

DEVELOPMENT AND DEMONSTRATION OF THE ZINC8 ZINC AIR ENERGY STORAGE SYSTEM

**AGREEMENT BY AND BETWEEN
POWER AUTHORITY OF THE STATE OF NEW YORK
AND
ZINC8 ENERGY SOLUTIONS**

This Agreement ("Agreement") made this 24 day of December 2019, by and between the Power Authority of the State of New York ("Authority"), a corporate municipal instrumentality of the State of New York, with a place of business at 123 Main Street, White Plains, NY 10601, and MGX Renewables Inc, DBA Zinc8 Energy Solutions ("Zinc8"), having its principal place of business at #1 – 8765 Ash Street, Vancouver, BC V6P 6T3. The Authority and Zinc8 are hereinafter referred to collectively as the "Parties" and each individually as a "Party".

WHEREAS, Zinc8 is a developer and manufacturer of long-duration, low-cost, modular, zinc air energy storage solutions that can be used to levelize intermittent renewable energy generation, provide peak-shaving or defer transmission & distribution costs; and

WHEREAS, Zinc8 submitted a project proposal, attached hereto as Attachment A, to the Urban Future Lab (UFL) on June 21, 2019 in response to the NYPA Innovation Challenge for collaboration opportunities to bring their zinc air energy storage technology from concept to market; and

WHEREAS, the Authority has offered to collaborate with Zinc8 and contribute to a research and development project through its participation in aspects of design and fabrication of a zinc air energy storage system, then demonstration of the system; and

WHEREAS, Zinc8 has agreed to collaborate with the Authority to pursue the research and development project; and

NOW, THEREFORE, in consideration of the terms, conditions and mutual covenants herein contained, the Parties hereto agree as follows:

Article 1 Preamble and Attachments

1.1 The Preamble to this Cooperation Agreement ("Agreement") regarding the research and development project and all attachments attached hereto form an integral part hereof.

1.2 The Attachments attached to this document are:

- Attachment A: NYPA Innovation Challenge Application
- Attachment B: Proposed Project Description including, Project Schedule and Project Budget
- Attachment C: Detailed Project Budget Format
- Attachment D: Fiscal Report Format

Article 2 Definitions

- 2.1 For the purpose of this Agreement, the terms listed below shall have the following meanings:
- 2.1.1 "**Agreement**" or "**Cooperation Agreement**" shall refer to this document and its incorporated attachments.
 - 2.1.2 "**Customer**" shall refer to any and all persons or entities that purchase, lease, rent, license or otherwise utilize the Product (other than the Parties) following the commercialization of the Product.
 - 2.1.3 "**Demonstration Site**" shall refer to a mutually agreed upon site within the State of New York at which the Product will be installed and integrated with existing systems, and demonstrated for a period of time.
 - 2.1.4 "**Effective Date**" shall mean the last day of execution of this Agreement by both Parties.
 - 2.1.5 "**Gross Sales**" shall mean any and all proceeds received by Zinc8, its affiliates, subsidiaries, licensees, or agents from the sale, licensing, rental or use of any product created or contemplated under this Agreement as well as any improvements, modifications, enhancements or derivatives thereof, received from a Customer.
 - 2.1.6 "**Hosting and Demonstration Agreement**" shall refer to an agreement, executed by Zinc8, the Authority and the owner of the Demonstration Site to: 1) allow for installation and integration of the Product with existing systems at the Demonstration Site, 2) govern operation and maintenance of the Product, and (iii) to showcase the Product as a reference site for future sales in New York State and elsewhere.
 - 2.1.7 "**Intellectual Property Rights**" or "**IPR**" shall mean any and all intellectual property rights, including, but not limited to all of the following: (i) technical information and know-how (ii) discoveries, improvements, enhancements, upgrades, inventions, (whether or not patentable); (iii) patents, patent applications, patent disclosures, and any other patentable subject matter; (iv) copyrights, applications to register copyrights, works of authorship and any other copyrightable works; (v) trademarks, trade names, trade dresses, brand names, logos and similar marks; (vi) any sketches, drawings, outlines, drafts (v) computer software (including source code, executable code, databases, data and related documentation); (vi) trade secrets and know-how; (vii) all improvements or modifications to any of the foregoing.
 - 2.1.8 "**Owner**" is any party that shall acquire ownership of the Product through purchase.
 - 2.1.9 "**Product**" shall mean an engineered, zinc air energy storage system and outcome of the research and development work by the Parties under this Agreement.

2.1.10 "**Licensee**" is any party that shall acquire a license for the use of the Product.

2.1.11 "**License**" or "**License to Use**" shall mean a commercial or any other type of permission to use the Product.

Article 3 Project Description, Project Schedule and Project Budget

- 3.1 As described in the proposed project description, as attached hereto as Attachment "B", the purpose of this Agreement is for both Parties to collaborate on a research and development project to: 1) advance Zinc8's zinc air energy storage technology to Technology Readiness Level TRL-9, 2) develop a commercial scale air zinc energy storage system ("Product"), 3) demonstrate and prove the technology at commercial scale, and 3) advance Zinc8's efforts to demonstrate and prove manufacture and construction of the technology at commercial scale.
- 3.2 The Product is an engineered zinc air energy storage system consisting of three major components:
- A Fuel Storage Tank where zinc particles and potassium hydroxide (KOH) electrolyte are stored
 - The Power Stack where fuel is electrochemically converted to electric power
 - A Zinc Generator where electrical power is converted back to zinc
- 3.3 The Product with a power/energy of approximately 100kW/1MWh will be designed, fabricated, tested and listed, then installed and integrated with existing systems at a Demonstration Site, and demonstrated at the Demonstration Site for a period of 3 years, but not less than 1 year.
- 3.4 Within 30 days from the Effective Date of this Agreement, Zinc8 shall prepare a detailed project budget based on development of project tasks in accordance with the detailed project budget format as attached hereto as Attachment "C". In the event, Zinc8 is unable to complete preparation of a detailed project budget within 30 days from the Effective Date of this Agreement, this Agreement will automatically terminate unless an extension is granted by the Authority.
- 3.5 The Parties agree that the Demonstration Site will be either a university, commercial or industrial setting located within New York State. The Parties anticipate the potential difficulties with finding and securing a Demonstration Site that supports the proposed size of the demonstration Product and agree that it may be necessary to adjust the detail project budget. Any adjustments to the proposed details project budget shall be made within 30 days from the execution of a host site agreement ("Hosting and Demonstration Agreement"). In the event, the Parties are unable to agree to a project budget within 30 days from the execution of the Hosting and Demonstration Agreement, this Agreement will automatically terminate.

Article 4 Work Share

4.1 Mutual Responsibilities:

- 4.1.1 The Parties will evaluate and select a Demonstration Site where the Product can be installed and integrated with existing systems at the Demonstration Site, then demonstrated. The Parties will make a good faith effort to execute a Hosting and Demonstration Agreement with the Demonstration Site to; (i) allow for installation of the Product and integration with existing systems, (ii) operate and maintain the Product, and (iii) showcase the Product as a reference site for future sales.
- 4.1.2 The Parties will furnish all necessary materials, equipment, technology, qualified personnel and otherwise do all things reasonably necessary for or incidental to the performance of their work in the research and development project. The Parties may modify their respective obligations as set forth herein by a written amendment to this Agreement on the basis of ongoing developments as agreed by the Parties.
- 4.1.3 Unless otherwise agreed, each Party is responsible for its own costs associated with the performance of its obligations set forth in this Agreement.

4.2 Zinc8 Responsibilities:

- 4.2.1 Zinc8 shall prepare a detailed project budget as set forth in Section 3.4.
- 4.2.2 Zinc8 shall conduct the project and prepare and submit periodic fiscal reports and the financial analysis of the project as set forth in Article 5.
- 4.2.3 Zinc8 shall design, fabricate, test and obtain listing of a Product for demonstration at a Demonstrate Site. Listing of the Product shall be conducted and certified by a Nationally Recognized Testing Laboratory in accordance with UL 9540. Zinc8 shall provide the Product and ancillary equipment required for a complete installation including control and monitoring equipment, converter and switchgear, for installation and integration with existing systems at the Demonstration Site.
- 4.2.4 Zinc8 shall size and engineer the Product and ancillary equipment for integration with existing systems at the Demonstration Site. Zinc8 will provide technical input, as reasonably requested by the Authority, relating to the Product, required to support integration of the Product and ancillary equipment with existing systems at the Demonstration Site
- 4.2.5 Zinc8 will obtain all rights in and to the Product for use in the energy storage market, including cost of any future Product manufacture, sales and marketing. Zinc8 shall market and sell the Product to Customers.
- 4.2.6 Zinc8 will provide quality assurance services and commission the Product and any ancillary equipment at the Demonstration Site.

- 4.2.7 Zinc8 agrees to conduct all work in furtherance of this Agreement, and in compliance in all material aspects with all applicable laws, rules and regulatory requirements.
- 4.2.8 Zinc8 will maintain all records, in sufficient detail and in a manner, which shall be complete and accurate, and shall fully and properly reflect all work done and the results achieved in the performance of its development and commissioning obligations hereunder.
- 4.2.9 Zinc8 will be responsible for any hazardous waste generated during Product installation, or during service, repair and maintenance during Demonstration period or Warranty period, including obtaining an EPA Identification number as required for the installation, and transport and dispose of hazardous waste at a qualified disposal or recycling facility that is acceptable to the Authority. In the event of a release of hazardous substance to the environment (land, water or air), Zinc8 shall be responsible for all clean-up and costs required to restore the Demonstration Site and environment to pre-installation conditions and to such condition as may be required by regulatory agency.

4.3 Authority Responsibilities:

- 4.3.1 The Authority will provide technical input, as reasonably requested by Zinc8, relating to power plant equipment and system operation required to support the research and development effort. In the event Zinc8 requests technical input from the Authority that is not within the Authority's possession, but within the Authority's responsibilities, the Authority will make a good faith effort to obtain the technical input. Notwithstanding the foregoing, the Authority does not guarantee that it will be able to obtain any technical input not within its possession.
- 4.3.2 The Authority will be responsible for the cost of engineering services required to integrate the Product and required ancillary equipment, as provided by Zinc8, with existing systems at the Demonstration Site.
- 4.3.3 The Authority will be responsible for the cost of materials, required for the integration of the Product and required ancillary equipment with existing systems at the Demonstration Site.
- 4.3.4 The Authority will be responsible for the cost of construction services required for installation of the Product and ancillary equipment at the Demonstration Site.
- 4.3.5 The Authority will provide technical input and logistical support for the commissioning of the Product and ancillary equipment at the Demonstration Site as performed by Zinc8.
- 4.3.6 The Authority will make a good faith effort to execute a formal agreement between Zinc8, the Authority and the Demonstration Site to provide access for prospective

customers. Notwithstanding the foregoing, in the event the Demonstration Site is owned by a third party, the Authority cannot guarantee access to the Demonstration Site.

- 4.3.7 To the extent permitted by law and Authority policies, The Authority will support Zinc8's marketing efforts of the Product by (i) providing non-proprietary information concerning the benefits of the Product to prospective customers, (ii) facilitating reasonable access to the Demonstration Site for future sales of the Product, in accordance with Section 4.3.6, and (iii) by participating in joint technical conferences with Zinc8 to present information about the Product, which will be coordinated between the Parties.

Article 5 Conduct of the Project, Fiscal Reporting and Financial Analysis

- 5.1 Zinc8 hereby appoints Dr. Simon Fan as their Project Manager for implementation of the project during the period of this Agreement and in accordance with the Project Plan.
- 5.2 Zinc8 shall not make substantial transfers of funds from one budget item to another, change key personnel or their duties and responsibilities, or diminish their time allocated to the proposed work hereunder without prior written approval by the Authority, which approval shall not be unreasonably withheld.
- 5.3 Should any key person be absent from work, or should such absence be expected for 90 days or more or should there be any significant reduction in the total personnel force assigned to the project under the Proposal, Zinc8 shall forthwith notify the Authority.
- 5.4 Zinc8 shall prepare and submit to the Authority, in writing and within the time period specified, the following fiscal reports, in accordance with the fiscal report format as attached hereto as Attachment "D":
- First Interim Fiscal Report - Within 30 days after 6 months from the Effective Date of this Agreement;
 - Second Interim Fiscal Report - Within 30 days after 12 months from the Effective Date of this Agreement;
 - Third Interim Fiscal Report - Within 30 days after 18 months from the Effective Date of this Agreement;
 - Fourth Interim Fiscal Report – Within 30 days after 24 months from the Effective Date of this Agreement;
 - Fifth Interim Fiscal Report – Within 30 days after 30 months from the Effective Date of the Agreement; and

- Final Fiscal Report – Within 60 days after 36 months from the Effective Date of this Agreement representing completion of the Installation Phase of the research and development project.
- 5.5 Failure to submit reports in a timely fashion pursuant to Section 5.4 shall be deemed a fundamental breach and a breach for cause pursuant to this Agreement.
- 5.6 Fiscal Reports to be submitted pursuant to Section 5.4 shall be in form and substance in accordance with the format, as detailed in Exhibit A of this Agreement. Any material misrepresentations or inaccuracies in any report shall constitute a fundamental breach of this Agreement.
- 5.7 The Authority shall be entitled to carry out inspections or audits of the project efforts at Zinc8’s facilities from time to time and Zinc8 shall give the Authority’s representatives full access to all relevant evidence and paperwork and further allow them access to their premises for the purposes of carrying out such inspections or audits. Failure to provide access and cooperate with the Authority shall constitute a fundamental breach of this Agreement.
- 5.8 Zinc8 shall prepare and submit a financial analysis of the project to the Authority, in writing and within 30 days from the execution of the Hosting and Demonstration Agreement. The financial analysis shall evaluate the potential value of the energy storage system at the Demonstration Site and consider, as a minimum, anticipated capital cost, anticipated power/energy, application and anticipated system operation, anticipated system efficiency and anticipated operating cost.

Article 6 Project Financing

6.1 The Authority will contribute the following monetary contributions to Zinc8 for the research and development of the Product:

- First Contribution - \$835,000 USD, to be paid within 30 days following the Effective Date of this Agreement.
- Second Contribution - \$0 USD, to be paid after 6 months following the Effective Date of this Agreement, after receipt and approval of the first interim fiscal report for the first 6-month period, but not before actual qualified expenses and Zinc8’s project expenses have equaled or exceeded the minimum required expenditures.

Minimum Required Qualified Expenses: \$355,000 USD
 Minimum Required Zinc8’s Project Expenses: \$0

- Third Contribution - \$0 USD, to be paid after 12 months following the Effective Date of this Agreement, after receipt and approval of the second interim fiscal report for the second 6-month period, but not before actual qualified expenses and

Zinc8's project expenses have equaled or exceeded the minimum required expenditures.

Minimum Required Qualified Expenses: \$835,000 USD
Minimum Required Zinc8's Project Expenses: 80% of \$2,950,000 USD

- Fourth Contribution - \$160,000 USD, to be paid after 18 months following the Effective Date of this Agreement, after receipt and approval of the third interim fiscal report for the third 6-month period, but not before actual qualified expenses and Zinc8's project expenses have equaled or exceeded the minimum required expenditures.

Minimum Required Qualified Expenses: \$995,000 USD
Minimum Required Zinc8's Project Expenses: 80% of \$4,100,000 USD

- Fifth Contribution - \$380,000 USD, to be paid after 24 months following the Effective Date of this Agreement, after receipt and approval of the fourth interim fiscal report for the fourth 6-month period, but not before actual qualified expenses and Zinc8's project expenses have been equaled or exceeded the minimum required expenditures, whichever is later.

Minimum Required Qualified Expenses: \$1,375,000 USD
Minimum Required Zinc8's Project Expenses: 80% of \$5,400,000 USD

- Sixth Contribution - \$20,000 USD, to be paid after 30 months following the Effective Date of this Agreement, after receipt and approval of the fifth interim fiscal report for the fifth 6-month period, or after actual qualified expenses and Zinc8's project expenditures have been equaled or exceeded the required expenditure, whichever is later.

Minimum Required Qualified Expenses: \$1,395,000 USD
Minimum Required Zinc8's Project Expenses: 80% of \$6,450,000 USD

- Final Contribution - After receipt and approval of the final fiscal report, a final contribution of \$155,000 will be paid for actual qualified expenses and Zinc8's project expenditures have equaled or exceeded the required expenditures.

Minimum Required Qualified Expenses: \$1,550,000 USD
Minimum Required Zinc8's Project Expenses: 80% of \$6,450,000 USD

6.2 As referred to in Section 6.1, qualified demonstration expenditures shall refer those expenses incurred by Zinc8 to develop the Product at commercial scale and demonstrate and prove the technology at commercial scale, specifically "Additional Headcount" and "System A Cost" as set forth in the project budget as attached hereto as Attachment B. Zinc's project expenditures shall refer to those expenses incurred by Zinc8's efforts to demonstrate and prove manufacture and construction of the technology at commercial

scale, specifically “Factory”, “System Capital” and “Cathode Manufacturing” as set forth in the project budget as attached hereto as Attachment B.

- 6.3 The Authority will contribute up to \$1,000,000 USD for 1) the cost of engineering services required to integrate the Product and required ancillary equipment, as provided by Zinc8, with existing systems at the Demonstration Site, 2) the cost of materials, required for the integration of the Product and required ancillary equipment with existing systems at the Demonstration Site, and 3) the cost of construction services required for installation of the Product and ancillary equipment at the Demonstration Site, as set forth in Article 4. Any costs in excess of \$1,000,000 USD shall be the responsibility of Zinc8 and will result in reduced contributions as set forth in Section 6.1.
- 6.4 The Authority’s contributions under Article 6 represents the Authority’s total monetary contributions for its responsibilities as set forth in Article 4.
- 6.5 The Authority shall not be obligated to make any other monetary contributions to the joint development of the Product in addition to the amounts set forth in Article 6.
- 6.6 The Authority shall not be obligated to pay for any costs related to marketing, sales or further commercialization of the Product.

Article 7 Location of Product Development and Product Demonstration

- 7.1 Most of the product development will be performed at Zinc8’s facilities located in Vancouver, BC Canada. Prior to performing any work hereunder at the Demonstration Site or any Authority facility, Zinc8 will provide the Authority and the Owner or designated contact at the Demonstration Site with at least 10 days’ prior written notice.
- 7.2 Written notice shall include a written description of the work that will be performed, the locations that will require access to, an approximation of time required to complete the work and a list of all Zinc8 personnel that will be present.
- 7.3 The Authority or the Owner or designated contact at the Demonstration Site may refuse access for any reason arising out of security concerns, operational needs or regulatory issues, which may arise.

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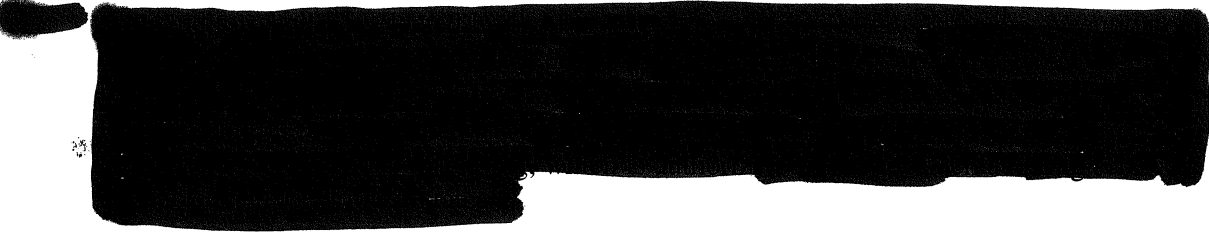
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[REDACTED]



Article 9 Confidentiality

- 9.1 As used in this Agreement, “Confidential Information” shall mean (i) any and all confidential and proprietary information (whether written, digital or in any other form) disclosed in connection with this Agreement, or (ii) obtained as a result of visual access to such information during site visits to either Party’s premises.
- 9.2 The Parties may only use the Confidential Information for the purpose of furthering the objectives of this Agreement and undertaking their respective obligations under this Agreement.
- 9.3 In order to preserve the confidentiality of the Confidential Information, the Parties shall:
- 9.3.1 protect and preserve the confidential and proprietary nature of all Confidential Information and use the same care and discretion to avoid disclosure of Confidential Information as the Party uses with respect to its own confidential information;
 - 9.3.2 hold the Confidential Information in the strictest confidence and not disclose any Confidential Information to any persons other than the Party’s employees or representatives of the Party who need to know the Confidential Information for the purposes described in the Agreement;
 - 9.3.3 not use or make any records or copies of, or permit anyone else to use or make any copies of, the Confidential Information, except as may be required for the purposes of the Agreement;
 - 9.3.4 notify the disclosing Party immediately of any loss of or misplacement of Confidential Information, in whatever form;
 - 9.3.5 comply with reasonable security procedures as may be requested by the disclosing Party from time to time for protection of the Confidential Information, including without limitation, procedures concerning the transportation, storage and use of Confidential Information and/or data processing media containing any Confidential Information.
- 9.4 In the event a receiving Party is required by law, subpoena, court order or other similar process to disclose Confidential Information of the disclosing Party, the receiving Party shall (unless prohibited from doing so by law or by court order) provide the other

- disclosing Party with immediate written notice and documentation thereof, so that the disclosing Party may seek a protective order or other appropriate remedy.
- 9.5 In no event, however, shall the Parties disclose Confidential Information at any time which is deemed confidential by operation of law, rule, regulation or other governmental order.
- 9.6 For the avoidance of doubt, Confidential Information shall remain at all times the exclusive property its respective owning Party.
- 9.7 Neither Party shall not make any public announcements relating to this Agreement without the prior written approval of the other Party, except for (i) an announcement intended solely for internal distribution within the announcing Party's legal entity, or (ii) any disclosure required by law, regulation, or government agency request.
- 9.8 The obligations of the Parties under this Section shall remain in effect as long as the Parties are in possession of Confidential Information and this Article shall survive termination or expiration of this Agreement under such condition.

Article 10 Intellectual Property Rights

- 10.1 Neither Party shall acquire, directly or by implication, any ownership of any IPR of the other Party owned, controlled, acquired, developed, invented, generated, authored, conceived or reduced to practice prior to the date of this Agreement, or acquired in parallel to it and independent of this Agreement or any contracts entered into under this Agreement ("Background IPR").
- 10.2 Each Party shall retain title to IPR if developed, authored, conceived or reduced to practice independently and solely by that Party during the performance of this Agreement without the other Party's Background IPR ("Resulting IPR"). Notwithstanding any of the foregoing, it is agreed by the Parties that Zinc8 shall be the sole owner of all IPR related to the Product, which is jointly developed, invented or otherwise generated during the performance of this Agreement.
- 10.3 The Authority hereby grants to Zinc8 a worldwide, non-exclusive, irrevocable, perpetual, transferable, sublicensable license in the Authority's Background IPR and Resulting IPR for the purpose of selling, marketing, distributing, promoting, using, developing, constructing, performing, manufacturing, maintaining, altering or improving the Product, in consideration for the Royalty payments set forth in Article 8.
- 10.4 Each Party represents and warrants to the other Party that it owns or has obtained the right to use all of the intellectual property it intends to incorporate into the Product, free and clear of all liens, claims and restrictions, requirement for implementation into the Product. Each Party shall defend, indemnify and hold harmless the other Party from and against any and all third party claims and liabilities (including without limitation, reasonable attorneys' fees and costs), regardless of the form of action, arising out of or in

connection with a claim that the intellectual property utilized in the performance of this Agreement infringes, violates or misappropriates a third party patent, copyright or other proprietary right.

Article 11 Relationship Between the Parties

- 11.1 Zinc8 and the Authority shall at all times remain separate and independent entities and shall not be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership or formal business entity of any kind between the Parties and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Except as provided in this Agreement regarding the payment of royalties to the Authority by Zinc8, nothing contained in this Agreement shall be construed as providing for the sharing of profits or losses arising out of the efforts of the Parties hereunder with the exception of Royalties due to the Authority as set forth in Article 8 herein.
- 11.2 Each Party agrees that it does not have, nor shall it hold itself out as having, any right, power, or authority to create any contract obligation, express or implied, on behalf of, in the name of, or binding upon the other Party and agrees not to undertake any action which would tend to mislead anyone in this regard.
- 11.3 All employees of each Party to this Agreement shall remain the employees of such Party for all purposes, and each Party shall be responsible for the payment of the wages, salaries and benefits of its employees and all payroll taxes, contributions, travel expenses and other payments required to be made with respect thereto.
- 11.4 Each Party shall indemnify, defend and hold the other Party (and its directors, officers, and employees) harmless from and against any and all loss, cost and damages in connection with suits or demands incurred or suffered by the other Party (and its directors, officers, and employees) as a consequence of: (i) any breach of any representation or warranty made by the Party in this Agreement; (ii) any failure to perform duly and reasonably any covenant, agreement or undertaking on the part of the Party contained in this Agreement; or (iii) such Party's negligent acts or omissions in the course of performing its obligations under this Agreement.

Article 12 Assignment

- 12.1 Neither Party shall sell, assign, or in any manner transfer its rights, duties or obligations under this Agreement without obtaining the prior written consent of the other Party, which shall not be unreasonably withheld. Any assignment or attempted assignment, transfer, subcontracting or other delegation without such consent will be void.

Article 13 Term and Termination

- 13.1 The term of this Agreement (the "Term") shall begin on the Effective Date and shall be valid for an initial period of 10 years as of the Effective Date, with automatic renewals of one (1) year periods each unless either Party provides written notification to the other

Party at least 60 days prior to the end of such renewal period stating that it does not desire to extend the Agreement for an additional renewal period. The Term may also be mutually extended in writing, subject to terms contained herein.

13.2 The Authority, within its sole discretion and for any reason, may terminate this Agreement at any time upon 30 days' notice to Zinc8. Upon such termination, the Parties will conduct a final payment schedule, which will include any and all final payments due to each side.

13.3 This Agreement may be terminated during the Term:

13.3.1 upon notice by a Party, in the event that the other Party ceases to conduct its operations in the normal course of business, or if proceedings under any bankruptcy or insolvency law is brought by or against that Party, or if a receiver for said Party is appointed or applied for, or shall commence liquidation for reason of insolvency or shall make assignment for the benefit of creditors and such proceedings are not ceased within 60 days of their commencement; or

13.3.2 upon notice by the non-breaching Party, in the event that one Party hereto shall be in breach of any material obligation hereunder and shall, after having received written notice from the other Party, fail within 30 days of receipt of such notice to remedy such breach.

13.4 For the avoidance of doubt, the license granted by the Authority to Zinc8 under Section 10.3 and Zinc8's Royalty obligations under Article 8 shall survive termination of this Agreement for any reason.

Article 14 Publicity

14.1 No marketing, publicity, promotion or advertising regarding this Agreement or the Product will be issued by Zinc8 without the Authority's prior written approval, which approval will not be unreasonably withheld. Any responses to news media inquiries developed by Zinc8, related to the Agreement or the Product, must be coordinated with the Authority for review and approval. Letters, speeches, news and/or press releases, articles for publication, etc. related to the Agreement or Product, must be coordinated with the Authority for review and approval prior to release. Any and all communications, whether verbal or written, must be submitted to the Authority's Corporate Communication Business Unit for prior review and approval.

Article 15 Work Performed at the Authority's Facilities

15.1 All individuals assigned to any of the Authority's facilities by Zinc8, its employees, contractors, agents or affiliates are subject to approval by the Authority and will be subject to the Authority's policies regarding access to its facilities, including security clearances. The Authority may refuse access to its facilities if Zinc8's employees,

contractors, agents or affiliates' presence may create a security or safety concern and Zinc* should replace those with reasonable expediency.

15.2 For any work performed by Zinc8 at the Authority's facilities, Zinc8 shall:

15.2.1 keep the Authority informed of controversial or unusual matters which have the potential of causing a disruption of the timely technical and economic prosecution of the work;

15.2.2 perform all work in accordance with good safety rules and regulations including compliance with OSHA standards;

15.2.3 ensure that its employees, contractors, agents or affiliates do not engage in any activities which would hinder progress of the work or of the work of Authority personnel or its contractors; and

15.2.4 cooperate fully with and follow all directions by the Authority.

Article 16 Notices

16.1 Any unclassified notice, consent, demand or request required or permitted by this Agreement, shall be in writing, and shall be considered to be effective upon receipt thereof if sent by registered or certified mail (return receipt requested), or via reputable international overnight service such as Federal Express or DHL, or via facsimile (with confirmation of transmission mailed to the receiving Party), addressed as follows:

If to the Authority: Power Authority of the State of New York
123 Main Street
White Plains, New York 10601
Attn: Alan Ettlinger
Tel: (914) 287-3068
Email: alan.ettlinger@the Authority.gov

If to Zinc8: Zinc8 Energy Solutions
#1 – 8765 Ash Street
Vancouver, BC V6P 6T3
Attn: Ron MacDonald
Tel: (604) 366-5918
Email: ronmacdonald@rocketmail.com

Article 17 Dispute Resolution and Governing Law

17.1 Any dispute as to a matter arising out of or relating to this Agreement which cannot be resolved by the Parties shall initially be addressed as described herein. The aggrieved Party shall notify the other Party in writing within 30 calendar days of any event or omission giving rise to the dispute. Thereafter, the President and CEO of Zinc8 Energy

Solutions and the Authority's Sr. Vice-President of Technology & Innovation, will attempt to resolve the dispute within 30 calendar days of the notification via an informal mediation between the Parties, unless the applicable statute of limitations is set to expire, in which case either Party shall have the right to commence litigation immediately. If the Parties are unable to resolve the dispute, then either Party shall have the right to commence litigation as described further in this clause. Unless the aggrieved Party shall notify the other Party in writing within 30 days after the event or omission giving rise to the dispute or within 30 days after discovery or actual knowledge of the event or omission giving rise to the dispute, whichever comes later, all claims arising out of such dispute shall be deemed waived and no right to recover on any such claim shall exist.

- 17.2 This Agreement, and any disputes hereunder, shall be governed by the laws of the State of New York, United States of America, but without regard to its conflict of laws rules. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 17.3 The Parties hereby agree that any and all actions and proceedings arising out of this Agreement shall be resolved by a court of competent jurisdiction located in Albany County, State of New York or the United States District Court for the Southern District of New York.
- 17.4 The Parties agree that the matters that are the subject of this Agreement are commercial transactions and irrevocably agree not to claim and to waive any sovereign, state or other immunity from service, suit, execution, pre-judgment or post-judgment attachment, or other legal process in any jurisdiction in connection with the Agreement or any arbitration or the enforcement of any arbitral award hereunder.
- 17.5 Each Party shall bear its own costs and expenses, including without limitation attorneys' fees and other costs of legal representation.

Article 18 Titles of Articles

- 18.1 Titles of sections in this Agreement and any use of bold or italic fonts herein are for reference only and shall not be construed in determining the intent or construction of this Agreement.

Article 19 Limitation of Liability

- 19.1 In no event shall either Party be liable to the other for indirect, incidental, consequential, special, punitive or exemplary damages, even if that Party has been advised of the possibility of such damages arising from any provision of this Agreement, such as, but not limited to, loss of use, income or profits, or anticipated profits or lost business or the costs of procurement of substitute goods or services and both parties hereby waive any claim with regard to such indirect, incidental, consequential, special, punitive and exemplary damages provided, however, that this limitation shall not apply to claims arising out of the other party's gross negligence or willful misconduct.

Article 20 Governmental Regulations

20.1 The Parties agree that any transfer of technical data or performance under this Agreement may be contingent upon the ability of the Parties to obtain requisite permits and approvals, as applicable, from the agencies of the governments of the State of New York and the United States. The Parties further agree that in pursuing this Agreement, and in performing contract and subcontracts, they will fully comply with all applicable laws, regulations and policies.

Article 21 Anticorruption Provision

21.1 Each Party represents and warrants to, and covenants and agrees with each other Party that:

21.1.1 In connection with its performance of this Agreement and with the sale of any goods or services in connection with the program, the Party has not, directly or indirectly, offered, paid, promised to pay or authorized the payment of any money or gift, or offered, promised to give, or authorized the giving of anything of value to, and will not, directly or indirectly, offer, pay, promise to pay or authorize the payment of any money or gift, or offer, promise to give, or authorize the giving of anything of value to:

21.1.1.1 any Customer official, any political party or official thereof, or any candidate for political office (each such official, political party or official thereof, or candidate or person being herein called a "Restricted Person");

21.1.1.2 any person while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any such Restricted Person;

21.1.1.3 Any officer, director, shareholder, employee or agent of any Customer, for the purpose of:

21.1.1.3.1 influencing any act or decision of such Restricted Person or officer, director, shareholder, employee or agent of any Customer in his or its official capacity, or inducing such Restricted Person, or officer, director, shareholder, employee or agency of any Customer to do or omit to do any act in violation of the lawful duty of such Restricted Person or officer, director, shareholder, employee or agency of any Customer;

21.1.1.3.2 inducing such Restricted Person or officer, director, shareholder, employee or agent of any Customer to use his or its influence with any Customer or instrumentality thereof or any Customer to affect or influence any act or decision of such Customer or instrumentality or Customer; in order to assist either Party hereto in obtaining or retaining business for or with, or directing business to, any person.

- 21.2 None of such Party's officers, directors, shareholders, employees and agents is a Restricted Person. Except for the Israeli Penal Law 1977, which shall apply only apply to BE, neither Party nor any of its shareholders, directors, officers, employees or agents has performed or will perform any act which would constitute a violation of the Foreign Corrupt Practices Act, or any applicable anticorruption laws (the "Relevant Anticorruption Laws") or which would cause either party hereto to be in violation of the Relevant Anticorruption Laws.
- 21.3 The Parties acknowledges that no Restricted Person has a right to share directly or indirectly in the proceeds of any sales contract obtained pursuant to this Agreement. All payments under any related subcontract will be paid solely by check or bank transfer to the applicable Party, no payment will be made hereunder in cash or bearer instrument; no payment will be made hereunder to any person other than the Party; and no payment will be made to the applicable Party under this Agreement other than payment under the contracts or subcontracts in accordance with the terms hereof. The payments made hereunder have not been used, and will not be used, for any activity or purpose that would violate the Relevant Anticorruption Laws or that might expose either Party to liability under the Relevant Anticorruption Laws.

Article 22 Order of Precedence

- 22.1 In the event of a conflict between this Agreement and any of the Attachments, the terms of this Agreement shall prevail.

Article 23 Miscellaneous

- 23.1 All communication between the Parties shall be in the English language.
- 23.2 If any part, term, or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law to which a Customer is subject, the validity of the remaining provisions of this Agreement shall not be affected thereby. In the event that any part, term or provision of this Agreement fails for any of the foregoing reasons, the Parties agree, to the extent possible, to negotiate a replacement provision to accomplish the originally intended effect that does not violate such law or regulation.
- 23.3 Neither Party shall be in default for any failure of nor delay in performance hereunder when such failure or delay is the result of Force Majeure, which is hereby defined as any event which is beyond its control, not caused by its fault or negligence and which such Party could not take any reasonable action to avoid. "Force Majeure" events include, but are not restricted to: acts of God, epidemics, fire flood, extraordinary natural events, quarantines, acts of government in its sovereign capacity, transportation breakdowns, freight embargoes or blockades, riots, mutinies, strikes, lockouts, or other labor disturbances, civil commotion, war or war-like operations, terrorism, sabotage, insurrections and hostilities. The Party affected by such Force Majeure event shall duly verify its nature, the beginning and duration of such event in writing to the other Party.

- Said Party's performance shall be excused during the Force Majeure event, plus a reasonable recovery period subsequent to the cessation of such event.
- 23.4 Any failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of such provision or prejudice the right of that Party to enforce said provision at any subsequent time.
- 23.5 This Agreement, including the Preamble and the Attachments hereto, constitute the entire understanding and agreement of and between the Parties with respect to the subject matter hereof, and supersedes all prior representations and agreements, verbal or written with respect to the subject matter hereof. This Agreement shall not be varied, except by an instrument in writing, of subsequent data, duly executed by an authorized representative of each Party.
- 23.6 Update to this Agreement shall be in the form of an amendment to this Agreement. The update shall be signed between the Parties and will supersede parts or all clauses in this Agreement.
- 23.7 No name, logo, and/or trademark of a Party may be used by the other Party for any purpose without the prior written approval of such Party.
- 23.8 Neither Party will actively recruit, solicit or otherwise attempt to hire the employees of the other who are assigned to work on efforts under this Agreement and have such employees support its own efforts under this Agreement without the prior written permission of the other Party. This restriction shall not apply to any individual employed by either Party who voluntarily seeks employment with the other Party on their own initiative or in response to employment advertisements in the newspapers, trade publications or other public commercial media, or as an unsolicited "walk-in" candidate.
- 23.9 When executed, the terms of a subcontract entered into pursuant to this Agreement shall supersede the provisions of this Agreement with regard to that subcontract.
- 23.10 The Sections of this Agreement covering CONFIDENTIALITY, INTELLECTUAL PROPERTY RIGHTS, TERM AND TERMINATION, DISPUTE RESOLUTION AND GOVERNING LAW, SALES AND PRODUCT LICENSING and LIMITATION OF LIABILITY shall remain in full force and effect after termination or expiration of this Agreement.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

ZINC8 ENERGY SOLUTIONS

POWER AUTHORITY OF THE STATE
OF NEW YORK

Signature: 
Ron Macdonald (Dec 23, 2019)
Email: ronmacdonald@rocketmail.com
Title: CEO
Company: Zinc8 Energy Solutions Inc

Signature: 
John Canale (Dec 27, 2019)
Email: john.canale@nypa.gov
Title: VP Strategic Supply Management
Company: New York Power Authority