation Services, Testing, and Acceptance.

Seller shall perform or provide vendor representatives to supervise the installation/testing of the Equipment in accordance with the installation/testing schedule (including Factory Acceptance Test ("FAT") and Site Acceptance Test ("SAT") specified in Section D of Appendix I. Unless otherwise stated, the cost of all installation, and thereafter testing to confirm the Equipment is functioning properly in accordance with the Specifications is included in the price of the Equipment.

9. Process Guarantee

9.1 Seller shall provide the performance guarantee of the Equipment supplied as set out in this Agreement. The SAT procedure will be mutually agreed-upon between Buyer and Seller no less than sixty (60) days prior to the anticipated SAT. The acceptance criteria shall be based on the performance guarantees defined above. Both parties acknowledge that the system may be operated outside of the

conditions listed in the specifications for short periods of time without such conditions invalidating the process guarantee. The SAT shall include but not limited to the following:

a) Last seven (7) consecutive days.

b) Upon completion of a successful test, Seller shall submit a SAT report to Buyer.

c) Buyer shall review the report within five (5) business days and confirm its agreement in writing or will specify the reasons that such guarantees have not been satisfied.

9.2 For downtime of less than six (6) hours during the SAT, a pause in the testing will occur, and testing will resume once the conditions resulting in the downtime has been corrected. The testing shall continue until the cumulative duration has been achieved. If the downtime is larger than 6 hours the test may be cancelled or rescheduled. If the SAT is cancelled or rescheduled due to an item under Buyer's responsibility, the SAT shall not be considered failed due to Seller.

9.3 After completion of the SAT if the Equipment supplied/designed by Seller fails to comply with the performance guarantee requirements, then the SAT shall be considered failed. After any failed SAT, Seller shall provide a proposal to Buyer within five (5) days outlining the corrective actions which may be taken to meet the required performance, including an estimation of the time to implement such corrective actions, as well as an estimate of the cost. If such proposal is accepted by Buyer a subsequent SAT shall be performed. For clarity and avoidance of any doubt, Buyer at its sole discretion elect not to implement the proposed corrective actions for whatsoever reasons.

9.4 Each subsequent SAT shall have the same duration, seven (7) consecutive days. Subsequent SAT's will be performed tentatively less than one (1) month after the corrections have been implemented. If failure(s) persists after a subsequent SAT, the cost associate with that subsequent SAT shall be at Seller's expense. Seller shall have one (1) month to apply corrective action and one (1) month after the corrections have been implemented to demonstrate the performance guarantees have been met. No more than three (3) SAT shall be performed.

9.5 In the event all SAT fail or if Buyer elects not to implement the corrective actions submitted by Seller, Buyer shall retain the final payment and/or use any outstanding invoice payments to offset the costs spent by Buyer to rectify the performances of the plant as well as the cost associated to the execution of the subsequent SAT. Buyer shall use commercially reasonable efforts to operate the Equipment until it passes SAT. In the event the costs exceed the above, Seller shall reimburse Buyer accordingly within 30 calendar days upon demand.

10. Warranty Period.

The warranty of the Equipment shall be one (1) year from the time of SAT completion. Should any part of the Equipment be repaired or replaced, such repaired or replacement part shall be similarly warranted for a period of one (1) year form the time of such repair or replacement or the end of the original warranty period, whichever is shorter ("**Warranty Period**").

Seller warrants to Buyer that, for a period of twelve (12) months from the date of the SAT completion, that such Equipment will be free from material defects in material and workmanship (the "**Equipment Warranty**"). For purposes of this Equipment Warranty, the Equipment shall not include any "filter membranes", "filter cartridges", "pump and valve replacement parts", "lubricants", or "chemicals".

Notwithstanding the foregoing, Seller shall not be liable for a breach of the Equipment Warranty, and the Equipment Warranty shall not apply, if the defect arises because (a) Buyer failed to follow Seller's written instructions as to the storage, installation, commissioning, use or maintenance of Equipment; (b) Buyer neglected or misused the Equipment; (c) Buyer alters or repairs the Equipment without the prior written consent of Seller; or (d) if Buyer uses the Equipment for any purpose other than the use set forth on the Seller's Proposal Q23107A.

If the Equipment fails to conform to Equipment Warranty, Seller will use commercially reasonable efforts to promptly correct the non-compliance provided that Buyer notifies Seller in writing of the non-compliance. If Seller is unable to remedy the non-compliance, Seller will refund to Buyer the cost of the non-conforming Equipment as full and complete satisfaction of Buyer's claim relating to such non-compliance and Buyer would have the right to terminate, without additional pre-advice or penalty, all Agreements in place between Customer and Company for the site that this equipment was installed. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, SELLER GIVES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER RELATING TO THE EQUIPMENT, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, TITLE, OWNERSHIP, RESULTS, OR THE QUALITY, SUITABILITY, ADEQUACY, GENUINENESS, ACCURACY OR COMPLETENESS OF THE EQUIPMENT.

11. Support Service, Parts and Training.

11.1 **Support Service**. Seller shall ensure availability of knowledgeable service/technical personnel for:

a) Installation or installation supervision at Buyer's Location.

b) Commissioning or commissioning supervision at Buyer's Location.

c) Start-up or commissioning supervision at Buyer's Location.

d) Training for Buyer's personnel.

e) Buyer's request to address and/or cure a defect during the warranty period as well as post warranty.

Further, Seller shall ensure its operations processes and procedure will ensure the quickest response to Buyer's request to address and/or cure a defect during the warranty period and post warranty. Base case Seller will reply to all support requests by Buyer within 48 hours provided such requests are received during Seller's normal business hours, and if Seller determines that it cannot adequately address the request within 48 hours of its initial response to Buyer, Seller will send a representative to Buyer 's facility within 72 hours of Seller's initial response to further investigate and address the request.

To ensure the quickest response to request for rectification of defects and/or problems encountered during Equipment operations any assurances and agreement as a condition precedent of award on steps and/or initiatives which may include setting up a back-up support service center in US in close proximity to the Buyer's Location, shall be incorporated into this Agreement accordingly.

Any post warranty support services shall be based on the same rate as quoted for installation/ commissioning/start-up support. Buyer may incorporate the scope and rates for such post warranty support services into this Agreement or issue a separate purchase order accordingly.

11.2 **Spare Parts**. Seller shall ensure the scope of supply for the Equipment shall include all installation, commissioning and start-up spares as required. Unless the breakout cost is itemized in Section A of Appendix I, it is deemed that the cost has been included in the Equipment prices.

For a period of seven (7) years after Buyer's acceptance of the Equipment, Seller guarantees the supply of all Seller-manufactured parts as are necessary to ensure the continued operations of the Equipment.

If not already provided at the time of execution of this Agreement, Seller shall provide the recommended replacement schedule for specific components/parts and a list of recommended operational spares as for Buyer's consideration. Upon Buyer's selection of the items to be purchased a change order will be issued to incorporate the items and cost into this Agreement or Buyer may issue a separate purchase order accordingly.

11.3 **Training Services**. Seller shall provide training to Buyer's personnel as stipulated in Section A of Appendix I accordingly. In the event additional training services is required, Buyer may incorporate the scope and rates into this Agreement or issue a separate purchase order accordingly.

12. Documentation.

12.1 Seller shall establish a register of all design, data, drawings and documents, fabrication drawings of the Equipment including that of sub-order vendors collectively, "Vendor Data"). Buyer shall determine the specific critical Vendor Data that requires review and Seller shall submit the same timely to Buyer accordingly. Buyer's review requirements and review cycle shall be incorporated into the Equipment fabrication schedule. The parties shall endeavor and work around the Equipment fabrication schedule to ensure there is no impact on the committed delivery dates.

12.2 Seller shall provide the list of main components suborders complete with the description of the equipment/material, name of sub-vendor and make/brand accordingly.

12.3 Mechanical Catalogue comprising the Vendor Data documents, all technical documentation and other literature necessary for the proper use of the Equipment to be provided prior to commissioning of the Equipment. Unless the breakout cost is itemized in Section A of Appendix I it is deemed that the cost has been included in the Equipment prices. For clarity and avoidance of any doubt all documentation, information and literature shall be in English. It shall where applicable, include but not limited to:

a) Operational manual.
b) All Vendor Data.
c) Electrical schematics.
d) Bill of materials identifying OEM part numbers of the Equipment.
e) Seller's personnel contact details (name, email and phone nos.)
f) List of main components suborders complete with the company name of the sub-vendors, office addresses and personnel contact details (names, emails and phone nos.).
g) Weight of the major components as well as the complete Equipment.
h) All approved exceptions granted for the Equipment by Buyer.
i) Quality documentation and test results.
j) FAT and SAT reports.
k) Recommended maintenance inspection points and schedule.
l) Specific components/parts recommended replacement schedule.
m) List of operating spares with part numbers.
n) All software configuration files developed by Seller specific to the Project.
o) Any other documentation necessary to operate, maintain, service and support operations of the Equipment.

All drawings and schematics described above shall be provided to Buyer in CAD (preferably Pro-E, AutoCAD or SolidWorks) format.

13. Terms and Conditions.

For clarity and avoidance of any doubt, the General Terms and Conditions attached hereto as

Appendix II (the "**Terms and Conditions**") are made a part of this Agreement and shall be read in totality with the provisions in this Agreement.

14. Notices.

All notices, documents, statements, reports and other writing required or permitted to be given under this Agreement shall be sent either by prepaid, registered or certified air mail, overnight courier or email, properly addressed to Seller or Buyer at their respective addresses as follows, or at such other address as one Party to this Agreement may from time to time designate by notice in writing to the other, which notice shall be deemed to be given upon receipt by the addressee thereof:

(a) If to Seller:

Address: 749 West Short St, Lexington, KY 40508
Attention: Keith Jacobs
E-mail: keith.jacobs@electramet.com

(b) If to Buyer:

Address: 133 Flanders Rd., Westborough, MA 01581
Attention: Legal Department, c/o Liam Lochhead
E-mail: llochhead@ascendelements.com

15. Miscellaneous

This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date December 5, 2023.

("**Buyer**")
ASCEND ELEMENTS, INC.

DocuSigned by:
By: _____
37EC7AE24B9243C...

Name: Andrew Aberdale

Title: CFO

1/29/2024

("**Seller**")
POWERTECH WATER, INC. dba ElectraMet

DocuSigned by:
By: Keith Jacobs
C9B63B7AAA73418...

Name: Keith Jacobs

Title: CEO

APPENDIX I

Section A: Equipment and Pricing

Item	Scope/Activity	Qty	Amount (US$)
1	ElectraMet Equipment Skid with Spare Parts per Quote Q23107A ("Devens System"). This price includes the installation, commissioning and site acceptance test and all travel expenses.	1	$ 788,486
	Vendor Site Support Day Rate applicable for Installation /Commissioning/Start-up/Other Site Support and Training. For clarity and avoidance of any doubt, compensation on Day Rate shall be derived from the actual man days utilized multiplied by the Day Rate.		Included
	Unless a breakout price is stated the cost for provision of Mechanical Catalogue is included in the Equipment Prices		Included
	Total Price with Tank Instrumentation (Incoterms specified below)		**788,486**

Section B: Payment Terms and Milestone Payment Schedule

Except for the Down Payment, all payments shall be made by wire transfer within thirty (30) calendar days after receipt of correct invoice complete with the supporting documentation in good order by Buyer's Accounts Payables in accordance with Buyer's invoicing procedures as communicated to the Seller. The Down Payment shall be made within ten (10) calendar days of receipt of invoice.

% of Total Equipment Value	Milestone Schedule for Invoice Submission
30%	Down Payment invoiced when PO issued
30%	Successful FAT
25%	Due upon Delivery
5%	Successful SAT
Vendor support services - installation, commissioning, start-up, training and other similar services shall be invoiced upon completion of services concerned. The compensation amount shall be derived from the multiplication of the day rate by the actual number of man days utilized. **As exception, Payment Term for Down Payment is agreed to be reduced to 10 days.**	

Section C: Delivery Terms and Location

Delivery terms shall be EXW per Incoterms 2020.

- If shipping from within the United States, equipment should be delivered at Buyer's Location.
- Equipment will be delivered to 9176 Industrial Drive Northeast, Covington, GA 30014

The committed delivery date shall be 22 weeks after award of this Agreement.

Section D: Milestones

System Milestones	Weeks After Award of Revised Agreement
Award of Equipment Purchase Agreement and PO issuance	0
Custom engineering work	0
Commence Purchasing of Long Lead Time Parts	0
Commence Purchasing of COTS Parts	0
Commence Purchasing of Custom Parts	4
Commence Assembly	16
Assemble Complete	18
Successful FAT	20
Presentation of clean Bill of Lading for shipment	20
Delivered to Buyer	22
Initiation of SAT	24

APPENDIX II

Buyer General Terms and Conditions of Purchase

1. **Definitions:** The term "Agreement" means these General Terms and Conditions of Purchase ("Terms and Conditions"), together with all documents specifically referenced herein and any written purchase order(s), contract or agreement which attaches, incorporates or otherwise references these Terms and Conditions, including, without limitation, the Equipment Purchase Agreement. The term "Buyer" means Ascend Elements, Inc., or its subsidiary(ies) or affiliate(s) executing this Agreement. The term "Seller" means any individual, corporation or other entity who is to supply Equipment purchased by Buyer pursuant to this Agreement. The term "Equipment" means the equipment, products, goods, materials or services sold by Seller and purchased by Buyer under this Agreement.

2. **Examination Prior To Commencement:** Seller acknowledges that it has had the opportunity and has carefully examined all specifications, drawings, designs and other similar information related to this Agreement as well as governmental restrictions permits and license requirements, and all other law and rules applicable to the work to be done under this Agreement, and has made all other investigations necessary to obtain a complete understanding of what is required to fully perform its obligations under this Agreement. Seller further represents that, based on these examinations and investigations that it has all necessary business, professional and technical expertise as well as the equipment, plant and employee resources required to provide the Equipment covered by this Agreement in accordance with specifications and drawings and the terms of this Agreement.

3. **Price/Terms:** Seller warrants that the prices set forth in this Agreement are complete and that no additional charge of any type will be added without Buyer's prior express written consent unless an additional charge is Buyer's responsibility under the applicable Incoterm set forth herein, including but not limited to, charges for, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating, Seller's engineering, overhead, labor, material, inspection testing, the cost of Seller's installation and testing of the Equipment at Buyer's facility, and the cost of all documentation, software, training as set forth in this Agreement. Unless otherwise specified in the Agreement, all prices will be as stipulated in Appendix I of the Agreement.

4. **Fees, Expenses and Taxes:** Unless otherwise specified herein, each Party shall bear and pay all fees, costs and expenses (including legal fees and accounting fees), and taxes and banking that have been incurred or that are incurred by such Party in connection with the transactions contemplated by this Agreement.

5. **Inspection and Quality Assurance**: All Equipment will, before delivery, be subject to reasonable inspection, tests, and audits by Buyer or its agent at reasonable times and places. Provided Buyer provides reasonable prior notice to Seller, Seller agrees to provide access for Buyer to its facilities at all reasonable times for such inspection, tests, and audits, and, at no additional cost, to provide all assistance and facilities reasonably necessary to perform the same. Neither the inspection, testing, or auditing of any Equipment, nor the failure to do so, before delivery to Buyer will constitute acceptance of any Equipment or relieve Seller from exclusive responsibility for furnishing Equipment in strict conformance with Buyer's specifications. Seller warrants that it has and will maintain an adequate quality control/assurance program with respect to the production and delivery of Equipment and that it creates and maintains adequate quality control/assurance reports, certificates, affidavits, and other such records relating to the Equipment. Seller agrees that, upon request and at no additional charge, it will promptly furnish authenticated copies thereof, as well as applicable certificates of conformance and/or compliance acceptable to Buyer at the time of, or promptly after, delivery. Seller agrees to notify Buyer of any changes to Seller's raw materials manufacturing processes, analytical processes and quality control/assurance program that affect the quality of provided Equipment, including changes to certificates, affidavits and other such records relating to the Equipment.

6. **Rejection:** Upon inspection, Buyer may give Seller notice of rejection or revocation of acceptance, notwithstanding any payment, passage of title, approval, prior test or inspection. No inspection, approval, test, delay or failure to inspect or test, or failure to discover any defect or other

nonconformance will relieve Seller of any obligations under this Agreement or impair or waive any right or remedy of Buyer with respect to Seller's performance hereunder. If, in Buyer's judgment, the Equipment does not conform with the requirements of this Agreement, Buyer will have the right to reject the Equipment and, in addition to any other rights and remedies it may have, Buyer may, in its sole discretion:

(1) return any or all nonconforming Equipment to Seller for reimbursement, credit, replacement, or repair as Buyer may direct; (2) correct, rework, and/or repair the Equipment with all costs associated therewith to be charged to and paid by Seller; or (3) hold any or all nonconforming Equipment, at Seller's risk and expense, for disposal or correction according to Seller's Instructions. Furthermore, Buyer may, at its option, reduce the quantity of Equipment Buyer is obligated to purchase by the quantity of Equipment returned to Seller hereunder. Any Equipment rejected by Buyer and returned to Seller will be returned, at Seller's risk and expense, with the cost of packaging, handling, inspection, examination, transportation and any other costs incidental thereto to be charged to and paid by Seller. Such Equipment will not thereafter be tendered to Buyer for acceptance unless the previous rejection and requirement of correction are disclosed to Buyer in writing. All such nonconforming Equipment that is so remedied will have the same warranty as stated in Section 7 from the date of re- delivery. Acceptance, whether or not it has been revoked, will not release Seller's responsibility for latent defects, non- conformities, warranty, or other claims. Nothing in these Terms and Conditions will relieve Seller from the obligation of testing, inspection and quality control.

(2) **Warranty:** Seller warrants that all Equipment will be (i) in strict conformance with all applicable specifications, drawings, instructions, data, samples, standards and regulations, (ii) merchantable, new and free from defects in design, material and workmanship, (iii) as described and advertised, of good quality, fit for the intended purposes, (iv) composed of all new components, (v) free from all liens, encumbrances and any actual or claimed patent, copyright or trademark infringement, (vi) safe for its intended use to the extent that the Equipment is used as intended, and (vi) manufactured in compliance with all applicable federal, state and local laws, regulations or orders, and agency or association standards or other standards applicable to the manufacture, labeling, transporting, licensing, approval or certification of the Equipment. Except as expressly set forth above, Seller expressly disclaims all other representations and warranties of any kind that may be applicable (whether arising by implication or by operation of law). Buyer's review and/or approval of Seller's design, material, process, drawing, specifications or the like will not be construed to relieve Seller of the warranties set forth herein. Except as set forth herein, limitations on Buyer's remedies (or disclaimers of warranties} in documents of Seller, or otherwise, will not be effective and are hereby objected to and rejected. All warranties and other provisions of this paragraph will survive inspection or acceptance of payment for, and use of the Equipment and completion, termination, or cancellation of this Agreement, and will accrue to Buyer, its successors, and assigns, and to users of the Equipment. All of the covenants, warranties and representations contained herein shall survive the performance of this Agreement by Buyer and Seller, including without limitation, delivery of the Equipment ordered hereunder, and the payment therefor.

7. **Intellectual Property**: If Buyer furnishes the design for the Equipment or requires Seller to prepare a design for the Equipment, then Buyer will own all intellectual property rights relating to such design and Seller agrees to assign all rights, title in such designs to Buyer. Further Seller agrees that all deliverables resulting from this Agreement as well as the Equipment will be the sole and exclusive property of Buyer. Buyer does not transfer to Seller any patent, trade secret, trademark, service mark, copyright, or other intellectual property right of Buyer. If either party learns of any third-party patent, copy-right, trade secret and proprietary right which covers any aspect of the supply and/or fabrication of the Equipment, it shall promptly inform the other party concerned.

Seller will indemnify, protect, defend or settle (at Seller's expense), and hold harmless Buyer, its parents, affiliates, and its and their directors, officers, employees, agents, successors and assigns, and the users of Equipment ("Indemnitees") from all liabilities, and all other obligations and proceedings, and all fines and penalties imposed upon, Indemnitees and all

attorney fees and any other cost of litigation (collectively "Labilities") incurred as a result of actual or alleged infringement of any present or future or actual or alleged intellectual property right of any third party arising from Buyer's purchase, use or sale of Equipment supplied under this Agreement. In the event of an allegation of intellectual property infringement or if the use or sale of the Equipment is enjoined, Seller will, at its own expense and at Buyer's option, either (i) procure the right to continue using the Equipment; (ii) make such alterations modifications or adjustments to the Equipment so that they become non-infringing without incurring a material diminution in performance or function; (iii) replace same with a non-infringing equivalent; or (iv) remove the Equipment and refund the purchase price and the transportation and installation costs thereof. All such obligations of Seller to indemnify, hold harmless, protect and defend Buyer are in addition to Seller's warranty obligations and all other rights or remedies of Buyer and will survive acceptance and use of, and payment for, the Equipment, and completion, termination, or cancellation of this Agreement if any settlement requires an affirmative obligation (other than ceasing use of the Equipment) of, results in any ongoing liability to or prejudice or detrimentally impacts Buyer in any material way, then such settlement shall require Buyer's written consent and Buyer may have its own counsel in attendance at all proceedings and substantive negotiations relating to such Liabilities.

Seller agrees that only the Work Product from the Engineering Scope of Work as listed in the proposal on page 6 will be the sole and exclusive property of Buyer. Seller will and hereby does irrevocably assign to Buyer all right, title and interest in and to the Work Product and all related intellectual property rights. Notwithstanding the foregoing, Buyer acknowledges and agrees that Seller retains exclusive ownership of its Background Intellectual Property Rights related to the Equipment sold to Buyer and does not transfer to Buyer any such Background Intellectual Property Rights. As used herein, “Background Intellectual Property Rights” means all intellectual property owned by or licensed to Seller developed prior to or separately from this Agreement.

8. **Inventions**. Seller shall promptly disclose to Buyer all inventions, discoveries, and improvements (whether patentable or not) conceived or made by Seller's personnel, either alone or jointly with others, or its vendors in the course of performance of this Agreement. At Buyer's request, Seller shall assign and require its personnel to assign to Buyer or to its designee, each such invention, discovery, and improvement. Seller shall also require its employees to execute such papers as Buyer requests in connection with the assignment or prosecution of patents or patent applications covering each such invention, discovery, or improvement in all countries specified by Buyer and to render reasonable assistance to Buyer in connection with protecting Buyer's rights to such invention, discovery or improvements.

Seller agrees that only the Work Product from the Engineering Scope of Work as listed in the proposal on page 6 will be the sole and exclusive property of Buyer. Seller will and hereby does irrevocably assign to Buyer all right, title and interest in and to the Work Product and all related intellectual property rights. Notwithstanding the foregoing, Buyer acknowledges and agrees that Seller retains exclusive ownership of its Background Intellectual Property Rights related to the Equipment sold to Buyer and does not transfer to Buyer any such Background Intellectual Property Rights. As used herein, “Background Intellectual Property Rights” means all intellectual property owned by or licensed to Seller developed prior to or separately from this Agreement.

9. **Liability and Indemnification:** Seller will indemnify, protect, defend or settle (at Seller's expense), and hold harmless Indemnitees from and against all Liabilities arising out of or in any manner connected with personal injury, including death, or property loss or damage, or any other loss or damage, to Buyer or to others (including Seller and employees and invitees of Seller, Seller's suppliers, distributors, Buyer and Buyer employees and invitees) arising out of or in any manner delivery of, or any defect in the Equipment supplied hereunder, (ii) any negligent act or omission of Seller in the course of performing this Agreement; and/or (iii) breach of any representation, warranty or covenant by Seller. Seller, for itself, its successors, assigns and subcontractors hereby expressly agrees to waive any provision of any workers' compensation act or other similar law whereby Seller could preclude its joinder by Buyer as an additional defendant, or avoid liability for damages, contribution or indemnity in any action at law, or otherwise where Seller's or its subcontractor's employee or employees, heirs, assigns or anyone

otherwise entitled to receive damages by reason of injury or death brings an action at law against any Indemnitee. Seller's obligation to Buyer herein will not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Seller under any workers' compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Buyer by an employee of Seller or anyone employed directly or indirectly by Seller or anyone for whose acts Seller may be liable. The obligations in this Section are in addition to Seller's duty to provide insurance and will not be altered by any limitation on the amount or type of damages, compensation, or benefits payable by Seller under any Workers' Compensation Act, U.S. Longshoreman's and Harbor Workers' Act, or any other employee benefit act. Seller's obligations

hereunder will not be limited to the extent of any insurance available to or provided by Seller. Buyer will indemnify, protect, defend or settle (at Buyer's expense), and hold harmless Seller, its parents, affiliates, and its and their directors, officers, employees, agents, successors and assigns ("Seller Parties") from and against all liabilities, and all other obligations and proceedings, and all fines and penalties, imposed upon Seller Parties arising out of or in any manner connected with personal injury, including death, or property loss or damage, or any other loss or damage to the Seller Parties arising out of or in any manner connected with (i) the unsafe or improper use of the Equipment; (ii) any negligent act or omission of Buyer; and/or (iii) breach of any representation, warranty or covenant by Buyer.

10. **Title and Risk of Loss:** All damage or loss to the Equipment shall be as determined by the applicable Incoterms set forth in Section C Appendix I of this Agreement), unless otherwise agreed by the parties.

11. **Insurance**: Subject to any additional or increased insurance requirements that may be set forth in any Addendum hereto, Seller shall maintain and keep in full force and effect, policies of insurance as set forth in this Section, which will be primary and non- contributing with respect to any other insurance or self-insurance that may be maintained by Buyer. Seller shall name Buyer as an additional insured on all such insurance policies and shall cause its underwriters or insurers to issue certificates of insurance to Buyer evidencing that the coverage and policy endorsements required under this Section are maintained in force. All such insurance must be placed with one or more insurance companies having an A.M. Best's rating of not less than A-VII. All deductibles, self- insured retentions or prospective premium features relating to such insurance will be assumed by Seller, for the account of Seller, and at Seller's sole expense and risk. Seller will have and maintain the following insurance coverage: (a) commercial general liability insurance (including but not limited to, premises, operations, products, completed operations, and contractual liability); (b) excess/umbrella liability insurance, primary and noncontributory, covering claims in excess of the coverage described above in this Section in an amount of at least $5,000,000 U.S. dollars per occurrence, which policy shall follow the form of all underlying policies including, but not limited to, primary, non-contributory, additional insured, and waiver of subrogation in favor of Buyer; and (d) statutory workers' compensation and employer's liability insurance.

12. **Termination:** Either party may terminate this Agreement, or any releases issued pursuant to this Agreement, in whole or in part, if the other party is in material breach of this Agreement and has failed to cure such breach within thirty (30) days of receipt of notice of material breach from the non-breaching party. Buyer may terminate this Agreement for convenience by providing Seller thirty (30) days prior written notice. If this Agreement is terminated by Seller for material breach, Buyer will pay Seller, on a pro rata basis, for Equipment delivered as of the date of termination, as well as reasonable costs incurred by Seller through the date of termination. The net compensation shall take into account payments that have already been made to Seller. or clarity and avoidance of any doubt for illustration purposes it is determined that the pro-rata value of Equipment delivered is $XX. In the event $YY has already been paid, the compensation shall be $(XX – YY) only. Upon such payment, all finished goods for which Buyer has paid will become the property of Buyer and will be released by Seller to Buyer for pick-up and removal, upon demand. The provisions of this clause are without prejudice to any other rights or remedies of Buyer, including those resulting from default by Seller hereunder. The provisions of Sections 7 through 110 inclusive, 14 through 20 inclusive, 23, 24, 28, 29, 34, 35 and 37 through 39 inclusive shall survive termination of this Agreement for any reason

whatsoever.

13. **Confidentiality:** At all times, each party will: (i) maintain the confidentiality of any information disclosed by the other party or any of its parents, subsidiaries, affiliates, customers, and contractors, whether or not identified as "confidential" upon disclosure ("Confidential Information"); (ii) not disclose or permit the disclosure of any Confidential Information to any person other than its employees for whom such knowledge is essential for performance of the Agreement; and (iii) not use Confidential Information except for performance of the Agreement. The party receiving the Confidential Information ("Receiving Party") will immediately notify the other party ("Disclosing Party") of any disclosure of any Confidential Information that is not permitted by this Agreement and Receiving Party will be responsible for the disclosure of other misuse of Disclosing Party's Confidential Information. Disclosing Party makes no representation or warranty of any kind, express or implied, with respect to any Confidential Information including, without limitation, any warranty of non-infringement, system integration, non-interruption of use, and freedom from program errors with respect to the Confidential Information. Disclosing Party may, at its sole discretion, elect at any time, by written notice to Receiving Party, terminate Receiving Party's further use of Confidential Information and Receiving Party shall immediately return to Disclosing Party all Confidential Information and copies thereof and erase any digitally held Confidential Information. Termination by Disclosing Party will not affect Receiving Party's continuing obligations in this Section.

14. **Liens:** Seller warrants that no lien, encumbrance or security interest will be filed by Seller or anyone claiming under or through Seller against Buyer, Buyer's property, or the Equipment furnished under this Agreement. If any services are performed at the premises of Buyer, Seller shall keep such premises free and clear of all mechanics liens and furnish Buyer with proper affidavits and/or waivers certifying thereto upon request.

15. **Independent Contractor/Safety:** Seller is and will remain an independent contractor of Buyer. No employee, agent, or representative of Seller or its subcontractors will be deemed to be an employee of Buyer. Seller will provide all safeguards, and take all precautions, necessary in connection with the production and delivery of the Equipment sold hereunder to prevent the occurrence of any accident, injury, death, loss, or damage to any person or property, and will be solely responsible therefor. Seller warrants that all Equipment delivered hereunder will be produced and delivered in a safe, proper, and workmanlike manner and in compliance with all subsidiaries, affiliates, customers, and contractors, applicable codes, regulations, laws, standards, specifications and Buyer requirements concerning safety, performance and otherwise, including, without limitation, any work or services related thereto performed on premises controlled by Buyer.

16. **Assignment:** Neither this Agreement, nor Seller's rights and obligations hereunder, are assignable by Seller without the prior written consent of Buyer. No such consent or assignment will release Seller or change Seller's liability to perform all of its obligations under this Agreement. Any attempted assignment without the prior written consent of Buyer will be null and void.

17. **No Violation of Law:** Seller and the Equipment will comply with all applicable laws, rules, regulations orders, conventions, ordinances or standards of the country(les) of destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the Equipment, including, but not limited to those relating to environmental matters, data protection and privacy, wages, hours, and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety, Upon request, Seller will furnish Buyer with certificates of compliance therewith. Unless this Agreement is otherwise exempted by law, Seller will comply with Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity), the Rehabilitation Action of 1973, the Vietnam Era Veteran's Readjustment Assistance Act of 1974 and the Americans with Disabilities Act, as they have been or may be amended from time to time, and regulations implementing such statutes; and any similar state and local laws and ordinances and the regulations implementing such statutes. If requested by Buyer, Seller will furnish to Buyer an executed Certificate of Non-segregated Facilities. Seller

warrants that the Equipment delivered hereunder were produced at facilities complying with all applicable provisions of the Occupational Safety and Health Act and applicable regulations under that Act and agrees to, upon request, provide Buyer with all explanatory and factual information needed to verify such compliance and to enable Buyer to comply therewith, and with any other laws and regulations applicable hereto. Seller further warrants that it will comply, where applicable, and without limitation, with all orders, standards, and regulations of the National Highway & Transportation Safety Administration, Federal Aviation Administration, Environmental Protection Administration, Food and Drug Administration, Consumer Product Commission, and Occupational Safety & Health Act Administration. This contractor and subcontractor shall abide by the

requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance ln employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

18. **Limitation of Use of Payment:** Seller shall not offer or use, directly or indirectly, any money, property or anything of value received by Seller under or pursuant to this Agreement to influence improperly or unlawfully any decision, improperly or unlawfully any decision, judgment, action or inaction of any official, employee or representative of any government or agency or instrumentality thereof, or of any government owned or partially government owned entity, or any other person or entity, in connection with or relating to the subject matter of this Agreement or any supplement or amendment hereto. No payment shall be made, nor shall any transaction be entered into in connection with this Agreement that is illegal, improper or is intended to unduly or improperly influence any third party, including without limitation, by means of extortion, any kickback or bribery. If Seller breaches the terms of this provision, Buyer may immediately terminate this Agreement without any liability.

19. **Environment, Health, Safety and Security:** If Seller, either as principal or by agent or employee, enters upon the property of Buyer; Seller agrees to comply with Buyer's rules and regulations, including its environmental, health, safety and security rules and regulations.

20. **Hazardous and Dangerous Goods and Materials**: Seller warrants: (1) that any chemical substance or mixture delivered to Buyer pursuant to this Agreement is on the Toxic Substance Control Act inventory or that the pre-manufacture notice requirements thereof have been satisfied and such chemical substance or mixture is lawfully available for sale and use;(2) that chemical substances or mixtures delivered hereunder will be properly packaged with all appropriate warning labels, instructions for use, and notices, and that, if such chemical substances or mixtures are supplied in bulk, Seller will provide Buyer with an adequate supply of such warning labels, instructions, and notices for use in Buyer's facilities;
(3) that Seller will supply with, or before, delivery, and at any other time upon Buyer's request, all information known to Seller with respect to potential hazards, including possible toxic or harmful effects, related to the handling, use, storage, disposal, or transportation of any chemical substances or mixtures delivered hereunder, and any precautions that should be taken to eliminate or reduce to a minimum such hazards; and (4) that Seller will ascertain and furnish all information about the Equipment required by Buyer to comply with all safety-related laws and regulations (including, without limitation, those relating to applicable right-to know laws and occupational safety and health acts), and with laws and regulations regarding composition, ingredients, or otherwise, including promptly furnishing to Buyer upon written request a list of all ingredients therein and the amounts thereof and information concerning any changes in such ingredients thereafter. Seller agrees that it will, upon Buyer’s request, accept the return of unused toxic or hazardous chemical substances or mixtures delivered to Buyer pursuant to this Agreement. Unless approved in writing by Buyer's location manager prior to shipment, Seller will not deliver any Equipment containing asbestos in a content exceeding the local regulatory level.

21. **Duty Drawback:** Upon request of Buyer, Seller will cooperate with Buyer in seeking any duty drawback available to Buyer in connection with export by Buyer of

any Equipment imported by Seller and provided to Buyer under this Agreement, or incorporating, or manufactured by Buyer from, such Equipment. Without limitation, Seller will (i) provide all information with respect to such imported Equipment necessary to complete any such drawback claims to be filed by Buyer, including U.S. Customs Service entry numbers, dates of entry, quantities and description of goods, customs values, and rates and amounts of customs duties paid by Seller, and (ii) execute applicable certificates of delivery and other documents as necessary in connection with Buyer's drawback claims.

22. **Labor Agreements:** Seller will notify Buyer of any labor contract expiration if the expiring contract will not be extended or replaced. Buyer may thereafter direct Seller in writing to manufacture up to 30 days of additional inventory of the Equipment, specifying the quantities of Equipment required and any packaging and storage requirements. Seller will use commercially reasonably efforts to comply with Buyer's written instructions prior to the expiration of the current labor contract and until the current labor contract has been extended or a new contract completed. By authorizing the additional inventory, Buyer commits to buy the entire quantity of conforming Equipment requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture.

23. **Changes:** Buyer may, at any time, in writing, make changes to the general scope of this Agreement, and Seller will, within a reasonable time depending on the details of the requested change but in no event more than two (2) weeks from the date of the request, deliver a proposal to Buyer that includes the adjusted price and/or performance timeframe, as applicable. If Buyer accepts Seller's proposal, Seller will implement the change on the new terms set forth in the proposal. If any such change causes an increase or decrease in the cost of, or time required for, the performance of Seller's obligations under this Agreement, an equitable adjustment will be made to the price or delivery schedule, or both, and this Agreement will be modified in writing accordingly.

24. **Electronic Commerce:** Seller acknowledges that Buyer currently uses, or will in the future use, an electronic "business to business" framework to facilitate the transmission of Key Documentation relating to the purchase of Equipment hereunder. For purposes of this provision, Key Documentation means purchase orders, order confirmations, advanced shipping notices (ASN), change orders, invoices and other similar documentation which form a part of the Agreement. Seller acknowledges and agrees that (i) it has in place currently, or will implement as soon as possible after execution hereof, the system designated by Buyer to facilitate transmission of Key Documentation electronically, and Key Documentation transmitted hereunder by such methods will not be deemed invalid solely because they have been transmitted or executed electronically. To the extent required by Buyer, each authorized representative of a party will adopt a unique, verifiable digital identification consisting of symbols or codes to be transmitted with each electronic transmission, and use of such digital identification will be

25.

26. **Notifications:** Seller agrees to immediately notify Buyer of any actual or possible safety problems with the Equipment delivered hereunder. Seller also agrees to give Buyer reasonable advance notice of potential material shortages, insolvency or other matters that might delay or interfere with its performance of this Agreement.

27. **Force Majeure:** Neither party will be in default for any delay or failure to perform its obligations under this Agreement if caused by an extraordinary event beyond its reasonable control without its fault or negligence as further elaborated below; provided that any delay or failure to perform caused by default of a supplier of Seller at any lower tier must be beyond the reasonable control of both Seller and such supplier without the fault or negligence of either and items to be furnished must not be obtainable from other sources in sufficient time to permit Seller to meet the delivery schedule, and provided further that Seller furnishes prompt written notice of any delays or non-performances (including its anticipated duration) after becoming aware that it has occurred or will occur.

Further for clarity and avoidance of any doubt**,** Force Majeure shall mean an occurrence beyond the control and without the fault or negligence of the party affected including, but not limited to, acts of God or the public enemy; expropriation or confiscation of whole or part of the facilities; war, rebellion, sabotage or riots; pandemic, lockdowns; sanctions, embargoes; severe disruptions to the labor supply or supply chain, earthquakes, severe flooding or unusually severe

weather that could not reasonably have been anticipated; fires, explosions or other catastrophes; unresolved community protest, authorities restrictions that prevents construction of the facilities in the current selected location; strikes or any other concerted acts of workmen; or other similar o:ccurrences which are not within the control of the party affected and which by the exercise of reasonable diligence said party is unable to prevent or provide against. The parties agree that the remedy for Force Majeure occurrences shall be as follows:

a) Should either party be delayed in performance of this Agreement by an occurrence which it considers to be Force Majeure and should either party be unable to avoid or prevent said delay by reasonable effort, the party affected shall promptly give notice to other party and shall do all things reasonably possible to remove the cause and mitigate its effects. If Seller's and/or its vendors performance is delayed by Force Majeure, appropriate adjustments shall be made to the work schedule and Equipment delivery dates. Notwithstanding there shall be NO adjustment to the Price NOR any claim for damages, consequential losses or loss of anticipated profits whatsoever.

b) Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages, consequential losses or loss of anticipated profits whatsoever if, and to the extent, such delay or failure is caused by Force Majeure.

28.If performance of this Agreement is suspended for thirty [30] consecutive days, then the parties shall mutually agree on the amicable way forward which may include termination of the Agreement as a last resort.

29.**Shipping:** Unless the governing Incoterms set forth in Section C of Appendix I of this Agreement governs otherwise: (i) all drayage, demurrage, storage, insurance, packing and related charges will be paid by Seller; (ii) all Equipment will be packed, marked and shipped in accordance with the requirements of the common carriers in a manner to secure the lowest transportation costs consistent with the requirements hereof; (iii) packing slips identifying the purchase order number, release number and part number must accompany each shipment: (iv) Seller will mark each package with the Agreement number, and where multiple packages comprise a single shipment each package will be shown on packing slips, bills of lading, and invoices; (v) in the event that Buyer is obligated to pay for shipping, Seller will be responsible for all extra charges incurred because of Seller's failure to follow Buyer's shipping instructions, including those related to delivery schedules, whether or not Seller's liability for general damages is excused under other provisions of the Agreement; (vi) Seller will mark the Equipment, packaging and packing as instructed by Buyer and in accordance with the standards of the Uniform Commercial Code; (vii) if Seller is responsible for the expected delay, Seller will pay all express and other charges necessary to expedite delivery to enable Seller to meet the delivery schedule; (viii) if Seller is responsible for the delay, Seller will ship all late shipments by express or other priority methods of delivery at its expense; and (ix) Seller will issue to Buyer advance shipping notices as requested by Buyer.

30. **Delivery:** Time and quantity are of the essence. Delivery must be on the date indicated, if any, and otherwise as requested by Buyer. Buyer will have no liability for payment of Equipment delivered to Buyer that is in excess of quantities specified in the Agreement or in releases and Buyer may return over shipments to Seller at Seller's expense for all packing, handling, sorting and transportation charges. Buyer may, from time to time, change delivery schedules or direct temporary suspension of scheduled shipments. Buyer will be responsible for additional costs of expedited or other special transportation that Buyer may require as a result of changes to its firm releases or delivery schedules to the extent that such changes were not caused by Seller. If the delivery schedule is delayed by Buyer's request or as a result of Buyer's acts or omissions, Buyer will be responsible for reasonable costs incurred by Seller in connection with such delay, including without limitation storage fees incurred in connection with the storage of the Equipment.

31. **Buyer Name/Logo:** Seller may not use Buyer's name and/or logo in any manner other than as may be identified in this Agreement without first obtaining written permission from Buyer.

32. **Data Privacy:** Seller warrants and undertakes that Seller's processes, services and treatment of all personal data that it may receive, access and/or process on behalf of Buyer (and/or Buyer's employees, customers or suppliers) comply with the applicable laws of all states and countries regarding

personal data, including but not limited to the U.S. Department of Commerce Safe Harbor Guidelines ("Guidelines"), the Australian Privacy Principles as prescribed by the Privacy Act 1988 ("Principles") and/or the European Data Protection Directive (95/46/EC) ("Directive") (as amended and collectively, "Privacy Laws") and that Seller shall use best efforts to comply at all times with such Privacy Laws. If applicable, Seller agrees to execute a data processing agreement with Buyer to ensure ongoing privacy protection for individuals. If Seller fails to comply with any of the Privacy Laws, Buyer will have the option to terminate this Agreement immediately without further liability. Seller shall act solely on the instructions of Buyer regarding all personal data (unless prohibited by the Privacy Laws). Seller will notify Buyer immediately in writing of any:(i) actual or suspected breach of this Section; and (ii) of any complaint or request by any individual concerning personal data or relating to Buyer's obligations under any of the Privacy Laws. Seller will provide full cooperation and assistance to Buyer regarding any such complaint or request. Seller shall, upon Buyer's final acceptance of the Equipment, destroy or return all personal data to Buyer with all other media or document where any personal data is maintained. Seller warrants and undertakes that it will ensure that its employees, agents and subcontractors comply with all applicable Privacy Laws regarding the receipt and/or processing of personal data. If Seller violates any obligations in this Section, the applicable data processing agreement or the Privacy Laws in any manner, Seller shall take all necessary measures required by the local laws of each individual affected by the unauthorized disclosure. Seller will conduct audits to ensure compliance with its obligation under this Section will permit Buyer (or its designee), upon reasonable notice, access to Seller's facilities, procedures and other operational data and information for purposes of reviewing records and materials and auditing Seller's compliance with this Agreement. By submitting business contact and personal information about Seller and/or its employees to Buyer, Seller consents to the collection, processing, storage, use and transfer of that information to/by Buyer in the United States of America: facilitating Seller's business relationship with Buyer, enhancing Buyer's ability to contact Seller and its employees, and enabling Buyer to process and track Seller's transactions with Buyer through various internal systems and external third parties (the "Purpose"). Buyer shall use the information supplied solely for the Purpose and shall store the data for as long as is strictly necessary to be able to complete the Purpose.

33. **Subcontractors:** Unless otherwise specified, Seller must obtain Buyer's written permission before subcontracting any portion of this Agreement. Except for the insurance requirements in this Agreement, all subcontracts and orders thereunder will require that the subcontractor or materialman be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Seller from its obligations to Buyer, including, but not limited to Seller's insurance and indemnification obligations. No subcontract or order will bind Buyer.

34. **Other Provisions:** This Agreement shall constitute the final, complete and exclusive statement of the agreement between Buyer and Seller and may not be modified or rescinded except by a written change order issued by Buyer. This Agreement is governed by the laws of the State of Delaware, excluding its laws related to choice or conflicts of law. The United Nations Convention on Agreements for the International Sale of Goods is expressly disclaimed and does not apply. Any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The Tribunal will consist of three arbitrators. The place of arbitration will be Suffolk County, Massachusetts. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Buyer's failure to assert any right is not a waiver of such right or any other right. Any remedies provided herein to Buyer are cumulative and in addition to any other remedies provided in law or equity or by statute. **EACH PARTY KNOWINGLY AND VOLUNTARILY WAIVES TRIAL BY JURY AND THE RIGHT THERETO IN ANY ACTION OR PROCEEDING OF ANY KIND, ARISING UNDER OR OUT OF, OR OTHERWISE RELATED TO OR OTHERWISE CONNECTED WITH THIS AGREEMENT AND ANY RELATED DOCUMENT.**

35. **Waiver of Default:** The forbearance or failure of either party to enforce any of these Terms and

Conditions or any of the other terms of this Agreement or to exercise any right accruing from any default of the other party shall not affect or impair the non-defaulting party's rights upon continuance of such default, and no such forbearance or failure shall constitute a waiver of any future default.

36. **Severability:** Should any provision hereof be found to violate any statute or regulation or by the operation of law be deemed invalid, all other provisions contained herein shall be considered separable and shall remain in full force and effect, and the parties shall negotiate in good faith to replace the invalid clause or clauses with provisions having similar business purposes that are consistent with this Agreement.

37. Limitation of Liability. EXCEPT AS OTHERWISE PROVIDED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, OR LOST PROFITS OR REVENUES, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. EXCEPT AS OTHERWISE PROVIDED HEREIN, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL PRICE OF THE EQUIPMENT GIVING RISE TO THE CLAIM.

A Proposal For

Ascend Elements
Devens

Q23107B

Overview

Ascend Elements in Devens, MA is seeking a solution to remove the copper impurities from their battery recycling process. ElectraMet is putting forth this proposal to address this challenge using our ElectraMet® system.

Problem Statement

The Process Limits are defined in the separate Master Services Agreement.

ElectraMet® Technology

ElectraMet® Technology

ElectraMet® is a patented water treatment system that uses advanced electrode technology combined with sophisticated automation to separate and recover dissolved metals from a wide range of process and wastewater streams.

ElectraMet® Advantages

- *Real-time Monitoring*: Unlike other water treatment systems, ElectraMet® tracks its performance in real-time, allowing it to detect and correct problems before they impact your discharge compliance.
- *Sustainability*: In many cases, ElectraMet® allows the captured metals to be returned and re-used in the supply chain, instead of dumping them as hazardous sludge into ever expanding landfills.
- *Automation*: ElectraMet® can be programmed to run in a fully-automated mode, freeing up valuable labor to do more productive tasks.
- *Small Footprint*: A typical ElectraMet® installation is 10 to 100 times smaller than competing solutions. This often eliminates the need to build a new wastewater treatment plant, saving substantial time and capital.

ElectraMet® Delivers Hardware-as-a-Service

ElectraMet delivers a full-service solution using our Hardware-as-a-Service business model, which is divided into three elements:

ElectraMet Equipment Skid

The Equipment Skid provides the platform on which the ElectraMet solution is delivered. The skid includes a frame, one or more control panels and all the necessary pumps, valves, piping and sensors to monitor and control your ElectraMet system.

The Skid can be purchased outright (CapEx), or it can be leased with the cost included in the ElectraMet service fee (OpEx). If you choose the CapEx option, the scheduled on-site maintenance labor is included as part of your ElectraLink service (see below). With this option, you are responsible for any replacement parts. If you choose the OpEx option, we provide scheduled on-site maintenance labor *and* the parts.

ElectraMet Cartridge Service

Based on the schedule defined in your Master Service Agreement, we will come to your site and replace the ElectraMet cartridges on a regular basis to keep your system running in top condition.

ElectraMet Support Services

Once installed and operational, we continue to support your ElectraMet system over its entire service life. Our goal is to make ElectraMet hassle free for you so you can focus your time on more important things. We offer the following ElectraMet Support Services:

- ElectraLink Remote Monitoring Services
- ElectraMet Software Licenses
- ElectraMet Technical Support Services

Proposed Commercial Solution

ElectraMet Equipment Skid

The Equipment Skid will include the following items:

Qty	Description
1	Custom ElectraMet-M and ElectraMet-R Skid with: • (1) Industrial PC with touch screen HMI, headless PLC, (2) pump VFD, DC power supplies, (1) ElectraLink™ remote monitoring device • (2) Feed pumps • (6) M-Series Cartridge holders • (1) X-Series Tank for hydrogen peroxide removal • (2) R-Series cartridge holders (only 1 to be populated initially)
1	ElectraMet-R Series Cartridge
1	All necessary valves (electrically actuated), magnetic flowmeters, and pressure transducers
1	(Optional) All tank instrumentation (referenced in the Note section of Figure 1) and **associated subpanels**

The following Spare Parts will be supplied with the Skid:

Qty	Description
1	Goulds Pump e-SV, w/o motor
1	1HP 3450 RPM 56C TEFC, 230/460 60hz, standard medium grey color
1	3.0 GPM Pump, Santoprene Diaphragm, Viton Valves, 120VAC
1	Pulsatron Series E Metering Pump, 25GPH w/4-20
1	2051 Inline Pressure Transmitter
1	8705 Flanged Magnetic Flow Meter Sensor, 1in
1	8732E Magnetic Flow Meter Transmitter
1	Geoflow Air Release Vent 1"
2	GF 1" Valve Ball Elec Act S/T CPVC FKM 24Vdc Type 127
1	Fail-Safe Return for GF Actuated Valve 199.127.335
1	Pulsafeeder Static Mixer 1in Inlet and Outlet
1	Cosel PCA Series 1500W, 300A, 5Vdc Power Supply
1	Rosemount Level and Flow Transmitter
30	40" 0.5 micron filters
1*	pH Sensor InPro4260i/SG/425
1*	InTrac 785/AN/220/4435/N10/Vi/-
1*	3408 Radar Level Transmitter

1*	2130 Vibrating Fork Liquid Level Switch
1*	Rosemount 214C Temperature Sensor
1*	Rosemount 114C Thermowell
1*	Rosemount 644 Temperature Transmitter
1*	2051T Pressure Transmitter and 1199 Seal Assembly
***Not included unless the tank equipment is purchased**	

Skid Piping and Instrumentation Diagrams

The planned piping and instrumentation diagrams for this system are presented in Figure 1 thru Figure 3 below. These diagrams include the Phase 1 skids and illustrates the system after the Phase 2 additions are made.

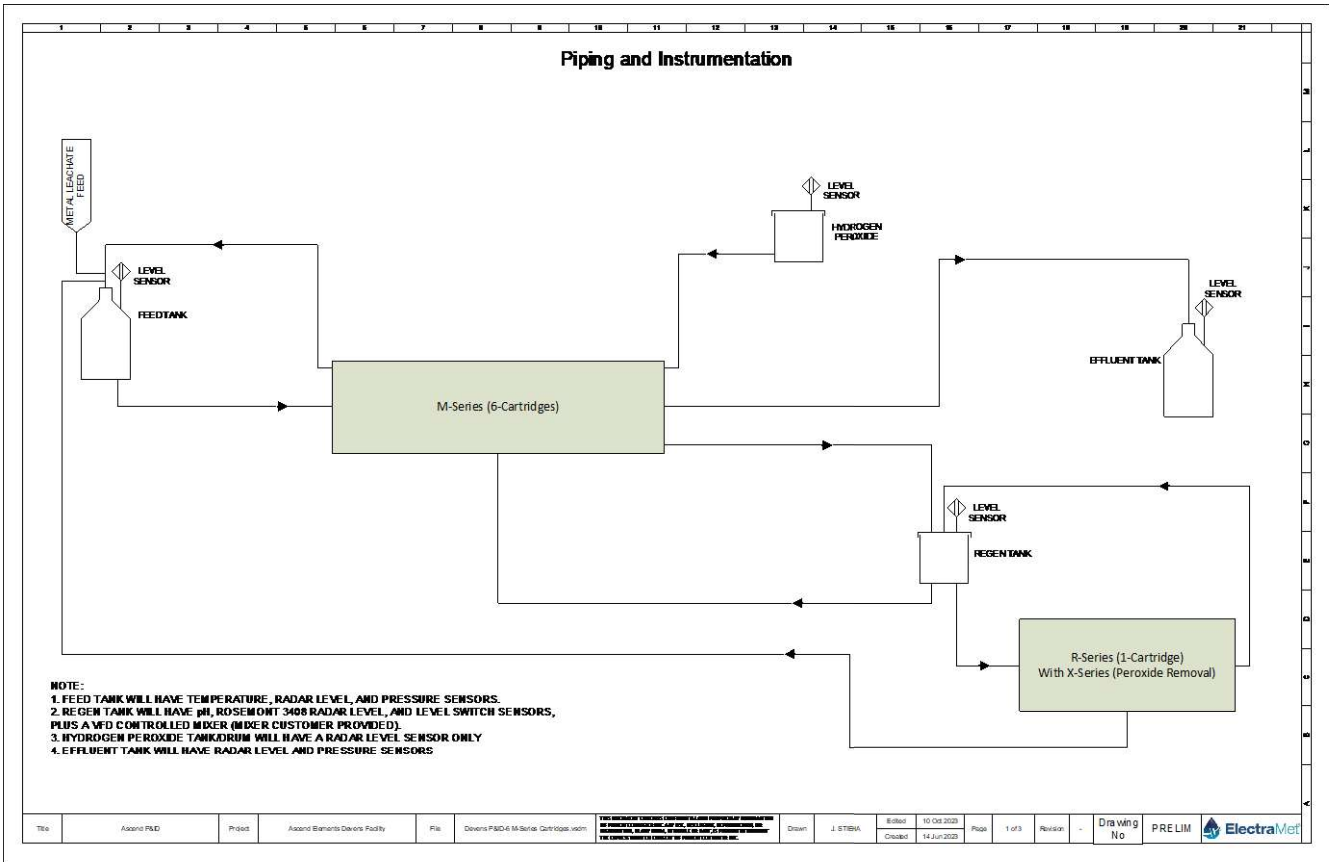


Figure 1. ElectraMet System Schematic

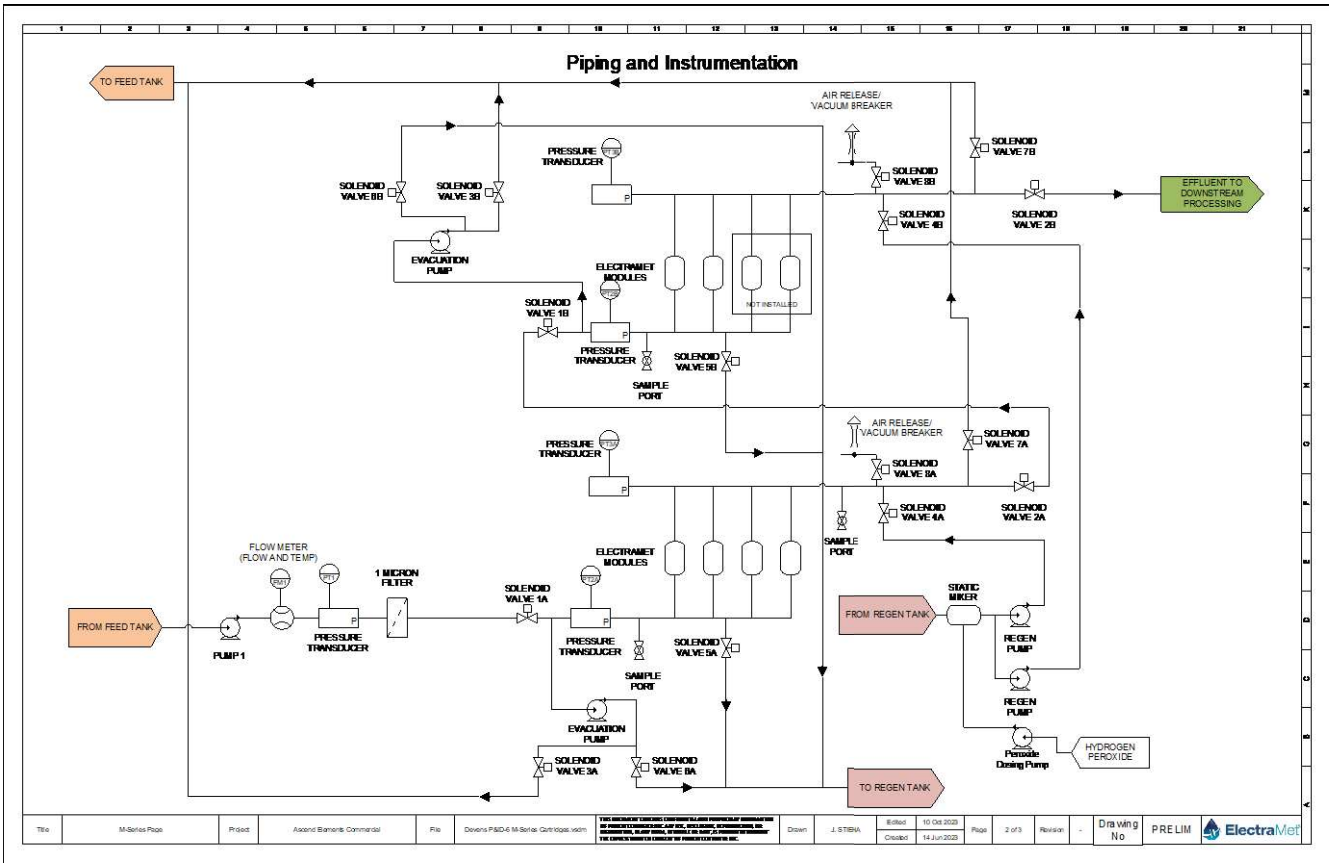


Figure 2. ElectraMet M-Series Schematic

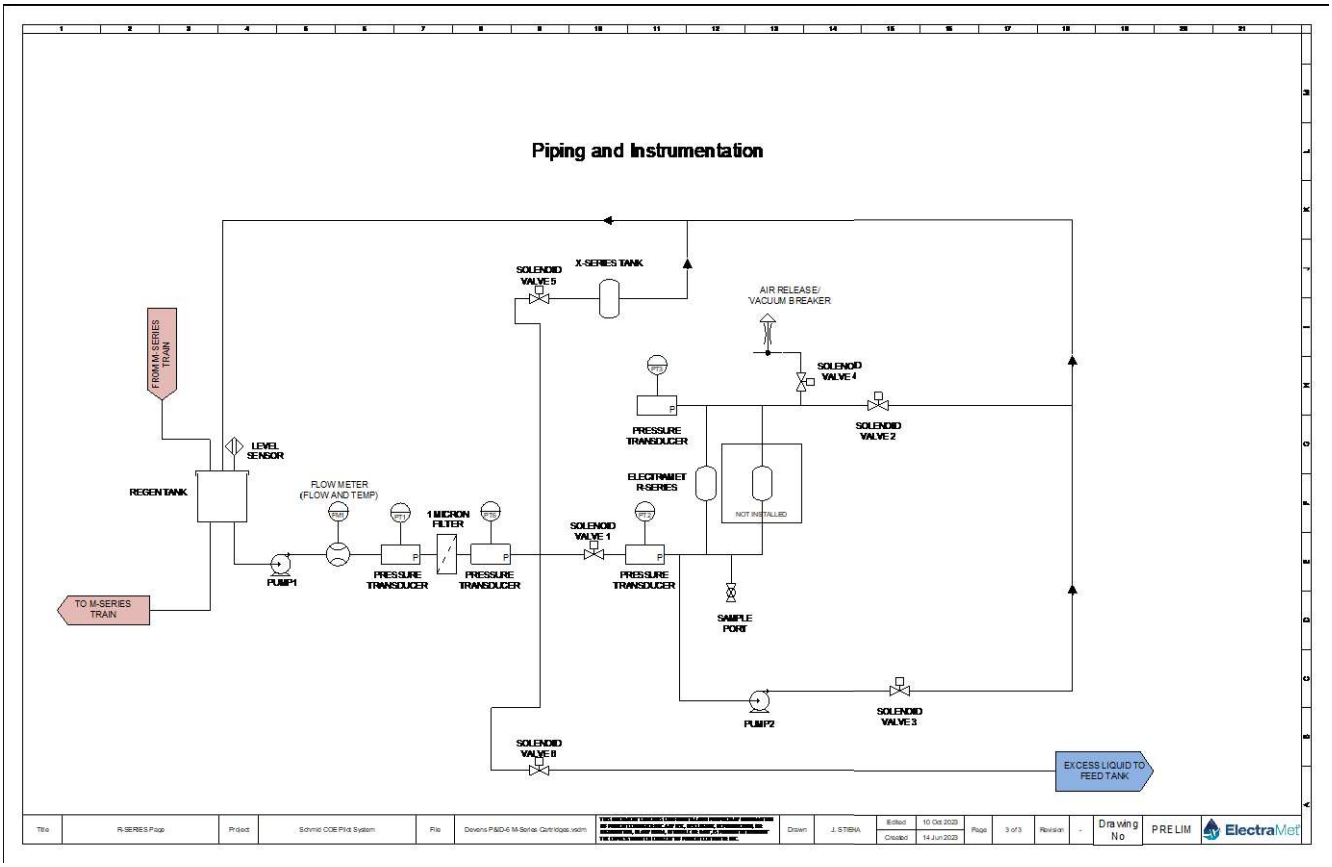


Figure 3. ElectraMet R-Series Schematic

Customer Supplied Items

For the Skid to be fully operational, the Customer agrees to purchase, install, and commission the following items:

- All process and/or water storage tanks
- pH adjustment system to deliver feed water at pH specified in Process Limits section of the Master Service Agreement
- All external plumbing necessary to connect customer supplied components to the Skid (i.e., pumps to tanks, etc.)
- The required electrical power and all electrical wiring and conduit necessary to connect Skid components to electrical control panels and facility electrical power (electrical panel to pumps, etc.).

ElectraMet Cartridge Service

The details of the proposed Cartridge Service are defined in the Master Service Agreement.

ElectraMet Support Services

The details of the proposed ElectraMet Support Services are defined in the Master Service Agreement.

System Pricing (USD) & Delivery

ElectraMet® Equipment Skid ..... $788,486 (one-time)

The Skid is offered as a capital purchase (CapEx). The purchase price includes the Spare Parts listed in this proposal. This covers the Site Installation/Commissioning, Site Acceptance Test, and all Travel Expenses for ElectraMet personnel.

Tank Equipment (Optional) ..... $160,442 (one-time)

The tank equipment and corresponding subpanel are offered as a capital purchase (CapEx). The purchase price includes the Spare Parts listed in this proposal.

ElectraMet® Service Fee $30,230/month

All-inclusive ElectraMet Services fee that includes the ElectraMet Cartridge and ElectraLink Services as defined in the Master Services Agreement. This is invoiced quarterly on the first day of the first month.

Skid Delivery ..... 22 weeks ARO

Skid shipment terms shall be FOB per Incoterms 2020.

Terms & Conditions

The terms and conditions of this Proposal shall be governed by the Master Services Agreement (attached) and the Equipment Purchase Agreement (attached).

This proposal shall be valid for 30 days from the date shown on the proposal.

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Rodrigo Almeida

Supply Chain Director

Ascend Elements

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