

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

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): February 12, 2021

**FLUX POWER HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

<b>Nevada</b> (State or Other Jurisdiction of Incorporation)	<b>001-31543</b> (Commission File Number)	<b>86-0931332</b> (IRS Employer Identification No.)
<b>2685 S. Melrose Drive, Vista, California</b> (Address of Principal Executive Offices)		<b>92081</b> (Zip Code)
	<b>877-505-3589</b> (Registrant's telephone number, including area code)	

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions see General Instruction A.2. below):

- [ ] Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- [ ] Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- [ ] Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- [ ] Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, \$0.001 par value	FLUX	Nasdaq Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company  [ ]

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

**Item 1.01 Entry into a Material Definitive Agreement**

On February 12, 2021, Flux Power Holdings, Inc. (the "Company") entered into an Amended and Restated Employment Agreement with the Company's president and chief executive officer, Ronald F. Dutt (the "Dutt Employment Agreement"), which amends and restates the Employment Agreement between the Company and Mr. Dutt effective December 11, 2012, as amended. In addition to the inclusion of terms relating to change in control, termination, severance, benefits and the acceleration of vesting of options and restricted stock units upon certain events, the Dutt Employment Agreement memorialized Mr. Dutt's continued services as the president and chief executive officer of the Company and its wholly-owned subsidiary, Flux Power, Inc. ("Flux Power"), and the terms pursuant to which he would provide such services. Pursuant to the terms of the Dutt Employment Agreement, Mr. Dutt's annual base salary is \$250,000.

On February 12, 2021, the Company entered into an Employment Agreement with the Company's chief financial officer, treasurer and secretary, Charles A. Scheiwe (the "Scheiwe Employment Agreement"). In addition to the inclusion of terms relating to change in control, termination, severance, benefits and the acceleration of vesting of options and restricted stock units upon certain events, the Employment Agreement memorialized Mr. Scheiwe's continued services as the chief financial officer and secretary of the Company, and as chief financial officer/treasurer and secretary of Flux Power. Pursuant to the terms of the Scheiwe Employment Agreement, Mr. Scheiwe's annual base salary of \$190,000.

On February 12, 2021, Flux Power entered into an Employment Agreement with its chief operating officer, Jonathan Berry (the "Berry Employment Agreement"). In addition to the inclusion of terms relating to change in control, termination, severance, benefits and the acceleration of vesting of options and restricted stock units upon certain events, the Berry Employment Agreement memorialized Mr. Berry's continued services as the chief operating officer of Flux Power. Pursuant to the terms of the Berry Employment Agreement, Mr. Berry's annual base salary is \$190,000.

Under their respective employment agreement, Messrs. Dutt, Scheiwe and Berry, among other things, are (i) eligible an annual target cash bonus and awards of restricted stock units or other equity-based incentive compensation consistent with his position as determined by the Board of Directors (the "Board") and the Compensation Committee; (ii) entitled to reimbursement for all reasonable business expenses incurred in performing services; and (iii) entitled to certain severance and change of control benefits contingent upon such employee's agreement to a general release of claims in favor of the company following termination of employment. Messrs. Dutt, Scheiwe and

Berry are also eligible to participate in all customary employee benefit plans or programs generally made available to the senior executive officers. Messrs. Dutt, Scheiwe and Berry have each agreed to observe the terms of a standard confidentiality and non-compete agreement. Messrs. Dutt, Scheiwe and Berry employment is "at-will" and may be terminated at any time for any reason.

The information contained in this Item 1.01 regarding the Dutt Employment Agreement, Scheiwe Employment Agreement, and Berry Employment Agreement are qualified in its entirety by a copy of such agreement attached to this Current Report on Form 8-K as Exhibit 10.1, 10.2 and 10.3 respectively and is incorporated herein by reference.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangement of Certain Officers.**

The information contained in Item 1.01 of this Current Report on Form 8-K regarding the compensation and material terms of employment agreements with Messrs. Dutt, Scheiwe and Berry are incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<b>Exhibit No.</b>	<b>Exhibit Description</b>
10.1	<a href="#"><u>Amended and Restated Employment Agreement by and between Flux Power Holdings, Inc. and Ronald F. Dutt</u></a>
10.2	<a href="#"><u>Employment Agreement by and between Flux Power Holdings, Inc. and Charles A. Scheiwe</u></a>
10.3	<a href="#"><u>Employment Agreement by and between Flux Power, Inc. and Jonathan Berry</u></a>

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Flux Power Holdings, Inc.  
a Nevada corporation

By: /s/ Ronald F. Dutt  
Ronald F. Dutt, Chief Executive Officer

Dated: February 16, 2021

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**AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT**

This AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT (this "Agreement") is made and entered into as of February 12, 2021 (the "Effective Date"), by and between Flux Power Holdings, Inc., a Nevada corporation with its principal place of business at 2685 S. MELROSE DRIVE, VISTA CA 92081 (the "Company"), and Ronald F. Dutt, an individual residing in the state of California ("Employee"). Employee and the Company also referred to herein each as a "party" and collectively as "parties."

**RECITALS**

WHEREAS, Employee has been providing services to the Company prior to the date hereof, pursuant to the Employment Agreement effective December 11, 2012, as amended ("Prior Agreement") which services are similar to the services to be provided herein, and such services have been performed substantially on the same terms set forth herein;

WHEREAS, the Company and Employee desire to amend and restate the Prior Agreement in its entirety by entering into this Agreement, and Employee and Company desires that this Agreement set forth the terms and conditions in its entirety pursuant to which Employee is employed by the Company;

WHEREAS, the Company recognizes that Employee has gained extensive knowledge and formed many valuable relationships in Employee's career and during the scope of Employee's services to the Company, and that such knowledge and relationships have significant value to the Company; and

WHEREAS, the Company and Employee desire that Employee continue to provide such services for the benefit of the Company as an employee of the Company subject to the provisions set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Company and Employee hereby agree to as follows:

**Section 1. Definitions.**

(a) "Accrued Obligations" shall mean (i) all accrued but unpaid Base Salary through the date of termination of Employee's employment and (ii) any unpaid or unreimbursed expenses incurred in accordance with Section 6 below.

(b) "Annual Compensation" shall mean, at any time, an amount equal to Employee's Base Salary, plus cash bonus or other cash incentive that Employee is eligible to earn in such year pursuant to each plan or program (whether or not such plan or program has been formalized or is in written form) of the Company in effect for such year that provides for cash bonuses or other cash incentives.

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(c) "Base Salary" shall mean the salary provided for in Section 3(a) below or any increased or decreased salary pursuant to Section 3(a), exclusive of any other compensation received by Employee regardless of form.

(d) "Board" shall mean the Board of Directors of the Company.

(e) "Cause" shall mean (i) a breach of Employee's fiduciary duties to the Company including, but not limited to, Employee's failure to obey any lawful directive of the Board, (ii) Employee's personal dishonesty or willful misconduct, (iii) Employee's willful violation of any law, rule or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, and/or (iv) a breach by the Employee of any provision of this Agreement.

(f) "Compensation Committee" shall mean the Company's Compensation Committee of the Board.

(g) "Change in Control" shall mean an event involving one transaction or a related series of transactions, in which (i) the Company issues securities equal to 50% or more of the Company's issued and outstanding voting securities, determined as a single class, to any individual, firm, partnership, limited liability company, or other entity, including a "group" within the meaning of Exchange Act Rule 13d-3, (ii) the Company issues voting securities equal to 50% or more of the issued and outstanding voting stock of the Company in connection with a merger, consolidation other business combination, (iii) the Company is acquired in a merger, consolidation, combination or reorganization in which the Company is not the surviving company, or (iv) all or substantially all of the Company's assets are sold or transferred. For the purpose of "Change in Control" definition, the term "Company" will be interpreted to include the Flux Power, Inc., a California corporation, if applicable.

(h) "Change in Control Termination" shall have the meaning set forth in Section 7(e).

(i) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(j) "Company" shall have the meaning set forth in the preamble hereto.

(k) "Competitive Activities" shall mean any business activities involving, or related to, (i) the design, develop, manufacture, supply, sale, distribution and support of lithium-ion battery and related products, and/or (ii) any other products or services which the Company or its subsidiaries design, develop, manufacture, supply, sell, distribute or provide (or have committed plans to develop, design, supply, manufacture, sell, distribute or provide) during the term of Employee's employment with the Company.

(l) "Confidential Information" shall mean confidential or proprietary trade secrets, customer lists, customer identities and information, information regarding service providers, manufacturing processes, product designs or other intellectual property, marketing data or plans, sales data or plans, management organization information, operating policies or manuals, business plans, operations or techniques, financial records or data, or other financial, commercial, business or technical information (i) of or relating to the Company or any of its subsidiaries, or (ii) that the Company or any of its subsidiaries may receive belonging to suppliers, customers or other Persons who do business with the Company or its subsidiaries, but shall exclude any information that is in the public domain or hereafter enters the public domain, in each case, without the breach by Employee of Employee's obligations under this Agreement.

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(m) "Developments" shall have the meaning set forth in Section 8.

(n) "Effective Date" shall have the meaning set forth in the preamble.

(o) "Employee" shall have the meaning set forth in the preamble hereto.

(p) "Good Reason" shall mean, without Employee's consent (i) a substantial and material diminution in Employee's title, duties or responsibilities or (ii) a breach by the Company of any material provision of this Agreement.

(q) "Interfering Activities" shall mean directly or indirectly (i) encouraging, soliciting, or inducing, or in any manner attempting to encourage, solicit, or induce, any Person employed by, or Person providing services to, the Company or any of its subsidiaries to terminate such employment or consulting services; provided, that the foregoing shall not be violated by a general advertising not targeted at employees or consultants of the Company or its subsidiaries; (ii) hiring any Person who was employed by the Company or any of its subsidiaries at any time during the twenty-four (24) month period preceding the date of such attempted hiring; (iii) encouraging, soliciting or inducing, or in any manner attempting to encourage, solicit or induce any customer, distributor, insurer, supplier, licensee or other business relation of the Company or any of its subsidiaries to cease doing business with or reduce the amount of business conducted with the Company or its subsidiaries, or interfering in any way with the relationship between any such customer, distributor, insurer, supplier, licensee or business relation and the Company or its subsidiaries; or (iv) disparaging the Company and its subsidiaries, or otherwise taking any action which could reasonably be expected to adversely affect Company, subsidiaries or any of their directors, officers, agents or employees.

(r) "Parachute Payment" shall have the meaning set forth in Section 12(b).

(s) "Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust (charitable or non-charitable), unincorporated organization or other form of business entity.

(t) "Plan" means the Company's 2014 Equity Incentive Plan, as amended, modified, supplemented or superseded after the date of this Agreement (for the avoidance of doubt, such term shall include any successor plan of the Company that replaces the Plan).

(u) "Release Expiration Date" shall mean the date which is twenty-one (21) days following Employee's termination of employment, or, in the event that such termination of employment is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date which is forty-five (45) days following Employee's termination of employment.

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(v) "Release" shall mean a release made by Employee in favor of the Company, subsidiaries, and their affiliates, in form and content acceptable to the Company, which shall include, but not be limited to, appropriate non-disparagement provisions.

(w) "Restricted Period" shall have the meaning set forth in Section 9.

(x) "Term of Employment" shall have the meaning set forth in Section 2(a) below.

## **Section 2. Acceptance of Employment; Position, Duties and Responsibilities; Place of Performance**

(a) Term of Employment; Employment Status. Employee shall provide services pursuant to this Agreement until the termination of Employee's employment for any reason (such period, the "Term of Employment"). Notwithstanding the foregoing, or anything to the contrary herein, nothing in this Agreement (i) confers upon Employee the right to continue in the employment of the Company or to the right to hold any particular office or position with the Company, (ii) except as set forth herein, entitles Employee to receive any specified annual salary or bonus or other compensation or (iii) interferes with or restricts in any way the right of the Company to terminate Employee's employment at any time, with or without Cause.

(b) Position. Employee shall be employed as the Chief Executive Officer and President of the Company reporting to the Company's Board of Directors and such other duties, and responsibilities as the Board shall reasonably assign to Employee from time to time, including duties and responsibilities relating to the Company's wholly owned and partially owned subsidiaries and other affiliates.

(c) Employment Duties; Conflicting Activities. Employee shall devote Employee's full business time, attention, skill and best efforts to the performance of Employee's duties under this Agreement and shall not engage in any other business or occupation during the Term of Employment, including, without limitation, any activity that (x) conflicts with the interests of the Company or its subsidiaries, (y) interferes with the proper and efficient performance of Employee's duties for the Company or (z) interferes with the exercise of Employee's judgment in the Company's best interests. Notwithstanding the foregoing, nothing herein shall preclude Employee from (i) serving, with the prior written consent of the Board, as a member of the board of directors or advisory boards (or their equivalents in the case of a non-corporate entity) of non-competing businesses and charitable organizations, (ii) engaging in charitable activities and community affairs and (iii) managing Employee's personal investments and affairs; provided, however, that the activities set out in clauses (i), (ii) and (iii) shall be limited by Employee so as not to materially interfere, individually or in the aggregate, with the performance of Employee's duties and responsibilities hereunder.

(d) Place of Employment. Employee's principal place of employment shall be in Vista, California or such other location as may be designated as the Company's corporate headquarters by the Board from time to time, although Employee understands and agrees that Employee will be required to travel from time to time for business reasons.

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**Section 3. Compensation.** During the Term of Employment, for the services to be rendered pursuant to this Agreement or at the request of the Company, Employee shall be entitled to the following compensation:

(a) Base Salary. Employee shall be paid an annualized Base Salary, payable in accordance with the regular payroll practices of the Company, \$250,000, with increases or decreases, if any, as may be approved by the Board or the Compensation Committee from time to time.

(b) Annual Bonus and Equity Compensation. Employee shall be eligible to receive an annual target cash bonus and awards of restricted stock units or other equity-based incentive compensation consistent with Employee's position(s) with the Company, in each case, as determined by the Board and the Compensation Committee of the Board.

**Section 4. Employee Benefits.** During the Term of Employment, Employee shall be entitled to participate in health, insurance, retirement and other benefits provided to other senior executives of the Company. During the Term of Employment Employee shall also be entitled to the same number of holidays, vacation days, sick days and other benefits as are generally allowed to senior executives of the Company in accordance with the Company's policies in effect from time to time.

**Section 5. Key-Man Insurance.** At any time during the Term of Employment, the Company shall have the right to insure the life of Employee for the sole benefit of the Company, in such amounts, and with such terms, as it may determine. All premiums payable thereon shall be the obligation of the Company. Employee shall have no

interest in any such policy but agrees to cooperate with the Company in taking out such insurance by submitting to physical examinations, supplying all information required by each insurance company, and executing all necessary documents, provided that no financial obligation is imposed on Employee by any such documents.

**Section 6. Reimbursement of Business Expenses.** During the Term of Employment Employee is authorized to incur reasonable business expenses in carrying out Employee's duties and responsibilities under this Agreement and the Company shall promptly reimburse Employee for all such reasonable business expenses incurred in connection with carrying out the business of the Company, subject to documentation in accordance with the Company's policies, as in effect from time to time.

**Section 7. Termination of Employment**

(a) General. Notwithstanding Section 2, or anything to the contrary herein, the Term of Employment shall terminate upon the earliest to occur of (i) Employee's death, (ii) a termination of Employee's employment by the Company with or without Cause and (iii) a termination by Employee. Upon any termination of Employee's employment for any reason, except as may otherwise be requested by the Company in writing, Employee shall resign from any and all directorships, committee memberships or any other positions Employee holds with the Company or any of its subsidiaries or affiliates.

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(b) Termination due to Death. Employee's employment shall terminate automatically upon Employee's death. In the event Employee's employment is terminated due to Employee's death, Employee's estate or beneficiaries, as the case may be, shall be entitled to the Accrued Obligations. Following such termination of Employee's employment by the reason of death, except as set forth in this Section 7(b), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(c) Termination by the Company for Cause. The Company may terminate Employee's employment at any time for Cause. In the event the Company terminates Employee's employment for Cause, Employee shall be entitled only to the Accrued Obligations. Following such termination of Employee's employment for Cause, except as set forth in this Section 7(c), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(d) Termination by the Company without Cause. The Company may terminate Employee's employment at any time without Cause. In the event Employee's employment is terminated by the Company without Cause (other than due to death) during the Term of Employment, Employee shall be entitled to receive:

(i) The Accrued Obligations; and

(ii) Subject to the limitations set forth in Section 12(b), within thirty (30) days (or forty-five (45) days in the event that such termination of employment is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967)) after the date that Employee executes and delivers a Release to the Company, or, to the extent required by Section 409A of Code, on the first day of the seventh month following such date, and subject to the Release under Section 7(i), as a severance payment for services previously rendered to the Company, a lump sum equal to twelve (12) months of Base Salary (at the rate in effect immediately prior to the date Employee's employment terminates).

Following such termination of Employee's employment without Cause, except as set forth in this Section 7(d) and Section 7(h), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(e) Change in Control Termination. If (i) a Change in Control occurs during the Term of Employment, (ii) within twenty four (24) months after the effective date of such Change in Control the occurrence of one or more of the following conditions; (X) failure by the Company to comply with any provision of this Agreement, (Y) reduction of Employee's Base Salary without the prior written consent of the Employee, or (Z) a substantial and material diminution in Employee's title, duties or responsibilities which the Employee currently maintains without the prior written consent of the Employee, and (iii) within ninety (90) days thereafter Employee or the Company terminates Employee's employment (an employment termination that satisfies the foregoing conditions, a "Change in Control Termination"), then Employee shall be entitled to receive:

(i) The Accrued Obligations; and

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(ii) Subject to the limitations set forth in Section 12(b), within thirty (30) days (or forty-five (45) days in the event that such termination of employment is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967)) after the date that Employee executes and delivers a Release to the Company or, to the extent required by Section 409A of the Code, on the first day of the seventh month following such date, and subject to the Release under Section 7(i), a lump sum equal to 18 months of Base Salary in effect immediately prior to the date Employee's employment terminates (without regard to any decrease in the rate of Employee's Annual Compensation made after such Change in Control).

Following such termination of Employee's employment, except as set forth in this Section 7(e) and Section 7(h), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(f) Termination by Employee With Good Reason. Employee may terminate Employee's employment with the Company for Good Reason by providing the Company thirty (30) days' written notice setting forth in reasonable specificity the event that constitutes Good Reason, which written notice, to be effective, must be provided to the Company within sixty (60) days of the occurrence of such event. During such thirty (30) day notice period, the Company shall have a cure right (if such event is curable), and if such event is not reasonably cured within such period, Employee's termination will be effective upon the expiration of such cure period, and Employee shall be entitled to the same payments and benefits as provided in Section 7(d) above for a termination of Employee's employment by the Company without Cause, subject to the same conditions on payment and benefits as described in Section 7(d) above, including the Release. Following such termination by Employee, except as set forth in this Section 7(f) and Section 7(h), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(g) Termination by Employee Without Good Reason. Employee may terminate Employee's employment with the Company at any time. In the event of a termination of employment by Employee, other than a termination of employment by Employee that qualifies as a Change in Control Termination or a termination with Good Reason pursuant to Section 7(f), Employee shall be entitled only to the Accrued Obligations. Following such termination by Employee, except as set forth in this Section 7(g), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(h) Benefits. Upon the occurrence of a termination of Employee's employment pursuant to Sections 7(d), (e) or (f), the Company shall also cause to be continued, for a period of twelve (12) months, such life, medical and dental insurance coverage as is otherwise maintained by the Company for full-time employees (based on the Base Salary in effect immediately prior to the date Employee's employment terminates), subject to the limitations set forth in such plans, programs or policies, provided that Employee shall continue to pay all amounts in respect of such coverage that an employee receiving the same level of coverage is or would be required to pay (the employee contribution).

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(i) **Release.** Notwithstanding any provision herein to the contrary, the Company may require that, prior to payment of any amount or provision of any benefit pursuant to Sections 7(d), (e), (f), or (h) (other than the Accrued Obligations), Employee shall have executed, on or prior to the Release Expiration Date, a Release, which Release and any waiting periods contained in such Release shall have expired. In the event that Employee fails to execute a Release in favor of the Company and its subsidiaries and affiliates and their respective related parties on or prior to the Release Expiration Date, Employee shall not be entitled to any payments or benefits pursuant to Sections 7(d), (e), (f), or (h) (other than the Accrued Obligations).

(j) **Exclusive Rights.** The severance benefits specified in Section 7 shall be in lieu of any severance pay or other severance benefit that the Company may provide to terminated employees pursuant to policies of the Company that may at that time be in effect and (ii) shall not in any way affect Employee's entitlement to the receipt of a pro-rated cash bonus or other cash incentive that Employee is otherwise eligible to earn in the ordinary course, during the partial year prior to date of termination, pursuant to each plan or program (whether or not such plan or program has been formalized or is in written form) of the Company in effect for such year that provides for cash bonuses or other cash incentives (provided that the Company goals that trigger the obligation of the Company to pay any such cash bonus or other cash incentives are satisfied).

**Section 8. Works for Hire.** Employee agrees that the Company shall own all right, title and interest throughout the world in and to any and all inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets, whether or not patentable or registerable under copyright or similar laws, which Employee may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, whether or not during regular working hours or prior to the Effective Date, provided such inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets (i) relate at the time of conception or development to the actual or demonstrably proposed business or research and development activities of the Company or its subsidiaries; (ii) result from or relate to any work performed for the Company or its subsidiaries; or (iii) are developed through the use of Confidential Information and/or Company resources or in consultation with Company personnel (such inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets are collectively referred to herein as "**Developments**"). Employee hereby assigns all right, title and interest in and to any and all of these Developments to the Company. Employee agrees to assist the Company, at the Company's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce, and defend any rights specified to be so owned or assigned. Employee hereby irrevocably designates and appoints the Company and its agents as attorneys-in-fact to act for and on Employee's behalf to execute and file any document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by Employee. In addition, and not in contravention of any of the foregoing, Employee acknowledges that all original works of authorship which are made by Employee (solely or jointly with others) within the scope of employment and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 USC Sec. 101). To the extent allowed by law, this includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights." To the extent Employee retains any such moral rights under applicable law, Employee hereby waives such moral rights and consents to any action consistent with the terms of this Agreement with respect to such moral rights, in each case, to the full extent of such applicable law. Employee will confirm any such waivers and consents from time to time as requested by the Company.

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**Section 9. Confidentiality; Restricted Activities.** Employee agrees that some restrictions on Employee's activities are necessary to protect the goodwill, Confidential Information and other legitimate interests of the Company and its affiliates:

(a) Employee shall not disclose Confidential Information to, or use Confidential Information for the benefit of, any Person, except (i) to the extent required by an order of a court having jurisdiction over Employee or under subpoena from an appropriate government agency, in which event, Employee shall use Employee's good faith efforts to consult with the General Counsel of the Company prior to responding to any such order or subpoena, or (ii) as required in the performance of Employee's obligations under this Agreement.

(b) Employee agrees that, during the Term of Employment, Employee shall not, directly or indirectly, individually or jointly, own any interest in, operate, join, control or participate as a partner, director, principal, officer, or agent of, enter into the employment of, act as a consultant to, or perform any services for any Person (other than the Company or its subsidiaries), that engages in any Competitive Activities. Notwithstanding anything herein to the contrary, this Section 9 shall not prevent Employee from acquiring or holding as an investment security (x) of the Company or (y) representing not more than three percent (3%) of the outstanding voting securities of any other publicly held corporation.

(c) Employee agrees that, during the period commencing on the date of this Agreement and ending on the two (2) year anniversary of the termination of Employee's employment for any reason (such period, the "**Restricted Period**"), Employee shall not, for Employee's own account or for the account of any other Person (other than the Company or its subsidiaries), engage in Interfering Activities.

(d) Without limiting the remedies available to the Company, Employee acknowledges that a breach of any of the covenants contained in this Section 9 may result in material irreparable injury to the Company or its subsidiaries for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to seek a temporary restraining order and/or a preliminary or permanent injunction, without the necessity of proving irreparable harm or injury as a result of such breach or threatened breach of this Section 9, restraining Employee from engaging in activities prohibited by this Section 9 or such other relief as may be required specifically to enforce any of the covenants in this Section 9. Notwithstanding any other provision herein to the contrary, the Restricted Period shall be tolled during any period of violation of Sections 9(b) or (c) and during any other period required for litigation during which the Company seeks to enforce such covenants against Employee if it is ultimately determined that Employee was in breach of such covenants.

(e) If any court of competent jurisdiction shall at any time determine that any covenant or agreement contained in this Section 9 exceeds the temporal, geographic or other limitations permitted by applicable law in any jurisdiction and renders such covenant or agreement unenforceable, the other provisions of this Section 9 shall nevertheless remain in effect and such covenant or agreement shall be deemed to be reformed and modified to the maximum temporal, geographic or other limitation permitted by law under the circumstances, and the Company and Employee each agree that any such court shall be expressly empowered to so reform and modify such covenant or agreement.

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(f) Employee acknowledges and agrees that (A) the agreements and covenants contained in this Section 9 (i) are reasonable and valid in geographical and temporal scope and in all other respects, (ii) are essential to protect the value of the business, assets and confidential information of the Company and its subsidiaries, and (iii) will not impose any undue hardship on Employee, and (B) Employee has and will obtain valuable knowledge (including knowledge of the Company's trade secrets, customer relationships and other confidential information), contacts, know-how, training and experience and such knowledge, know-how, contacts, training and experience could be used to the substantial detriment of the Company and its subsidiaries. Employee further acknowledges that the Company's agreement to enter into the Agreement and to make the payments and take the actions contemplated herein is conditioned upon Employee's agreement to the terms set forth in this Section 9 and the Company's agreement to enter into the Agreement constitutes good and valuable consideration for Employee's agreement to the restrictions set forth in this Section 9.

(g) In the event of the termination of Employee's employment for any reason, Employee shall deliver to the Company all of (i) the property of the Company and (ii) the documents and data of any nature and in whatever medium of the Company, and Employee shall not take with Employee any such property, documents or data or any reproduction thereof, or any documents containing or pertaining to any Confidential Information.

**Section 10. Injunctive Relief.** Without limiting the remedies available to the Company, Employee acknowledges that a breach of any of the covenants contained in Section 9 hereof may result in material irreparable injury to the Company or its subsidiaries or affiliates for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to obtain a temporary restraining order

and/or a preliminary or permanent injunction, without the necessity of proving irreparable harm or injury as a result of such breach or threatened breach of Section 9 hereof, restraining Employee from engaging in activities prohibited by Section 9 hereof or such other relief as may be required specifically to enforce any of the covenants in Section 9 hereof. Notwithstanding any other provision to the contrary, the Restricted Period shall be tolled during any period of violation of any of the covenants in Section 9(b) or (c) hereof and during any other period required for litigation during which the Company seeks to enforce such covenants against Employee if it is ultimately determined that Employee was in breach of such covenants.

**Section 11. Representations and Warranties of Employee.** Employee represents and warrants to the Company that:

(a) Employee is entering into this Agreement voluntarily and that Employee's employment hereunder and compliance with the terms and conditions hereof will not conflict with or result in the breach by Employee of any agreement to which Employee is a party or by which Employee may be bound;

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(b) Employee has not, and in connection with Employee's employment with the Company will not, violate any non-solicitation or other similar covenant or agreement by which Employee is or may be bound; and

(c) In connection with Employee's employment with the Company, Employee has not and will not disclose or use any confidential or proprietary information Employee may have obtained in connection with employment with any prior employer.

**Section 12. Taxes.**

(a) The Company may withhold from any payments made under this Agreement, including payments made pursuant to Section 7, all applicable taxes, including, but not limited to, income, employment and social insurance taxes, as shall be required by law. Employee acknowledges and represents that the Company has not provided any tax advice to Employee in connection with this Agreement and that Employee has been advised by the Company to seek tax advice from Employee's own tax advisors regarding this Agreement and payments that may be made to Employee pursuant to this Agreement, including, specifically, the application of the provisions of Sections 280G or 409A of the Code to such payments.

(b) In the event that any amount otherwise payable pursuant to Section 7 would be deemed to constitute a parachute payment (a "Parachute Payment") within the meaning of Section 280G of the Code, and if any such Parachute Payment, when added to any other payments which are deemed to constitute Parachute Payments, would otherwise result in the imposition of an excise tax under Section 4999 of the Code, the amounts payable hereunder shall be reduced by the smallest amount necessary to avoid the imposition of such excise tax. Any such limitation shall be applied to such compensation and benefit amounts, and in such order, as the Company shall determine in its sole discretion.

**Section 13. Set Off; Mitigation.** The Company's obligation to pay Employee the amounts provided and to make the arrangements provided hereunder shall be subject to set-off, counterclaim or recoupment of amounts owed by Employee to the Company or its subsidiaries or affiliates. Employee shall not be required to mitigate the amount of any payment provided for pursuant to this Agreement by seeking other employment or otherwise and the amount of any payment provided for pursuant to this Agreement shall not be reduced by any compensation earned as a result of Employee's other employment or otherwise.

**Section 14. Delay in Payment.** Notwithstanding any provision in this Agreement to the contrary, any payment otherwise required to be made hereunder to Employee at any date as a result of the termination of Employee's employment shall be delayed for such period of time as may be necessary to meet the requirements of section 409A(a)(2)(B)(i) of the Code. On the earliest date on which such payments can be made without violating the requirements of section 409A(a)(2)(B)(i) of the Code, there shall be paid to Employee, in a single cash lump sum, an amount equal to the aggregate amount of all payments delayed pursuant to the preceding sentence.

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**Section 15. Successors and Assigns; No Third-Party Beneficiaries.**

(a) The Company. This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Neither this Agreement nor any of the rights, obligations or interests arising hereunder may be assigned by the Company without Employee's prior written consent, to a Person other than a subsidiary, affiliate or parent entity of the Company, or their respective successors or assigns; provided, however, that, in the event of the merger, consolidation, transfer or sale of all or substantially all of the assets of the Company with or to any other Person, this Agreement shall, subject to the provisions hereof, be freely assignable to, and be binding upon and inure to the benefit of, each such Person, without Employee's consent, and, to the extent the Agreement has been so assigned, such Person shall discharge and perform all the promises, covenants, duties and obligations of the Company hereunder.

(b) Employee. Employee's rights and obligations under this Agreement shall not be transferable by Employee, by assignment or otherwise, without the prior written consent of the Company; provided, however, that if Employee shall die, all amounts then payable to Employee hereunder shall be paid in accordance with the terms of this Agreement to Employee's devisee, legatee or other designee or, if there be no such designee, to Employee's estate.

(c) No Third-Party Beneficiaries. Except as otherwise set forth in Section 7(b) or this Section 15, nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the Company (and its subsidiaries and affiliates) and Employee any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

**Section 16. Waiver and Amendments.** Any waiver, alteration, amendment or modification of any of the terms of this Agreement shall be valid only if made in writing and signed by each of the parties hereto; provided, however, that any such waiver, alteration, amendment or modification is approved by the Board. No waiver by either of the parties hereto of their rights hereunder shall be deemed to constitute a waiver with respect to any subsequent occurrences or transactions hereunder unless such waiver specifically states that it is to be construed as a continuing waiver.

**Section 17. Severability.** If any covenants or such other provisions of this Agreement are found to be invalid or unenforceable by a final determination of a court of competent jurisdiction: (i) the remaining terms and provisions hereof shall be unimpaired, and (ii) the invalid or unenforceable term or provision hereof shall be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision hereof.

**Section 18. Governing Law and Jurisdiction.** This Agreement is governed by and is to be construed under the laws of the State of California without regard to conflict of laws rules. Any dispute or claim arising out of or relating to this Agreement or claim of breach hereof (other than claims for injunctive relief, which shall be governed by Section 10 hereof) shall be brought exclusively in the State or Federal courts located in San Diego County in California. By execution of the Agreement, the parties hereto, and their respective affiliates, consent to the exclusive jurisdiction of such court, and waive any right to challenge jurisdiction or venue in such court with regard to any suit, action, or proceeding under or in connection with the Agreement. Each party to this Agreement also hereby waives any right to trial by jury in connection with any suit, action or proceeding under or in connection with this Agreement.

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**Section 19. Notices.**

(a) Every notice or other communication relating to this Agreement shall be in writing, and shall be mailed to or delivered to the party for whom it is intended at such address as may from time to time be designated by it in a notice mailed or delivered to the other party as herein provided, provided that, unless and until some other address be so designated, all notices or communications by Employee to the Company shall be mailed or delivered to the Company at its principal executive office, and all notices or communications by the Company to Employee may be given to Employee personally or may be mailed to Employee at Employee's last known address, as reflected in the Company's records.

(b) Any notice so addressed shall be deemed to be given: (i) if delivered by hand, on the date of such delivery; (ii) if mailed by courier or by overnight mail, on the first business day following the date of such mailing; and (iii) if mailed by registered or certified mail, on the third (3<sup>rd</sup>) business day after the date of such mailing.

**Section 20. Section Headings.** The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part thereof, affect the meaning or interpretation of this Agreement or of any term or provision hereof.

**Section 21. Entire Agreement.** This Agreement, together with any exhibits attached hereto, constitutes the entire understanding and agreement of the parties hereto regarding the subject matter hereof, including but not limited to the Prior Agreement. This Agreement supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements between the parties hereto relating to the subject matter of this Agreement, including, without limitation, any severance or termination agreement between the Company and Employee, if any.

**Section 22. Survival of Operative Sections.** Upon any termination of Employee's employment with the Company, the provisions of Section 7 through Section 22 of this Agreement (together with any related definitions set forth in Section 1 hereof) shall survive to the extent necessary to give effect to the provisions thereof.

**Section 23. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile (including by way of PDF files) signature.

\* \* \*

[Signatures to appear on the following page.]

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

COMPANY:

FLUX POWER HOLDINGS, INC.

By: /s/ Charles A. Scheiwe

Charles A. Scheiwe, Chief Financial Officer

EMPLOYEE:

/s/Ronald F. Dutt

Ronald F. Dutt

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## EXECUTIVE EMPLOYMENT AGREEMENT

This EXECUTIVE EMPLOYMENT AGREEMENT (this “Agreement”) is made and entered into as of February 21, 2021 (the “Effective Date”), by and between Flux Power Holdings, Inc., a Nevada corporation with its principal place of business at 2685 S. MELROSE DRIVE, VISTA CA 92081 (the “Company”), and Charles A. Scheiwe, an individual residing in the state of California (“Employee”). Employee and the Company also referred to herein each as a “party” and collectively as “parties.”

### RECITALS

WHEREAS, Employee has been providing services to the Company prior to the date hereof, which services are similar to the services to be provided herein, and such services have been performed substantially on the same terms set forth herein;

WHEREAS, the Company and Employee desire to formally memorialize and set forth the terms and conditions pursuant to which Employee is employed by the Company;

WHEREAS, the Company recognizes that Employee has gained extensive knowledge and formed many valuable relationships in Employee’s career and during the scope of Employee’s services to the Company, and that such knowledge and relationships have significant value to the Company; and

WHEREAS, the Company and Employee desire that Employee continue to provide such services for the benefit of the Company as an employee of the Company subject to the provisions set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Company and Employee hereby agree to as follows:

#### **Section 1. Definitions.**

(a) “Accrued Obligations” shall mean (i) all accrued but unpaid Base Salary through the date of termination of Employee’s employment and (ii) any unpaid or unreimbursed expenses incurred in accordance with Section 6 below.

(b) “Annual Compensation” shall mean, at any time, an amount equal to Employee’s Base Salary, plus cash bonus or other cash incentive that Employee is eligible to earn in such year pursuant to each plan or program (whether or not such plan or program has been formalized or is in written form) of the Company in effect for such year that provides for cash bonuses or other cash incentives.

(c) “Base Salary” shall mean the salary provided for in Section 3(a) below or any increased or decreased salary pursuant to Section 3(a), exclusive of any other compensation received by Employee regardless of form.

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(d) “Board” shall mean the Board of Directors of the Company.

(e) “Cause” shall mean (i) a breach of Employee’s fiduciary duties to the Company including, but not limited to, Employee’s failure to obey any lawful directive of the Board, (ii) Employee’s personal dishonesty or willful misconduct, (iii) Employee’s willful violation of any law, rule or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, and/or (iv) a breach by the Employee of any provision of this Agreement.

(f) “Compensation Committee” shall mean the Company’s Compensation Committee of the Board.

(g) “Change in Control” shall mean an event involving one transaction or a related series of transactions, in which (i) the Company issues securities equal to 50% or more of the Company’s issued and outstanding voting securities, determined as a single class, to any individual, firm, partnership, limited liability company, or other entity, including a “group” within the meaning of Exchange Act Rule 13d-3, (ii) the Company issues voting securities equal to 50% or more of the issued and outstanding voting stock of the Company in connection with a merger, consolidation or other business combination, (iii) the Company is acquired in a merger, consolidation, combination or reorganization in which the Company is not the surviving company, or (iv) all or substantially all of the Company’s assets are sold or transferred. For the purpose of “Change in Control” definition, the term “Company” will be interpreted to include the Flux Power, Inc., a California corporation, if applicable.

(h) “Change in Control Termination” shall have the meaning set forth in Section 7(e).

(i) “Code” shall mean the Internal Revenue Code of 1986, as amended.

(j) “Company” shall have the meaning set forth in the preamble hereto.

(k) “Competitive Activities” shall mean any business activities involving, or related to, (i) the design, develop, manufacture, supply, sale, distribution and support of lithium-ion battery and related products, and/or (ii) any other products or services which the Company or its subsidiaries design, develop, manufacture, supply, sell, distribute or provide (or have committed plans to develop, design, supply, manufacture, sell, distribute or provide) during the term of Employee’s employment with the Company.

(l) “Confidential Information” shall mean confidential or proprietary trade secrets, customer lists, customer identities and information, information regarding service providers, manufacturing processes, product designs or other intellectual property, marketing data or plans, sales data or plans, management organization information, operating policies or manuals, business plans, operations or techniques, financial records or data, or other financial, commercial, business or technical information (i) of or relating to the Company or any of its subsidiaries, or (ii) that the Company or any of its subsidiaries may receive belonging to suppliers, customers or other Persons who do business with the Company or its subsidiaries, but shall exclude any information that is in the public domain or hereafter enters the public domain, in each case, without the breach by Employee of Employee’s obligations under this Agreement.

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(m) “Developments” shall have the meaning set forth in Section 8.

(n) “Effective Date” shall have the meaning set forth in the preamble.

(o) "Employee" shall have the meaning set forth in the preamble hereto.

(p) "Good Reason" shall mean, without Employee's consent (i) a substantial and material diminution in Employee's title, duties or responsibilities or (ii) a breach by the Company of any material provision of this Agreement.

(q) "Interfering Activities" shall mean directly or indirectly (i) encouraging, soliciting, or inducing, or in any manner attempting to encourage, solicit, or induce, any Person employed by, or Person providing services to, the Company or any of its subsidiaries to terminate such employment or consulting services; provided, that the foregoing shall not be violated by a general advertising not targeted at employees or consultants of the Company or its subsidiaries; (ii) hiring any Person who was employed by the Company or any of its subsidiaries at any time during the twenty-four (24) month period preceding the date of such attempted hiring; (iii) encouraging, soliciting or inducing, or in any manner attempting to encourage, solicit or induce any customer, distributor, insurer, supplier, licensee or other business relation of the Company or any of its subsidiaries to cease doing business with or reduce the amount of business conducted with the Company or its subsidiaries, or interfering in any way with the relationship between any such customer, distributor, insurer, supplier, licensee or business relation and the Company or its subsidiaries; or (iv) disparaging the Company and its subsidiaries, or otherwise taking any action which could reasonably be expected to adversely affect Company, subsidiaries or any of their directors, officers, agents or employees.

(r) "Parachute Payment" shall have the meaning set forth in Section 12(b).

(s) "Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust (charitable or non-charitable), unincorporated organization or other form of business entity.

(t) "Plan" means the Company's 2014 Equity Incentive Plan, as amended, modified, supplemented or superseded after the date of this Agreement (for the avoidance of doubt, such term shall include any successor plan of the Company that replaces the Plan).

(u) "Release Expiration Date" shall mean the date which is twenty-one (21) days following Employee's termination of employment, or, in the event that such termination of employment is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date which is forty-five (45) days following Employee's termination of employment.

(v) "Release" shall mean a release made by Employee in favor of the Company, subsidiaries, and their affiliates, in form and content acceptable to the Company, which shall include, but not be limited to, appropriate non-disparagement provisions.

(w) "Restricted Period" shall have the meaning set forth in Section 9.

(x) "Term of Employment" shall have the meaning set forth in Section 2(a) below.

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## **Section 2. Acceptance of Employment; Position, Duties and Responsibilities; Place of Performance**

(a) Term of Employment; Employment Status. Employee shall provide services pursuant to this Agreement until the termination of Employee's employment for any reason (such period, the "Term of Employment"). Notwithstanding the foregoing, or anything to the contrary herein, nothing in this Agreement (i) confers upon Employee the right to continue in the employment of the Company or to the right to hold any particular office or position with the Company, (ii) except as set forth herein, entitles Employee to receive any specified annual salary or bonus or other compensation or (iii) interferes with or restricts in any way the right of the Company to terminate Employee's employment at any time, with or without Cause.

(b) Position. Employee shall be employed as the Chief Financial Officer and Secretary of the Company reporting to the Company's Chief Executive Officer and such other duties, and responsibilities as the Board shall reasonably assign to Employee from time to time, including duties and responsibilities relating to the Company's wholly owned and partially owned subsidiaries and other affiliates.

(c) Employment Duties; Conflicting Activities. Employee shall devote Employee's full business time, attention, skill and best efforts to the performance of Employee's duties under this Agreement and shall not engage in any other business or occupation during the Term of Employment, including, without limitation, any activity that (x) conflicts with the interests of the Company or its subsidiaries, (y) interferes with the proper and efficient performance of Employee's duties for the Company or (z) interferes with the exercise of Employee's judgment in the Company's best interests. Notwithstanding the foregoing, nothing herein shall preclude Employee from (i) serving, with the prior written consent of the Board, as a member of the board of directors or advisory boards (or their equivalents in the case of a non-corporate entity) of non-competing businesses and charitable organizations, (ii) engaging in charitable activities and community affairs and (iii) managing Employee's personal investments and affairs; provided, however, that the activities set out in clauses (i), (ii) and (iii) shall be limited by Employee so as not to materially interfere, individually or in the aggregate, with the performance of Employee's duties and responsibilities hereunder.

(d) Place of Employment. Employee's principal place of employment shall be in Vista, California or such other location as may be designated as the Company's corporate headquarters by the Board from time to time, although Employee understands and agrees that Employee will be required to travel from time to time for business reasons.

**Section 3. Compensation.** During the Term of Employment, for the services to be rendered pursuant to this Agreement or at the request of the Company, Employee shall be entitled to the following compensation:

(a) Base Salary. Employee shall be paid an annualized Base Salary, payable in accordance with the regular payroll practices of the Company, \$190,000, with increases or decreases, if any, as may be approved by the Board or the Compensation Committee from time to time.

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(b) Annual Bonus and Equity Compensation. Employee shall be eligible to receive an annual target cash bonus and awards of restricted stock units or other equity-based incentive compensation consistent with Employee's position(s) with the Company, in each case, as determined by the Board and the Compensation Committee of the Board.

**Section 4. Employee Benefits.** During the Term of Employment, Employee shall be entitled to participate in health, insurance, retirement and other benefits provided to other senior executives of the Company. During the Term of Employment Employee shall also be entitled to the same number of holidays, vacation days, sick days and other benefits as are generally allowed to senior executives of the Company in accordance with the Company's policies in effect from time to time.

**Section 5. Key-Man Insurance.** At any time during the Term of Employment, the Company shall have the right to insure the life of Employee for the sole benefit of the Company, in such amounts, and with such terms, as it may determine. All premiums payable thereon shall be the obligation of the Company. Employee shall have no interest in any such policy but agrees to cooperate with the Company in taking out such insurance by submitting to physical examinations, supplying all information required by each insurance company, and executing all necessary documents, provided that no financial obligation is imposed on Employee by any such documents.

**Section 6. Reimbursement of Business Expenses.** During the Term of Employment Employee is authorized to incur reasonable business expenses in carrying out Employee's duties and responsibilities under this Agreement and the Company shall promptly reimburse Employee for all such reasonable business expenses incurred in connection with carrying out the business of the Company, subject to documentation in accordance with the Company's policies, as in effect from time to time.

**Section 7. Termination of Employment**

(a) General. Notwithstanding Section 2, or anything to the contrary herein, the Term of Employment shall terminate upon the earliest to occur of (i) Employee's death, (ii) a termination of Employee's employment by the Company with or without Cause and (iii) a termination by Employee. Upon any termination of Employee's employment for any reason, except as may otherwise be requested by the Company in writing, Employee shall resign from any and all directorships, committee memberships or any other positions Employee holds with the Company or any of its subsidiaries or affiliates.

(b) Termination due to Death. Employee's employment shall terminate automatically upon Employee's death. In the event Employee's employment is terminated due to Employee's death, Employee's estate or beneficiaries, as the case may be, shall be entitled to the Accrued Obligations. Following such termination of Employee's employment by the reason of death, except as set forth in this Section 7(b), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

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(c) Termination by the Company for Cause. The Company may terminate Employee's employment at any time for Cause. In the event the Company terminates Employee's employment for Cause, Employee shall be entitled only to the Accrued Obligations. Following such termination of Employee's employment for Cause, except as set forth in this Section 7(c), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(d) Termination by the Company without Cause. The Company may terminate Employee's employment at any time without Cause. In the event Employee's employment is terminated by the Company without Cause (other than due to death) during the Term of Employment, Employee shall be entitled to receive:

(i) The Accrued Obligations; and

(ii) Subject to the limitations set forth in Section 12(b), within thirty (30) days (or forty-five (45) days in the event that such termination of employment is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967)) after the date that Employee executes and delivers a Release to the Company, or, to the extent required by Section 409A of Code, on the first day of the seventh month following such date, and subject to the Release under Section 7(i), as a severance payment for services previously rendered to the Company, a lump sum equal to twelve (12) months of Base Salary (at the rate in effect immediately prior to the date Employee's employment terminates).

Following such termination of Employee's employment without Cause, except as set forth in this Section 7(d) and Section 7(h), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(e) Change in Control Termination. If (i) a Change in Control occurs during the Term of Employment, (ii) within twenty four (24) months after the effective date of such Change in Control the occurrence of one or more of the following conditions; (X) failure by the Company to comply with any provision of this Agreement, (Y) reduction of Employee's Base Salary without the prior written consent of the Employee, or (Z) a substantial and material diminution in Employee's title, duties or responsibilities which the Employee currently maintains without the prior written consent of the Employee, and (iii) within ninety (90) days thereafter Employee or the Company terminates Employee's employment (an employment termination that satisfies the foregoing conditions, a "Change in Control Termination"), then Employee shall be entitled to receive:

(i) The Accrued Obligations; and

(ii) Subject to the limitations set forth in Section 12(b), within thirty (30) days (or forty-five (45) days in the event that such termination of employment is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967)) after the date that Employee executes and delivers a Release to the Company or, to the extent required by Section 409A of the Code, on the first day of the seventh month following such date, and subject to the Release under Section 7(i), a lump sum equal to 12 months of Base Salary in effect immediately prior to the date Employee's employment terminates (without regard to any decrease in the rate of Employee's Annual Compensation made after such Change in Control).

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Following such termination of Employee's employment, except as set forth in this Section 7(e) and Section 7(h), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(f) Termination by Employee With Good Reason. Employee may terminate Employee's employment with the Company for Good Reason by providing the Company thirty (30) days' written notice setting forth in reasonable specificity the event that constitutes Good Reason, which written notice, to be effective, must be provided to the Company within sixty (60) days of the occurrence of such event. During such thirty (30) day notice period, the Company shall have a cure right (if such event is curable), and if such event is not reasonably cured within such period, Employee's termination will be effective upon the expiration of such cure period, and Employee shall be entitled to the same payments and benefits as provided in Section 7(d) above for a termination of Employee's employment by the Company without Cause, subject to the same conditions on payment and benefits as described in Section 7(d) above, including the Release. Following such termination by Employee, except as set forth in this Section 7(f) and Section 7(h), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(g) Termination by Employee Without Good Reason. Employee may terminate Employee's employment with the Company at any time. In the event of a termination of employment by Employee, other than a termination of employment by Employee that qualifies as a Change in Control Termination or a termination with Good Reason pursuant to Section 7(f), Employee shall be entitled only to the Accrued Obligations. Following such termination by Employee, except as set forth in this Section 7(g), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(h) Benefits. Upon the occurrence of a termination of Employee's employment pursuant to Sections 7(d), (e) or (f), the Company shall also cause to be continued, for a period of twelve (12) months, such life, medical and dental insurance coverage as is otherwise maintained by the Company for full-time employees (based on the Base Salary in effect immediately prior to the date Employee's employment terminates), subject to the limitations set forth in such plans, programs or policies, provided that Employee shall continue to pay all amounts in respect of such coverage that an employee receiving the same level of coverage is or would be required to pay (the employee contribution).

(i) Release. Notwithstanding any provision herein to the contrary, the Company may require that, prior to payment of any amount or provision of any benefit pursuant to Sections 7(d), (e), (f), or (h) (other than the Accrued Obligations), Employee shall have executed, on or prior to the Release Expiration Date, a Release, which Release and any waiting periods contained in such Release shall have expired. In the event that Employee fails to execute a Release in favor of the Company and its subsidiaries and affiliates and their respective related parties on or prior to the Release Expiration Date, Employee shall not be entitled to any payments or benefits pursuant to Sections 7(d), (e), (f), or (h) (other than the Accrued Obligations).

(j) **Exclusive Rights.** The severance benefits specified in Section 7 shall be in lieu of any severance pay or other severance benefit that the Company may provide to terminated employees pursuant to policies of the Company that may at that time be in effect and (ii) shall not in any way affect Employee's entitlement to the receipt of a pro-rated cash bonus or other cash incentive that Employee is otherwise eligible to earn in the ordinary course, during the partial year prior to date of termination, pursuant to each plan or program (whether or not such plan or program has been formalized or is in written form) of the Company in effect for such year that provides for cash bonuses or other cash incentives (provided that the Company goals that trigger the obligation of the Company to pay any such cash bonus or other cash incentives are satisfied).

**Section 8. Works for Hire.** Employee agrees that the Company shall own all right, title and interest throughout the world in and to any and all inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets, whether or not patentable or registerable under copyright or similar laws, which Employee may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, whether or not during regular working hours or prior to the Effective Date, provided such inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets (i) relate at the time of conception or development to the actual or demonstrably proposed business or research and development activities of the Company or its subsidiaries; (ii) result from or relate to any work performed for the Company or its subsidiaries; or (iii) are developed through the use of Confidential Information and/or Company resources or in consultation with Company personnel (such inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets are collectively referred to herein as "**Developments**"). Employee hereby assigns all right, title and interest in and to any and all of these Developments to the Company. Employee agrees to assist the Company, at the Company's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce, and defend any rights specified to be so owned or assigned. Employee hereby irrevocably designates and appoints the Company and its agents as attorneys-in-fact to act for and on Employee's behalf to execute and file any document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by Employee. In addition, and not in contravention of any of the foregoing, Employee acknowledges that all original works of authorship which are made by Employee (solely or jointly with others) within the scope of employment and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 USC Sec. 101). To the extent allowed by law, this includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights." To the extent Employee retains any such moral rights under applicable law, Employee hereby waives such moral rights and consents to any action consistent with the terms of this Agreement with respect to such moral rights, in each case, to the full extent of such applicable law. Employee will confirm any such waivers and consents from time to time as requested by the Company.

**Section 9. Confidentiality; Restricted Activities.** Employee agrees that some restrictions on Employee's activities are necessary to protect the goodwill, Confidential Information and other legitimate interests of the Company and its affiliates:

(a) Employee shall not disclose Confidential Information to, or use Confidential Information for the benefit of, any Person, except (i) to the extent required by an order of a court having jurisdiction over Employee or under subpoena from an appropriate government agency, in which event, Employee shall use Employee's good faith efforts to consult with the General Counsel of the Company prior to responding to any such order or subpoena, or (ii) as required in the performance of Employee's obligations under this Agreement.

(b) Employee agrees that, during the Term of Employment, Employee shall not, directly or indirectly, individually or jointly, own any interest in, operate, join, control or participate as a partner, director, principal, officer, or agent of, enter into the employment of, act as a consultant to, or perform any services for any Person (other than the Company or its subsidiaries), that engages in any Competitive Activities. Notwithstanding anything herein to the contrary, this Section 9 shall not prevent Employee from acquiring or holding as an investment security (x) of the Company or (y) representing not more than three percent (3%) of the outstanding voting securities of any other publicly held corporation.

(c) Employee agrees that, during the period commencing on the date of this Agreement and ending on the two (2) year anniversary of the termination of Employee's employment for any reason (such period, the "**Restricted Period**"), Employee shall not, for Employee's own account or for the account of any other Person (other than the Company or its subsidiaries), engage in Interfering Activities.

(d) Without limiting the remedies available to the Company, Employee acknowledges that a breach of any of the covenants contained in this Section 9 may result in material irreparable injury to the Company or its subsidiaries for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to seek a temporary restraining order and/or a preliminary or permanent injunction, without the necessity of proving irreparable harm or injury as a result of such breach or threatened breach of this Section 9, restraining Employee from engaging in activities prohibited by this Section 9 or such other relief as may be required specifically to enforce any of the covenants in this Section 9. Notwithstanding any other provision herein to the contrary, the Restricted Period shall be tolled during any period of violation of Sections 9(b) or (c) and during any other period required for litigation during which the Company seeks to enforce such covenants against Employee if it is ultimately determined that Employee was in breach of such covenants.

(e) If any court of competent jurisdiction shall at any time determine that any covenant or agreement contained in this Section 9 exceeds the temporal, geographic or other limitations permitted by applicable law in any jurisdiction and renders such covenant or agreement unenforceable, the other provisions of this Section 9 shall nevertheless remain in effect and such covenant or agreement shall be deemed to be reformed and modified to the maximum temporal, geographic or other limitation permitted by law under the circumstances, and the Company and Employee each agree that any such court shall be expressly empowered to so reform and modify such covenant or agreement.

(f) Employee acknowledges and agrees that (A) the agreements and covenants contained in this Section 9 (i) are reasonable and valid in geographical and temporal scope and in all other respects, (ii) are essential to protect the value of the business, assets and confidential information of the Company and its subsidiaries, and (iii) will not impose any undue hardship on Employee, and (B) Employee has and will obtain valuable knowledge (including knowledge of the Company's trade secrets, customer relationships and other confidential information), contacts, know-how, training and experience and such knowledge, know-how, contacts, training and experience could be used to the substantial detriment of the Company and its subsidiaries. Employee further acknowledges that the Company's agreement to enter into the Agreement and to make the payments and take the actions contemplated herein is conditioned upon Employee's agreement to the terms set forth in this Section 9 and the Company's agreement to enter into the Agreement constitutes good and valuable consideration for Employee's agreement to the restrictions set forth in this Section 9.

(g) In the event of the termination of Employee's employment for any reason, Employee shall deliver to the Company all of (i) the property of the Company and (ii) the documents and data of any nature and in whatever medium of the Company, and Employee shall not take with Employee any such property, documents or data or any reproduction thereof, or any documents containing or pertaining to any Confidential Information.

**Section 10. Injunctive Relief.** Without limiting the remedies available to the Company, Employee acknowledges that a breach of any of the covenants contained in Section 9 hereof may result in material irreparable injury to the Company or its subsidiaries or affiliates for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to obtain a temporary restraining order and/or a preliminary or permanent injunction, without the necessity of proving irreparable harm or injury as a result of such breach or threatened breach of Section 9 hereof, restraining Employee from engaging in activities prohibited by Section 9 hereof or such other relief as may be required specifically to enforce any of the covenants in Section 9

hereof. Notwithstanding any other provision to the contrary, the Restricted Period shall be tolled during any period of violation of any of the covenants in Section 9(b) or (c) hereof and during any other period required for litigation during which the Company seeks to enforce such covenants against Employee if it is ultimately determined that Employee was in breach of such covenants.

**Section 11. Representations and Warranties of Employee.** Employee represents and warrants to the Company that:

(a) Employee is entering into this Agreement voluntarily and that Employee's employment hereunder and compliance with the terms and conditions hereof will not conflict with or result in the breach by Employee of any agreement to which Employee is a party or by which Employee may be bound;

(b) Employee has not, and in connection with Employee's employment with the Company will not, violate any non-solicitation or other similar covenant or agreement by which Employee is or may be bound; and

(c) In connection with Employee's employment with the Company, Employee has not and will not disclose or use any confidential or proprietary information Employee may have obtained in connection with employment with any prior employer.

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**Section 12. Taxes.**

(a) The Company may withhold from any payments made under this Agreement, including payments made pursuant to Section 7, all applicable taxes, including, but not limited to, income, employment and social insurance taxes, as shall be required by law. Employee acknowledges and represents that the Company has not provided any tax advice to Employee in connection with this Agreement and that Employee has been advised by the Company to seek tax advice from Employee's own tax advisors regarding this Agreement and payments that may be made to Employee pursuant to this Agreement, including, specifically, the application of the provisions of Sections 280G or 409A of the Code to such payments.

(b) In the event that any amount otherwise payable pursuant to Section 7 would be deemed to constitute a parachute payment (a "Parachute Payment") within the meaning of Section 280G of the Code, and if any such Parachute Payment, when added to any other payments which are deemed to constitute Parachute Payments, would otherwise result in the imposition of an excise tax under Section 4999 of the Code, the amounts payable hereunder shall be reduced by the smallest amount necessary to avoid the imposition of such excise tax. Any such limitation shall be applied to such compensation and benefit amounts, and in such order, as the Company shall determine in its sole discretion.

**Section 13. Set Off; Mitigation.** The Company's obligation to pay Employee the amounts provided and to make the arrangements provided hereunder shall be subject to set-off, counterclaim or recoupment of amounts owed by Employee to the Company or its subsidiaries or affiliates. Employee shall not be required to mitigate the amount of any payment provided for pursuant to this Agreement by seeking other employment or otherwise and the amount of any payment provided for pursuant to this Agreement shall not be reduced by any compensation earned as a result of Employee's other employment or otherwise.

**Section 14. Delay in Payment.** Notwithstanding any provision in this Agreement to the contrary, any payment otherwise required to be made hereunder to Employee at any date as a result of the termination of Employee's employment shall be delayed for such period of time as may be necessary to meet the requirements of section 409A(a)(2)(B)(i) of the Code. On the earliest date on which such payments can be made without violating the requirements of section 409A(a)(2)(B)(i) of the Code, there shall be paid to Employee, in a single cash lump sum, an amount equal to the aggregate amount of all payments delayed pursuant to the preceding sentence.

**Section 15. Successors and Assigns; No Third-Party Beneficiaries**

(a) The Company. This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Neither this Agreement nor any of the rights, obligations or interests arising hereunder may be assigned by the Company without Employee's prior written consent, to a Person other than a subsidiary, affiliate or parent entity of the Company, or their respective successors or assigns; provided, however, that, in the event of the merger, consolidation, transfer or sale of all or substantially all of the assets of the Company with or to any other Person, this Agreement shall, subject to the provisions hereof, be freely assignable to, and be binding upon and inure to the benefit of, each such Person, without Employee's consent, and, to the extent the Agreement has been so assigned, such Person shall discharge and perform all the promises, covenants, duties and obligations of the Company hereunder.

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(b) Employee. Employee's rights and obligations under this Agreement shall not be transferable by Employee, by assignment or otherwise, without the prior written consent of the Company; provided, however, that if Employee shall die, all amounts then payable to Employee hereunder shall be paid in accordance with the terms of this Agreement to Employee's devisee, legatee or other designee or, if there be no such designee, to Employee's estate.

(c) No Third-Party Beneficiaries. Except as otherwise set forth in Section 7(b) or this Section 15, nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the Company (and its subsidiaries and affiliates) and Employee any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

**Section 16. Waiver and Amendments.** Any waiver, alteration, amendment or modification of any of the terms of this Agreement shall be valid only if made in writing and signed by each of the parties hereto; provided, however, that any such waiver, alteration, amendment or modification is approved by the Board. No waiver by either of the parties hereto of their rights hereunder shall be deemed to constitute a waiver with respect to any subsequent occurrences or transactions hereunder unless such waiver specifically states that it is to be construed as a continuing waiver.

**Section 17. Severability.** If any covenants or such other provisions of this Agreement are found to be invalid or unenforceable by a final determination of a court of competent jurisdiction: (i) the remaining terms and provisions hereof shall be unimpaired, and (ii) the invalid or unenforceable term or provision hereof shall be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision hereof.

**Section 18. Governing Law and Jurisdiction.** This Agreement is governed by and is to be construed under the laws of the State of California without regard to conflict of laws rules. Any dispute or claim arising out of or relating to this Agreement or claim of breach hereof (other than claims for injunctive relief, which shall be governed by Section 10 hereof) shall be brought exclusively in the State or Federal courts located in San Diego County in California. By execution of the Agreement, the parties hereto, and their respective affiliates, consent to the exclusive jurisdiction of such court, and waive any right to challenge jurisdiction or venue in such court with regard to any suit, action, or proceeding under or in connection with the Agreement. Each party to this Agreement also hereby waives any right to trial by jury in connection with any suit, action or proceeding under or in connection with this Agreement.

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**Section 19. Notices.**

(a) Every notice or other communication relating to this Agreement shall be in writing, and shall be mailed to or delivered to the party for whom it is intended at such address as may from time to time be designated by it in a notice mailed or delivered to the other party as herein provided, provided that, unless and until some other address be so designated, all notices or communications by Employee to the Company shall be mailed or delivered to the Company at its principal executive office, and all notices or communications by the Company to Employee may be given to Employee personally or may be mailed to Employee at Employee's last known address, as reflected in the Company's records.

(b) Any notice so addressed shall be deemed to be given: (i) if delivered by hand, on the date of such delivery; (ii) if mailed by courier or by overnight mail, on the first business day following the date of such mailing; and (iii) if mailed by registered or certified mail, on the third (3<sup>rd</sup>) business day after the date of such mailing.

**Section 20. Section Headings.** The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part thereof, affect the meaning or interpretation of this Agreement or of any term or provision hereof.

**Section 21. Entire Agreement.** This Agreement, together with any exhibits attached hereto, constitutes the entire understanding and agreement of the parties hereto regarding the subject matter hereof. This Agreement supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements between the parties hereto relating to the subject matter of this Agreement, including, without limitation, any severance or termination agreement between the Company and Employee, if any.

**Section 22. Survival of Operative Sections.** Upon any termination of Employee's employment with the Company, the provisions of Section 7 through Section 22 of this Agreement (together with any related definitions set forth in Section 1 hereof) shall survive to the extent necessary to give effect to the provisions thereof.

**Section 23. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile (including by way of PDF files) signature.

\* \* \*

[Signatures to appear on the following page.]

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

COMPANY:

FLUX POWER HOLDINGS, INC.

By: /s/ Ronald F. Dutt

Ronald F. Dutt  
Chief Executive Officer and President

EMPLOYEE:

/s/Charles A. Scheiwe

Charles A. Scheiwe

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## EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (this “Agreement”) is made and entered into as of February 12, 2021 (the “Effective Date”), by and between Flux Power, Inc., a California corporation with its principal place of business at 2685 S. MELROSE DRIVE, VISTA CA 92081 (the “Company”), and Jonathan A. Berry, an individual residing in the state of California (“Employee”). Employee and the Company also referred to herein each as a “party” and collectively as “parties”

### RECITALS

WHEREAS, Employee has been providing services to the Company prior to the date hereof, which services are similar to the services to be provided herein, and such services have been performed substantially on the same terms set forth herein;

WHEREAS, the Company and Employee desire to formally memorialize and set forth the terms and conditions pursuant to which Employee is employed by the Company;

WHEREAS, the Company recognizes that Employee has gained extensive knowledge and formed many valuable relationships in Employee’s career and during the scope of Employee’s services to the Company, and that such knowledge and relationships have significant value to the Company; and

WHEREAS, the Company and Employee desire that Employee continue to provide such services for the benefit of the Company as an employee of the Company subject to the provisions set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Company and Employee hereby agree to as follows:

#### **Section 1. Definitions.**

(a) “Accrued Obligations” shall mean (i) all accrued but unpaid Base Salary through the date of termination of Employee’s employment and (ii) any unpaid or unreimbursed expenses incurred in accordance with Section 6 below.

(b) “Annual Compensation” shall mean, at any time, an amount equal to Employee’s Base Salary, plus cash bonus or other cash incentive that Employee is eligible to earn in such year pursuant to each plan or program (whether or not such plan or program has been formalized or is in written form) of the Company in effect for such year that provides for cash bonuses or other cash incentives.

(c) “Base Salary” shall mean the salary provided for in Section 3(a) below or any increased or decreased salary pursuant to Section 3(a), exclusive of any other compensation received by Employee regardless of form.

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(d) “Board” shall mean the Board of Directors of the Company.

(e) “Cause” shall mean (i) a breach of Employee’s fiduciary duties to the Company including, but not limited to, Employee’s failure to obey any lawful directive of the Board, (ii) Employee’s personal dishonesty or willful misconduct, (iii) Employee’s willful violation of any law, rule or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, and/or (iv) a breach by the Employee of any provision of this Agreement.

(f) “Compensation Committee” shall mean the Company’s Compensation Committee of the Board.

(g) “Change in Control” shall mean an event involving one transaction or a related series of transactions, in which (i) the Company issues securities equal to 50% or more of the Company’s issued and outstanding voting securities, determined as a single class, to any individual, firm, partnership, limited liability company, or other entity, including a “group” within the meaning of Exchange Act Rule 13d-3, (ii) the Company issues voting securities equal to 50% or more of the issued and outstanding voting stock of the Company in connection with a merger, consolidation or other business combination, (iii) the Company is acquired in a merger, consolidation, combination or reorganization in which the Company is not the surviving company, or (iv) all or substantially all of the Company’s assets are sold or transferred. For the purpose of “Change in Control” definition, the term “Company” will be interpreted to include the Parent, if applicable.

(h) “Change in Control Termination” shall have the meaning set forth in Section 7(e).

(i) “Code” shall mean the Internal Revenue Code of 1986, as amended.

(j) “Company” shall have the meaning set forth in the preamble hereto.

(k) “Competitive Activities” shall mean any business activities involving, or related to, (i) the design, develop, manufacture, supply, sale, distribution and support of lithium-ion battery and related products, and/or (ii) any other products or services which the Company or its subsidiaries design, develop, manufacture, supply, sell, distribute or provide (or have committed plans to develop, design, supply, manufacture, sell, distribute or provide) during the term of Employee’s employment with the Company.

(l) “Confidential Information” shall mean confidential or proprietary trade secrets, customer lists, customer identities and information, information regarding service providers, manufacturing processes, product designs or other intellectual property, marketing data or plans, sales data or plans, management organization information, operating policies or manuals, business plans, operations or techniques, financial records or data, or other financial, commercial, business or technical information (i) of or relating to the Company or any of its subsidiaries, or (ii) that the Company or any of its subsidiaries may receive belonging to suppliers, customers or other Persons who do business with the Company or its subsidiaries, but shall exclude any information that is in the public domain or hereafter enters the public domain, in each case, without the breach by Employee of Employee’s obligations under this Agreement.

(m) “Developments” shall have the meaning set forth in Section 8.

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(n) “Effective Date” shall have the meaning set forth in the preamble.

(o) “Employee” shall have the meaning set forth in the preamble hereto.

(p) “Good Reason” shall mean, without Employee’s consent (i) a substantial and material diminution in Employee’s title, duties or responsibilities or (ii) a breach by the Company of any material provision of this Agreement.

(q) “Interfering Activities” shall mean directly or indirectly (i) encouraging, soliciting, or inducing, or in any manner attempting to encourage, solicit, or induce, any Person employed by, or Person providing services to, the Company or any of its subsidiaries to terminate such employment or consulting services; provided, that the foregoing shall not be violated by a general advertising not targeted at employees or consultants of the Company or its subsidiaries; (ii) hiring any Person who was employed by the Company or any of its subsidiaries at any time during the twenty-four (24) month period preceding the date of such attempted hiring; (iii) encouraging, soliciting or inducing, or in any manner attempting to encourage, solicit or induce any customer, distributor, insurer, supplier, licensee or other business relation of the Company or any of its subsidiaries to cease doing business with or reduce the amount of business conducted with the Company or its subsidiaries, or interfering in any way with the relationship between any such customer, distributor, insurer, supplier, licensee or business relation and the Company or its subsidiaries; or (iv) disparaging the Company and its subsidiaries, or otherwise taking any action which could reasonably be expected to adversely affect Company, subsidiaries or any of their directors, officers, agents or employees.

(r) “Parent” shall mean Flux Power Holdings, Inc., a Nevada corporation.

(s) “Parachute Payment” shall have the meaning set forth in Section 12(b).

(t) “Person” shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust (charitable or non-charitable), unincorporated organization or other form of business entity.

(u) “Plan” means the Company’s 2014 Equity Incentive Plan, as amended, modified, supplemented or superseded after the date of this Agreement (for the avoidance of doubt, such term shall include any successor plan of the Company that replaces the Plan).

(v) “Release Expiration Date” shall mean the date which is twenty-one (21) days following Employee’s termination of employment, or, in the event that such termination of employment is “in connection with an exit incentive or other employment termination program” (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date which is forty-five (45) days following Employee’s termination of employment.

(w) “Release” shall mean a release made by Employee in favor of the Company, subsidiaries, and their affiliates, in form and content acceptable to the Company, which shall include, but not be limited to, appropriate non-disparagement provisions.

(x) “Restricted Period” shall have the meaning set forth in Section 9.

(y) “Term of Employment” shall have the meaning set forth in Section 2(a) below.

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## **Section 2. Acceptance of Employment; Position, Duties and Responsibilities; Place of Performance**

(a) Term of Employment; Employment Status. Employee shall provide services pursuant to this Agreement until the termination of Employee’s employment for any reason (such period, the “Term of Employment”). Notwithstanding the foregoing, or anything to the contrary herein, nothing in this Agreement (i) confers upon Employee the right to continue in the employment of the Company or to the right to hold any particular office or position with the Company, (ii) except as set forth herein, entitles Employee to receive any specified annual salary or bonus or other compensation or (iii) interferes with or restricts in any way the right of the Company to terminate Employee’s employment at any time, with or without Cause.

(b) Position. Employee shall be employed as the Chief Operating Officer of the Company reporting to the Company’s Chief Executive Officer and such other duties, and responsibilities as the Board shall reasonably assign to Employee from time to time, including duties and responsibilities relating to the Company’s wholly-owned and partially owned subsidiaries and other affiliates.

(c) Employment Duties; Conflicting Activities. Employee shall devote Employee’s full business time, attention, skill and best efforts to the performance of Employee’s duties under this Agreement and shall not engage in any other business or occupation during the Term of Employment, including, without limitation, any activity that (x) conflicts with the interests of the Company or its subsidiaries, (y) interferes with the proper and efficient performance of Employee’s duties for the Company or (z) interferes with the exercise of Employee’s judgment in the Company’s best interests. Notwithstanding the foregoing, nothing herein shall preclude Employee from (i) serving, with the prior written consent of the Board, as a member of the board of directors or advisory boards (or their equivalents in the case of a non-corporate entity) of non-competing businesses and charitable organizations, (ii) engaging in charitable activities and community affairs and (iii) managing Employee’s personal investments and affairs; provided, however, that the activities set out in clauses (i), (ii) and (iii) shall be limited by Employee so as not to materially interfere, individually or in the aggregate, with the performance of Employee’s duties and responsibilities hereunder.

(d) Place of Employment. Employee’s principal place of employment shall be in Vista, California or such other location as may be designated as the Company’s corporate headquarters by the Board from time to time, although Employee understands and agrees that Employee will be required to travel from time to time for business reasons.

**Section 3. Compensation.** During the Term of Employment, for the services to be rendered pursuant to this Agreement or at the request of the Company, Employee shall be entitled to the following compensation:

(a) Base Salary. Employee shall be paid an annualized Base Salary, payable in accordance with the regular payroll practices of the Company, \$190,000, with increases or decreases, if any, as may be approved by the Board or the Compensation Committee from time to time.

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(b) Annual Bonus and Equity Compensation. Employee shall be eligible to receive an annual target cash bonus and awards of restricted stock units or other equity-based incentive compensation consistent with Employee’s position(s) with the Company, in each case, as determined by the Board and the Compensation Committee of the Board.

**Section 4. Employee Benefits.** During the Term of Employment, Employee shall be entitled to participate in health, insurance, retirement and other benefits provided to other senior executives of the Company. During the Term of Employment Employee shall also be entitled to the same number of holidays, vacation days, sick days and other benefits as are generally allowed to senior executives of the Company in accordance with the Company’s policies in effect from time to time.

**Section 5. Key-Man Insurance.** At any time during the Term of Employment, the Company shall have the right to insure the life of Employee for the sole benefit of the Company, in such amounts, and with such terms, as it may determine. All premiums payable thereon shall be the obligation of the Company. Employee shall have no



interest in any such policy, but agrees to cooperate with the Company in taking out such insurance by submitting to physical examinations, supplying all information required by each insurance company, and executing all necessary documents, provided that no financial obligation is imposed on Employee by any such documents.

**Section 6. Reimbursement of Business Expenses.** During the Term of Employment Employee is authorized to incur reasonable business expenses in carrying out Employee's duties and responsibilities under this Agreement and the Company shall promptly reimburse Employee for all such reasonable business expenses incurred in connection with carrying out the business of the Company, subject to documentation in accordance with the Company's policies, as in effect from time to time.

**Section 7. Termination of Employment**

(a) General. Notwithstanding Section 2, or anything to the contrary herein, the Term of Employment shall terminate upon the earliest to occur of (i) Employee's death, (ii) a termination of Employee's employment by the Company with or without Cause and (iii) a termination by Employee. Upon any termination of Employee's employment for any reason, except as may otherwise be requested by the Company in writing, Employee shall resign from any and all directorships, committee memberships or any other positions Employee holds with the Company or any of its subsidiaries or affiliates.

(b) Termination due to Death. Employee's employment shall terminate automatically upon Employee's death. In the event Employee's employment is terminated due to Employee's death, Employee's estate or beneficiaries, as the case may be, shall be entitled to the Accrued Obligations. Following such termination of Employee's employment by the reason of death, except as set forth in this Section 7(b), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

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(c) Termination by the Company for Cause. The Company may terminate Employee's employment at any time for Cause. In the event the Company terminates Employee's employment for Cause, Employee shall be entitled only to the Accrued Obligations. Following such termination of Employee's employment for Cause, except as set forth in this Section 7(c), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(d) Termination by the Company without Cause. The Company may terminate Employee's employment at any time without Cause. In the event Employee's employment is terminated by the Company without Cause (other than due to death) during the Term of Employment, Employee shall be entitled to receive:

(i) The Accrued Obligations; and

(ii) Subject to the limitations set forth in Section 12(b), within thirty (30) days (or forty-five (45) days in the event that such termination of employment is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967)) after the date that Employee executes and delivers a Release to the Company, or, to the extent required by Section 409A of Code, on the first day of the seventh month following such date, and subject to the Release under Section 7(i), as a severance payment for services previously rendered to the Company, a lump sum equal to 12 months of Base Salary (at the rate in effect immediately prior to the date Employee's employment terminates).

Following such termination of Employee's employment without Cause, except as set forth in this Section 7(d) and Section 7(h), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(e) Change in Control Termination. If (i) a Change in Control occurs during the Term of Employment, (ii) within twenty four (24) months after the effective date of such Change in Control the occurrence of one or more of the following conditions; (X) failure by the Company to comply with any provision of this Agreement, (Y) reduction of Employee's Base Salary without the prior written consent of the Employee, or (Z) a substantial and material diminution in Employee's title, duties or responsibilities which the Employee currently maintains without the prior written consent of the Employee, and (iii) within ninety (90) days thereafter Employee or the Company terminates Employee's employment (an employment termination that satisfies the foregoing conditions, a "Change in Control Termination"), then Employee shall be entitled to receive:

(i) The Accrued Obligations; and

(ii) Subject to the limitations set forth in Section 12(b), within thirty (30) days (or forty-five (45) days in the event that such termination of employment is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967)) after the date that Employee executes and delivers a Release to the Company or, to the extent required by Section 409A of the Code, on the first day of the seventh month following such date, and subject to the Release under Section 7(i), a lump sum equal to 12 months of Base Salary in effect immediately prior to the date Employee's employment terminates (without regard to any decrease in the rate of Employee's Annual Compensation made after such Change in Control).

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Following such termination of Employee's employment, except as set forth in this Section 7(e) and Section 7(h), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(f) Termination by Employee With Good Reason. Employee may terminate Employee's employment with the Company for Good Reason by providing the Company thirty (30) days' written notice setting forth in reasonable specificity the event that constitutes Good Reason, which written notice, to be effective, must be provided to the Company within sixty (60) days of the occurrence of such event. During such thirty (30) day notice period, the Company shall have a cure right (if such event is curable), and if such event is not reasonably cured within such period, Employee's termination will be effective upon the expiration of such cure period, and Employee shall be entitled to the same payments and benefits as provided in Section 7(d) above for a termination of Employee's employment by the Company without Cause, subject to the same conditions on payment and benefits as described in Section 7(d) above, including the Release. Following such termination by Employee, except as set forth in this Section 7(f) and Section 7(h), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(g) Termination by Employee Without Good Reason. Employee may terminate Employee's employment with the Company at any time. In the event of a termination of employment by Employee, other than a termination of employment by Employee that qualifies as a Change in Control Termination or a termination with Good Reason pursuant to Section 7(f), Employee shall be entitled only to the Accrued Obligations. Following such termination by Employee, except as set forth in this Section 7(g), Employee shall have no further rights to any compensation or any other benefits under this Agreement.

(h) Benefits. Upon the occurrence of a termination of Employee's employment pursuant to Sections 7(d), (e) or (f), the Company shall also cause to be continued, for a period of 12 months such life, medical and dental insurance coverage as is otherwise maintained by the Company for full-time employees (based on the Base Salary in effect immediately prior to the date Employee's employment terminates), subject to the limitations set forth in such plans, programs or policies, provided that Employee shall continue to pay all amounts in respect of such coverage that an employee receiving the same level of coverage is or would be required to pay (the employee contribution).

(i) Release. Notwithstanding any provision herein to the contrary, the Company may require that, prior to payment of any amount or provision of any benefit pursuant to Sections 7(d), (e), (f), or (h) (other than the Accrued Obligations), Employee shall have executed, on or prior to the Release Expiration Date, a Release, which Release and any waiting periods contained in such Release shall have expired. In the event that Employee fails to execute a Release in favor of the Company and its subsidiaries

and affiliates and their respective related parties on or prior to the Release Expiration Date, Employee shall not be entitled to any payments or benefits pursuant to Sections 7(d), (e), (f), or (h) (other than the Accrued Obligations).

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(j) **Exclusive Rights.** The severance benefits specified in Section 7 shall be in lieu of any severance pay or other severance benefit that the Company may provide to terminated employees pursuant to policies of the Company that may at that time be in effect and (ii) shall not in any way affect Employee's entitlement to the receipt of a pro-rated cash bonus or other cash incentive that Employee is otherwise eligible to earn in the ordinary course, during the partial year prior to date of termination, pursuant to each plan or program (whether or not such plan or program has been formalized or is in written form) of the Company in effect for such year that provides for cash bonuses or other cash incentives (provided that the Company goals that trigger the obligation of the Company to pay any such cash bonus or other cash incentives are satisfied).

**Section 8. Works for Hire.** Employee agrees that the Company shall own all right, title and interest throughout the world in and to any and all inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets, whether or not patentable or registerable under copyright or similar laws, which Employee may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, whether or not during regular working hours or prior to the Effective Date, provided such inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets (i) relate at the time of conception or development to the actual or demonstrably proposed business or research and development activities of the Company or its subsidiaries; (ii) result from or relate to any work performed for the Company or its subsidiaries; or (iii) are developed through the use of Confidential Information and/or Company resources or in consultation with Company personnel (such inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets are collectively referred to herein as "**Developments**"). Employee hereby assigns all right, title and interest in and to any and all of these Developments to the Company. Employee agrees to assist the Company, at the Company's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce, and defend any rights specified to be so owned or assigned. Employee hereby irrevocably designates and appoints the Company and its agents as attorneys-in-fact to act for and on Employee's behalf to execute and file any document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by Employee. In addition, and not in contravention of any of the foregoing, Employee acknowledges that all original works of authorship which are made by Employee (solely or jointly with others) within the scope of employment and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 USC Sec. 101). To the extent allowed by law, this includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights." To the extent Employee retains any such moral rights under applicable law, Employee hereby waives such moral rights and consents to any action consistent with the terms of this Agreement with respect to such moral rights, in each case, to the full extent of such applicable law. Employee will confirm any such waivers and consents from time to time as requested by the Company.

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**Section 9. Confidentiality; Restricted Activities.** Employee agrees that some restrictions on Employee's activities are necessary to protect the goodwill, Confidential Information and other legitimate interests of the Company and its affiliates:

(a) Employee shall not disclose Confidential Information to, or use Confidential Information for the benefit of, any Person, except (i) to the extent required by an order of a court having jurisdiction over Employee or under subpoena from an appropriate government agency, in which event, Employee shall use Employee's good faith efforts to consult with the General Counsel of the Company prior to responding to any such order or subpoena, or (ii) as required in the performance of Employee's obligations under this Agreement.

(b) Employee agrees that, during the Term of Employment, Employee shall not, directly or indirectly, individually or jointly, own any interest in, operate, join, control or participate as a partner, director, principal, officer, or agent of, enter into the employment of, act as a consultant to, or perform any services for any Person (other than the Company or its subsidiaries), that engages in any Competitive Activities. Notwithstanding anything herein to the contrary, this Section 9 shall not prevent Employee from acquiring or holding as an investment securities (x) of the Company or (y) representing not more than three percent (3%) of the outstanding voting securities of any other publicly-held corporation.

(c) Employee agrees that, during the period commencing on the date of this Agreement and ending on the two (2) year anniversary of the termination of Employee's employment for any reason (such period, the "**Restricted Period**"), Employee shall not, for Employee's own account or for the account of any other Person (other than the Company or its subsidiaries), engage in Interfering Activities.

(d) Without limiting the remedies available to the Company, Employee acknowledges that a breach of any of the covenants contained in this Section 9 may result in material irreparable injury to the Company or its subsidiaries for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to seek a temporary restraining order and/or a preliminary or permanent injunction, without the necessity of proving irreparable harm or injury as a result of such breach or threatened breach of this Section 9, restraining Employee from engaging in activities prohibited by this Section 9 or such other relief as may be required specifically to enforce any of the covenants in this Section 9. Notwithstanding any other provision herein to the contrary, the Restricted Period shall be tolled during any period of violation of Sections 9(b) or (c) and during any other period required for litigation during which the Company seeks to enforce such covenants against Employee if it is ultimately determined that Employee was in breach of such covenants.

(e) If any court of competent jurisdiction shall at any time determine that any covenant or agreement contained in this Section 9 exceeds the temporal, geographic or other limitations permitted by applicable law in any jurisdiction and renders such covenant or agreement unenforceable, the other provisions of this Section 9 shall nevertheless remain in effect and such covenant or agreement shall be deemed to be reformed and modified to the maximum temporal, geographic or other limitation permitted by law under the circumstances, and the Company and Employee each agree that any such court shall be expressly empowered to so reform and modify such covenant or agreement.

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(f) Employee acknowledges and agrees that (A) the agreements and covenants contained in this Section 9 (i) are reasonable and valid in geographical and temporal scope and in all other respects, (ii) are essential to protect the value of the business, assets and confidential information of the Company and its subsidiaries, and (iii) will not impose any undue hardship on Employee, and (B) Employee has and will obtain valuable knowledge (including knowledge of the Company's trade secrets, customer relationships and other confidential information), contacts, know-how, training and experience and such knowledge, know-how, contacts, training and experience could be used to the substantial detriment of the Company and its subsidiaries. Employee further acknowledges that the Company's agreement to enter into the Agreement and to make the payments and take the actions contemplated herein is conditioned upon Employee's agreement to the terms set forth in this Section 9 and the Company's agreement to enter into the Agreement constitutes good and valuable consideration for Employee's agreement to the restrictions set forth in this Section 9.

(g) In the event of the termination of Employee's employment for any reason, Employee shall deliver to the Company all of (i) the property of the Company and (ii) the documents and data of any nature and in whatever medium of the Company, and Employee shall not take with Employee any such property, documents or data or any reproduction thereof, or any documents containing or pertaining to any Confidential Information.

**Section 10. Injunctive Relief.** Without limiting the remedies available to the Company, Employee acknowledges that a breach of any of the covenants contained in Section 9 hereof may result in material irreparable injury to the Company or its subsidiaries or affiliates for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to obtain a temporary restraining order

and/or a preliminary or permanent injunction, without the necessity of proving irreparable harm or injury as a result of such breach or threatened breach of Section 9 hereof, restraining Employee from engaging in activities prohibited by Section 9 hereof or such other relief as may be required specifically to enforce any of the covenants in Section 9 hereof. Notwithstanding any other provision to the contrary, the Restricted Period shall be tolled during any period of violation of any of the covenants in Section 9(b) or (c) hereof and during any other period required for litigation during which the Company seeks to enforce such covenants against Employee if it is ultimately determined that Employee was in breach of such covenants.

**Section 11. Representations and Warranties of Employee.** Employee represents and warrants to the Company that:

(a) Employee is entering into this Agreement voluntarily and that Employee's employment hereunder and compliance with the terms and conditions hereof will not conflict with or result in the breach by Employee of any agreement to which Employee is a party or by which Employee may be bound;

(b) Employee has not, and in connection with Employee's employment with the Company will not, violate any non-solicitation or other similar covenant or agreement by which Employee is or may be bound; and

(c) In connection with Employee's employment with the Company, Employee has not and will not disclose or use any confidential or proprietary information Employee may have obtained in connection with employment with any prior employer.

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**Section 12. Taxes.**

(a) The Company may withhold from any payments made under this Agreement, including payments made pursuant to Section 7, all applicable taxes, including, but not limited to, income, employment and social insurance taxes, as shall be required by law. Employee acknowledges and represents that the Company has not provided any tax advice to Employee in connection with this Agreement and that Employee has been advised by the Company to seek tax advice from Employee's own tax advisors regarding this Agreement and payments that may be made to Employee pursuant to this Agreement, including, specifically, the application of the provisions of Sections 280G or 409A of the Code to such payments.

(b) In the event that any amount otherwise payable pursuant to Section 7 would be deemed to constitute a parachute payment (a "Parachute Payment") within the meaning of Section 280G of the Code, and if any such Parachute Payment, when added to any other payments which are deemed to constitute Parachute Payments, would otherwise result in the imposition of an excise tax under Section 4999 of the Code, the amounts payable hereunder shall be reduced by the smallest amount necessary to avoid the imposition of such excise tax. Any such limitation shall be applied to such compensation and benefit amounts, and in such order, as the Company shall determine in its sole discretion.

**Section 13. Set Off; Mitigation.** The Company's obligation to pay Employee the amounts provided and to make the arrangements provided hereunder shall be subject to set-off, counterclaim or recoupment of amounts owed by Employee to the Company or its subsidiaries or affiliates. Employee shall not be required to mitigate the amount of any payment provided for pursuant to this Agreement by seeking other employment or otherwise and the amount of any payment provided for pursuant to this Agreement shall not be reduced by any compensation earned as a result of Employee's other employment or otherwise.

**Section 14. Delay in Payment.** Notwithstanding any provision in this Agreement to the contrary, any payment otherwise required to be made hereunder to Employee at any date as a result of the termination of Employee's employment shall be delayed for such period of time as may be necessary to meet the requirements of section 409A(a)(2)(B)(i) of the Code. On the earliest date on which such payments can be made without violating the requirements of section 409A(a)(2)(B)(i) of the Code, there shall be paid to Employee, in a single cash lump sum, an amount equal to the aggregate amount of all payments delayed pursuant to the preceding sentence.

**Section 15. Successors and Assigns; No Third-Party Beneficiaries**

(a) The Company. This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Neither this Agreement nor any of the rights, obligations or interests arising hereunder may be assigned by the Company without Employee's prior written consent, to a Person other than a subsidiary, affiliate or parent entity of the Company, or their respective successors or assigns; provided, however, that, in the event of the merger, consolidation, transfer or sale of all or substantially all of the assets of the Company with or to any other Person, this Agreement shall, subject to the provisions hereof, be freely assignable to, and be binding upon and inure to the benefit of, each such Person, without Employee's consent, and, to the extent the Agreement has been so assigned, such Person shall discharge and perform all the promises, covenants, duties and obligations of the Company hereunder.

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(b) Employee. Employee's rights and obligations under this Agreement shall not be transferable by Employee, by assignment or otherwise, without the prior written consent of the Company; provided, however, that if Employee shall die, all amounts then payable to Employee hereunder shall be paid in accordance with the terms of this Agreement to Employee's devisee, legatee or other designee or, if there be no such designee, to Employee's estate.

(c) No Third-Party Beneficiaries. Except as otherwise set forth in Section 7(b) or this Section 15, nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the Company (and its subsidiaries and affiliates) and Employee any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

**Section 16. Waiver and Amendments.** Any waiver, alteration, amendment or modification of any of the terms of this Agreement shall be valid only if made in writing and signed by each of the parties hereto; provided, however, that any such waiver, alteration, amendment or modification is approved by the Board. No waiver by either of the parties hereto of their rights hereunder shall be deemed to constitute a waiver with respect to any subsequent occurrences or transactions hereunder unless such waiver specifically states that it is to be construed as a continuing waiver.

**Section 17. Severability.** If any covenants or such other provisions of this Agreement are found to be invalid or unenforceable by a final determination of a court of competent jurisdiction: (i) the remaining terms and provisions hereof shall be unimpaired, and (ii) the invalid or unenforceable term or provision hereof shall be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision hereof.

**Section 18. Governing Law and Jurisdiction.** This Agreement is governed by and is to be construed under the laws of the State of California without regard to conflict of laws rules. Any dispute or claim arising out of or relating to this Agreement or claim of breach hereof (other than claims for injunctive relief, which shall be governed by Section 10 hereof) shall be brought exclusively in the State or Federal courts located in San Diego County in California. By execution of the Agreement, the parties hereto, and their respective affiliates, consent to the exclusive jurisdiction of such court, and waive any right to challenge jurisdiction or venue in such court with regard to any suit, action, or proceeding under or in connection with the Agreement. Each party to this Agreement also hereby waives any right to trial by jury in connection with any suit, action or proceeding under or in connection with this Agreement.

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**Section 19. Notices.**

(a) Every notice or other communication relating to this Agreement shall be in writing, and shall be mailed to or delivered to the party for whom it is intended at such address as may from time to time be designated by it in a notice mailed or delivered to the other party as herein provided, provided that, unless and until some other address be so designated, all notices or communications by Employee to the Company shall be mailed or delivered to the Company at its principal executive office, and all notices or communications by the Company to Employee may be given to Employee personally or may be mailed to Employee at Employee's last known address, as reflected in the Company's records.

(b) Any notice so addressed shall be deemed to be given: (i) if delivered by hand, on the date of such delivery; (ii) if mailed by courier or by overnight mail, on the first business day following the date of such mailing; and (iii) if mailed by registered or certified mail, on the third (3<sup>rd</sup>) business day after the date of such mailing.

**Section 20. Section Headings.** The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part thereof, affect the meaning or interpretation of this Agreement or of any term or provision hereof.

**Section 21. Entire Agreement.** This Agreement, together with any exhibits attached hereto, constitutes the entire understanding and agreement of the parties hereto regarding the subject matter hereof. This Agreement supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements between the parties hereto relating to the subject matter of this Agreement, including, without limitation, any severance or termination agreement between the Company and Employee, if any.

**Section 22. Survival of Operative Sections.** Upon any termination of Employee's employment with the Company, the provisions of Section 7 through Section 22 of this Agreement (together with any related definitions set forth in Section 1 hereof) shall survive to the extent necessary to give effect to the provisions thereof.

**Section 23. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile (including by way of PDF files) signature.

\* \* \*

[Signatures to appear on the following page.]

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

COMPANY:

FLUX POWER, INC.

By: /s/ Ronald F. Dutt

Ronald F. Dutt  
Chief Executive Officer and President

EMPLOYEE:

/s/ Jonathan A. Berry

Jonathan A. Berry

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