

**AGREEMENT FOR THE SALE OF
ZERO-EMISSIONS ENERGY CERTIFICATES**

This Agreement (the “Agreement”) is made as of December 1, 2016 (“Effective Date”) by and between the New York State Energy Research and Development Authority, a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203 (“NYSERDA”), and _____, a _____ [corporation], having a principal business address of _____ (the “LSE” or “Buyer”). NYSERDA and Buyer are each referred to herein as a “Party” and are collectively referred to herein as the “Parties.”

RECITALS:

WHEREAS, by its August 1, 2016 “Order Adopting a Clean Energy Standard” (“CES Order”) in Case 15-E-0302 the PSC established a Zero-Emissions Credit Requirement Program (“ZECR”); and

WHEREAS, the ZECR directs NYSERDA to offer long-term contracts for the purchase of Zero-Emissions Credits (“ZECs”) from the FitzPatrick, Ginna and Nine Mile Point generating facilities in accordance with the price, contract period and other terms specified in the CES Order; and

WHEREAS, NYSERDA has entered contracts for the purchase of ZECs from the FitzPatrick, Ginna and Nine Mile Point generating facilities; and

WHEREAS, the CES Order established a cap of 27,618,000 ZECs to be purchased from the FitzPatrick, Ginna and Nine Mile Point generating facilities, on an annual basis, by NYSERDA; and

WHEREAS, the ZECR requires each LSE that serves end-use customers in New York to procure from NYSERDA, beginning April 1, 2017, qualifying ZECs in an amount equal to the percentage of ZECs purchased by NYSERDA in a year that represents the portion of the electric energy load served by each LSE in relation to the total electric energy load served by all such LSEs; and

WHEREAS, the Order establishes the ZECR compliance period as April 1 to March 31 of each year, beginning in 2017, and divides the ZECR purchase obligation into six two-year tranches, the last ending on March 31, 2029; and

WHEREAS, the CES Order establishes, for Tranche 1 the ZEC price, including the amount approved by the Commission as an administrative adder, as \$ _____ per ZEC; and

WHEREAS, Buyer is an LSE; and

WHEREAS, Buyer wishes to fulfill its obligation to purchase ZECs from NYSERDA, under the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1: DEFINITIONS

1.1 Definitions. In addition to any other terms defined herein, the following terms shall have the meaning ascribed to them below:

- (a) “Actual ZEC Quantity” means the number of ZECs actually purchased by NYSERDA for compliance year 2017.
- (b) “Delivery” or “Deliver” means NYSERDA’s electronic delivery of ZEC Certificates via the NYGATS to the Buyer’s account within the NYGATS, in accordance with the NYGATS Operating Rules, or such other form or matter of crediting REC Certificates to an LSE account as may be approved or directed by the PSC.
- (c) “Energy Service Company” or “ESCO” means any eligible competitive energy service company operating in New York State pursuant to the Uniform Business Practices approved by the PSC.
- (d) “Load Serving Entity” or “LSE” means any entity or individual that sells retail commodity electricity supply to an end-use customer located in New York State, including any ESCO and each electric distribution company regulated by the PSC, serving in their roles as electric commodity supplier of last resort, jurisdictional municipal utilities, community choice aggregators not otherwise served by an ESCO, customers purchasing power directly from NYISO, and Long Island Power Authority (“LIPA”) and the New York Power Authority (“NYPA”) to the extent LIPA and NYPA have voluntarily agreed to act as LSEs.
- (e) “NYGATS” means the New York Generation Attribute Tracking System, the tracking system that records electricity generation attribute information within New York State, and processes generation attribute information from energy imported and consumed within New York State, as a basis for creating tradable generation attribute certificates, including ZEC Certificates.
- (f) “NYGATS Operating Rules” means the rules governing the operation of the NYGATS by NYSERDA and its designated NYGATS Administrator, and the participation in and use of the NYGATS by users. The Operating Rules describe how the system is operated and delineate the roles, requirements and responsibilities of all parties.¹
- (g) “NYISO” means the New York Independent System Operator.
- (h) “New York State Public Service Commission” or “PSC” means the commission duly authorized to operate in New York State pursuant to Articles 1 and 2 of the Public Service Law.
- (i) “ZEC Cap” means 27,618,000, the maximum number of ZECs that NYSERDA is obligated to purchase for the year 2017 compliance period.

¹ . <https://www.nyserda.ny.gov/All-Programs/Programs/NYGATS/Registration-Documents>

- (j) “ZEC Certificate” means certain NYGATS certificates evidencing ZECs derived from the energy production of megawatt hours by ZECR-eligible electric generation sources. Each ZEC, as reflected in a ZEC Certificate, represents the energy production of one (1) megawatt-hour.

ARTICLE 2: PURCHASE AND SALE OF ZECs

2.1 Purchase. Subject to the terms and conditions of this Agreement, NYSERDA agrees to sell and Deliver to Buyer, and Buyer agrees to purchase and accept from NYSERDA, _____ ZECs (ZEC Purchase Quantity). The purchase price for each ZEC shall be _____ dollars (USD \$_____, for a total projected purchase price equal to _____ dollars (USD \$_____)). The amount of ZEC Certificates ultimately acquired by the LSE from NYSERDA shall be determined in accordance with the reconciliation procedure set forth in Section 2.7 below.

2.2 Deliver/Delivery. Seller will Deliver via NYGATS the ZEC Certificates in a quantity equal to the ZEC Purchase Quantity shown in Section 2.1 or the amount calculated in Section 2.7, below. Upon notification of Delivery by Seller, Buyer shall be obligated to accept Delivery. NYSERDA shall transfer the ZEC Certificates to Buyer free and clear of any lien or other encumbrance at the time of Delivery. Notwithstanding the foregoing, this Agreement and the CES Order restrict Buyer from reselling ZEC Certificates.

2.3 Payment. NYSERDA shall require payment by Buyer in uniform monthly amounts equaling in the aggregate the total projected purchase price as set forth in Section 2.1, above, in accordance with the payment schedule attached hereto as Exhibit A. NYSERDA will not Deliver ZEC Certificates prior to receipt of payment. Any and all payments due to NYSERDA shall be made by check or by wire/ACH payment as follows:

By Check:

NYSERDA
17 Columbia Circle
Albany, New York 12203

By Wire/ACH:

Bank:	Bank of America
Account No.:	XXXXXXXXXXXX
ABA:	021000322 if by ACH; 026009593 if by wire
Account Name:	NYSERDA NYS Energy Research and Development

2.4 Interest. All overdue payments hereunder shall bear interest from (and including) the due date to (but excluding) the date of payment at a rate equal to two percent (2%) over the per annum rate of interest from time to time published in the Wall Street Journal under “Money Rates” as the prime lending rate, provided that in no event shall the applicable interest rate ever exceed the maximum rate permitted by applicable law.

2.5 Taxes/Fees. NYSERDA shall pay any taxes or other fees, if any, imposed on the creation, or ownership of the ZEC Certificates up to the date of Delivery. Buyer will pay any taxes or other fees, if any, imposed on the receipt or ownership of the ZEC Certificates on and after the date of Delivery.

2.6 Term. This Agreement shall be effective on and as of December 1, 2016 and shall terminate upon satisfaction by Buyer and Seller of their respective obligations pursuant, unless terminated earlier pursuant to Article 5 or Section 8.3 of this Agreement or extended by mutual agreement of the Parties or at the direction of the PSC. Termination shall not affect provisions hereof that expressly survive termination.

2.7. Settlement and Reconciliation. In the event the Actual ZEC Quantity is less than 27,618,000 (the ZEC Cap), NYSERDA shall notify Buyer in writing on or before June 1, 2018 of the adjusted Quantity of ZEC Certificates to be Delivered and shall refund to Buyer by check a proration of the projected purchase price, less the administrative adder.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES

3.1 NYSERDA representations and warranties. NYSERDA hereby represents and warrants to Buyer as follows:

- (a) NYSERDA has and, at all times during the Term will have, all necessary power and authority to execute, deliver and perform its obligations hereunder.
- (b) The execution, Delivery and performance of this Agreement by NYSERDA has been duly authorized by all necessary action and does not violate any of the terms or conditions of NYSERDA governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to NYSERDA. This Agreement constitutes the valid and binding obligation of NYSERDA enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors' rights and remedies generally and to general principles of equity.
- (c) There is no pending or (to NYSERDA's knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects NYSERDA's ability to perform its obligations under this Agreement.
- (d) The ZEC Certificates delivered to Buyer hereunder shall be eligible for compliance under the ZECR.
- (e) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NYSERDA EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

3.2 Buyer representations and warranties. Buyer hereby represents and warrants to NYSERDA as follows:

- (a) Buyer is a [corporation] duly organized, validly existing and in good standing under its laws of [incorporation] and has the requisite [corporate] power and authority to own, lease and operate its properties and to carry on its business as being conducted on the Effective Date. Buyer has, and at all times during the Term will have, all necessary power and authority to execute, deliver and perform its obligations hereunder.
- (b) The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action and does not violate any of the terms or conditions of Buyer's governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to Buyer. This Agreement constitutes the valid and binding obligation of the LSE enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors' rights and remedies generally and to general principles of equity.
- (c) There is no pending or (to Buyer's knowledge) threatened litigation or administrative proceeding that materially adversely affects Buyer's ability to perform its obligations under this Agreement.
- (d) Buyer has, and at all times during the Term, will have the financial capability to perform its obligations hereunder.
- (e) Buyer is an Account Holder as defined in the NYGATS Operating Rules.

ARTICLE 4: EVENTS OF DEFAULT

4.1 Events of Default. For purposes of and during the Term, each of the following shall constitute an event of default ("Event of Default") by a Party:

- (a) if a Party materially breaches any or all of its obligations as described in this Agreement and such breach is not cured within five (5) Business Days of written notice of such breach from the other Party;
- (b) if any representation or warranty made by a Party in Article 3 of this Agreement proves to have been misleading or false in any material respect when made; and/or
- (c) if a Party:
 - (i) makes an assignment or any general arrangement for the benefit of its creditors;
 - (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it;

- (iii) otherwise becomes bankrupt or insolvent (however evidenced); or
- (iv) becomes unable to pay its debts as they fall due.

ARTICLE 5: REMEDIES UPON DEFAULT

5.1 Remedies. Upon an Event of Default, the non-defaulting Party may (a) terminate this Agreement upon written notice to the defaulting Party, (b) withhold any payments due in respect of this Agreement, (c) set off any payments due against any other credits or payments under other agreements between the Parties, and/or (d) withhold any ZEC Certificate Delivery.

5.2 Exclusive Remedy. The remedies set forth in this article 5 shall be the sole and exclusive remedies of the respective parties in the event of a default, and a party's liability shall be limited as set forth in this section. All other remedies or damages at law are hereby waived.

5.5 Limitation of Liability. In the event of a default, the defaulting party's liability shall be limited as set forth herein. In no event shall any other liability be incurred by either Party for any obligations that arise under this agreement, including (but not limited to) liability for consequential, incidental, punitive, exemplary, or indirect damages in tort, contract, or otherwise.

ARTICLE 6: NOTICES

6.1 Notices.

- (a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:
 - (1) via certified or registered United States mail, return receipt requested;
 - (2) by personal delivery;
 - (3) by expedited delivery service; or
 - (4) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

To Buyer:	Company Attn: Name Address Line 1 Address Line 2 City, State Zip code Email Address:
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To NYSERDA: NYSERDA
Attn: Office of the General Counsel
17 Columbia Circle
Albany, New York 12203-6399
Email address: pete.keane@nyserda.ny.gov

With a copy to: NYSERDA
Attn: TBD
17 Columbia Circle
Albany, New York 12203-6399
Email address:

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States [or Canadian] mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt of an email acknowledgement of receipt.
- (c) The parties may, from time to time, specify any new or different address in the United States [or Canada] as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

6.2 The addresses for notice and payment specified in Sections 6.1 may be changed from time to time by written notice by either Party to the other Party without amendment of this Agreement.

ARTICLE 7: MISCELLANEOUS

7.1 Force Majeure. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, or strikes. In the event that such failure or delay occurs, the claiming Party shall notify the other Party of the occurrence thereof as soon as possible, shall use reasonable efforts to resume performance as soon as possible, and shall regularly consult with the other Party during the pendency of the force majeure event. In the event that the force majeure event lasts more than forty-five (45) days, NYSERDA may terminate this Agreement with no further obligation or liability to Buyer other than to Deliver any ZEC Certificates for which Buyer has made payment prior to termination that have not been Delivered to Buyer as of the termination date.

7.2 Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect. If any provision of this Agreement is so broad as to

be unenforceable, that provision shall be interpreted to be only so broad as will enable it to be enforced.

7.3 Waiver. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof are breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

7.4 Forward Contract. Each Party represents and warrants to the other that it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, that this Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement shall be “contractual rights” as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.

7.5 Assignment. Except as specifically provided otherwise in this Section 7.5, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Buyer’s rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA. Such consent shall not be unreasonably withheld.

Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity’s creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment.

7.6 Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Buyer and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be amended, modified, changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such amendment, modification, change, waiver, discharge or termination is sought.

7.7 All Legal Provisions Deemed Included. It is the intent and understanding of the Seller and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Seller, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

7.8 Governing Law/Venue. This Agreement shall be governed by, and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles. The parties irrevocably acknowledge and accept that all actions arising under or relating to this Agreement, and the transactions

contemplated hereby and thereby shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action.

7.10 Headings. The Article and Section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.

7.11 No Third Party Beneficiaries. Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in third persons not parties to this Agreement.

7.12 Freedom of Information Law. Seller acknowledges that NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL;" see Public Officers' Law Article 6); 21 NYCRR Part 501.

7.13 Claim of Confidentiality. Information of any tangible form including any document that Buyer wishes to be protected from disclosure to third parties, including this Agreement must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA. Notwithstanding the foregoing, NYSERDA, in accordance with the provisions of the CES Order, shall be permitted to report to the New York State Department of Public Service, as to the amounts received from LSE for ZEC purchases as against the total due each month and on the LSE's compliance or non-compliance, generally, with the terms of this Agreement.

7.14 Trade Secrets/Commercial Information. The FOIL Law (Public Officers Law § 87(d)(2)) provides an exception to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." If NYSERDA receives a request from a third party for information or a document received from Seller and which has been marked "Confidential" or "Proprietary," NYSERDA will process such request under the procedures provided by NYSERDA's FOIL regulations (21 NYCRR Part 501).

IN WITNESS WHEREOF, the Buyer has executed this Agreement as of the Effective Date.

BUYER

By:

Name:

Title: