

# CONTRACT FACE PAGE

<b>AGENCY</b> (Name and Address):  ATTN: Division of Science ,Technology &Innovation NYS Department of Economic Development 30 South Pearl St., 11 <sup>th</sup> Floor Albany, New York 12207	<b>Contract Number: «ContractNo»</b>  <b>ORIG. AGENCY: 22000</b>
<b>CONTRACTOR</b> (Name and Payment Address):  «Contractor» «Address1» «Address2» «CityState_Zip»	<b>TYPE OF PROGRAM:</b>  Regional Technology Development Centers ("RTDC") Program
<b>CHARITIES REGISTRATION #:</b>  «Charity»	<b>STATUS:</b>  Contractor <b>IS NOT</b> a sectarian entity. Contractor <b>IS</b> a not-for-profit organization.
<b>FEDERAL TAX I.D. #:</b> «TaxID»	<b>RENEWAL TERM</b> (IF APPLICABLE): Annually FROM: 7/1/12 TO: 6/30/16
<b>MUNICIPALITY #</b> (IF APPLICABLE):  «Muni_No»	<b>INITIAL CONTRACT PERIOD:</b>  FROM: 10/1/11 TO: 6/30/12
<b>NYS Senate District #:</b> «Senate»	<b>FUNDING AMOUNT FOR INITIAL PERIOD:</b>  AMOUNT: \$«Amount»
<b>NYS Assembly District #:</b> «Assem»	

APPENDICES ATTACHED TO AND PART OF THIS AGREEMENT:	
<input checked="" type="checkbox"/> <a href="#">APPENDIX A</a> Standard Clauses for All State Contracts	<input type="checkbox"/> APPENDIX G Interest Payment Waiver
<input checked="" type="checkbox"/> <a href="#">APPENDIX A-1</a> Agency-Specific Clauses	<input checked="" type="checkbox"/> <a href="#">APPENDIX H</a> Program-Specific Clauses
<input checked="" type="checkbox"/> <a href="#">APPENDIX B</a> Budget	<input checked="" type="checkbox"/> <a href="#">APPENDIX I</a> Memorandum of Understanding
<input checked="" type="checkbox"/> <a href="#">APPENDIX C</a> Payment and Reporting Schedule	<input checked="" type="checkbox"/> <a href="#">APPENDIX X</a> Modification Agreement
<input checked="" type="checkbox"/> <a href="#">APPENDIX D</a> Work Plan	<input type="checkbox"/> OTHER (Identify)_____
<input checked="" type="checkbox"/> <a href="#">APPENDIX E</a> Travel Guidelines	<input type="checkbox"/> OTHER (Identify)_____
<input checked="" type="checkbox"/> <a href="#">APPENDIX F</a> Workforce Utilization	<input type="checkbox"/> OTHER (Identify)_____

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## DED AGREEMENT

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This Agreement is between the New York State Department of Economic Development (DED) having its principal office and place of business at 30 South Pearl Street, Albany, New York 12207-3425, 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) 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’s subcontract agreements must include specific remedies for non-performance by its subcontractor. 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)
_____
(Printed name)
Title: _____
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: \_\_\_\_\_

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

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

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) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, 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  
30 South Pearl St -- 7th Floor  
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  
30 South Pearl St -- 2nd Floor  
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.

(Revised 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 , NYSTAR® 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. In the event Contractor requests that NYSTAR approve a retroactive start date for this Agreement, and NYSTAR in its sole discretion approves such request, Contractor agrees to execute an Interest Payment Waiver in the form set forth in Appendix G. Any retroactive start-date must be approved by the Office of the State Comptroller.
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. Poor Performance.

- A. A contractor will be determined to be in poor performance if they fail to take good faith steps to achieve the agreed upon performance targets (which may include the National Institute of Standards and Technology's Manufacturing Extension Partnership's quarterly performance data) or fails to diligently proceed with the Project to NYSTAR's satisfaction.
- B. If poor performance continues for more than three consecutive quarters, ESD/NYSTAR may require additional reporting on a more frequent basis.
- C. If poor performance continues for more than six consecutive quarters, ESD/NYSTAR may reduce or remove the funding of a RTDC.
- D. If an RTDC is ineligible for all or part of its annual allocation due to an inability to meet the matching fund requirements or for reduced funding due to poor performance, those RTDC funds may be made available to those RTDCs that exceed their matching requirements for that period.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.
34. 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.
35. MATCHING FUNDS. All sources of matching funds when required must be approved by DED and conform to statutory requirements and program guidelines.
36. 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.
37. SUFFICIENT FUNDS. Contractor has sufficient funds to complete the Project described in its proposal and summarized in this Agreement.
38. LITIGATION. Any litigation that arises out of this agreement shall be initiated and resolved in Albany County in New York State.
39. EQUIPMENT. DED shall have the sole discretion in deciding how any unused equipment or supplies are discarded that are purchased because of this Agreement.
40. MODIFICATION. This Agreement cannot be modified, amended, or otherwise changed except by a writing signed by both parties. Any material modification, amendment, or change must also be approved by the Office of the State Attorney General and the Office of the State Comptroller.

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## APPENDIX B

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### BUDGET FOR REGIONAL TECHNOLOGY DEVELOPMENT CENTERS 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 program or project supported by this Agreement shall be operated in accordance with the Budget established below. 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 written approval of DED and the Office of the State Comptroller. 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, 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 EXPEND FUNDS. Unless otherwise specified, contract funds not expended by the contract termination date 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. Except for the amount of matching funds specified in Contractor's proposal, the Contractor shall comply with the matching fund requirements set forth below and in Appendix A1. Match will not be credited until approved by DED.
  - A. STATE TECHNOLOGY DEVELOPMENT ORGANIZATION (TDO) PROGRAM MATCH REQUIREMENT. Each dollar of State TDO funds must be matched by one (1) dollar from other local sources. No more than 50% of the match may be in-kind. Funds provided by other State sources are generally not eligible as match to State TDO funds.
  - B. FEDERAL MANUFACTURING EXTENSION PARTNERSHIP (MEP) PROGRAM MATCH REQUIREMENT. Each dollar of Federal MEP funds must be matched by two (2) dollars from other sources. No more than 50% of the match may be in-kind. State MEP, State Industrial Technology Extension Service (ITES), and State TDO funds may be counted as cash match to the Federal funds. Local cash and in-kind match to the TDO program funds may also be counted where eligible and approved by DED. Funds

provided by other Federal sources are generally not eligible as match to Federal MEP funds.

- C. MINIMUM MATCH REQUIRED UNDER THIS AGREEMENT. If it is determined that some sources of match are not eligible for both State and Federal funds, then the required amount of match will increase accordingly. Any questions regarding match and match approval should be directed to DED.
  - D. The match is a non-reimbursable component of the Project's total cost and is reflective of the award recipient's commitment to the Project. Items eligible to be approved as match are cash and in-kind items directly related to the purpose of the Project.
  - E. Discounted prices and/or rates are ineligible as in-kind contribution.
5. BUDGET. The Budget is set forth beginning on page 3 of this Appendix B.

Contract Number: «ContractNo»  
Contractor: «Contractor»  
Project Director: «Project\_Director»  
Initial Contract Period: From 10/1/11 TO 6/30/12  
Funding Amount for Initial Period: \$«Amount»

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

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## APPENDIX C

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### REGIONAL TECHNOLOGY DEVELOPMENT CENTERS PROGRAM PAYMENT AND REPORTING SCHEDULE

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 set forth in the applicable state and federal laws and regulations and Appendix A1, and the work plan contained in Appendix D. Any interest income earned on funds received pursuant to this Agreement shall be used only to defray costs of services to be performed by the Contractor pursuant to this Agreement. DED funds cannot be used to reimburse costs of entertainment, amusement, diversion and social activities and any expenses directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation and gratuities).
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 hereof, subject to: (a) the availability of State funds; and (b) the Contractor's conformity with: (i) program requirements, including matching funds requirements; and (ii) other terms and conditions of this Agreement.
3. **PAYMENT.**
  - A. Payments shall be made in the ordinary course of State business, upon approval by DED of duly authenticated financial and progress reports submitted by the Contractor. DED reserves the right to review invoices and supporting documentation, which evidence actual expenditures prior to approving payment. Disagreement with scientific research results represented in the reports shall not be grounds for withholding approval of the Contractor's reports.
  - B. 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; by up to ten percent (10%) of the original amount or \$5,000, whichever is greater, provided that the total Funding Amount is not exceeded. If expenditures 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 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. Two (2) copies of all required reports shall be sent to the following address:

Contract Reports  
New York State Department of Economic Development  
30 South Pearl Street  
11<sup>th</sup> Floor  
Albany, NY 12207

In addition, an electronic copy of all required reports shall be sent to [contractreports@DED.state.ny.us](mailto:contractreports@DED.state.ny.us)

- E. If Contractor fails to comply with reporting requirements, the Contractor's eligibility for payment on any other existing contracts with DED as well as eligibility for future DED contracts may be negatively impacted.

Contract Number: «ContractNo»  
 Contractor: «Contractor»  
 Project Director: «Project\_Director»  
 Initial Contract Period: From 10/1/11 TO 6/30/12  
 Funding Amount for Initial Period: \$«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.

Progress and Financial Report Covering			Report Due Date
10/01/2011	through	12/31/2011	01/15/2012
01/01/2012	through	03/31/2012	04/15/2012
04/01/2012	through	06/30/2012	07/15/2012
07/01/2012	through	09/30/2012	10/15/2012
10/01/2012	through	12/31/2012	01/15/2013
01/01/2013	through	03/31/2013	04/15/2013
04/01/2013	through	06/30/2013	07/15/2013
07/01/2013	through	09/30/2013	10/15/2013
10/01/2013	through	12/31/2013	01/15/2014
01/01/2014	through	03/31/2014	04/15/2014
04/01/2014	through	06/30/2014	07/15/2014
07/01/2014	through	09/30//2014	10/15/2014
10/01/2014	through	12/31/2014	01/15/2015
01/01/2015	through	03/31/2015	04/15/2015
04/01/2015	through	06/30/2015	07/15/2015
07/01/2015	through	09/30/2015	10/15/2015
10/01/2015	through	12/31/2015	01/15/2016
01/01/2016	through	03/31/2016	04/15/2016
04/01/2016	through	06/30/2016 (final Report)	07/15/2016

**2. Report Format**

DED will provide templates and guidelines to be used when completing progress and financial reports.

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## APPENDIX D

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### WORK PLAN FOR REGIONAL TECHNOLOGY DEVELOPMENT CENTERS 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 to carry out the work plan described in this Appendix D ("the Project"). Within the framework of the work plan, the Contractor and the Project Director in charge of the Project shall have flexibility in the conduct of the Project. Material changes in the work plan shall require the prior written approval of DED. 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. In the event that it becomes necessary to replace any Key Personnel, the Contractor shall give reasonable advance notice thereof to DED in writing. DED reserves the right to take an active role in the selection process of new Key Personnel, in coordination with the appropriate Contractor officials. Final designation of new Key Personnel shall be in consultation with DED and shall require the written approval of DED, which approval shall not be unreasonably withheld.
3. WORK PLAN. The Contractor will implement the work plan set forth beginning on page 2 of this Appendix D. The work plan was submitted as part of the Contractor's proposal.
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, third-party surveys conducted on behalf of NIST and/or DED, 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>

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## APPENDIX F

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### WORK FORCE UTILIZATION

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):

#### **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE COMMITMENTS AND EQUAL EMPLOYMENT OPPORTUNITIES**

DED administers a Minority and Women-owned Business Enterprises (MWBE) Program as mandated by Article 15-A of the New York State Executive Law. This law supersedes any other provision in state law authorizing or requiring an equal employment opportunity program or a program for securing participation by minority and women-owned business participation in certain state contracts.

Article 15-A requires that rules and regulations be established for contracts entered into by DED. In accordance with Article 15-A, goals must be set for contracts entered into by DED in excess of \$25,000 for labor, services, supplies, equipment, and materials, or any combination of the foregoing, and for contracts entered into by DED in excess of \$100,000 for acquisition, construction, demolition, replacement, major repair, renovation or improvement of real property. In applying these rules and regulations, DED must consider the availability of certified minority and women-owned businesses in the region in which the state contract will be performed, the total dollar value of the contract, the scope of work to be performed, and the project size and term.

To facilitate use of certified minority and women-owned business enterprises, the Department of Economic Development has available for inspection in its Finance Office at 30 South Pearl Street, Albany; at the Minority and Women-Owned Business Development Division at 633 Third Avenue, New York City; and at its Regional Offices a copy of the New York State Directory of Certified Minority and Women-owned Business Enterprises (the "Directory"), which lists certified minority and women-owned businesses and their fields of expertise. The directory may also be found at <http://www.nylovesmwbe.ny.gov/cf/search.cfm>.

#### Minority and Women-Owned Business Enterprise Commitments

##### General Requirements:

The Contractor acknowledges that it is the policy of DED to provide maximum practicable opportunities for certified minority and women-owned business enterprises ("MWBEs") to participate in the performance of DED's contracts. The Contractor agrees to use its best efforts to solicit and obtain the participation of MWBEs on this contract and to periodically report on such efforts, upon the request of DED.

##### Minority and Women-Owned Business Enterprise Participation Goals:

Pursuant to Article 15-A of the Executive Law and regulations adopted thereunder, DED has established a 0-5% goal for the participation of certified minority-owned business enterprises and a 0-7% goal for the participation of certified women-owned business enterprises on the Project under this Agreement.

### Equal Employment Opportunities

General Requirements for Contracts over \$25,000:

As part of this Agreement, all Contractors shall submit to DED an **Equal Employment Opportunity Policy Statement**, which shall contain a statement that during the performance of this Agreement:

- 1) The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status; will undertake or continue existing programs of affirmative action 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 on this Agreement.
- 2) At the request of DED, 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 described herein.
- 3) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- 4) The Contractor shall include the provisions above in every subcontract as required under Article 15-A of the Executive Law, in such a manner that said provisions will be binding upon each subcontractor as to work in connection with this Agreement.

### Reporting Requirements:

The Contractor shall submit to DED a work force utilization report if, for the performance of this Agreement, the Contractor's work force will exceed twenty-five (25) employees. If twenty-five (25) employees or more will be actually utilized for the performance of this Agreement, the Contractor shall submit such report with the work force broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by DED.

If a work force utilization report is required, the report shall be submitted to DED on a regular basis throughout the life of this Agreement.

If a report is required and the work force utilized for the performance of this Agreement does not change within a reporting period, the Contractor shall so notify DED in writing in lieu of submitting an updated work force utilization report.

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## APPENDIX H

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### REGIONAL TECHNOLOGY DEVELOPMENT CENTERS (RTDC)

The RTDC Program is an integrated service delivery program that draws on three related programs: the Technology Development Organization (TDO) Program (statutory authority at §3102-d of the Public Authorities Law); the Industrial Technology Extension Service (ITES) (statutory authority at §3102-a of the Public Authorities Law); and the Manufacturing Extension Partnership (MEP) Program (statutory authority at US Code Title 15, Chapter 7, §278k) [authorized by Cooperative Agreements with the National Institute of Standards and Technology (NIST), which govern the use of federal funds for the MEP Program]. All requirements found in the aforementioned statutes as well as the Cooperative Agreements with NIST apply to this Agreement.

All requirements of the RFP are binding in Appendix H and Contractor must maintain a copy of the RFP for review in complying with this Agreement that incorporates the RFP by reference.

#### 1. FEDERAL REQUIREMENTS

The Contractor shall comply, and require all subcontractors to comply, with the provisions of NIST awards, including applicable cost principles, administrative, and audit requirements. These requirements include, but are not limited to the following:

A. The Contractor certifies that it is subject to Federal Office of Management and Budget (OMB) Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations" and that an annual audit will be performed in accordance with the appropriate circular, and that any material weaknesses will be reported by the auditor. The Contractor further certifies that the Contractor will reimburse any penalties or expenditure disallowances that may be imposed on DED resulting from instances of non-compliance by the Contractor with federal laws and regulations. The Contractor will immediately inform DED if any audit performed after execution of this Agreement discloses material weaknesses in the Contractor's operations. The Contractor agrees to provide DED with a copy of such audit.

B. All requests for bids or applications, except for goods and services under \$25,000, shall carry a notice that the subcontractor is subject to 15 CFR part 26, Subparts A through E, "Governmentwide Debarment and Suspension (Non-procurement)." In addition, subcontractors receiving a contract greater \$100,000 are subject to 15 CFR Part 28, "New Restrictions on Lobbying." These regulations also apply to the Contractor.

C. The Contractor shall include a statement in all subcontracts exceeding \$100,000 that the subcontract is subject to Sec. 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code, as implemented at 15 CFR Part 28, "New Restrictions on Lobbying." The Contractor shall further require the subcontractor to submit a completed "Disclosure of Lobbying Activities" regarding the use of non-Federal funds for lobbying. The form SF-LL shall be submitted within 30 days following the end of

the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. When received by the Contractor, the form SF-LLL must be submitted immediately to DED. These regulations also apply to the Contractor.

D. The Contractor shall include a statement in all subcontracts that the award is subject to Executive Order 12549, "Debarment and Suspension," and Department of Commerce implementing regulations published in 15 CFR part 26, Subparts A through E, "Governmentwide Debarment and Suspension (Non-procurement)."

E. The Contractor shall not subcontract any part of this Project to any agency of the federal Department of Commerce and/or other federal department, agency or instrumentality, without the prior written approval of DED and NIST.

## **2. PLACE OF BUSINESS**

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

## **3. DED LOGO AND NAME USE**

The Contractor shall include the words "DED Designated Regional Technology Development Center," along with the DED logo, in the official name of the RTDC, either as part of the primary title, or as a subtitle. It is to be explicitly displayed on all print and electronic materials distributed by the RTDC. This includes but is not limited to: website, letterhead, business cards, press releases, banners used at workshops, seminars and conferences. The DED logo must be legible, plainly visible and professional in appearance. Final appearance must be approved by DED.

The Contractor shall maintain appropriate name identification clearly identifying the office and facilities as sponsored by DED and New York's Manufacturing Extension Partnership Program. The Contractor shall also acknowledge and display NIST MEP support, following guidelines provided by DED.

## **4. CASH AND IN-KIND MATCHING FUNDS**

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

A. The Contractor shall match the award made by DED with required matching funds in support of the Project in the amounts set forth in the Budget.

B. In-kind goods and services must be approved in writing by DED in order to satisfy the matching requirement.

C. In-kind matching funds must be quantifiable and documented goods and services provided without charge by third parties. The value of the in-kind match must be prorated based upon the portion of the resources used for the Project and this percentage must be adequately documented.

D. Goods and services claimed as match must represent an increase in the discretionary resources available to the Project, and must be shown as an expense related to the Project Specific Work Plan.

E. Efforts that represent on-going activities by third parties and expenditures managed on behalf of third parties, including other State-sponsored activities, do not qualify as either cash or in-kind matching funds, except with prior written approval of DED.

F. The Contractor shall maintain detailed records documenting both cash and approved in-kind matching funds. These records must be made available to DED upon request.

Prior written approval of DED and the NIST Program and Grants Officer is required for: (a) acquisitions of equipment valued at \$10,000 or more; (b) start up, operating and other required plans; (c) obligations or subcontracts in excess of \$100,000; and (d) development of tools, systems and resources in excess of \$10,000. Requests shall be forwarded to DED, which shall be responsible for coordinating NIST approval. Failure to obtain approval may result in disapproval of reimbursement of these expenditures.

## **5. PROJECT DIRECTOR**

During the period of this Agreement, DED reserves the right to review and evaluate the performance of the Project Director and, when appropriate, communicate to the governing body of the Contractor if said performance is unsatisfactory. Should the performance of the Project Director be evaluated by DED as insufficient to effectively carry out the responsibilities of this Agreement, the governing body of the Contractor and DED shall promptly agree upon a course of action, including the recruitment and hire of another Project Director. Final designation of a new director shall be in consultation with DED and shall require the written approval of DED, which approval shall not be unreasonably withheld. If the situation is not rectified in a manner satisfactory to DED, DED, in its sole discretion, may elect to reduce the amount payable to the Contractor, modify or terminate this Agreement, or take any other action it deems necessary. DED may request that the Project Director and/or key staff attend periodic meetings organized by DED. Costs for attending such meetings will be borne by the Contractor.

## **6. STRATEGIC PLAN**

The RTDC Strategic Plan outlines the goals for New York's Statewide system. The Project Director must diligently take appropriate actions to achieve the goals of the plan.

## **7. SERVICES**

The Center must provide basic and specialty services.

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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 Department of Economic Development, 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.
- **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)

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

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

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

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

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

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

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

**APPENDIX X**

**MODIFICATION AGREEMENT FORM**

Agency Code: 22000  
Contract Number: «ContractNo»  
Period: \_\_\_\_\_

Name: NYS Department of Economic Development  
Contractor Name: «Contractor»  
Funding Amount for Period: \_\_\_\_\_

This is an AGREEMENT between the STATE OF NEW YORK, acting by and through the DED and the Contractor named above for modification of Contract Number «ContractNo», as amended in attached Appendix(ices) \_\_\_\_\_.

All other provisions of said AGREEMENT shall remain in full force and effect.

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

<p><b>CONTRACTOR</b></p> <p>«Contractor»</p> <p>By: _____ (Signature)</p> <p>_____ (Printed Name)</p> <p>Title: _____</p> <p>Date: _____</p>	
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**NYS Department of Economic Development**

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

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

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

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

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."

<p><b>NOTARY</b></p> <p>STATE OF NEW YORK ) COUNTY OF _____) ss.:</p> <p>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.</p>	
<p>_____ NOTARY PUBLIC</p>	

STATE COMPTROLLER'S SIGNATURE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_