

## CONTRACT FACE PAGE

<b>AGENCY</b> (Name and Address):
NYS Department of Economic Development, Division of Science, Technology and Innovation Albany, New York 12245

<b>Contract Number:</b> «ContractNo»
<b>ORIG. AGENCY:</b> <b>22000</b>

<b>TYPE OF PROGRAM:</b>
NYS Regional Innovation Specialist Program

<b>CONTRACTOR</b> (Name and Payment Address):
«Contractor» «Address1» «Address2» «CityState_Zip»

<b>STATUS:</b>
Contractor <b>IS NOT</b> a sectarian entity. Contractor <b>IS</b> a not-for-profit organization.

<b>CHARITIES REGISTRATION #:</b> «Charity»
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<b>MULTI-YEAR TERM</b> (IF APPLICABLE):
FROM:            TO:

<b>FEDERAL TAX I.D. #:</b> «TaxID»
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<b>INITIAL CONTRACT PERIOD:</b>
FROM: 1/1/13        TO: 6/30/16

<b>MUNICIPALITY #</b> (IF APPLICABLE):
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<b>FUNDING AMOUNT FOR INITIAL PERIOD:</b> AMOUNT: \$«Amount»
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NYS Senate District #: «Senate»
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NYS Assembly District #: «Assem»
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APPENDICES ATTACHED TO AND PART OF THIS AGREEMENT:	
<input checked="" type="checkbox"/> <u>APPENDIX A</u> Standard Clauses for All State Contracts	<input type="checkbox"/> <u>APPENDIX G</u> Interest Payment Waiver
<input checked="" type="checkbox"/> <u>APPENDIX A1</u> DED Specific Clauses	<input checked="" type="checkbox"/> <u>APPENDIX H</u> Program-Specific Clauses
<input checked="" type="checkbox"/> <u>APPENDIX B</u> Budget	<input checked="" type="checkbox"/> <u>APPENDIX I</u> Memorandum of Understanding
<input checked="" type="checkbox"/> <u>APPENDIX C</u> Payment and Reporting Schedule	<input type="checkbox"/> <u>APPENDIX X</u> Modification Agreement
<input checked="" type="checkbox"/> <u>APPENDIX D</u> Work Plan	<input type="checkbox"/> OTHER (Identify) _____
<input checked="" type="checkbox"/> <u>APPENDIX E</u> Travel Guidelines	<input type="checkbox"/> OTHER (Identify) _____
<input checked="" type="checkbox"/> <u>APPENDIX F</u> Workforce Utilization	<input type="checkbox"/> OTHER (Identify) _____

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## NYS Department of Economic Development AGREEMENT

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This AGREEMENT is hereby made between the New York State Department of Economic Development (DED) and its successors, having its principal office and place of business at Albany, New York 12245, and «Contractor» having its principal office and place of business at «Address1 », «Address2» «CityState\_Zip» ("Contractor").

This Agreement is composed of the Appendices identified on the Contract Face Page which DED and the Contractor are bound to follow. This Agreement cannot be modified, amended, or otherwise changed except by a signed written agreement by both parties.

In consideration of the promises, covenants and responsibilities contained in this Agreement, the New York State Department of Economic Development (DED) and the CONTRACTOR agree as follows:

I. Conditions

- A. This AGREEMENT may consist of successive periods (PERIOD), as specified within Appendix X which shall be incorporated into this AGREEMENT.
- B. Funding for the AGREEMENT shall not exceed the funding amount specified on the face page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate Appendix for that PERIOD.
- C. For each succeeding PERIOD of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification. Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT. To modify the AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, or change in the term, may be subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with guidelines as stated in Appendix A1.
- D. CONTRACTOR shall meet the program objectives in compliance with laws, regulations and the Request for Proposals (RFP or proposal) where appropriate and as summarized in the Appendices described in detail in the submitted proposal. Performance shall be in strict compliance with all federal, state and local laws, rules and regulations, as well as administrative and fiscal guidelines, and, where applicable, operating certificates for facilities or licenses for an activity or program.
- E. If CONTRACTOR enters into subcontracts it shall take full responsibility for the acts and omissions of its subcontractors. Contractor should have its legal counsel review

a subcontract agreement before it is signed. Contractor's subcontract agreements should include specific remedies for non-performance by its subcontractor.

- F. Nothing contained in this Agreement shall constitute or be construed to create any type of relationship with DED. Contractor is an independent contractor. The Contractor and any subcontractors shall perform in a manner consistent with such status, and that neither will hold themselves out as, nor claim to be, an officer or employee of DED by reason of this Agreement. It further agrees that it will not make any claim, demand or application to DED for any right or privilege applicable to an officer or employee of DED, including but not limited to health insurance, workers' compensation, unemployment insurance benefits, social security coverage, or retirement membership or credit.
- G. Nothing contained in this Agreement shall create or give to third parties any claim or right of action against the State of New York, DED, Contractor, or any of their officials or employees beyond that as may legally exist without regard to this Agreement.
- H. CONTRACTOR or its subcontractors shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services. CONTRACTOR shall indemnify and hold harmless the State and DED and its officers and employees from all liability.
- I. In the event Contractor subcontracts with other entities in order to perform this Agreement, Contractor shall notify such entities that they are subject to the applicable terms and conditions of this Agreement as they relate to the subcontractor's scope of work, including, without limitation, DED's right to conduct site visits and inspection of records. Contractor shall provide any such entities with a copy of this Agreement. Any subcontract entered into between Contractor and any entity shall incorporate by reference this Agreement. Any subcontractors must receive a copy of this agreement in its entirety.
- J. The Contractor shall make available upon DED's request any and all agreements between Contractor and any company identified in the Work Plan and submitted Proposal set forth in Appendix D of this Agreement that relate to the application of the technology that is the focus of the Project.
- K. Appendix A Standard Clauses shall take precedence over all other parts of the AGREEMENT.

II. Payment and Reporting

CONTRACTOR is eligible for payment if all the requirements in the appropriate appendices are met. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

If Contractor fails to comply with reporting requirements, or with a request for information pertaining to meeting contractual requirements, Contractor's eligibility for payment on any contracts with DED as well as eligibility for future DED competitions may be negatively impacted.

The CONTRACTOR shall meet the audit requirements specified by DED.

III. Safeguards for Services and Confidentiality

Funds are for secular, non-political purposes and shall not be used to influence any proposed law, rule, regulation or Executive Order.

Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendices A and A1.

IV. Compliance with Certain Laws

- A. Contractor shall comply with all of the requirements set forth in Appendix A.
- B. It is the intent and understanding of the Contractor and DED 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 DED or the Contractor, 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.
- C. The references to particular laws of the State of New York in this Section, in Appendix A and elsewhere are not intended to be exclusive and nothing contained in such Section or Appendix shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

V. Clawback Clause

DED shall have the right to require Contractor to return money awarded to it for Contractor's failure to successfully meet the components in Appendix D Work Plan and for failing to submit in a timely manner all required reports.

**CONTRACT SIGNATURE AND NOTARY PAGE**

**Contract No. «ContractNo»**

DED Certification

In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

<b>CONTRACTOR</b>	
«Contractor»	
By: _____ (Signature)	
_____ (Printed Name)	
Title: _____	
Date: _____	

**NYS Department of Economic  
Development**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_ **Ed Hamilton** \_\_\_\_\_  
(Printed name)

Title: Sr. Deputy Commissioner for Finance & Administration

Date: \_\_\_\_\_

<b>NOTARY</b>	
STATE OF NEW YORK )	
COUNTY OF _____ ) ss.:	
On the ____ day of _____, 20____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that (s)he resides at _____; that (s)he is the _____ of _____, the corporation described herein which executed the foregoing instrument; and that (s)he signed (her)his name thereto by order of the board of directors of said corporation.	
	NOTARY PUBLIC

ATTORNEY GENERAL'S SIGNATURE:

STATE COMPTROLLER'S SIGNATURE:

\_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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## APPENDIX A

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### STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a)

discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the

Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride

Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health

services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

December 2011

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## APPENDIX A-1

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### DED-SPECIFIC CLAUSES

1. GENERAL. For the purposes of this Agreement, DED and its successors shall mean the New York State Foundation for Science, Technology and Innovation or the New York State Department of Economic Development unless the context specifically indicates otherwise. "Project" or "Program" refers to the subject matter of this Agreement.

Contractor shall focus on contributing to the significant growth of the New York State economy.

In some cases this may include working with and helping to create or substantially expand New York companies. A New York State company is defined as a for-profit enterprise with a fixed place of business in New York State employing regular full-time employees that either: a) has its worldwide corporate headquarters in New York State; or b) has a business unit with which Contractor is collaborating at a fixed place of business in New York State where it has its unit headquarters or research, development or manufacturing facilities.

Contractor shall use funds that primarily support the work or services of New York compan(ies). Any exception to this prohibition requires the written approval of DED. Approval shall be based on an expectation that it primarily benefits New York's economy.

2. Notwithstanding any other terms of this Agreement, the parties to this agreement agree to be bound by the following clauses and appendices. In the case of appendices, the order of priority in the event of dispute, question, or inconsistency shall be: (1) Appendix A – Based on Standard Clauses for New York State Contracts; (2) Appendix A1 – DED-Specific Clauses; (3) Appendix H – Program Specific Clauses; (4) Appendix D – Work Plan; (5) Appendix B -- Budget; (6) Appendix C – Payment and Reporting Schedule; (7) Appendix I – Memorandum of Understanding; (8) Appendix X – Modification Agreement; (9) Appendix F – Workforce Utilization; (10) Appendix E – Travel Guidelines; and (11) where appropriate, Appendix J – Insurance.
3. REPRESENTATIONS OF THE CONTRACTOR.
  - a. The Contractor is duly authorized to accept any payments made pursuant to this Agreement and has obtained or shall timely obtain all necessary approvals from all governmental agencies requisite to the completion of the Project.
  - b. As of the date of this Agreement, there are no actions, suits, liens or other legal, regulatory or administrative proceedings pending, or, to the Contractor's knowledge, threatened against it, or any of its representatives or properties which has not been disclosed to DED which, if adversely determined, would have an adverse impact on the financial condition and/or operation of the Contractor, or would adversely affect its ability to enter into and/or perform any of its obligations under this Agreement.
4. COMPLIANCE WITH LAWS. Prior to the commencement of any work under this Agreement, the Contractor is required to meet all legal requirements necessary in the performance of the Agreement. This includes, but is not limited to, compliance with all applicable federal, state and local laws and

regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations.

5. GOVERNMENT INVESTIGATION. In event of a State, Federal or regulatory body investigation of Contractor DED reserves the right, in its sole discretion, to withhold payments otherwise due.
6. TERM. The term of this Agreement is set forth on the Contract Face Page.
7. ELIGIBLE EXPENDITURES. DED funding may only be used to pay for eligible costs. Eligible costs or expenditures are those actual, reasonable and necessary incurred by the Contractor in the provision of contract services in accordance with the amount in Appendices B, C and if applicable H and as may be allowed under State, or if applicable, federal law and the rules and regulations of the State Comptroller. Eligible expenditures do not include any type of social entertainment or items associated with it including, but not limited to, the purchase of alcoholic beverages.

Eligible costs may be reimbursed in advance including through advanced payments governed by Appendix C and funding made available under this Agreement to the Contractor for expenses incurred. Expenditures incurred prior to the commencement date shall not be charged against funds authorized in this Agreement.

8. PERSONAL PROPERTY. If equipment, supplies, real property and improvements to it, furniture or other property is purchased pursuant to Appendix B or H it is deemed to be the property of the Contractor except during the term of this Agreement (a) the rights, title or interest thereto shall not be assigned, transferred, conveyed, sublet or disposed of without the prior written consent of DED and (b) in the event the Agreement is terminated prior to the end of its term, DED reserves the right to determine whether such property should be transferred to DED. The Contractor shall maintain a separate detailed inventory of all the equipment, furnishings, and non-consumable property purchased with funds provided pursuant to this Agreement and shall provide, upon DED's request, a true copy of such inventory which is apart from, and independent of, the information required in Contractor's Report.
9. PUBLICATION AND ACKNOWLEDGEMENT.
  - a. An acknowledgement of DED support shall be conspicuously displayed in any communication to the public. Communication to the public shall include, but not be limited to, signs, banners, printed publications, press releases and events, speeches, electronic media, conferences, exhibits, and announcements and invitations. All such materials, except scientific articles and papers published in scientific journals, must contain the following disclaimer: "Any opinions, findings, conclusions or recommendations expressed are those of the author(s) and do not necessarily reflect the views of DED.
  - b. Any materials that are copyrighted shall be subject to a royalty-free, irrevocable, worldwide, non-exclusive license to DED to reproduce, perform, translate, and otherwise use and to authorize others to use such materials.
  - c. Contractor will fully cooperate with DED in providing information to disseminate through DED's website including, but not limited to biographical information.

- d. DED shall have the right to approve that portion of all press releases which relate to DED's funding and/or sponsorship at least three (3) business days before its issuance. It also shall have the right to participate in the public issuance of such press releases.
- e. Contractor shall seek DED prior approval before it commits to any type of sponsorship that relates to the Program and funding under this Agreement, including Matching Funds if required. After approval has been granted Contractor will provide planning updates on an ongoing basis.
- f. The Contractor shall provide DED fifteen (15) business days notice prior to any Project meetings and activities, including but not limited to meetings of advisory bodies, project review and selection meetings, seminars, conferences, and workshops. DED reserves the right to attend such meetings and activities to observe first-hand the operation of the Project without the imposition of any fees.

10. LICENSE FOR USE OF DED SERVICE MARKS



- A. DED is the exclusive owner of the service mark , DED® and variations thereof (collectively "the Marks"). DED grants to Contractor the non-exclusive right to use the Marks during performance of the agreement. DED reserves to itself all rights. It shall provide the logo for Contractor to use.
- B. In addition to the other terms and conditions in this Agreement, Contractor's non-exclusive right to use the Marks shall be subject to the following terms and conditions:
  - i. License rights commence following the execution of this Agreement by both parties and continue through and including the end date of this Agreement, unless the Agreement is terminated earlier, at which time Contractor's rights with respect to the Marks shall terminate immediately. In the event the parties intend to extend this Agreement or to enter into a new Agreement for similar services and the parties desire to extend this grant of license with respect to the Marks prior to the execution and approval of such amendment or agreement (the "Interim Period"), then DED may, in its sole discretion, grant written approval to Contractor to continue to use the Marks during the Interim Period.
  - ii. Contractor's license is limited to those activities identified in the Agreement.
  - iii. Contractor cannot assign its rights. It may authorize use of the Marks to any person or entity who is part of this Agreement.
  - iv. All rights that might be acquired by Contractor's use of the Marks inure to the sole benefit of DED.
  - v. Contractor cannot use or register in any country the Marks or any service marks, trademarks, trade names, or other designations resembling or confusingly similar to the Marks. Contractor agrees never to challenge or contest DED's exclusive and proprietary rights in the Marks or the validity thereof as DED's distinctive Marks for the Program or do any act or thing in derogation thereof or of the goodwill symbolized thereby.
  - vi. DED has continuing control over the manner in which the Marks are used, including, without limitation, advertising and other promotional materials. Contractor will submit representative specimens of promotional materials, or any materials bearing the Marks. At any time during the term of this Agreement and all extensions hereof, if, in the sole opinion of DED, Contractor's use of the Marks are inconsistent with the image or reputation of DED

or DED's Marks and goodwill, DED shall terminate the licensing agreement it has with Contractor. Contractor shall cease to use DED's Marks.

11. TRAVEL. Travel shall be in accordance, where applicable, with Appendices D, E and H limited to personnel who are demonstrably contributing to fulfilling the work plan.
12. ACCOUNTING PROCEDURES.
  - A. Contractor shall maintain records in accordance with Generally Accepted Accounting Principles (GAAP) to prepare the required fiscal reports and make possible the determination that State funds and Matching Funds, if applicable, were used for intended purposes.
  - B. Contract funds, including Matching Funds, shall be accounted for in a separately designated project account. Detailed records are required for all expenditures charged to the Agreement and/or reported to DED. These records should include, but not be limited to: time cards or another generally accepted auditable system to record time allocated by individuals; payroll information including salaries; actual invoices for all purchases; and all cancelled checks (if applicable) or other appropriate documentation which substantiates disbursement.
13. GENERAL FINANCIAL AUDITS. DED shall be notified every time an audit is being conducted. Contractor shall retain on file all independently audited financial statements and management letters issued in connection with its internal control structure. Any findings made in the aforementioned audit shall include, where appropriate, specific references to this Agreement. DED reserves the right to receive copies of all such statements and letters if requested.
14. INDIRECT COSTS. Indirect costs, or overhead charges, paid with DED funds shall be limited to fifteen percent (15%) of the sum total of salaries plus fringe benefits charged to DED and may be subject to change. This applies to Matching Funds except as provided for in Appendix H.
15. CONFLICT OF INTEREST. Contractor shall maintain a conflict of interest policy, regularly review it for effectiveness, and will notify DED in required reports of actual or potential conflicts and provide an action plan of how it has or will manage such conflicts.
16. KEY PERSONNEL. Contractor will notify DED within fourteen (14) business days in the event that any key personnel identified in Appendix D fail to work on the Project or fail to adhere to the scope of work. DED and Contractor will work together to identify successor key personnel. DED reserves the right, where situations merit, to approve the assignment of a successor or replacement for key personnel. DED reserves the right to terminate this Agreement in the event any key personnel fail to continue to work on the Project or adhere to the scope of work.
17. FREEDOM OF INFORMATION LAW. DED is subject to the Freedom of Information Law (FOIL), which involves the public disclosure of certain records maintained by DED. (See Public Officers Law, Sections 84 through 90.) The Contractor may request that DED except from public disclosure, pursuant to Section 87 (2)(d) of the Public Officers Law, trade secrets or information which, if disclosed, would cause substantial injury to its competitive position. The request for such an exception must be: in writing and made in a cover letter to the report or document. The request must state the reasons for the requested exception and it must clearly specify the portions of the report or document for which the exception is requested. Information provided to DED by

the Contractor that is not explicitly identified and excepted from public disclosure shall be available for public inspection under the terms of FOIL. Entire documents can not be excepted.

18. INTEREST PAYMENT WAIVER. DED will not change the start date of a contract. In addition, in the event Contractor requests that DED approve a retroactive start date for this Agreement, and DED in its sole discretion approves such request, Contractor agrees to execute an Interest Payment Waiver in the form set forth in Appendix G. If there is a retroactive date Contractor will not use such date as a basis for contract extension.
19. REQUEST FOR PROPOSALS. In the event Contractor responded to a Request for Proposals (RFP) or Investment Request Guidelines issued by DED, the response to them are incorporated by this reference in this Agreement. Contractor is required to keep a copy of one or both for six years.
20. SITE VISITS. DED, or its designees, has the right to conduct site visits of Contractor and any subcontractors throughout the Agreement to monitor progress and compliance.
21. DED ACTIVITIES. DED may request that key staff and personnel attend periodic meetings organized by DED. Costs for attending such meetings will be borne by the Contractor.
22. NOTICES. Each Notice, demand, request or other communication required or otherwise permitted shall be in writing and submitted in accordance with standard business protocol allowing for documentation of receipt.
23. INTELLECTUAL PROPERTY. Universities/Contractors will have in place an Intellectual Property policy that is in compliance with the Bayh-Dole Act. Contractor's policy cannot adversely impact the State's economic development or be contrary to the intent of this contract.

In situations involving intellectual property the decisions about its disposition arising from the Project shall, to the maximum extent possible, promote the exploitation of such intellectual property in ways that will contribute to the creation or growth of New York companies and economic development in the State and be in keeping with any Intellectual Property Policy developed by DED.

24. LOCAL HIRING. While performing the services required pursuant to this Agreement, the Contractor shall make every effort practicable to contract with firms, manufacturers and businesses whose principal place of business is located in the State of New York.
25. NONCOMPLIANCE, TERMINATION AND OTHER REMEDIES.
  - A. Agreement may be terminated at any time upon mutual written consent of the Parties.
  - B. DED reserves the right to terminate this Agreement upon thirty (30) business days prior written notice if it is in the best interest of the People of New York.
  - C. Written notice of termination shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.

- D. Upon receipt of termination notice, Contractor will cancel as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by DED.
- E. In no event shall the State or DED be liable for expenses and obligations arising from the program(s) in this Agreement that accrue after the termination date.
- F. Upon the occurrence of any of the following events (each of which is a "Default"), then DED shall have the right to terminate this Agreement as follows:
- i. Contractor fails to comply with the terms and conditions of this Agreement, including all of its appendices, and/or with any laws, rules, regulations, policies or procedures affecting this Agreement;
  - ii. Upon ten (10) business days prior written notice, if the Contractor has received three (3) or more Notices of Default pursuant to this Agreement;
  - iii. Contractor ceases to do business, files a petition for dissolution, files a petition in bankruptcy, is adjudicated bankrupt, makes an assignment for the benefit of creditors, or has a receiver appointed for it which remains unstayed for a period of sixty (60) business days;
  - iv. Contractor fails to take good faith steps to achieve the agreed upon performance targets or fails to diligently proceed with the Project to DED's satisfaction;
  - v. Key personnel, whether employed by Contractor or others, are no longer working on the Project funded by this Agreement or fail to adhere to the scope of work;
  - vi. Contractor unilaterally changes the scope of the Project funded by this Agreement or the subcontractors identified in this Agreement;
  - vii. Contractor fails to comply with any request for information reasonably requested by DED in connection with this Agreement; and
  - viii. A legal or government investigation concludes in an adverse finding against Contractor.
- G. DED reserves the right to withhold funding for any Default until such Default is corrected to DED's satisfaction.
- H. In the event of a Default, except for the Defaults described in subparagraph F(ii) of this Paragraph 25, Contractor shall have thirty (30) business days to remedy such Default following the date of the Contractor's receipt of DED's notice of Default which shall state the grounds for the Default, provided, however, that if such Default cannot reasonably be remedied within thirty (30) business days but is subject to being remedied, then the Contractor shall be deemed to have cured the Default if it undertakes to remedy the same within the thirty (30) business day period and then diligently pursues such remedy to completion.

I. In the event this Agreement is terminated prior to the end of its term DED reserves the right to demand that all monies paid to the Contractor by the State, or a portion thereof, be repaid to DED upon demand to the extent DED determines: (1) such monies were not expended in accordance with the terms of this agreement or (2) Contractor's failure to complete the Project, or remedy a Default. If such monies are not repaid, DED or the Office of the State Comptroller may cause to be withheld from any State assistance to which contractor would otherwise be entitled an amount equal to the monies demanded.

J. If the un-remedied Default occurred after the expiration or termination of this Agreement and if it pertains to a provision or provisions that survive expiration or termination of this Agreement, DED reserves the right to demand that monies paid to Contractor by the State, or a portion thereof, be repaid upon demand to the extent the DED reasonably determines that:

(1) such monies were not expended in accordance with the terms of this Agreement or (2) Contractor failed to satisfy and complete the Project, for whatever reason including Contractor's failure to remedy the Default.

DED may withhold monies from any assistance that Contractor may otherwise be entitled in an amount equal to the monies necessary until the Contractor remits monies owed to DED to remedy the default.

K. If applicable when there is a Company Partner and the company is sold DED must be notified immediately.

26. WAIVER. A waiver of enforcement of any provision of this Agreement by DED or Contractor shall not constitute a waiver of any other provision of this Agreement, nor shall it preclude DED or Contractor from subsequently enforcing such provision. A specific remedy identified in a provision of this Agreement does not preclude the imposition of any other allowable remedy in law or equity.

27. SEVERABILITY. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

28. INTEGRATION. The parties to this Agreement intend the foregoing writing, including its Appendices and any documents incorporated by reference, to be the final, complete and exclusive expression of all the terms of their agreement.

29. FORCE MAJEURE. Should either Party be delayed or prevented from performing an act(s) required by this Agreement because of an act of God, strike, lockout or labor trouble, fire, flood, act of war, riot or other similar event, without fault and beyond the party's reasonable control, the performance of such act(s) shall be excused for the period of the delay and the period for performance of such act(s) shall be extended for a period of time equivalent to the period of such delay.

30. LIMITATIONS. The Contractor acknowledges that DED makes no warranty, express or implied, as to the Project or Program or their respective conditions, or that will be suitable for the Contractor's purposes or needs, or that the proceeds of this Agreement will be sufficient to pay the

entire costs of the Project. Where applicable submittal or review of any reports, plans, drawings and specifications or other documents, to DED will not create any liability on behalf of DED with respect to such material, and will not relieve the Contractor of its responsibility to plan, design, and build the Project properly, and to operate and maintain the Project effectively, as required by laws, regulations, permits and good management practices. DED and its representatives are not responsible for increased costs resulting from, where applicable, any defects in the plans, design drawings and specifications or other Project documents.

31. SUBCONTRACTORS AND OTHER AGREEMENTS. If Contractor uses subcontractors, the following shall apply:

- a. With regard to completing any of its obligations under this Agreement, the Contractor shall not enter into a subcontract with an entity, which is, pursuant to Labor Law Section 220-b (3)(b), debarred, suspended, or proposed for debarment.
- b. Contractor shall notify subcontractors performing work or services relating to this Project that they will be subject to the applicable terms and conditions of this Agreement as they relate to the subcontractor's scope of work, including, without limitation, DED's right to conduct site visits and inspect records. Contractor shall provide any such entities with a copy of this Agreement. Any subcontract entered into between Contractor and any other entity shall incorporate by reference this Agreement.
- c. For each such subcontract, the Contractor shall, except as provided otherwise by DED, withhold at least five percent (5%) as a retainage which shall be paid to the appropriate contractor upon the completion of the applicable contract.
- d. The Contractor, where applicable, shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by any subcontractor under this Agreement. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- e. The Contractor's use of subcontractors does not in any way diminish its own obligations under this Agreement.
- f. Where applicable, the Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by any subcontractor under this Agreement. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- g. Contractor should have its legal counsel review a subcontract agreement before it is signed. It should also include specific remedies for non-performance by its subcontractor.

32. ADDITIONAL COSTS. The Contractor has the sole responsibility to complete the Project and pay such portion of the Project costs in excess of funds available pursuant to this Agreement and set forth on the Face page or which are determined by DED to be ineligible for reimbursement.

33. FINAL PAYMENT/RELEASE. The Contractor's acceptance of the disbursement, certified by DED as the final payment under this Agreement, shall constitute a release of DED from any and all claims, causes of action and liability to the Contractor, or their legal representatives, arising out of or related to this Agreement.

34. MATCHING FUNDS. All sources of matching funds when required must be approved by DED and conform to statutory requirements and program guidelines.
35. OTHER DED CONTRACTS. If Contractor fails to comply with reporting requirements, the Contractor's eligibility for payment on existing contracts with DED as well as eligibility for future contracts may be negatively impacted.
36. SUFFICIENT FUNDS. Contractor has sufficient funds to complete the Project described in its proposal and summarized in this Agreement.
37. LITIGATION. Any litigation that arises out of this agreement shall be initiated and resolved in Albany County in New York State.
38. EQUIPMENT. DED shall have the sole discretion in deciding how any unused equipment or supplies are discarded that are purchased because of this Agreement.
39. MODIFICATION. With respect to no-cost contract term extensions, no later than 3-months prior to the established expiration date may Contractor submit a request for a contract term extension for a term of no less than 6 months but no longer than 12 months. A request for a no-cost contract term extension must include justification for the term extension, specification as to why the extension is necessary, and an estimate for the funds that will not have been expended by the established expiration date of the contract. If DED, in its sole discretion, grants such a request it may do so for reasons that include the need for additional time beyond the established expiration date to assure adequate completion of the original scope of work within the funds already made available. This extension may not be exercised merely for the purpose of using the unexpended contract balance. Nor may be it exercised contrary to any state or federal law.

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## APPENDIX B

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### BUDGET FOR

#### NYS Regional Innovation Specialist Program

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. BUDGET MODIFICATIONS. The Project supported by this Agreement shall be developed and operated in accordance with the Budget established herein. Reasonable changes in the allocation of funds between and among the Budget Categories may be made by the Contractor provided any increase in allocation shall not exceed ten percent (10%) of the original amount or \$5,000, whichever is greater, and provided further that the total consideration payable to the Contractor shall not be increased as a result of such changes. Except as provided herein, Budget changes shall require the prior written approval of DED. If Budget changes are made without DED's prior approval, DED reserves the right, in its sole discretion, to disallow reimbursement for the changes, reduce the amount payable to the Contractor, terminate this Agreement, and/or take any other action deemed necessary.
2. CERTIFICATION OF COSTS. The Contractor certifies that the costs cited in this Agreement are accurate and conform to its approved standards and practices. Further, the Contractor certifies that DED is the sole source of funds for the specific costs submitted for reimbursement under this Agreement. DED reserves the right to require the Contractor to provide evidence of these certifications.
3. FAILURE TO COMMIT FUNDS. Unless otherwise specified, any funds disbursed pursuant to this Agreement, which are not expended or committed by the termination date set forth on the Face Page of this Agreement as documented in the Contractor's final financial report may be withheld by DED, in its sole discretion, from the total amount of funds authorized. If the Contractor has received payments exceeding total expenditures, the Contractor shall remit such excess to DED.
4. MATCHING FUNDS. The Contractor shall comply with the matching fund requirements set forth below and in Appendix H. Match will not be credited until approved by DED.
5. BUDGET. The Budget is set forth on page 2 of this Appendix B.

Contract Number: «ContractNo»  
Contractor: «Contractor»  
Project Title: Regional RISP Specialist  
Project Director: «Project\_Director»  
Initial Contract Period: 1/1/10 TO 9/30/11  
Total Funding: \$«Amount»

**Budget**

Contractor must demonstrate \$xx in matching funds in the first year of this Agreement.

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## APPENDIX C

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### PAYMENT AND REPORTING SCHEDULE

#### Regional Innovation Specialist Program

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. USE OF FUNDS. The funds provided pursuant to this Agreement shall be used in accordance with the Budget established in Appendix B, any program requirements contained in Appendix H, and the Work Plan contained in Appendix D of this Agreement. Any interest income earned on funds received pursuant to this Agreement shall be used only to defray costs incurred by the Contractor pursuant to this Agreement.
2. FUNDING AMOUNT. In full consideration for the services performed by the Contractor pursuant to this Agreement, DED shall pay the Contractor a sum not to exceed the Funding Amount shown on the Face Page of this Agreement, subject to the availability of State funds, and the Contractor's conformity with the requirements of this Agreement.
3. PAYMENT.
  - a. Except for the Advance Payment described below, all payments shall be made on a cost reimbursement basis in the ordinary course of State business, upon approval by DED of duly authenticated financial and progress reports, including any supporting documentation, submitted by the Contractor. DED reserves the right to review invoices and supporting documentation which evidence actual expenditures prior to approving payment.
  - b. As a condition precedent to any and all disbursements under this Agreement, the Contractor shall provide DED with an original Certified Disbursement Request, the form of which will be provided with reporting guidelines, and the appropriate financial and progress reports, including and requested supporting documentation illustrating the exact nature of the cost, and the achievement of applicable performance objectives and milestones, in accordance with the schedule and requirements detailed below. Formats for these reports will be provided under separate cover by DED. If any expenditure is not properly documented, DED reserves the right, in its sole discretion, to require reimbursement, reduce the amount payable to the Contractor, modify or terminate this Agreement, or take any other action deemed necessary.
  - c. Claimed and documented expenditures per Budget Categories may exceed the amounts indicated in the Budget, Appendix B of this Agreement, by up to ten percent (10%) of the original amount or \$5,000, whichever is greater, provided that the total Funding Amount set forth on the Face Page of this Agreement is not exceeded. If expenditures submitted for reimbursement exceed this limit, DED reserves the right, in its sole discretion, to disallow reimbursement for the excess amount, reduce the amount payable to the

Contractor, modify or terminate this Agreement, or take any other action deemed necessary.

- d. If the Contractor has received payments exceeding total eligible expenditures, the Contractor shall remit such excess to DED. Any funds disbursed to the Contractor, but not documented as expenditures supported by incurred eligible costs under this Agreement, shall be remitted back to DED.
- e. If the Contractor is found to have misrepresented any expenditures, activities, results, or outcomes pursuant to this Agreement, DED reserves the right to disallow the associated expenditures, reduce the amount payable to the Contractor, modify or terminate this Agreement, or take any other action deemed necessary.

#### 4. REPORTS.

- a. Statistical information in compliance with Article 15-A of the Executive Law regarding the recruitment and retention of minority and women owned businesses must be included in all reports.
- b. The Contractor shall submit financial and progress reports in accordance with the schedule and requirements detailed below. DED shall not reimburse Contractor until DED receives financial and progress reports prepared in accordance with the terms of this Agreement and to the reasonable satisfaction of DED. If the Contractor fails to submit the required reports in a timely manner, DED reserves the right to reduce the amount payable to the Contractor, modify or terminate this Agreement, or take any other action deemed necessary.
- c. An extension of the due date for any report will be considered only in unusual circumstances and only upon written request of the Contractor received by DED at least 15 days prior to the due date. Any such extension must be specifically justified and approved in writing by DED.
- d. A signed PDF version **and** an electronic copy of all required reports shall be sent to [contractreports@esd.ny.gov](mailto:contractreports@esd.ny.gov) in accordance with the schedule listed on page three of this Appendix C.
- e. The Contractor shall comply with any reasonable additional information requested in writing by DED with reasonable notice and opportunity to respond, including, but not limited to, requests for documentation supporting the information and conclusions set forth in reports prepared by Contractor.

Contract Number: «ContractNo»  
Contractor: «Contractor»  
Project Title: Regional Innovation Specialist Program  
Project Director: «Project\_Director»  
Initial Contract Period: 1/1/10 TO 9/30/11  
Total Funding: \$«Amount»

**1. Payment and Report Schedule**

Payments will be made upon review and approval of progress and financial reports received according to the schedule below. If necessary, a final payment of not less than 10% of the total funding amount will be withheld until completion of all contract requirements to the satisfaction of DED.

<b>Progress and Financial Report Covering</b>	<b>Report Due Date</b>
7/1/10 through 9/30/11	2/29/12

**2. Progress Report Format**

DED will provide templates and guidelines to use when completing Progress Reports and Financial Reports.

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## APPENDIX D

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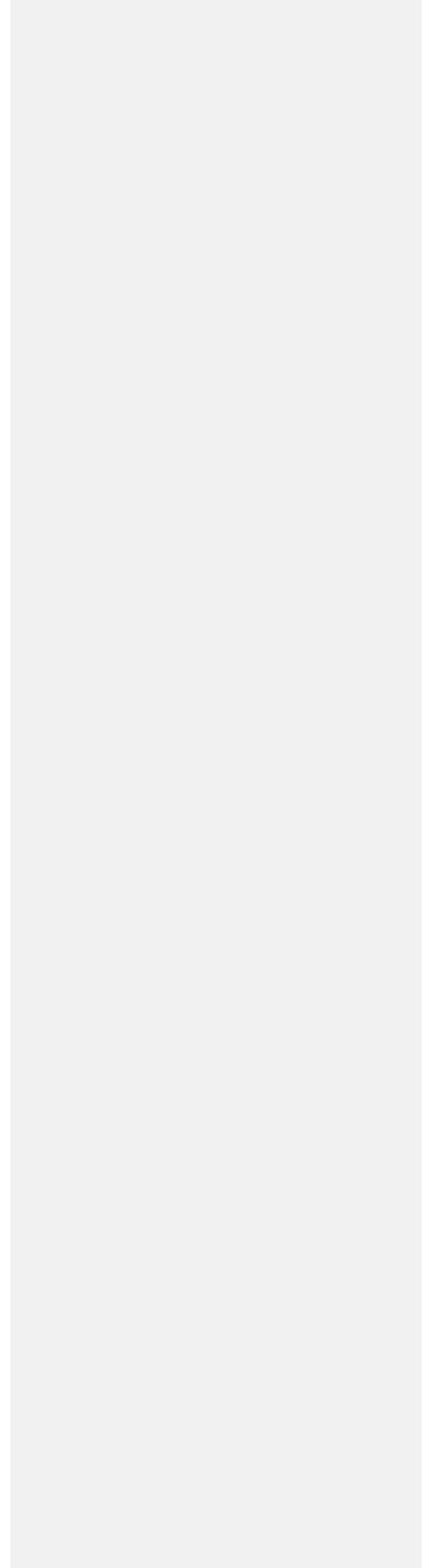
### WORK PLAN FOR NYS

#### Regional Innovation Specialist Program

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. SCOPE OF WORK. The Contractor shall use the funds provided pursuant to this Agreement in accordance with the Budget established in Appendix B of this Agreement and any program requirements set forth in Appendix H of this Agreement to carry out the Work Plan described in this Appendix D ("the Project"). Within the framework of the Work Plan, the Contractor shall have reasonable flexibility in the conduct and development of the Project. Material changes in the Work Plan shall require the prior written approval of DED. DED shall use its best efforts to timely respond to any such request. If material changes in the Work Plan are made without DED's prior approval, DED reserves the right, in its sole discretion, to disallow reimbursement for the modifications, reduce the amount payable to the Contractor, terminate this Agreement, or take any other action deemed necessary.
2. KEY PERSONNEL. «Project\_Director» is the Key Personnel involved in this Project.
3. WORK PLAN. The Contractor will implement the Work Plan set forth beginning on page 2 of this Appendix D. This work plan was submitted as part of the Contractor's proposal to DED.
4. EVALUATION. DED will continually monitor the Project's progress through information provided in Contractor's periodic progress reports, direct communication with the Project team and the companies related to the Project and on-site visits to the Project site. This Project is intended to result in economic impact in New York State. Final evaluation will be based on verified, measurable impact in New York State.

**Work Plan**



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## **APPENDIX E**

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### **TRAVEL GUIDELINES**

The maximum per diem rates permitted by the Travel Guidelines of the New York State Office of State Comptroller can be found at the following web site:  
<http://www.osc.state.ny.us/agencies/travel/travel.htm>

## APPENDIX F

### PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

#### I. General Provisions

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- A. The New York State Department of Economic Development (DED) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to DED to fully comply and cooperate with the DED in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to section VII of this Appendix or enforcement proceedings as allowed by the Contract.

#### II. Contract Goals

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- A. For purposes of this procurement, DED hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 20% for Minority-Owned Business Enterprises ("MBE") participation and 20% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the subject contract ("Contract") and achieving the Contract Goals established in section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:  
<http://www.esd.ny.gov/MWBE.html>  
Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the [AGENCY] for liquidated or other appropriate damages, as set forth herein.

#### III. Equal Employment Opportunity (EEO)

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- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
  1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall

apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to DED.
3. If Contractor or Subcontractor does not have an existing EEO policy statement, DED may provide the Contractor or Subcontractor a model Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement.
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. The Contractor will include the provisions of sections (a) through (c) of this subsection 4 and paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. Staffing Plan To ensure compliance with this section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.
- D. Workforce Employment Utilization Report ("Workforce Report")
  1. During the term of Contract, Contractor is responsible for updating and providing notice to DED of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
  2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract
  3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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## APPENDIX H

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### RISP PROGRAM CLAUSES

The Regional Innovation Specialist Program (RISP) is a program that supports the need to encourage innovation, increase new business start-ups and develop an entrepreneurial culture.

The Regional Innovation Specialist Program provides funds to support Regional Innovation Specialists to be hosted by Regional Technology Development Centers (RTDC) designated pursuant to the Regional Innovation Specialist Program Request for Proposals (RFP). Each Regional Innovation Specialist will provide the RISP assistance to clients located in their respective Regions.

The objectives of the Program are to:

- Working with New York State's Regional Councils to achieve the region's innovation and high technology goals;
- Providing technical assistance, hosting events and seminars, and other activities that will foster an innovative environment in New York State.
- Enhancing awareness and understanding of New York State technology assets, such as Regional Technology Development Centers (RTDCs), Centers of Advance Technology (CATs), Centers of Excellence (COEs), High Performance Computing (HPC) and other strategic partners in an effort to make the innovation process in New York State more efficient and easier to navigate;
- Highlighting New York State innovation within the state and across the nation to attract seed, angel and venture investments in our state;
- Assisting with technology acceleration, technology matching, innovation engineering and other activities to improve innovation in New York State;
- Providing support structures and networks for science and technology-based start-up and small and medium sized businesses;
- Driving and promoting innovation through regional programs such as business plan, innovation and entrepreneurial competitions;
- Increasing economic benefits to New York State companies and the State and national economies resulting from CAT, COE, HPC and SBIR-funded technology research and commercialization; and
- Increasing the knowledge of New York State technology assets (programs and contractors funded by NYS) and companies about Innovation Engineering and tools available to assist with economic development.

This Agreement incorporates the RFP by reference. All requirements of the RFP are binding. Contractor must keep a copy of the RFP.

Expenditures incurred prior to the commencement date shall not be charged against funds authorized in this Agreement.

## 1. DEFINITIONS

“Regional Innovation Specialist” or “Regional Specialist” shall mean the individual identified in Appendix D of this Agreement to serve the RISP Regions identified in Appendix D.

## 2. REQUIREMENTS AND RESTRICTIONS

Contractor’s requirements and restrictions include, but are not limited to:

- a. The Regional Innovation Specialist will provide RISP services to clients in each of the RISP Regions identified in Appendix D.
- b. DED and matching funds may generally be used for activities outlined in the Contractor’ proposal including the following activities:
  - i. Providing technical assistance, RISP information dissemination and outreach, links to university research partners, and information regarding alternative or additional funding opportunities to applicants and clients throughout the RISP Region; and
  - ii. Collaborating with RTDCs, DED-funded contractors, and other economic development organizations in the RISP region to identify resources and opportunities and to ensure that clients throughout the region receive the RISP assistance they need.
- c. DED Regional Innovation Specialist funds may be expended on items that directly support the above activities, such as
  - i. Salaries and fringe benefits for the Contractor’s employees or consultants who are performing RISP activities;
  - ii. Materials and supplies;
  - iii. Travel to clients, appropriate Conferences and/or DED meetings;
  - iv. Services subcontracted to partner organizations or other third parties;
  - v. Staff training, marketing, and outreach; and
  - vi. Other items explicitly approved by DED prior to being incurred.
- d. DED funds may not be provided to any for-profit organization other than for material and supply purchases, travel, professional services, and consultants for clients, etc.
- e. DED funds may not be used for indirect costs or to support the operational costs of the Contractor.

## 3. PERFORMANCE

Unsatisfactory performance by an RTDC as the host of a Regional Innovation Specialist may result in the termination of the contract and designation before the end of the designation period.

## 4. REGIONAL PRESENCE

The Contractor shall maintain its principal office within the region of New York State which it serves under the Agreement.

## 5. MATCHING FUNDS

Contractor will be held to all Matching Fund Requirements as outlined in the RFP. Each RTDC hosting a Regional Innovation Specialist must meet matching funds requirements to be eligible for reimbursement. For the Contractor to receive its full annual allocation, expenses submitted must demonstrate adequate match and be approved by DED. Regional

Innovation Specialist Program funds, as funds allocated under the State Technology Development Organization (TDO) Program, carry a 1:1 match requirement.

There are three categories of eligible matching funds to match the DED funding from this agreement:

- a. Company Cash—Matching funds contributed from non-state government sources.
- b. Federal Funds—Federal funds awarded to the RTDC or the RISP client and expended by the Applicant.
- c. In-Kind (not to exceed one-half of the match requirement)—Quantifiable goods and services including, but not limited to, professional services and time, and materials and supplies provided for use by the Applicant in furtherance of the objectives of this RFP and for which there is no monetary remuneration. Discounted prices or rates are not eligible as in-kind. A specific item or service must be completely donated to qualify as an in-kind contribution.

The specific amount, ratios, and limits of types of match required under this Agreement are described in Appendix B of this Agreement.

The minimum match requirement under this Agreement must be met according to the Appendix B requirements. Contractor must expend all required Match before DED releases any funds unless DED agrees otherwise in prior written authorization.

DED reserves the right to make determinations concerning the extent to which funds, goods and services qualify as matching funds. All match must be approved by DED before it is credited. Contractor is required to document and maintain detailed records for all cash and in-kind match, in accordance with generally accepted accounting principles.

No funds allocated pursuant to the 2011 RTDC RFP or any other New York State government funds are eligible to be used as matching funds. State funds granted directly to a company but used by the company to pay for Regional Innovation Specialist Program services are not eligible as match.

No funds included as matching funds for any other New York State program may be used as matching funds for this program. If an expense is included as match, it may not also be included as a reimbursable expense for which public funding is requested.

Cash qualifies as match only when it is expended by the RTDC for RISP activities. In-kind qualifies as match only during the period in which it is received and used for RISP activities.

Matching funds contributions must be provided for, and traceable to, allowable items and activities.

## 6. FEDERAL LAWS, RULES AND REGULATIONS

It is contractor's sole responsibility to be aware and fully comply with all federal laws, rules and regulations in performing under the RISP program. It also is contractor's sole responsibility to obtain this information for reference and compliance.

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## APPENDIX I

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**Memorandum of Understanding  
Between  
The New York State Department of Economic Development  
And  
«Contractor»**

This Memorandum of Understanding is entered into between the New York State Foundation for Science, Technology and Innovation, hereinafter referred to as DED, and «Contractor», hereinafter referred to as Contractor.

A. Purpose:

Contractor agrees to supply DED with annual reports, including requested economic information.

B. Reference:

This Memorandum of Understanding concerns all contracts between DED and the Contractor except those specifically excluded from this MOU in contracts signed by DED and the contractor.

C. Reason:

It is critical to assess the effectiveness of DED awards intended to grow the New York State economy through technology development, innovation and commercialization. In many cases the impact of DED awards may not be felt until well after the final financial disbursement is made to the Contractor. Therefore, DED acting on behalf and in the best interests of the People of New York requires, and Contractor agrees to provide, timely, thorough annual reports for all DED contracts in accordance with Section D of each contract.

D. Scope:

These annual reports shall be prepared in accordance with the appropriate program annual report guidelines and template. Annual reports are required as follows:

- **Centers for Advance Technology (CAT)** – one annual report upon a Center's designation not being renewed.
- **Center for Advanced Technology (CAT) Development** – one annual report after the conclusion of a contract.
- **College of Applied Research and Technology (CART)** – one annual report upon a Center's designation not being renewed.
- **Regional Technology Development Center (RTDC)** - one annual report upon a Center's designation not being renewed.
- **Regional Innovation Specialist Program (RISP)** - one annual report upon a Center's designation not being renewed.

- **Technology Transfer Incentive Program (TTIP)** – annual reports are required for seven years after the conclusion of a contract.
- **James D. Watson Investigator Program (JDW)** – annual reports are required for seven years after the conclusion of a contract.
- **Faculty Development Program (FDP)** – annual reports are required for seven years after the conclusion of a contract.
- **Matching Grant Program** – one annual report upon the conclusion of a contract.

E. Mutual Benefit:

Contractor agrees that the DED grant enables it to expand research and development opportunities at its institution. DED agrees that requiring annual reports enables it to assess the impact on the overall State economy.

F. Non-Fund Obligation:

This Memorandum of Understanding is neither a fiscal nor a funds obligation document. The transfer of funds under a grant award will be conducted in accordance with executed agreements between DED and Contractor.

G. Breach:

If Contractor fails to comply with reporting requirements, or with a request for information pertaining to meeting contractual requirements, contractor's eligibility for payment on any contracts with DED as well as eligibility for future DED competitions may be negatively impacted.

DED shall have the right to require Contractor to return money awarded to it for Contractor's failure to meet the reporting requirements set forth here.

H. Effective Date:

This agreement is executed as of the date of last signature below and is effective for seven years.

Wherefore, DED and Contractor hereto have executed this agreement as of the last written date below.

«Contractor»

**NYS Department of Economic Development**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

**Ed Hamilton**  
(Printed Name)

Title: Sr. Deputy Commissioner for Finance & Administration

Date: \_\_\_\_\_



