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NEW JERSEY INNOVATION EVERGREEN PROGRAM

TAX CREDIT PURCHASER CONTRACT

BETWEEN

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

AND

[PURCHASER NAME]

133628654
133820019
135627149
136586235
136586235
137713638

Project Name^
P#

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Approved by NJEDA

SAMPLE

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TAX CREDIT PURCHASER CONTRACT

THIS TAX CREDIT PURCHASER CONTRACT (hereinafter, the “*Agreement*”) is made and entered into as of this ____ day of _____, 202__ (the “*Effective Date*”) by and between _____, having its principal office located at _____ (hereinafter, the “*Purchaser*”), and the New Jersey Economic Development Authority, a body corporate and politic organized and existing under the authority of N.J.S.A. 34:1B-1 et seq., having its offices at 36 West State Street, PO Box 990, Trenton, NJ 08625-0990 (hereinafter, the “*Authority*”, the above entities being hereinafter referred to as the “*Parties*”). Capitalized terms used in this Agreement have the meaning given to such term herein, as such definitions are identified and defined in Article I.

W I T N E S S E T H:

WHEREAS, the Legislature enacted the “New Jersey Innovation Evergreen Program” pursuant to sections 20 through 34 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-288 through 34:1B-302) (hereinafter, the “*Act*”) which was enacted to invest in innovation as a catalyst for economic growth and to advance the competitiveness of the State of New Jersey’s businesses in the global economy (hereinafter, the “*Program*”);

WHEREAS, the Act provides, amongst other things, that eligible corporations may purchase tax credits and commit strategic value to the State’s innovation economy to raise funds for the Program and that the Authority will invest such funds along with investments by venture capital firms in high growth businesses located in New Jersey;

WHEREAS, the Act and regulations implementing the Act, N.J.A.C. 19:31-25 et seq. (hereinafter, the “*Regulations*”), set forth the criteria under which an eligible corporation is eligible for a purchase of corporation business tax credits in accordance with the Program;

WHEREAS, the Regulations further provide that, in order to purchase tax credits under the Program, an eligible corporation is required to enter into a tax credit purchaser contract and, amongst other requirements, undertake a Strategic Commitment (as hereinafter defined) that shall include, without limitation, mentorship hours, networking opportunities, internship offerings, sales and distribution pipeline access and collaboration opportunities with New Jersey businesses during the Commitment Period (as hereinafter defined);

WHEREAS, the Purchaser, by submission of its Tax Credit Bid (as hereinafter defined) certified that it is eligible to purchase tax credits under the Program based on the eligibility criteria set forth in the Act and Regulations, which certification is incorporated into this Agreement;

WHEREAS, incorporated into the submission of the Tax Credit Bid, the Purchaser proposed to the Authority its Tax Credit Purchase Offer (as hereinafter defined) and a Strategic Commitment;

WHEREAS, the Board of the Authority has approved the Tax Credit Bid (“*Board Approval*”), and so notified the Purchaser through an approval letter, which approval letter the Purchaser has executed (including any amendments or modifications, the “*Approval Letter*”); and

WHEREAS, the Act provides that Board Approval and the issuance of the Tax Credit Award is subject to terms and conditions contained in the Regulations, and is conditioned upon the Purchaser executing this Agreement to establish such terms and conditions of its Tax Credit Bid, including Purchaser’s Strategic Commitment and Tax Credit Purchase Offer.

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

Article I. Definitions

“Advisory Board” shall have the meaning ascribed to such term in Section 5.01(i).

“Advisory Board Representative” shall have the meaning ascribed to such term in Section 5.01(i).

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by Purchaser. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to Section 1563 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 1563 or the entity is an organization in a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 414.

“Agreement” means this Agreement between the Purchaser and the Authority.

“Annual Compliance Report” means an annual certification by the Purchaser in a format acceptable to the Authority evidencing that the Purchaser has satisfied the conditions relating to the Program, including its Strategic Commitment, as more particular described in Section 8.01.

“Approval Letter” means that certain letter issued by the Authority and dated the date set forth in Schedule A hereto evidencing Board Approval of the Purchaser’s Tax Credit Bid and executed by the Purchaser, as it may be amended or supplemented.

“Auction Deposit” or “Deposit” means that refundable deposit in the amount set forth on Schedule A hereto remitted to the Authority by the Purchaser in connection with submitting its Tax Credit Bid, and in accordance with N.J.A.C. 19:31-25.4 (f).

“Authority” means the New Jersey Economic Development Authority, a body corporate and politic organized and existing under the authority of N.J.S.A. 34:1B-1 et seq.

“Board” means the Board of the Authority.

“Board Approval” means the Board’s approval of the Purchaser’s Tax Credit Bid, as evidenced by the Approval Letter.

“Commitment Period” shall have the meaning ascribed to such term in Section 4.01(a).

“Completion Report” means a certification by the Purchaser in a format acceptable to the Authority evidencing that the Purchaser has satisfied a component of the Strategic Commitment, as more particular described in Section 8.03.

“Delinquent ACR” shall have the meaning ascribed to such term in Section 9.01(c).

“Director” means the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey.

“Division” means the Division of Taxation in the Department of the Treasury of the State of New Jersey.

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“Effective Date” means the date of full execution of this Agreement by both the Purchaser and the Authority.

“Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default hereunder as set forth in Section 10.01 of this Agreement.

“Event of Strategic Commitment Payment” shall have the meaning ascribed to such term in Section 9.01.

“Evergreen Special Purpose Vehicle” means an entity controlled by or under common control with a Qualified Venture Firm that is formed solely by the Qualified Venture Firm for the purpose of the Fund investing in a Qualified Business alongside the investment from the Qualified Venture Firm active fund.

“Follow-on Investment” means a subsequent investment in a Qualified Business made by the Fund, through an Evergreen Special Purpose Vehicle, corresponding to the additional investment made by a Qualified Venture Firm that has a previous Qualified Investment in such Qualified Business.

“Fund” means the “New Jersey Innovation Evergreen Fund” established by section 23 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-291).

“Indemnified Parties” shall have the meaning set forth in Section 7.01 of this Agreement.

“New Jersey S Corporation” means the same as the term is defined in section 12 of P.L. 1993, c. 173 (N.J.S.A. 54A:5-10).

“Offer Balance” means an amount equal to the Tax Credit Purchase Offer *less* the Auction Deposit, as more particular described in Section 2.03

“Partnership” means an entity classified as a partnership for Federal income tax purposes.

“Privilege Period” or “Tax Privilege Period” shall mean the fiscal accounting period for which a tax is payable under the Corporation Business Tax Act, N.J.S.A. 54:10A-5.

“Program” means the New Jersey Innovation Evergreen Program established pursuant to the Act and the Regulations, as amended.

“Prohibited Interest” shall have the meaning set forth in Section 6.01(d).

“Purchaser” means the Purchaser set forth on the execution page hereof and Schedule A hereto.

“Qualified Business” means a business approved by the Authority as a recipient of a Qualified Investment.

“Qualified Investment” means, the direct investment of money by the Fund, through an Evergreen Special Purpose Vehicle, corresponding with a Qualified Venture Firm’s initial investment in a Qualified Business for the purchase of shares of stock, which may include option or warrant rights, and the right to make a Follow-on Investment at a later date, all of which is matched by the initial investment by a Qualified Venture Firm.

“Qualified Venture Firm” means a venture firm that is certified by the Authority as a Qualified Venture Firm pursuant to section 29 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-297) and N.J.A.C. 19:31-25.7.

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“Regulations” means the regulations implementing the Act, N.J.A.C. 19:31-18 et seq.

“State” means the State of New Jersey.

“Strategic Commitment” means the commitment by the Purchaser to strengthen the State's innovation ecosystem, which may include, but is not limited to, providing mentorship, networking, sales and distribution pipeline access, and collaboration opportunities to Qualified Businesses that receive Qualified Investments. The activities comprising the Purchaser’s Strategic Commitment, as approved by the Authority in the Tax Credit Bid, are described in Schedule A hereof.

“Strategic Commitment Remedy Amount” means all costs incurred by the Authority in connection with the pursuit of the Strategic Commitment Payment Amount and Strategic Commitment Remedy Amount and enforcement of its rights under the terms of this Agreement (including, but not limited to, counsel fees, court costs and other costs of collection).

“Strategic Commitment Payment Amount” means an amount calculated in accordance with the provisions of Section 9.03.

“Tax Credit” or “Tax Credits” means an award of tax credits against the liability imposed against the Purchaser pursuant to section 5 of the Corporation Business Tax Act, P.L. 1945, c.162 (N.J.S.A. 54:10A-1 et seq.).

“Tax Credit Agreement of Sale” means that certain agreement between the Purchaser and a Transferee for the sale, transfer, or assignment of all or a portion of the Tax Credit Amount.

“Tax Credit Amount” means the face-value of the Tax Credits awarded pursuant to the terms of this Agreement as evidenced by the Tax Credit Certificate.

“Tax Credit Bid” means the Purchaser’s submission to the Authority of the Strategic Commitment, the Tax Credit Purchase Offer, and all other documents required pursuant to N.J.A.C. 19:31-25.4(e) for a bid for Tax Credits as part of the tax credit auction held in accordance with the Program.

“Tax Credit Bid Score” means, as applicable, (i) the aggregate score assigned to the Tax Credit Bid by the Authority in connection the Authority’s evaluation of the Tax Credit Bid and Strategic Commitment and (ii) the portion or value of the Tax Credit Bid Score ascribed to a particular component of the Strategic Commitment, in each event in accordance with the Program and as set forth in Schedule A

“Tax Credit Certificate” means the certificate issued by the Division to the Purchaser evidencing the Tax Credit Amount.

“Tax Credit Purchase Offer” means the specific cash dollar amount offered by the Purchaser, and set forth in the Tax Credit Bid, to purchase the Tax Credits in accordance with the Program and pursuant to the terms of this Agreement.

“Tax Credit Transfer Certificate” means such certificate issued by the Division to a Transferee upon approval by the Authority and the Director of the sale or assignment by the Purchaser of all or a part of its Tax Credit Amount to a Transferee pursuant to a Tax Credit Agreement of Sale.

“Transferee” shall have the meaning set forth in Section 11.02.

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“Transferred Tax Credits” shall have the meaning set forth in Section 11.04.

Article II. Approval; Compensation; Condition To Purchase

Section 2.01 Approval. Subject to the conditions contained herein and in reliance on the information, representations and warranties set forth in the Tax Credit Bid, this Agreement and other documents submitted by the Purchaser to the Authority, the Authority has determined that the Purchaser has satisfied the eligibility criteria of the Program to purchase Tax Credits with a face-value as set forth in Schedule A attached hereto (“***Tax Credit Amount***”).

Section 2.02 Consideration. Subject to the conditions set forth herein and in exchange for the award of Tax Credits in an amount equal to the Tax Credit Amount, the Purchaser agrees to (i) pay to the Authority for deposit into the Fund the amount set forth in Schedule A attached hereto (the “***Tax Credit Purchase Offer***”) and (ii) perform the Strategic Commitment consisting of those components set forth in detail in Schedule A attached hereto. The Parties acknowledge and agrees that (x) the components of the Strategic Commitment have an aggregate financial value as set forth in Schedule A and (y) Schedule A contains an itemized list of the financial value of each Strategic Commitment component. The Tax Credit Amount shall be evidenced by a Tax Credit Certificate (as hereinafter defined).

Section 2.03 Payment of Tax Credit Purchase Offer and Auction Deposit.

(a) Within thirty (30) business days of the Effective Date, the Purchaser shall remit to the Authority via wire transfer of immediately available funds an amount equal to the Tax Credit Purchase Offer *less* the Auction Deposit (the “***Offer Balance***”). The Offer Balance shall be paid via the wire instructions contained in the Approval Letter.

(b) The Purchaser acknowledges and agrees that the Auction Deposit shall become non-refundable upon the Parties’ fully executing this Agreement.

Section 2.04 Failure to Remit the Offer Balance.

(a) In the event the Purchaser fails to remit the Offer Balance within said thirty (30) business day period the Authority may, in its sole discretion, do any and all of the following:

- (i) offer for purchase the Tax Credits to other approved tax credit purchasers in accordance with the Regulations; or
- (ii) terminate this Agreement.

(b) Absent extenuating circumstances or written consent by the Authority, at its sole discretion, the Purchaser shall not be eligible to purchase tax credits under this Program through any competitive auction that occurs during the twelve (12) months immediately following the last day Purchaser was required to remit the Offer Balance. This Section 2.04(b) shall survive termination of this Agreement under Section 2.04(a)(ii) above.

Article III. Tax Credit Certificate; Application of Tax Credit Amount

Section 3.01 Tax Credit Certificate. Upon the Authority’s receipt of the Offer Balance in accordance with Section 2.03, the Authority shall notify the Director to issue a Tax Credit Certificate to the Purchaser with a face value equal to the amount of the Tax Credit Amount.

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Section 3.02 Application of Tax Credit Amount. Upon the issuance of the Tax Credit Certificate, the Purchaser shall apply the Tax Credit Certificate against the Purchaser's State tax liability due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for the Purchaser's Tax Privilege Period as of the date of Board Approval. Notwithstanding anything contained herein to the contrary, the Director shall prescribe the order of priority for the application of the Tax Credit Amount awarded pursuant to the Program. The Purchaser may carry forward any unused portion of its Tax Credit Amount resulting from the limitations of the order of priority for use in the seven (7) Tax Privilege Periods next following the Tax Privilege Period for which the Tax Credit Amount is awarded.

Section 3.03 S Corp and Partnership Application of Tax Credit Amount. In the event the Purchaser is a New Jersey S Corporation or a Partnership, the Tax Credit Amount shall be passed through to the Purchaser's corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method. Any agreement amongst the Purchaser's partners, members, or owners documenting such alternate distribution method shall be provided to the Director in advance and shall be accompanied by any additional information as the Director may request or prescribe consistent with any rule, guidance, or other publication issued by the Division. For the avoidance of doubt, no individual partner, individual member or individual owner of the Purchaser shall be eligible to apply any portion of the Tax Credit Amount against the individual's State tax liability.

Article IV. **Term**

Section 4.01 Term. The term of this Agreement shall commence on the Effective Date and shall expire upon the later to occur of (i) the Purchaser's completion of all components of its Strategic Commitment, as set forth in Schedule A, (ii) the conclusion of the Advisory Board Representative's 1-year term to serve on the Advisory Board, as more particularly discussed in Section 6.01(c), and (iii) the expiration of those limitations upon the Purchaser contained in Section 6.01(d) (the "***Commitment Period***"); provided, however, that the provisions of Article VII (Indemnity), Article IX (Failure to Perform Strategic Commitment or Advisory Board Requirement), Article X (Events of Default & Remedies), Article XIII (Audits and Inspections; Records), and Article XIV (Miscellaneous) shall survive the termination or expiration of this Agreement.

Section 4.02 Extension of Commitment Period. The Commitment Period shall automatically be extended for so long as the Purchaser seeks to cure an Event of Strategic Commitment Payment in accordance with Section 9.02(b); provided, unless the Authority provides prior written approval, nothing herein shall grant the Purchaser more than twelve (12) months to cure an Event of Strategic Commitment Payment occurring pursuant to Section 9.01(a).

Article V. **Representations Of The Purchaser; Eligibility**

Section 5.01 Representations. The Purchaser certifies and represents that it satisfies the requirements to be eligible under the Program to purchase the Tax Credits and that:

(a) The Purchaser is the type of entity identified on Schedule A hereto and is either duly organized, validly existing and in good standing under the laws of the State or is duly qualified to do business in the State. The Purchaser is not in violation of any provision of its governing documents, whether a certificate of incorporation and by-laws or certificate of formation and operating or similar agreement, as applicable, and has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement.

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(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Purchaser herein contemplated have been duly authorized by all requisite action on the part of Purchaser and will not violate any provision of law, any order of any court or agency of government, or the Purchaser's governing documents, whether a certificate of incorporation and by-laws or certificate of formation and operating or similar agreement, as applicable, or any indenture, agreement or other instrument to which the Purchaser is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever.

(c) This Agreement constitutes the legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms.

(d) There is no action or proceeding pending or, to the best knowledge of the Purchaser, threatened by or against the Purchaser by or before any court or administrative agency that might adversely affect the ability of the Purchaser to perform its obligations under this Agreement and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Purchaser as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Purchaser hereunder have been obtained.

(e) The Purchaser is not in default under any other program administered by the State.

(f) All information contained in the Tax Credit Bid and in all documents submitted in support of its Tax Credit Bid is true, correct and complete in all material respects, does not contain any untrue statement of a material fact, and does not omit to state a material fact necessary to make the statements contained herein or therein not misleading or incomplete.

(g) The Purchaser intends to complete all components of its Strategic Commitment as set forth in Schedule A.

(h) The Purchaser has submitted its Auction Deposit in accordance with the Program requirements.

(i) The Purchaser has nominated the individual identified in Schedule A (the "**Advisory Board Representative**") who is available to serve on the New Jersey Innovation Evergreen Advisory Board (the "**Advisory Board**") established pursuant to section 32 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-300) and N.J.A.C. 19:31-25.13(a) if appointed to the Advisory Board by the Authority's Chief Executive Officer.

(j) The Purchaser is in substantial compliance with all material statutes, rules, and other enforceable standards of the New Jersey Department of Labor and Workforce Development ("**LWD**") or the New Jersey Department of Environmental Protection ("**DEP**") that apply to the Purchaser and has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with LWD and DEP, with respect thereto. Further, the Purchaser has no unpaid liability in excess of any threshold dollar amount(s) that may be established by the Department of the Treasury, including, but not limited to, the Division.

Article VI. Covenants Of The Purchaser

Section 6.01 Covenants. At all times during the Commitment Period, the Purchaser covenants and agrees as follows:

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(a) The Purchaser shall maintain its existence as a legal entity and shall not take, or fail to take, any action, without providing advance written notice to the Authority, that could result in the Purchaser not to be in compliance with this Section 6.01(a), provided that such notice shall not affect the payment provisions contained in Article IX hereof. Notwithstanding anything contained herein to the contrary, the Authority makes no representations or warranties as to the Purchaser's ability to apply all or any portion of the Tax Credit Amount in accordance with the terms of this Agreement in the event the Purchaser fails to adhere to the terms of this Section 6.01(a) during the Commitment Period.

(b) The Purchaser shall satisfy or cause to be satisfied each component of the Strategic Commitment during the Commitment Period in accordance with this Agreement and as set forth in Schedule A. Subject to the last sentence of this Section 6.01(b), the Purchaser shall not take, or fail to take, any action that could cause a material change to the Strategic Commitment or result in a material change to the Tax Credit Bid Score, or the Tax Credit Bid Score ascribed to a particular component of the Strategic Commitment. The Purchaser shall not change any component of the Strategic Commitment during the Commitment Period absent extenuating circumstances or without the written consent of the Authority, provided that any consent shall not affect the payment provisions contained in Article IX hereof.

(c) The Purchaser shall, at all times during the twelve (12) month period following the Effective Date, (i) make available the Advisory Board Representative to serve on the Advisory Board and (ii) provide the Authority with the name, title, phone number and email address of the Advisory Board Representative. If the Authority's Chief Executive Officer appoints the Advisory Board Representative to the Advisory Board, the Purchaser shall cause the Advisory Board Representative to attend at least a majority of meetings and events that the Authority schedules in the respective year for participation by Advisory Board members. The Purchaser shall promptly notify the Authority in writing of any change to the Advisory Board Representative whether or not such Advisory Board Representative has been appointed to serve on the Advisory Board. Said notice shall include the name, title, phone number and email address of the replacement Advisory Board Representative. The Purchaser shall only nominate subsequent Advisory Board Representative that have professional experiences and credentials substantially similar to the initial Advisory Board Representative, as determined by the Authority.

(d) During the twelve (12) month period following the date of Board Approval, the Authority shall not approve a Qualified Investment or Follow-on Investment to a venture firm, or any of its Affiliates, that (i) is managed; (ii) has more than fifteen percent (15%) of the voting securities or other voting ownership interests beneficially owned, through rights, options, convertible interests, or otherwise, or (ii) whose direction of investments are controlled, by the Purchaser (collectively, "**Prohibited Interest**"). Notwithstanding anything contained in this subparagraph to the contrary, the restrictions contained in this Section 6.01(d) shall not apply to any Prohibited Interest that existed prior to the date of Board Approval. Nothing in this Section 6.01(d) shall require the Purchaser to divest, modify, or amend its participation in any Prohibited Interest that existed prior to the date of Board Approval.

(e) The Purchaser shall not assign, sell or transfer all or any portion of the Tax Credit Amount evidenced by the Tax Credit Certificate except in accordance with Article XI below.

(f) The Purchaser shall provide such other information as requested by the Authority or Division to confirm the Purchaser has adhered with the terms and conditions of this Agreement and the Tax Credit Bid including, without limitation, satisfying the Strategic Commitment.

(g) The Purchaser shall provide such other information as requested by the Authority or Division to administer the Program.

Article VII. Indemnity

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Section 7.01 **Indemnification.** The Purchaser covenants and agrees to protect, indemnify and hold harmless the Authority, the State, the Department of the Treasury and the Division and their respective members, agents, officers, employees and servants (collectively, the “*Indemnified Parties*”) from all losses, claims, damages, liabilities, and costs whatsoever (including all costs, expenses and reasonable counsel fees incurred in investigating and defending such losses and claims, etc.) suffered by any Indemnified Party or brought by any person or entity against any Indemnified Party, and caused by, related to, arising or purportedly arising out of, or from: (i) the participation by the Purchaser in the Program including without limitation any actions or inactions of the Purchaser relating to this Agreement, the Tax Credit Amount or the Strategic Commitment; (ii) any loss, damage or injury to, or death of, any person occurring at or about or resulting from the Purchaser’s or an Affiliate of the Purchaser’s operations; and (iii) any damage or injury to an Indemnified Party caused by the negligence, gross negligence and willful misconduct of the Purchaser or an Affiliate of the Purchaser or the Purchaser’s or such Affiliates’ owners, officers, employees or agents, except for losses, claims, damages, liabilities and costs arising from the gross negligence or willful misconduct of such Indemnified Party claiming indemnification hereunder.

Section 7.02 The Purchaser releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable for, and agrees to indemnify and hold each Indemnified Party harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by such Indemnified Party with respect to any of the matters set forth in clauses (i) through (iii) of Section 7.01 or at the direction of the Purchaser with respect to any of such matters above referred to.

Section 7.03 If any action shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect to which indemnity may be sought against the Purchaser, such Indemnified Party shall promptly notify the Purchaser in writing, and the Purchaser shall assume the defense thereof, including the employment of counsel satisfactory to the Indemnified Party, the payment of all costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel at the Purchaser's expense in any such action and to participate in the defense thereof if a conflict of interest arises out of the representation by the same counsel. The Purchaser shall not be liable for any settlement of any such action effected without the Purchaser's written consent, but if settled with the consent of the Purchaser, or if there is a final judgment for the claimant on any such action, the Purchaser agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement of judgment. Notwithstanding anything in this Agreement to the contrary which may limit recourse to the Purchaser or may otherwise purport to limit the Purchaser's liability, the provisions of this Section 7.03 shall control the Purchaser's obligations.

Section 7.04 Notwithstanding anything herein to the contrary, the Purchaser shall pay all claims, demands, expenses and other amounts for which the Purchaser has indemnified the Authority hereunder immediately as the same shall arise and the same shall be immediately due and payable by the Purchaser to the Indemnified Parties without demand therefore.

Section 7.05 The Purchaser agrees that the Authority is not liable in damages for the issuance, non-issuance, use, sale, or marketability of the Tax Credits. The Purchaser acknowledges the risks of relying on the use and sale of the tax credits. The Purchaser further acknowledges and accepts that the Legislature may enact further changes to the Act or to tax laws and that the terms and conditions set forth herein, including the Tax Credit Amount and when such amounts may be applied, are subject to changes to the Act and Regulations and to tax laws. Nothing herein shall be construed as a waiver of the Purchaser’s right to challenge the validity of any Legislation or Regulation that may be enacted after the date on which this Agreement is executed which changes the material terms of this Agreement.

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Section 7.06 The provisions of this Article VII shall be in addition to any and all other obligations and liabilities the Purchaser may have to any Indemnified Party at common law and shall survive the expiration or earlier termination of this Agreement.

Article VIII. Compliance Reports

Section 8.01 Annual Compliance Report. The Purchaser's chief executive officer, chief financial officer, chief operating officers, or equivalent senior officer or administrator, shall certify and submit to the Authority no later than thirty (30) days following each December 31 during the Commitment Period, an Annual Compliance Report in such form as may be proscribed by the Authority.

Section 8.02 Contents of Annual Compliance Report. Each Annual Compliance Report remitted to the Authority shall include the following:

(a) A certification acceptable to the Authority indicating whether or not the Purchaser is aware of any condition, event or act which would cause the Purchaser not to be in compliance with all applicable tax laws, the Authority's Approval, this Agreement, any Strategic Commitment component, the Act, or the Regulations promulgated thereunder.

(b) A certification acceptable to the Authority indicating the status of each component of the Strategic Commitment. Such certification shall include, without limitation, (i) a list of the Strategic Commitment components that have been satisfied, (ii) the date such Strategic Commitment components were satisfied, (iii) the status of each Strategic Commitment component that has not been completed and the anticipated date by when that Strategic Commitment component shall be completed, and (iv) the amount the Purchaser has expended (or dollar value of services) on account of each Strategic Commitment component.

Section 8.03 Completion Report. In addition to the Annual Compliance Reports required hereunder, the Purchaser's chief executive officer, chief financial officer, chief operating officers, or equivalent senior officer or administrator shall certify and submit to the Authority a completion report no later than thirty (30) days after the date the Purchaser satisfies any component of the Strategic Commitment (each, a "***Completion Report***"). Each Completion Report shall be in a format acceptable to the Authority and evidence that the Purchaser has satisfied such component of its Strategic Commitment. The Completion Report shall also include a certification as to the actual financial value the Purchaser has expended in satisfying such Strategic Commitment component, copies of all Verification Documents listed on Schedule A, and such other information as requested by the Authority.

Section 8.04 Additional Reports and Information. In addition to the Annual Compliance Report and Completion Reports required hereunder, the Purchaser's chief executive officer, chief financial officer, chief operating officers, or equivalent senior officer or administrator shall submit to the Authority such other reports and information as the Authority may request from time to time to confirm the Purchaser's compliance with this Agreement and the Program.

Article IX. Failure to Perform Strategic Commitment or Advisory Board Requirement

Section 9.01 Events of Strategic Commitment Payment. Any of the following occurrences shall separately constitute an "Event of Strategic Commitment Payment":

(a) Absent extenuating circumstances or written consent by the Authority, each of which shall be determined or granted by the Authority in its sole discretion:

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- (i) any action or inaction of the Purchaser that has the effect of or is equivalent to the Purchaser failing to fund at least eighty percent (80%) of the financial value of a single Strategic Commitment component on or before the target completion date specified on Schedule A, as discounted pursuant to Section 9.01(c); or
 - (ii) any action or inaction of the Purchaser that results in a reduction of the Tax Credit Bid Score ascribed to a single Strategic Commitment component; provided, the Authority shall evaluate such action or inaction and determine whether there has been a reduction in the Tax Credit Bid Score in comparison to the Strategic Commitment, and any applicable component thereof, in accordance with the description contained in Schedule A attached hereto; or
 - (iii) the Purchaser otherwise fails to materially perform or satisfy a Strategic Commitment component, including the failure to perform a Strategic component on or before the target completion date specified on Schedule A.
- (b) Failure of the Purchaser to timely submit a Completion Report.
- (c) Failure of the Purchaser to timely submit an Annual Compliance Report, or such other reports or information as may be requested by the Authority from time to time in accordance with Section 8.04 (each, a “*Delinquent ACR*”).

Section 9.02 Remedies Upon an Event of Strategic Commitment Payment; Cure.

(a) At any time after an Event of Strategic Commitment Payment and subject to the applicable cure period contained in Section 9.02(b) below, the Authority may demand in writing that the Purchaser pay to the Fund the Strategic Commitment Payment Amount, calculated in accordance with Section 9.03, and, if applicable, the Strategic Commitment Remedy Amount.

(b) If such Event of Strategic Commitment Payment is capable of cure,

- (i) the Purchaser shall have the right to cure any Event of Strategic Commitment Payment occurring pursuant to Section 9.01(a) within twelve (12) months of the date such Event of Strategic Commitment Payment occurred, without regard for whether the Authority had notice of such Event of Strategic Commitment and without the need for any notice from the Authority to the Purchaser of such Event of Strategic Commitment Payment, and
- (ii) the Purchaser shall have the right to cure any Event of Strategic Commitment Payment occurring pursuant to Section 9.01(b) within thirty (30) days of receiving notice from the Authority of such Event of Strategic Commitment Payment.

(c) Payment by the Purchaser of any Strategic Commitment Payment Amount and/or Strategic Commitment Remedy Amount shall be made within thirty (30) days of any demand by the Authority.

Section 9.03 Calculation of Strategic Commitment Payment Amount.

(a) Upon the occurrence of an Event of Strategic Commitment Payment set forth in Section 9.01(a), the Strategic Commitment Payment Amount shall be equal to, as determined by the Authority in its sole discretion:

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- (i) For an Event of Strategic Commitment Payment under Section 9.01(a)(i), the difference between the financial value of such under-funded Strategic Commitment component, as set forth on Schedule A, and the actual financial value incurred by the Purchaser in connection with its performance of such Strategic Commitment component, as demonstrated to the Authority's satisfaction and as discounted pursuant to Section 9.01(c); or
- (ii) For an Event of Strategic Commitment Payment under Section 9.01(a)(ii), irrespective of the financial value incurred by the Purchaser, an amount not to exceed the total financial value of each Strategic Commitment component subject to a reduced Tax Credit Bid Score; or
- (iii) For an Event of Strategic Commitment Payment under Section 9.01(a)(iii), irrespective of the financial value incurred by the Purchaser in such performance, an amount equal to the total financial value of such Strategic Commitment component, as set forth on Schedule A.

(b) Upon the occurrence of an Event of Strategic Commitment Payment set forth in Section 9.01(b), the Strategic Commitment Payment Amount shall be equal to the difference between the financial value of the Strategic Commitment component subject of the Completion Report, as set forth on Schedule A, and any actual financial value incurred by the Purchaser in connection with its performance of completed Strategic Commitment components, as demonstrated to the Authority's satisfaction.

(c) Upon the occurrence of an Event of Strategic Commitment Payment set forth in Section 9.01(c), and for purposes of determining the Purchaser's compliance with Section 9.01(a)(i) and the calculation of the Strategic Commitment Payment Amount in Section 9.03(a)(i), the Authority shall discount and reduce the actual financial value incurred by the Purchaser in connection with completing a Strategic Commitment component as follows:

- (i) For each Delinquent ACR, the amount the Authority shall credit the Purchaser in connection with funding a completed Strategic Commitment component(s) with a target competition date during or after the year such Delinquent ACR was due shall be discounted and reduced by an amount equal to ten percent (10%) of the value of such Strategic Commitment component(s), as set forth on Schedule A.
- (ii) For the avoidance of doubt, when determining whether the Purchaser is in compliance with Section 9.01(a)(i), the Authority shall not discount or reduce the amount the Purchaser is credited for incurring in connection with those Strategic Commitment component(s) the Purchaser has reported to have satisfied in an Annual Compliance Report, timely submitted in accordance with this Agreement, and before the occurrence of the Purchaser submitting or failing to submit a Delinquent ACR.
- (iii) By way of examples, but without limitation, in the event the Purchaser fails to timely submit an Annual Compliance Report in accordance with the terms of this Agreement and the Purchaser is obligated to complete a Strategic Commitment component with a value of \$50,000 in the year such Delinquent ACR was due, when determining whether the Purchaser is in compliance with Section 9.01(a)(i) and calculating the Strategic Commitment Payment Amount in Section 9.03(a)(i), the Authority shall discount and reduce the actual financial value incurred by the Purchaser in connection with completing such Strategic Commitment component by \$5,000. In addition, when determining the Purchaser's compliance with Section 9.01(a)(i) and calculating the

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Strategic Commitment Payment Amount in Section 9.03(a)(i), the Authority shall discount and reduce the actual financial value incurred by the Purchaser in connection with completing any other Strategic Commitment components with a completion date after the date of subject Delinquent ACR was due by an amount equal to ten percent (10%) of such component's value, as set forth on Schedule A.

(d) Subject to Section 9.03(e) below, in no event shall the Strategic Commitment Payment Amount exceed the total financial value of all Strategic Commitment components as set forth on Schedule A.

(e) In addition to the Strategic Commitment Payment Amount, the Authority may demand that the Purchaser pay a Strategic Commitment Remedy Amount.

(f) The Authority's remedies set forth in this Section 9.03 shall be in addition to such other remedies set forth in Article X below and any criminal or civil penalties to which the Purchaser and its respective officers may be subject.

Section 9.04 Absent extenuating circumstances or written consent by the Authority, at its sole discretion, the Purchaser shall not be eligible to purchase tax credits under this Program through any competitive auction that occurs during the twelve (12) months immediately following the failure of the Purchaser to nominate an Advisory Board Representative, or failure of such Advisory Board Representative, if appointed to the Advisory Board, to materially satisfy the obligations of such appointment as determined at the end of the year for which the Advisory Board Representative was appointed, in each event in accordance with Section 6.01(e).

Article X. Events of Default & Remedies

Section 10.01 Events of Default. The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "Event of Default," provided that an Event of Strategic Commitment Payment under Section 9.01 and the events described in Section 9.04 shall not constitute an Event of Default, with the exception of the Purchaser's failure to pay the Strategic Commitment Payment Amount and/or Strategic Commitment Remedy Amount in Section 10.01(c) below:

(a) The Purchaser fails to strictly observe or comply with the terms, conditions, and laws relating to the use, sale, assignment or transfer of the Tax Credit Certificate or a Tax Credit Transfer Certificate; or

(b) Any representation or warranty made by the Purchaser in its Tax Credit Bid, the Approval Letter, in this Agreement, or in any other submission to the Authority under this program is false, misleading, or inaccurate in any material respect as of the date made; or

(c) The Purchaser fails to observe or perform in any other material respect any other term, covenant or condition of the Purchaser under this Agreement, including timely payment of the Offer Balance or payment of the Strategic Commitment Payment Amount and/or Strategic Commitment Remedy Amount, and, provided such failure is capable of cure, such failure shall have continued for thirty (30) days after the earlier of (1) delivery to the Purchaser of written notice thereof from the Authority or (2) the Purchaser's actual or constructive knowledge of such failure; provided, however, that if such failure is capable of cure, but cannot be cured by payment of money or by diligent efforts within such thirty (30) day period, but such diligent efforts are properly commenced within the cure period and the Purchaser is

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diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional forty five (45) days and in no case to extend beyond the expiration of this Agreement; or

(d) The Purchaser is declared in default by the Authority or the State or any division of the State under any existing or new assistance or incentive program provided by the Authority and/or the State or any division of the State to the Purchaser and/or any of its Affiliates or in which the Purchaser and/or any of its Affiliates participates.

Section 10.02 Remedies Upon Default.

(a) Upon the occurrence of any Event of Default at any time hereafter, the Authority may, so long as such Event of Default is continuing, do one or more of the following as the Authority in its sole discretion shall determine, without limiting any other right or remedy the Authority or the Division may have on account of such Event of Default:

(i) If the Purchaser has not applied the Tax Credit Certificate against its State tax liability in accordance with Section 3.02 or sold or assigned the Tax Credit Award, in full or in part, pursuant to Article XI, the Authority may require the surrender by the Purchaser to the Authority of the Tax Credit Certificate for suspension or cancellation.

(ii) The Authority may exercise any other right or remedy that may be available to it under applicable law or under this Agreement, including, without limitation: (1) requiring immediate payment of the difference between the financial value of all Strategic Commitment components, as set forth on Schedule A, and the actual financial value incurred by the Purchaser in connection with its performance of completed Strategic Commitment components, as demonstrated to the Authority's satisfaction, including, but not limited to, any outstanding Strategic Commitment Payment Amount and Strategic Commitment Remedy Amount due to the Authority in accordance with the provisions of Article IX, (2) for an Event of Default under Section 10.01(b), recapture of any or all of the Tax Credit Amount, and/or (3) proceeding by appropriate court action (legal or equitable) to enforce the terms hereof. All damages may include all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture amount, including, but not limited to, counsel fees, court costs, and other costs of collection, and Damages payable under (2) and (3) shall include interest on such recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties.

(b) Damages payable by the Purchaser under this Article X shall be limited to the amount specified in Section 10.02(a); provided, however, that nothing in this Section 10.02(b) shall limit the Purchaser's obligation to make payments to the Indemnified Parties pursuant to Article VII hereof.

(c) The rights and remedies of the Authority under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Authority or the Division allowed by law with respect to any Event of Default under this Agreement. Failure by the Authority to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon any Event of Default by the Purchaser hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Purchaser with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Event of Default by the Purchaser be continued or repeated.

(d) Notwithstanding the provisions of this Article X, upon the occurrence and continuation of an Event of Default, the Authority will not seek an injunction or equitable remedies to force the Purchaser

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Article XI. Transfer.

Section 11.01 Assignment of Tax Credit Award. The Purchaser shall have the right to apply to the Authority and Director for a Tax Credit Transfer Certificate for the Tax Period during which the Purchaser is eligible to apply the Tax Credit Award in accordance with Section 3.02. Upon the approval by the Division and the Authority, in their sole discretion, and satisfaction of the conditions set forth in Section 11.03, the Division shall issue a Tax Credit Transfer Certificate to the Purchaser in the amount requested by the Purchaser (the “*Transferred Tax Credits*”). No sale or assignment of the Tax Credit Award, in full or in part, shall constitute an assignment of this Agreement or any obligation of the Purchaser in this Agreement.

Section 11.02 Prohibited Assignments. The Purchaser shall not sell or assign, in full or in part, the Tax Credit Award to another person (a “*Transferee*”) if:

- (a) Such Transferee does not have a State tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).
- (b) The requested Transferred Tax Credits is an amount less than \$100,000.
- (c) The sale or assignment is for consideration of less than eighty-five percent (85%) of the face value of the Transferred Tax Credits before considering any further discount to present value.

Section 11.03 Conditions to Issuance of Tax Credit Transfer Certificate. The Purchaser acknowledges that the Tax Credit Transfer Certificate shall not be issued, and the Purchaser shall not assign, and the Transferee shall not apply the Tax Credit Transfer Certificate against its State tax liability, unless and until:

- (a) The Purchaser provides or causes to be provided to the Authority and Division for approval, a copy of the fully executed agreement (the “*Tax Credit Agreement of Sale*”) between the Purchaser and Transferee conveying the Transferred Tax Credits. The Tax Credit Agreement of Sale shall be approved by the Authority and Division as a condition prior to the issuance of a Tax Credit Transfer Certificate.
- (b) The Purchaser shall remit or caused to be remitted to the Authority for transfer to the Division to deposit into the General Fund of the State an amount equal to ten percent (10%) of the consideration paid for the Transferred Tax Credits and set forth in the Tax Credit Agreement of Sale.

Section 11.04 Tax Credit Transfer Certificate. The issuance of Tax Credit Transfer Certificate issued by the Division in accordance with this Article XI, the Tax Credits transferred and reflected on the Tax Credit Certificate (the “*Transferred Tax Credits*”) shall be subject, without limitation, to the following restrictions and conditions:

- (a) The Purchaser shall not apply the face value of the Transferred Tax Credits against its State tax liability for any applicable Tax Privilege Period.
- (b) The Purchaser shall waive all right, title, interest, and claims to the Transferred Tax Credits.

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(c) The Transferred Tax Credits shall remain subject to recapture in accordance with Section 10.02(a)(ii)(3) above, provided that the Authority's right to pursue recapture and exercise such other remedies set forth in Section 10.02 shall be from and against the Purchaser and not from the Transferee.

(d) The issued Tax Credit Transfer Certificate shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to section 26 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-294), the Regulations, this Agreement, and any other terms and conditions that the Director may prescribe, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

(e) Following the issuance of the Tax Credit Transfer Certificate, the Authority may publish on its internet website, and in such other locations and forms as shall be determined by the Authority, the following information:

- (i) the name of Purchaser,
- (ii) the name of the Transferee,
- (iii) the face value of the Tax Credit Transfer Certificate,
- (iv) that the Transferred Tax Credits may be applied against the Transferee's State tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and
- (v) the consideration paid by the Transferee for the Transferred Tax Credits and the amount paid to the Division in accordance with Section 11.03(b).

Article XII. Termination

Section 12.01 Termination. The Purchaser may request in writing that the Authority consent to termination of this Agreement prior to the conclusion of the Term. The Authority shall determine whether to consent in its sole discretion.

Section 12.02 Remedies Upon Termination. As a condition of consent to termination in accordance with Section 12.01, the Authority, in its sole discretion, may require:

(a) The Purchaser pay to the Fund the difference between the financial value of all Strategic Commitment components, as set forth on Schedule A, and the actual financial value incurred by the Purchaser in connection with its performance of completed Strategic Commitment components, as demonstrated to the Authority's satisfaction, including, but not limited to, any outstanding Strategic Commitment Payment Amount and Strategic Commitment Remedy Amount due to the Authority in accordance with the provisions of Article IX, and/or

(b) The Purchaser pay to the Fund the difference between the Tax Credit Amount and the Tax Credit Purchase Offer, or, if the Purchaser has not applied the Tax Credit Certificate against its State tax liability in accordance with Section 3.02 or sold or assigned the Tax Credit Award, in full or in part, pursuant to Article XI, the Purchaser surrender the Tax Credit Certificate to the Authority.

Article XIII. Audits And Inspections; Records

Section 13.01 Audits and Inspections. At any time during normal business hours upon written notice and as often as the Authority may reasonably deem necessary, the Purchaser shall make available to the Authority, any other State agency, or their duly authorized representative for examination all of the

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Purchaser's evidence and documentation supporting (i) the Purchaser having satisfied its obligations under the Tax Credit Bid, including the Strategic Commitment, (ii) each Annual Compliance Reports, (iii) each Completion Report, and (iv) such other reports or information provided by the Purchaser in accordance with this Agreement.

Section 13.02 Record Maintenance. In addition to any other period of time required by law, including, but not limited to, any tax law, the Purchaser shall establish and maintain during the Commitment Period, and for five (5) years thereafter such records as are required by the Authority in Section 13.01 above and all relevant supporting documentation. Records required by the Authority with respect to any questioned costs, litigation or dispute between the Authority and the Purchaser arising out of this Agreement shall be maintained for the time needed to resolve any such issue. If for any reason the Authority shall require a review of the records related to this Agreement, the Purchaser shall, at its own cost and expense, provide all such records to the Authority. The Purchaser shall maintain and organize its records related to this Agreement and otherwise in connection with its participation in the Program in such form so that, in case of a review of its records or audit, it is able to verify and document the information it has provided in connection with this Agreement, including the Purchaser's Annual Compliance Reports and Completion Reports. The Purchaser agrees to be subject to review and audit by the Authority, the Office of the State Comptroller, and any other agency or department of the State in relation to this transaction. The provisions of this Section shall survive termination of this Agreement.

Article XIV. Miscellaneous

Section 14.01 Entire Agreement. This Agreement, together with the Tax Credit Bid and Approval Letter, constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, both written and oral, between the Parties with respect to the subject matter hereto.

Section 14.02 Severability. If any term or provision of this Agreement or any application thereof shall be declared invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

Section 14.03 Amendments and Modifications. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Authority and Purchaser and except that this Agreement shall be amended in accord with the provisions of any future regulations duly promulgated by the Authority that may affect the standard terms and conditions of approvals issued pursuant to the Act without the approval of Purchaser.

Section 14.04 No Waiver. No failure by the Authority or Purchaser to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon an Event of Default hereunder shall constitute a waiver of any such Event of Default or of any such term. To the fullest extent permitted by law, no waiver of any Event of Default shall affect or alter this Agreement, and this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Event of Default.

Section 14.05 Public Announcement. As a condition to entering into this Agreement, the Purchaser acknowledges and agrees that the Authority may publish on the Authority's website, and in such other locations and forms as shall be determined by the Authority, the following information relating to this Agreement:

- (a) The name of the Purchaser;
- (b) the face value of the Tax Credit Award purchased by the Purchaser;

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- (c) that the Tax Credit Award may be applied against State tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and
- (d) the Tax Credit Purchaser Offer paid by the Purchaser for Tax Credit Award.

Section 14.06 Notices. All notices, demands, requests, consents, approvals and other communications hereunder (collectively, “Notices”) shall be in writing and, unless otherwise required by law or regulation, shall be either (a) personally delivered, (b) sent by overnight courier, (c) sent by registered or certified mail, return receipt requested to the address provided herein, or (d) sent by electronic mail (email) to the address set forth herein so long as delivery of such email is confirmed by either automatic read receipt or email confirmation by the recipient and so long as a follow-up notice is sent by the methods set forth in clauses (a), (b) or (c) above.

If to the Authority, to: New Jersey Economic Development Authority
36 West State Street (FedEx, UPS, etc. delivery),
P.O. Box 990 (USPS mail only)
Trenton, NJ 08625-0820
Attn: Director
Email: njief@njeda.com

If to the Purchaser, to the address set forth on Schedule A hereto.

By giving the other Party at least five (5) days prior written notice, either party may, by Notice given as provided above, designate a different address or addresses for Notices. All Notices hereunder shall be deemed received (the time period measured by the giving of Notice shall commence): (i) upon delivery, if personally delivered or sent by overnight courier, or (ii) upon the date set forth on the return receipt if given by registered or certified mail.

Section 14.07 Successors and Assigns. All the terms and provisions of this Agreement shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. The Purchaser shall include a successor, as determined by the Authority in its sole discretion, to the Purchaser.

Section 14.08 Headings and Table of Contents. The headings and table of contents in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Section 14.09 Governing Law. This Agreement shall be governed by the laws of the State of New Jersey. Any and all claims made or to be made against the Authority based in tort law for damages shall be governed by and subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. Any and all claims made or to be made against the Authority based in contract law for damages shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., the provisions of which are hereby incorporated.

Section 14.10 Forum and Venue. The forum and venue for all actions related to the matters which are the subject of this Agreement shall be a court of competent jurisdiction in the County of Mercer and the State.

Section 14.11 Conflicts. No conflict between the provisions of this Agreement and any other document shall render ineffective any provision of this Agreement, relieve the Purchaser of the obligation to fully perform any provision hereof or prevent the Authority from exercising any of its rights and remedies hereunder.

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Section 14.12 Third Party Beneficiaries. This Agreement has been entered into solely by and among the Parties that have executed this Agreement; and except as otherwise expressly provided in this Agreement, this Agreement will not be deemed to create any rights in third parties or to create any obligations of any party hereto to any such third parties. Notwithstanding anything contained herein to the contrary, the Indemnified Parties shall be third-party beneficiaries to this Agreement, with the authority to enforce the provisions of Article VII hereof.

Section 14.13 Cross-default. It is specifically understood and agreed that this Agreement is *cross-defaulted* with any existing assistance and any future assistance provided by the Authority and/or the State to the Purchaser and/or any of its Affiliates, including, but not limited to, entities that have common principals. For purposes of this cross-default, a principal of an entity shall be any executive officer, director, or general partner of the entity; any person or other entity directly or indirectly controlling the entity; or a person or other entity directly or indirectly owning or controlling ten percent (10%) or more of the entity's ownership interest.

Section 14.14 Counterparts/Electronic Signature. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Electronic signature of this Agreement in accordance with the Uniform Electronic Transaction Act (UETA), N.J.S.A. 12A:12-1 to -26 shall be deemed to be valid execution and delivery as though an original ink. The parties explicitly consent to the electronic delivery of the terms of the transaction evidenced by this Agreement and affirm that their electronic signatures indicate a present intent to be bound by the electronic signatures and the terms of the Agreement. The electronic signature can be done either by ADOBE Acrobat or any other similar signature software that can be used for electronic signatures or by printing, manually signing, and scanning. Any signed counterpart may be delivered by electronic transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) with the same legal force and effect for all purposes as delivery of an originally signed agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered by their respective officers duly authorized as of the date and year set forth below.

WITNESS:

**NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY**

By: _____
Name:
Title:
Date:

WITNESS:

[Purchaser Name]

By: _____
Name:
Title:
Date:

SAMPLE

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Schedule A

Tax Credit Information Sheet

Purchaser Name:

Address: _____
 Attention: _____
 Phone: _____
 Email address: _____
 Entity Type: _____
 State of Formation: _____ Date of Formation: _____
 If Purchaser not formed in New Jersey, date of registration in New Jersey: _____

Tax Credit Bid Date: _____

Tax Credit Purchase Offer: \$ _____

Auction Deposit Paid: \$ _____

Offer Balance: \$ _____

Date of Board Approval: _____

Purchaser Tax Privilege Period: _____

Date of Approval Letter and any amendment to Approval Letter: _____

Face Value of Tax Credit Award: \$ _____

Strategic Commitment

Tax Credit Bid Score: _____

Total Commitment Period: _____

Total Financial Value of Strategic Commitment: \$ _____

Description of Strategic Commitment Components:

	Description of Component (Including Description of Completion Milestones)	Financial Value of Component	Target Completion Date	Component Score	Verification Documents
1.					
2.					
3.					

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Schedule A (continued)

Tax Credit Information Sheet

Advisory Board Representative:

Name: _____
Title: _____
Address: _____
Phone: _____
Email address: _____

SAMPLE