

Grow New Jersey Assistance
Tax Credit Grant Program

For

Capital Investment and Full-Time Positions Retained or Created at a
Qualifying Business Facility
Terms and Conditions of Incentive Approval

Between

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

And

KONICA MINOLTA BUSINESS SOLUTIONS U.S.A., INC.

Approved by NJEDA

INCENTIVE AGREEMENT

THIS INCENTIVE AGREEMENT (hereinafter, the “Agreement”) made and entered into by and between Konica Minolta Business Solutions U.S.A., Inc. (“Applicant”), having its principal offices located at 100 Williams Drive, Ramsey, New Jersey 07446 (hereinafter, together with any Affiliates listed in Section 9, the “Company”), 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 referred to as the “Authority”), the above entities being (hereinafter referred to as the “Parties”).

W I T N E S S E T H:

WHEREAS, the Legislature enacted the “Grow New Jersey Assistance Act,” L. 2011, c. 149 as amended by, among other laws, L. 2013, c. 161 and L. 2014, c. 63 (hereinafter “the Act”) which provides incentives for a business making, acquiring, or leasing a Capital Investment at a Qualified Business Facility with more than a certain required number of Retained Full-Time Jobs or New Full-Time Jobs (“Program”); and

WHEREAS, the Act further provides that to qualify for the Program, a business is required to enter into an incentive agreement to undertake a project that will result in the Retained Full-Time Jobs or New Full-Time Jobs required for eligibility, and maintain during the Commitment Period, and any Recoupment Period, a minimum number of Full-Time Jobs that takes into consideration the Bonus Awards, the net positive economic benefit provided by the project, and the amount of tax credits previously received by the business during the Eligibility Period; and

WHEREAS, the Applicant, by submission of an application dated September 21, 2017 (“Application”), certified that it is a qualifying business and that its Project, as defined herein, is a qualifying project as specified in the Act; and

WHEREAS, the Act and regulations implementing the Act, N.J.A.C. 19:31-18 et seq. (“Regulations”), set forth the criteria under which the Company is eligible for the grants of corporation business tax credits and insurance premiums tax credits, and

WHEREAS, the Applicant has certified that it meets the eligibility criteria set forth in the Act and implementing Regulations, which certification is incorporated into the Agreement as set forth hereinafter; and

WHEREAS, on November 14, 2017, the Authority approved the Application (“Authority’s Approval”), and so notified the Applicant and the Applicant has executed an approval letter dated December 5, 2017; and

WHEREAS, the December 5, 2017 approval letter inadvertently described the project premises as warehouse space instead of office space.

WHEREAS, the Act provides that any such approval is subject to terms and conditions contained in the Act and Regulations, and is conditioned upon the Company executing an Agreement to establish such terms and conditions of the Project.

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

SECTION 1. DEFINITIONS. Terms as used herein:

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by the Applicant. 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. A taxpayer may establish by clear and convincing evidence, as determined by the Director, that control exists in situations involving lesser percentages of ownership than required by those statutes. An Affiliate of the Applicant may contribute to meeting either the Capital Investment or Full-Time Employee requirements of the Applicant under the Act.

“Aggregate Tax Credits Allowed” means the aggregate amount of the tax credits allowed under all the Letters of Compliance that have been issued.

“Agreement” or “Incentive Agreement” means this Agreement between the Company and the Authority.

“Annual Compliance Report” means an annual certification by the Company’s chief financial officer in a format acceptable to the Authority evidencing that the Company has satisfied the conditions relating to the Program.

“Bonus Award” means the amounts to which the Company is eligible pursuant to N.J.A.C. 19:31-18.8(c).

“Capital Investment” in a Qualified Business Facility means expenses by the Company or any Affiliate incurred after the Application for: (a) site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property; (b) obtaining and installing furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods subject to bonus depreciation under Sections 168 and 179 of the Internal Revenue Code, 26 U.S.C. §§ 168 and 179, for the operation of a business on real property in a building, structure, facility, or improvement to real property, including associated Soft Costs; and (c) receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120, N.J.S.A. 13:20-13. Capital Investment includes obtaining and installing furnishings and machinery, apparatus or equipment for the operation of the Company in a building, structure, facility or improvement to real property, site-related utility and transportation infrastructure improvements, plantings or other environmental components required to attain the level of silver rating or above in the LEED building rating system, but only to the extent that such Capital Investments have not received any grant or financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. Vehicles and heavy equipment not permanently located in the building, structure, facility or improvement shall not constitute a Capital Investment. Also included is remediation of the Qualified Business Facility or qualified residential project site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. In a Garden State Growth Zone, the following qualify as a Capital Investment: any development, redevelopment and relocation costs, including, but not limited to, site acquisition if made within 24 months of the Application to the Authority, engineering, legal, accounting, and other professional services required; and relocation, environmental remediation, and infrastructure improvements for the project area, including, but not limited to, on- and off-site utility, road, pier, wharf, bulkhead, or sidewalk construction or repair. A business that acquires or leases a Qualified Business Facility shall also be deemed to have acquired the Capital Investments made or acquired by the seller or landlord if pertaining primarily to the premises of the Qualified Business Facility, and, if pertaining generally to the Qualified Business Facility being acquired

or leased, shall be allocated to the premises of the Qualified Business Facility on the basis of the Gross Leasable Area of the premises in relation to the total Gross Leasable Area in the Qualified Business Facility. The Capital Investment herein described may include any Capital Investment made or acquired within 24 months prior to the date of the Application, so long as the amount of Capital Investment made or acquired by the Company, any Affiliate, or any owner after the date of the Application equals at least 50 percent of the amount of Capital Investment, allocated to the premises of the Qualified Business Facility being acquired or leased on the basis of the Gross Leasable Area of the premises in relation to the total Gross Leasable Area in the Qualified Business Facility made or acquired prior to the date of the Application.

“College or university” means a county college, an independent institution of higher education, a public research university, or a State college.

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

“Commitment Period” means the period of time that is 1.5 times the Eligibility Period.

“Complex of Buildings” means buildings that are part of the same financing plan and operational plan.

“Compliance Period” means the period after the Eligibility Period during the Commitment Period.

“Deep Poverty Pocket” means a population census tract having a poverty level of 20 percent or more, and which is located within the Qualified Incentive Area.

“Default” means an event which, with notice or passage of time or both, would constitute an Event of Default hereunder.

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

“Disaster Recovery Project” means a project located on property that has been wholly or substantially damaged or destroyed as a result of a Federally declared disaster which, after utilizing all disaster funds available from Federal, State, county, and local funding sources, demonstrates to the satisfaction of the Authority that access to additional funding authorized pursuant to the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161, is necessary to complete the redevelopment project, and which is located within the qualified incentive area.

“Distressed Municipality” means a municipality that is qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act (1947), P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a Major Rail Station is located.

“Doctoral university” means a university located within New Jersey that is classified as a doctoral university under the Carnegie Classification of Institutions of Higher Education’s Basic Classification methodology on the effective date of P.L. 2017, c. 221 (August 7, 2017).

“Eligibility Period” means the period in which the Company may claim a tax credit under the Program, beginning with the Tax Period in which the Authority accepts the Project Completion Certifications and extending thereafter for ten (10) years, unless terminated sooner pursuant to the terms of this Agreement.

“Eligible Position” or “Full-Time Job” means a full-time position in the Company in the State that the Company has filled with a Full-Time Employee. To be eligible as an Eligible Position or Full-Time Job, the employee must have his or her primary office at the Qualified Business Facility and must spend at least 80 percent of his or her time at the Qualified Business Facility, or spend any other period of time generally accepted by custom or practice as full-time employment at the Qualified Business Facility, as determined by the Authority in its sole discretion based on the characteristics of the employee’s job and time at the facility, including, but not limited to, the amount of continuous time spent at the facility and the economic impact of the employee on the area in which the facility is located. For example, a reduced period of time is not applicable to a truck driver or salesperson who does not regularly contribute to the local economy due to the transient nature of his or her job responsibilities at the qualified business facility.

“Environmental Law” means, whenever enacted or promulgated, any applicable Federal, State, county or local law, statute, ordinance, rule, regulation, license, permit, authorization, approval, covenant, criteria, guideline, administrative or court order, judgment, decree, injunction, code or requirement or any agreement with a governmental authority:

- (1) relating to pollution (or the cleanup, removal, remediation or encapsulation thereof, or any other response thereto), or the regulation or protection of human health, safety or the environment, including air, water, vapor, surface water, groundwater, drinking water, land (including surface or subsurface), and plant, aquatic and animal life, or
- (2) concerning exposure to, or the use, containment, storage, recycling, treatment, generation, discharge, emission, release or threatened release, transportation, processing, handling, labeling, containment, production, manufacture, refinement, disposal or remediation of any hazardous substance, hazardous condition or hazardous activity, as such terms are defined in the applicable laws in each case as amended and as now or hereafter in effect, and any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligations for injuries (whether personal or property) or damages due to or threatened as a result of the presence of, exposure to, or ingestion of, any hazardous substance, whether such common law or equitable doctrine is now or hereafter recognized or developed.

“Full-Time Employee” means a person: who is employed by the Company for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, or who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (*N.J.S.A. 34:8-67 et seq.*) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1 et seq.* or who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1 et seq.* or who is a partner of the Company who works for the Company for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided

in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. and who, except for purposes of the Statewide workforce, is provided, by the Company, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law. With respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a Port District having a container terminal: the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement; full-time employment shall include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent; 35 hours of employment per week at a qualified business facility shall constitute one “Full-Time Employee,” regardless of whether or not the hours of work were performed by one or more persons. For any project located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or any project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 Square Feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, 30 hours of employment per week at a qualified business facility shall constitute one “Full-Time Employee,” regardless of whether or not the hours of work were performed by one or more persons, and the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the employees of the business are covered by a collective bargaining agreement. “Full-Time Employee” shall not include any person who works as an independent contractor or on a consulting basis for the business. “Full-Time Employee” shall also not include any person who at the time of the Application works in New Jersey for consideration for at least 35 hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment but who prior to the Application was not provided, by the Company, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law.

“Garden State Create Zone” means the campus of a doctoral university, and the area within a three-mile radius of the outermost boundary of the campus of a doctoral university, according to a map appearing in the doctoral university’s official catalog or other official publication on the effective date of P.L. 2017, c. 221 (August 7, 2017).

“Garden State Growth Zone” means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the U.S. Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009); or a municipality which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.

“Grant of Tax Credits” means a grant which consists of corporation business tax credits or insurance premiums tax credits against the liability imposed against the Company pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and N.J.S.A. 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), and N.J.S.A. 17B:23-5; and this Agreement.

“Grow Jobs” means the Retained Full-Time Jobs and the New Full-Time Jobs that constitute the employment portion of the Project specified in the Project Completion Certificate pursuant to Section 10(b).

“Highlands Development Credit Receiving Area or Redevelopment Area” means an area located within a qualified incentive area and designated by the Highlands Water Protection and Planning Council for the receipt of Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13).

“Incentive Effective Date” means the date the Tax Credit Certificate is issued based on documentation submitted by a business pursuant to Section 10.

“Independent institution of higher education” means a college or university incorporated and located in New Jersey, which by virtue of law or character or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education which is equivalent to the education provided by the State's public institutions of higher education, as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis or other professional persons in the field of religion.

“Industrial Premises” or “Industrial Space” means premises or space in which at least 51 percent of the square footage will be or has been used for the assembling, processing, and/or manufacturing of finished or partially finished products from materials or fabricated parts, including, but not limited to, factories, or as a warehouse if the Company uses the warehouse as part of the chain of distribution for products assembled, processed and/or manufactured by the business at the Qualified Business Facility; for the breaking up or demolishing of finished or partially finished products; or for the production of oil or gas or the generation or transformation of electricity.

“Industrial Use” means assembling, processing, and/or manufacturing of finished or partially finished products from materials or fabricated parts; the breaking or demolishing of finished or partially finished products; or the production of oil or gas or the generation or transformation of electricity, and including farming purposes as that term is defined under IRC section 6420(c)(3)(A), undertaken in an industrial space.

“Letter of Compliance” means an annual certificate issued by the Authority indicating the amount of tax credits that the Company may apply against liability.

“Major Rail Station” means a railroad station located within a Qualified Incentive Area that provides access to the public to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

“Mega Project” means:

1. A Qualified Business Facility located in a Port District housing a business in the logistics, manufacturing, energy, defense, or maritime industries, either:
 - i. Having a Capital Investment in excess of \$20,000,000, and at which more than 250 Full-Time Employees of the business are created or retained; or
 - ii. At which more than 1,000 Full-Time Employees of the business are created or retained;
2. A Qualified Business Facility located in an aviation district housing a business in the aviation industry, in a Garden State Growth Zone, or in a priority area housing the United States headquarters and related facilities of an automobile manufacturer, either:
 - i. Having a Capital Investment in excess of \$20,000,000, and at which more than 250 Full-Time Employees of the business are created or retained; or
 - ii. At which more than 1,000 Full-Time Employees of the business are created or retained;
3. A Qualified Business Facility located in an Urban Transit Hub housing a business of any kind, having a Capital Investment in excess of \$50,000,000, and at which more than 250 Full-Time Employees of the business are created or retained;
4. A project located in an area designated in need of redevelopment, pursuant to P.L. 1992, c. 79 (N.J.S.A. 40A:12A-1 et seq.) prior to the enactment of P.L. 2014, c. 63 within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties having Capital Investment in

excess of \$20,000,000, and at which more than 150 Full-Time Employees of the business are created or retained; or

5. For applications submitted after July 1, 2016, a Qualified Business Facility primarily used by a business principally engaged in research, development, or manufacture of a drug or device, as defined in N.J.S.A. 24:1-1, or primarily used by a business licensed to conduct a clinical laboratory and business facility pursuant to the “New Jersey Clinical Laboratory Improvement Act,” P.L. 1975, c. 166 (N.J.S.A. 45:9-42.26 et seq.), either:

- i. Having a Capital Investment in excess of \$20,000,000, and at which more than 250 Full-Time Employees of the business are created or retained; or
- ii. At which more than 1,000 Full-Time Employees of the business are created or retained.

“Minimum Capital Investment” means a Capital Investment of at least \$40 per Square Foot of Gross Leasable Area. If the Qualified Business Facility is 223,569 Square Feet of Gross Leasable Area, the Minimum Capital Investment is \$8,942,760.

“Minimum Environmental and Sustainability Standards” means the standards set forth in the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

“New Full-Time Job” means an Eligible Position created by the Company at the Qualified Business Facility that did not previously exist in this State. For the purposes of determining a number of New Full-Time Jobs, the Eligible Positions of an Affiliate shall be considered Eligible Positions of the Company.

“Non-Gaming Business” means any business, or portion of any business, which is not engaged in the operation of casino gambling or other gaming as defined in N.J.S.A. 5:12-218. For projects that contain both gaming and non-gaming operations, the number of Full-Time Jobs and amounts of eligible Capital Investment shall be apportioned based on the proportionate revenue from all non-gaming revenue compared to total revenue, for example, if gaming revenue is 40 percent of total revenue, then 60 percent of the Full-Time Employees would be deemed non-gaming and in an Eligible Position for the Program.

“Other Eligible Area” means the portions of the Qualified Incentive Area that are not located within a Distressed Municipality, or the Priority Area.

“Port District” means the portions of a qualified incentive area that are located within: the Port of New York District of the Port Authority of New York and New Jersey, as defined in Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved by the South Jersey Port District established pursuant to The South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

“Priority Area” means the portions of the qualified incentive area that are not located within a Distressed Municipality and which: are designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to revise this definition; intersect with portions of a Deep Poverty Pocket, a port district, or were Federally owned land approved for closure under a Federal Commission on Base Realignment and Closure action; are the proposed site of a Disaster Recovery Project, a Qualified Incubator Facility, a Highlands Development Credit receiving area or redevelopment area, a Tourism

Destination Project, or Transit Oriented Development; or contain a vacant commercial building having over 400,000 Square Feet of office, laboratory, or industrial space available for occupancy for a period of over one year; or a site that has been negatively impacted by the approval of a “Qualified Business Facility,” as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208).

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

“Project” means the renovation of the Qualified Business Facility for the Company’s consolidation and expansion of office space which will entail the Capital Investment and the employment commitment at the Qualified Business Facility as described in Appendix B, incorporated herein by reference.

“Project Completion Certifications” means the detailed certifications acceptable to the Authority evidencing that the Company has satisfied the conditions relating to Capital Investment (certified by a certified public accountant, which may be made pursuant to an “agreed upon procedures” letter acceptable to the Authority) and employment (certified by the Company’s chief financial officer), both with supporting evidence satisfactory to the Authority.

“Public research university” means a public research university as defined in section 3 of P.L. 1994, c. 48 (N.J.S.A. 18A:3B-3).

“Qualified Business Facility” means the existing non-Industrial Premises consisting of 223,569 square feet which is located at 100 & 101 Williams Drive, Ramsey Borough, Bergen County, New Jersey, as evidenced by documents listed in Appendix A. It is understood that the initial square footage of the Qualified Business Facility may change and said change is subject to the Authority’s written consent.

“Qualified Incentive Area” means an aviation district, a port district, a Distressed Municipality, Urban Transit Hub municipality, or an area:

1. Designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or Planning Area 3 (Fringe Planning Area), pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.); or

2. Located within:

i. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);

ii. Any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4), including the sports complex, that is, the 750-acre sports and exposition site located in the Borough of East Rutherford under the jurisdiction of the New Jersey Sports and Exposition Authority as of the effective date of P.L. 2015, c. 19 (N.J.S.A. 5:10A-1 et seq.) and such additional property that is owned and controlled by the New Jersey Sports and Exposition Authority as may be designated by the Meadowlands Regional Commission, as established by P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), and section 6 of P.L. 2015, c. 19 (N.J.S.A. 5:10A-6) from time to time as part of the sports complex;

iii. A regional growth area, a rural development area zoned for industrial use as of the effective date of P.L. 2016, c. 75 (December 5, 2016), a town, a village, or a military and Federal installation

area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

iv. The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or in a Highlands Development Credit receiving area or redevelopment area;

v. A Garden State Growth Zone;

vi. Land approved for closure under any Federal Commission on Base Realignment and Closure action; or

vii. Areas designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) only if such areas are located within:

(1) A designated center under the State Development and Redevelopment Plan;

(2) A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts rules to revise this definition as it pertains to Statewide planning areas;

(3) Any area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 40A:12A-6) or in need of rehabilitation pursuant to section 14 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-14);

(4) Any area on which a structure exists or previously existed, including any desired expansion of the footprint of the existing or previously existing structure, provided the expansion otherwise complies with all applicable Federal, State, county, and local permits and approvals;

(5) The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or a Highlands Development Credit receiving area or redevelopment area; or

(6) Any area on which an existing Tourism Destination Project is located.

“Qualified Incentive Area” shall not include any property located within the preservation area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-1 et seq.).

“Qualified Incubator Facility” means a commercial building located within a Qualified Incentive Area: that contains 50,000 or more Square Feet of office, laboratory, or industrial space; that is located near, and presents opportunities for collaboration with a research institution, teaching hospital, college, or university, which is evidenced by a written agreement that demonstrates this collaboration; and within which, at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the Commitment Period and any Recoupment Period. The restricted space may be comprised of non-contiguous areas, and its location within the Qualified Incubator Facility may change from time to time.

“Recoupment Period” means the period starting at the end of the Commitment Period for which the net positive economic benefit are calculated with no discount due to the Company’s additional commitment to maintain the Project at the Qualified Business Facility. For this Agreement, the Recoupment Period is zero (0) years.

“Retained Full-Time Jobs” means an Eligible Position that currently exists in New Jersey and is filled by a Full-Time Employee but which, because of a potential relocation by the Company, at the time of Authority Board approval, is at risk of being either lost to another state or country or eliminated. For the purposes of determining a number of Retained Full-Time Jobs, the Eligible Positions of an Affiliate shall be considered the Eligible Positions of the Company. For a project located in a Garden State Growth Zone

that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to P.L. 2011, c. 18, § 5 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, “Retained Full-Time Job” shall include any employee previously employed in New Jersey and transferred to the new location in the Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or in the Garden State Growth Zone that contains a Tourism District as established pursuant to P.L. 2011, c. 18, § 5 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority. For the purposes of the Project Completion Certifications and Annual Compliance Reports, to the extent an Eligible Position that was the basis of the award no longer exists, a business shall include as a Retained Full-Time Job a new Eligible Position that is filled by a Full-Time Employee as set forth in Paragraph 12(a)i.

“SDA District” means an “SDA district” as defined in section 3 of P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

“SDA Municipality” means a municipality in which an SDA district is situate.

“Section 12 Repayment Amount” means the Annual Recapture Amount and the Tax Credit Repayment Amount required pursuant to Section 12 hereof.

“Soft Costs” means all costs associated with financing or real estate commissions and, for a Qualified Business Facility not located in a Garden State Growth Zone, all costs associated with design, engineering, or legal, provided that total soft costs do not exceed 20 percent of total Capital Investment.

“Square Feet” means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas, for circulation and shaft areas that connect one floor to another, disregarding cornices, pilasters, buttresses, and similar structures, that extend beyond the wall faces.

“Square Feet of Gross Leasable Area” or “Gross Leasable Area” means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

“State” means the State of New Jersey.

“State college” means a State college or university established pursuant to chapter 64 of Title 18A of the New Jersey Statutes.

“Statewide Workforce” means the number of statewide Full-Time Employees employed by the Company (which includes Affiliates listed in Section 9) in the Tax Period prior to the date of the Authority’s Approval, which is 805. The Statewide Workforce shall be adjusted to include the Statewide employment of all Affiliates that contribute to the Full-Time Employees at the Qualified Business Facility for the relevant Tax Period or contribute Capital Investment to the Project.

“Substantial Environmental Remediation” means the completion of the necessary actions to investigate and clean-up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq., which shall equal at least five percent of the Capital Investment in a Qualified Business Facility.

“Tax Credit Repayment Amount” means in addition to the Annual Recapture Amount, (a) the interest on the Annual Recapture Amount at the rate equal to the statutory rate for corporate business or insurance premiums tax deficiencies plus any statutory penalties, and (b) all costs incurred by the Authority and the Division of Taxation in connection with the pursuit of the Annual Recapture Amount and Tax Credit Repayment Amount (including, but not limited to, counsel fees, court costs and other costs of collection).

“Targeted Industry” means transportation, manufacturing, defense, energy, logistics, life sciences, technology, health, and finance business, but excluding a primarily warehouse, distribution, or fulfillment center business.

“Tax Period” means the 12 month period selected by the Applicant for the purposes of determining taxable income.

“Technology Startup Company” means a for profit business that has been in operation fewer than five years and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service, which the business intends to move to commercialization. The business shall be deemed to have begun operation on the date that the business first hired at least one employee in a full-time position.

“Tourism Destination Project” means a qualified non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the Qualified Incentive Area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance, including a non-gaming business facility within an established Tourism District with a significant impact on the economic viability of that District.

“Transit Oriented Development” means a Qualified Business Facility located within a 1/2-mile radius, or one-mile radius for projects located in a Garden State Growth Zone, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations. For the purposes of determining the transit project bonus pursuant to N.J.A.C. 19:31-8.8(c)4, a bus station platform is a terminal as listed on the Authority’s website at www.njeda.com.

“Urban Transit Hub” means an urban transit hub, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208) and also located within a Qualified Incentive Area.

“Urban Transit Hub Municipality” means a municipality that qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-17 178 et seq.), or that has continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation that is taxable and that which is tax exempt.

“Withholdings” means the amount withheld by the Company from the wages of Full-Time Employees or estimated taxes paid by, or on behalf of, partners that are Full-Time Employees, or any combination thereof, pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Withholdings shall not include amounts withheld by the Company from stock options or money, or other payments given to a Full-Time Employee pursuant to the termination of employment of the Full-Time Employee. Withholdings shall include amounts withheld by the Company from money or other payments given to a Full-Time Employee pursuant to a bonus for commencing employment or for services rendered by the Full-Time Employee.

SECTION 2. APPROVAL.

- (a) Subject to Sections 5(a), 10 and 11 hereof, the Authority has determined that the Company has satisfied the eligibility criteria of the Program, as the Company has proposed a Project to create 391 New Full-Time Jobs and relocate or maintain 474 Retained Full-Time Jobs (“Proposed Jobs”) at the Qualified Business Facility at which it will make an estimated Capital Investment of \$19,763,624 (“Estimated Eligible Capital Investment”). The Authority has approved the Application for a Grant of Tax Credits not to exceed \$29,398,660 (“Approved Maximum Award”), and for purposes of calculating this Grant of Tax Credits, employment will not exceed the Proposed Jobs and the Capital Investment will not exceed the Estimated Eligible Capital Investment. Pursuant to the Authority’s Approval, the annual amount of the Grant of Tax Credits allocable to each New Full-Time Job shall not exceed \$4,750 and the annual amount of the Grant of Tax Credits allocable to each Retained Full-Time Job shall not exceed \$2,284. Any material change to the Project, including, but not limited to, a reduction in the amount of the Capital Investment or Proposed Jobs in an amount greater than the percentage specified in Section 10(a) and (b), may require review and approval by the Authority and may result in a reduction to the size of the Grant of Tax Credits or a determination that the Authority’s Approval does not apply to the Project as changed.
- (b) The amount of the Grant of Tax Credits is based on the Company submitting evidence acceptable to the Authority that it satisfies the criteria and requirements for the following Bonus Awards:

\$1,250 Large Number of New/Retained Full-Time Jobs
\$ 500 Targeted Industry (Technology)

SECTION 3. TERM. The term (the “Term”) of this Agreement shall commence on the Commencement Date and shall expire at the end of the Commitment Period and any Recoupment Period; provided, however, that the provisions of Sections 8 (Indemnity), 13 (pertaining in the case of Section 13 to events occurring prior to the termination of this Agreement), 14, 15, and 17 shall survive the termination of this Agreement.

SECTION 4. REPRESENTATION OF THE COMPANY; ELIGIBILITY. The Company certifies and represents that it satisfies the requirements for Program eligibility and that:

- (a) The Company represents that it is a business, as defined in the Act, that has 805 Full-Time Employees in the Statewide Workforce; and
- (b) The Company is not in default under any other program administered by the State; and
- (c) The Company represents that it is its current intention to employ the Proposed Jobs and make the Estimated Eligible Capital Investment.

SECTION 5. CERTAIN COVENANTS OF THE COMPANY.

- (a) In consideration for the Grant of Tax Credits, the Company, expressly including its landlord or seller, covenants to make, acquire or lease a Minimum Capital Investment at the Qualified Business Facility at which it will employ at least 35 Full-Time Employees in Retained Full-Time Jobs and create at least 25 New Full-Time Jobs ("Job Eligibility Criteria") at the time of the Project Completion Certification and will hire or retain the Program Minimum, as defined in Section 12(b), during the Commitment Period and any Recoupment Period.
- (b) The Company covenants not to reduce the number of Full-Time Employees employed by the Company statewide below the Statewide Minimum, as defined in Section 12(b), during the Commitment Period and any Recoupment Period.
- (c) The Company covenants that the representations, statements and warranties of the Company set forth in the Application and the representations, statements and warranties set forth herein (1) are true, correct and complete in all material respects, (2) do not contain any untrue statement of a material fact, and (3) do not omit to state a material fact necessary to make the statements contained herein or therein not misleading or incomplete.
- (d) The Company will maintain the Grow Jobs at the Qualified Business Facility for not less than the Commitment Period and any Recoupment Period. The Company shall not change the location of the Qualified Business Facility, expand the Qualified Business Facility, or include any Grow Job in an Annual Compliance Report for any month the job is not located in the Qualified Business Facility during the Commitment Period and any Recoupment Period without the prior written consent of the Authority, provided that any consent shall not affect the reduction, forfeiture and recapture provisions of Section 12 hereof. The Company shall maintain its existence as a legal entity and shall not sell, assign, transfer or otherwise dispose of all of its assets without the prior written consent of the Authority, which consent shall be based on the Company's continued compliance with the Authority's Approval, the Act, this Agreement, and the Regulations.
- (e) The Company will provide health benefits for the Grow Jobs under a health benefits plan authorized pursuant to State or federal law. With respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a Port District having a container terminal: the requirement that employee health benefits are to be provided shall be deemed to be satisfied if such benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement. For any project located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or any project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the employees of the business are covered by a collective bargaining agreement.

- (f) If, at any time after the Authority's Approval and until the end of the Commitment Period and any Recoupment Period, the Company should become aware of any facts that materially alter, change, or render incomplete its answers to the questions in the Application pertaining to the Authority's Disqualification/Debarment Regulations at N.J.A.C. 19:30-2.1, et seq., the Company will immediately report such facts to the Authority in writing.

SECTION 6. SPECIFIC COMPANY COVENANTS; QUALIFIED BUSINESS FACILITY.

- (a) A certificate of occupancy, if required, and such other permits and approvals as required will be obtained prior to creating or relocating the Grow Jobs to the Qualified Business Facility for the Project.
- (b) The Qualified Business Facility will be designed, acquired, installed, operated and shall continue to be operated in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) related to zoning, building safety, and environmental quality, including all Minimum Environmental and Sustainability Standards.
- (c) The Company shall not use any hazardous substance on, from, or affecting the Qualified Business Facility in any manner which violates any applicable Environmental Law, and shall use hazardous substances at the Qualified Business Facility only in compliance with applicable Environmental Law.
- (d) In the Application, the Applicant has set forth a description of all construction contemplated to be undertaken in connection with the Grant of Tax Credits provided herein. Such description includes any construction that the Company will undertake to fulfill any condition of receiving the Grant of Tax Credits, including any contract to construct, renovate or otherwise prepare a facility for operations which will be necessary for the receipt of the Grant of Tax Credits provided herein, unless otherwise excluded by law. Company represents that such description is true and accurate as of the date hereof. All construction that occurs after Authority Board approval, regardless of when the construction contract is executed, will be subject to the Authority's prevailing wage and affirmative action requirements and contracts entered into in connection with such construction will comply with the Authority's prevailing wage and affirmative action requirements and must contain additional language as set forth in Authority Affirmative Action Addendum to Construction Contract. In addition, the general contractor must include said language in all subcontracts. Regulations, forms, guidance documents (including an Affirmative Action and Prevailing Wage program summary) are available at www.njeda.com/affirmativeaction. This requirement shall not apply to construction commenced more than two years after the date the first Letter of Compliance is issued to the Company.
- (e) Prior to the commencement of construction, the Company will submit to the Authority for its approval a plan ("Green Building Plan") to meet the Authority's Green Building Standards Policy regarding the application of the Minimum Environmental and Sustainability Standards, available at <http://www.njeda.com/pdfs/GreenBuildingGuidance.aspx> ("Green Building Requirements"). Failure to submit the Green Building Plan within the indicated time frame may lead to forfeiture of the Grant of Tax Credits. When construction is completed, as a

condition to receipt of the award, Company will submit a certification from a licensed engineer that the Project has adhered in all material respects to the Green Building Plan.

SECTION 7. GENERAL REPRESENTATIONS OF THE APPLICANT AND THE COMPANY.

The Company makes the following representations and warranties:

- (a) Konica Minolta Business Solutions U.S.A., Inc. (i) is a C corporation duly organized, validly existing and in good standing under the laws of the State of New York, (ii) is duly qualified to do business in the State of New Jersey, (iii) is not in violation of any provision of its certificate of incorporation or by-laws, and (iv) 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.
- (b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Applicant herein contemplated have been duly authorized by all requisite action on the part of the Applicant and will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or bylaws of the Applicant, or any indenture, agreement or other instrument to which the Applicant 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 Company enforceable against the Company in accordance with its terms.
- (d) There is no action or proceeding pending or, to the best knowledge of the Company, threatened by or against the Company by or before any court or administrative agency that might adversely affect the ability of the Company to perform its obligations under this Agreement and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Company 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 Company hereunder have been obtained.
- (e) In addition to and without limitation of all other representations, warranties and covenants made by the Company under this Agreement, the Company further represents, warrants and covenants that the Company has not used any hazardous substance on, from, or affecting the Qualified Business Facility in any manner which violates any applicable Environmental Law, and that, to the best of the Company's knowledge, no prior owner of the Qualified Business Facility or any tenant, subtenant, prior tenant or prior subtenant has used any hazardous substance on, from, or affecting the Qualified Business Facility in any manner which violates any applicable Environmental Law. The Company shall keep or cause the Qualified Business Facility to be kept free of hazardous substances, except as provided in applicable Environmental Law. The Company shall comply with and ensure compliance by all users, tenants, subtenants or occupants with all applicable Environmental Laws with respect to the Qualified Business Facility whenever and by whomever triggered, and shall obtain and comply with and ensure that all users, tenants, subtenants or occupants obtain and comply with any and all approvals, registrations or permits required thereunder.

- (f) The Company represents that the design, acquisition, installation and operation of the Qualified Business Facility shall be in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.
- (g) The Company represents that the design, acquisition, installation, and the operation of the Qualified Business Facility will comply with and follow (i) the Green Building Requirements, (ii) the Conflicts of Interest Law as set forth in N.J.S.A. 52:13D-12 et seq., and (iii) requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq. and implementing regulations.

SECTION 8. INDEMNITY; INSURANCE; PAYMENTS OF CLAIMS.

- (a) The Company shall at all times protect and hold the State, the Authority and the Division of Taxation, and each of its assigns, directors, agents, contractors and employees (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, attorneys' fees) and liabilities for losses, damage, injury resulting from, arising out of: (1) the financing of the costs of the Project or the Qualified Business Facility, (2) the ownership, planning, design, acquisition, site preparation, transportation, construction, renovation, equipping, installation, maintenance, repair, replacement or completion of the Qualified Business Facility or any part thereof or the effecting of any work done in or about such Qualified Business Facility, (3) any defects (whether latent or patent) in the Qualified Business Facility or any part thereof, (4) the maintenance, repair, replacement, restoration, rebuilding, demolition, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Qualified Business Facility or any portion thereof, (5) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees with respect to the Project or the Qualified Business Facility, (6) any act of negligence of any assignee or sublessee of the Company with respect to the Project or the Qualified Business Facility, or (7) any violation of or failure to comply by the Company with any legal requirement applicable to the Qualified Business Facility, including Environmental Laws, or any cost imposed upon any of the Indemnified Parties by any legal requirement applicable to the Qualified Business Facility, and shall reimburse any such Indemnified Party for any reasonable legal or other expenses incurred by it in investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the Qualified Business Facility; provided, however, that the foregoing indemnifications and protections shall not extend to any losses arising from the negligence or willful misconduct of an Indemnified Party. Such indemnification set forth above shall be binding upon the Company for any and all claims, demands, expenses, liabilities and taxes set forth herein and shall survive the termination of this Agreement. Except as provided above, no Indemnified Party shall be liable for any damage or injury to the person or property of the Company or its directors, officers, employees, agents or servants or persons under the control or supervision of the Company, or any other Person who may be involved with the Project or the Qualified Business Facility, due to any act or gross negligence of any Person other than for the gross negligence or willful misconduct of such Indemnified Party. This provision shall survive the expiration or earlier termination of this Agreement.
- (b) The Company 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 subdivision (1) through (7) of subsection (a) of this Section or at the direction of the Company with respect to any of such matters above referred to.

- (c) The indemnifications and protections set forth in this Section shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under its control or supervision.
- (d) To effectuate the purposes of this Section, the Company agrees to obtain sufficient coverage under its commercial general liability insurance policy to cover not only its own liability, but also, any liability which might arise under this Section against the Indemnified Parties to the extent such liability is insurable under a commercial general liability insurance policy. The Company shall include the Indemnified Parties as additional insureds in the general liability insurance coverage for the Project and the Qualified Business Facility. The Company will provide evidence of such insurance upon request. Failure of the Company to retain such coverage and/or provide evidence of same to the Authority will result in either the Authority cancelling an existing Letter of Compliance and/or not issuing a Letter of Compliance.
- (e) For the purposes of this Section, the Company shall not be deemed an employee, agent or servant of the State, the Authority or the Division of Taxation or a person under their control or supervision.
- (f) The provisions of this Section shall be in addition to any and all other obligations and liabilities the Company may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.
- (g) In case 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 Company, such Indemnified Party shall promptly notify the Company in writing, and the Company 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 Company'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 Company shall not be liable for any settlement of any such action effected without the Company's written consent, but if settled with the consent of the Company, or if there is a final judgment for the claimant on any such action, the Company 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 Company or may otherwise purport to limit the Company's liability, the provisions of this Section shall control the Company's obligations and shall survive termination of this Agreement.
- (h) Notwithstanding anything herein to the contrary, the Company shall pay all claims, demands, expenses and other amounts for which the Company has indemnified the Authority hereunder immediately as the same shall arise and the same shall be immediately due and payable by the Company to the Indemnified Parties without demand therefore.

The Company agrees that the Authority is not liable in damages for the issuance, non-issuance, use, sale, or marketability of the Grant of Tax Credits. The Company acknowledges the risks of relying

on the use and sale of the tax credits to finance the Project. The Company 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 implementing Regulations and to tax laws. Nothing herein shall be construed as a waiver of the Company'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.

SECTION 9. AFFILIATES.

(a) The Company acknowledges that the term "Affiliate" is defined in the Act and the implementing regulations. In order to be considered an Affiliate for purposes of this Agreement, an entity must meet the definition of Affiliate either by being a member of a controlled group of corporations with the Company as defined pursuant to section 1563 of the Internal Revenue Code of 1986 ("Code") or an organization in a group of organizations with the Company as defined pursuant to subsection (b) or (c) of section 414 of the Code, as demonstrated by the Company to the Authority either through a certification by an independent certified public accountant or an opinion of counsel. In the alternative, the Company may demonstrate that an entity is an Affiliate by presenting to the Authority a written determination of the Director of the Division of Taxation.

(b) The Affiliates set forth below have met the requirements of subsection (a) hereof and the Capital Investments and Full-Time Employees of each will be included in determining eligibility for, and the amount of, the tax credits:

To be completed by Company if applicable:

Attach a list noting the initial percentage (%) allocated to the Applicant and each Affiliate.

If not applicable confirm by signing below – 100% of the Capital Investment and Full-Time Employee Requirements will be met by:

Name:

Title:

(c) In order to add a new entity as an Affiliate under subsection (b) hereof, the Company shall submit to the Authority a request with supporting evidence consistent with subsection (a) hereof that is satisfactory to the Authority. All Parties agree that an entity becomes a party to this Agreement as if listed in this Section upon the request of the Applicant to add the entity as an Affiliate, the acknowledgement by the Authority that the information required pursuant to subsection (a) hereof has been submitted, and the execution by the entity of the Affiliate Agreement as set out in **Appendix D** which may be amended from time to time by the Authority in its sole discretion. The Applicant and all Affiliates shall be jointly and severally liable under this Agreement.

**SECTION 10. CONDITIONS TO RECEIPT OF TAX CREDIT CERTIFICATE;
DETERMINATION OF GRANT AMOUNT; GRANT AMOUNT
ADJUSTMENT.**

On or before November 14, 2020 (three years following the Authority's Approval), the Company must complete the Project and submit the following documents ("Tax Credit Certificate Documents") to receive a tax credit certificate ("Tax Credit Certificate"):

- (a) The Project Completion Certification related to the Capital Investment stating the total amount of the Company's Capital Investment in the Qualified Business Facility, provided that the aggregate eligible Capital Investments made, acquired or leased by Company, expressly including its landlord or seller, in the Qualified Business Facility must total at least the Minimum Capital Investment in order to be eligible to receive a Grow NJ Tax Credit. The amount of Capital Investment in the certification shall be utilized by the Authority in the calculation of the Grant of Tax Credits and shall not be increased regardless of additional Capital Investment in the Qualified Business Facility. In the event the Capital Investment of the Company is reduced by 25% or more of the Estimated Eligible Capital Investment, in addition to other actions permitted under this Agreement, the Authority may re-evaluate the net positive economic benefit and reduce the size of the Grant of Tax Credits accordingly;
- (b) The Project Completion Certification related to employment stating that the number of Full-Time Employees employed at the Qualified Business Facility equals at least the Job Eligibility Criteria, the actual number of eligible New and Retained Full-Time Jobs at the Qualified Business Facility, and the number of Full-Time Employees employed by the Company statewide. To the extent the Company has received a Grant of Tax Credits for both New and Retained Full-Time Jobs, the Company shall meet the employment requirements related to the Retained Full-Time Jobs before receiving benefits for New Full-Time Jobs, as set forth in Paragraph 12(a)i. The number of eligible New and Retained Full-Time Jobs in the certification shall be utilized by the Authority in the calculation of the Grant of Tax Credits and shall not be increased regardless of additional jobs at the Qualified Business Facility and in no event will the number of eligible New or Retained Full-Time Jobs exceed the corresponding New or Retained Proposed Jobs (as defined in Section 2(a)). In the event the number of New or Retained Full-Time Jobs is reduced by 25% or more of the corresponding New or Retained Proposed Jobs (as defined in Section 2(a)), in addition to other actions permitted under this Agreement, the Authority may re-evaluate the net positive economic benefit and reduce the size of the Grant of Tax Credits accordingly;
- (c) As part of each Project Completion Certification, a list of the Affiliates that contributed to the Capital Investment and to the Full-Time Employees at the Qualified Business Facility and, for each such Affiliate, the number of Full-Time Employees in New Jersey in the last tax period prior to the Authority's Approval if that number was not provided in the Application.
- (d) Evidence acceptable to the Authority that the Project complied with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4). As part of this submission, the Company shall include evidence that all construction contracts regarding the Project contained the additional language as set forth in the Authority Affirmative Action Addendum to Construction Contract and that the general contractor included said language

in all subcontracts. Regulations, forms, guidance documents (including an Affirmative Action and Prevailing Wage program summary) are available at www.njeda.com/affirmativeaction;

- (e) A certification from a licensed engineer that the Project has adhered in all material respects to the Green Building Plan;
- (f) Evidence acceptable to the Authority that all criteria and requirements for all applicable Bonus Awards have been met. Failure to do so for any Bonus Award will result in the calculation of the amount of the Tax Credit Certificate not including any Bonus Award;
- (g) A current Tax Clearance Certificate for the Company, including Affiliates listed in Section 9, not more than 180 days old. The Authority requires that a valid Tax Clearance Certificate, no more than 180 days old, is on file with the Authority from the time of the Application through the date that the Tax Credit Certificate is issued. **During this period it remains the sole responsibility of the Company to renew the Tax Clearance Certificate and ensure timely delivery to the Authority as set forth herein.** To apply to receive a Tax Clearance Certificate, the Company must complete and submit the online application for Business Assistance Tax Clearance ("Tax Clearance Application") by visiting the State of New Jersey's Premier Business Services (PBS) portal at: https://www16.state.nj.us/NJ_PREMIER_EBIZ/jsp/home.jsp. **Questions regarding Business Assistance Tax Clearance may be emailed to: BusinessAssistanceTC.Taxation@treas.nj.gov.**

The Authority may modify the net positive economic benefit analysis from time to time. If the Authority re-evaluates the net positive economic benefit pursuant to paragraphs (a) and (b) above, the Authority shall use the net positive economic benefit analysis in effect at the time of the re-evaluation.

The Authority shall have 90 days from the submission of Tax Credit Certificate Documents and evidence satisfactory to the Authority to review for acceptability. Upon a determination by the Authority that the Tax Credit Certificate Documents are acceptable, the Authority shall notify the Company and Director, and a Tax Credit Certificate will be issued to the Company based on the information submitted. Once the Tax Credit Certificate is issued, the Company may apply the amount of the tax credits equal to the total credit amount divided by the duration of the Eligibility Period in years (fractions of a cent rounded down) to offset its tax liability in each Tax Period during the Eligibility Period with applicable carry forward provisions, beginning with liability that arises in the Tax Period in which the Authority accepts the Project Completion Certifications, subject to the conditions set forth below.

IN NO EVENT SHALL THE INCENTIVE EFFECTIVE DATE OCCUR LATER THAN FOUR YEARS FOLLOWING THE DATE OF THE AUTHORITY'S APPROVAL.

SECTION 11. ANNUAL COMPLIANCE REPORT; LETTER OF COMPLIANCE.

After receipt of the Tax Credit Certificate, the Company shall submit to the Authority, no later than 120 days after the end of each Tax Period during the Commitment Period and any Recoupment Period, the Annual Compliance Report as described below. Upon satisfactory review of all information submitted in the Annual Compliance Report during the Eligibility Period, the Authority will issue a Letter of Compliance indicating the amount of the Grant of Tax Credits that may be used for the relevant Tax Period. No Tax Credit Certificate will be valid without the Letter of Compliance issued for the relevant Tax Period. The credit amount for any Tax Period for which the Annual Compliance Report remains uncertified as of a date

three years after the closing date of that Tax Period shall be forfeited, although credit amounts for the remainder of the years of the Eligibility Period shall remain available to it.

Use of the Tax Credit Certificate shall be subject to the reduction, recapture and forfeiture provisions set forth in Section 12.

The Annual Compliance Report shall include the following:

1. A certification acceptable to the Authority by the Company indicating whether or not the Company is aware of any condition, event or act which would cause the Company not to be in compliance with all applicable local tax laws, the Authority's Approval, the Act, this Agreement or the Regulations promulgated thereunder.

2. A certification acceptable to the Authority by the Company indicating any change or anticipated change in the identity of the Affiliates comprising the Company that have elected to claim all or a portion of the credit, provided such Affiliates have contributed either Capital Investments or Full-Time Employees to the Qualified Business Facility.

3. A current Tax Clearance Certificate for the Company, including Affiliates listed in Section 9, not more than 180 days old, issued by the New Jersey Division of Taxation. To apply to receive a Tax Clearance Certificate, the Company must complete and submit the online application for Business Assistance Tax Clearance ("Tax Clearance Application") by visiting the State of New Jersey's Premier Business Services (PBS) portal at: https://www16.state.nj.us/NJ_PREMIER_EBIZ/jsp/home.jsp. **Questions regarding Business Assistance Tax Clearance may be emailed to: BusinessAssistanceTC.Taxation@treas.nj.gov. It is the sole responsibility of the Company to obtain each Tax Clearance Certificate and ensure timely delivery to the Authority as set forth herein.** If a Tax Clearance Certificate is not issued by the Division of Taxation, or the Company fails to apply for such Tax Clearance Certificate, and thus no such certificate is submitted to the Authority with an Annual Compliance Report, the Authority in its discretion may terminate the Authority's approval of Grant of the Tax Credits and/or delay the issuance of a Tax Credit Certificate/Letter of Compliance, provided, however, if the Company is diligently working to address the reason raised by the Division of Taxation for withholding the Tax Clearance Certificate and the Company is able to provide such certificate within 12 months of the applicable Annual Compliance Report due date, then the Authority will accept the Tax Credit Certificate. If the Company fails to submit the Tax Clearance Certificate within 12 months of the applicable Annual Compliance Report due date, then the Authority shall have the right to terminate the Authority's approval of Grant of the Tax Credits.

4. For the relevant Tax Period, a certification acceptable to the Authority stating the number of Full-Time Employees employed at the Qualified Business Facility, the number of those employees that are employed in eligible New and Retained Full-Time Jobs, and the number of Full-Time Employees employed by the Company statewide. To the extent the Company has received a Grant of Tax Credit for both New and Retained Full-Time Jobs, the Company shall meet the employment requirements related to the Retained Full-Time Jobs before receiving benefits for New Full-Time Jobs, as set forth in Paragraph 12(a)i. Full-Time Employees shall be calculated as the average of the monthly number of Full-Time Employees for the relevant period. For purposes of illustration, if the report encompasses a 12-month period, the average is obtained by summing the number of Full-Time Employees each month during the relevant Tax Period and dividing that sum by 12. The certification shall also list the Affiliates that contributed to the Full-Time Employees at the Qualified Business Facility and, for each such Affiliate, the number of Full-Time Employees in New Jersey in the last tax period prior to the Authority's Approval if that number was not provided in the Application. Employee information must include names, addresses,

date of hire and other information as requested by the Authority. This certification shall also indicate the amount of annual lease payment in the Tax Period, if applicable.

5. Evidence acceptable to the Authority that all criteria and requirements for all applicable Bonus Awards have been met.

6. Evidence acceptable to the Authority of the Withholdings of the Company's employees from the Qualified Business Facility, including, but not limited to, the Company's W-3 forms.

FAILURE TO SUBMIT A COMPLETE PACKAGE OF ALL INFORMATION REQUIREMENTS LISTED HEREINABOVE IN THIS SECTION WITHIN THE INDICATED TIMEFRAME WILL LEAD TO FORFEITURE OF THE TAX CREDITS ALLOCABLE TO THAT YEAR.

NO LETTER OF COMPLIANCE SHALL BE ISSUED WHILE THE COMPANY IS DEBARRED, DISQUALIFIED, OR SUSPENDED BY THE AUTHORITY.

ANY REDUCTION IN THE NUMBER OF ELIGIBLE GROW JOBS SHALL REDUCE THE AMOUNT OF TAX CREDITS FOR THAT YEAR.

THE AMOUNT OF TAX CREDITS ALLOCABLE FOR THE RELEVANT TAX PERIOD SHALL NOT BE MORE THAN 90% OF THE WITHHOLDINGS OF THE COMPANY'S EMPLOYEES FROM THE QUALIFIED BUSINESS FACILITY ("WITHHOLDING CAP").

SECTION 12. REDUCTION, FORFEITURE AND RECAPTURE

(a) Reduction:

- i. For the purposes of the Project Completion Certifications and the Annual Compliance Reports, to the extent an eligible Retained Full-Time Job that was the basis of the Grant of Tax Credits no longer exists, the Company shall include as a Retained Full-Time Job a new Eligible Position that is filled by a Full-Time Employee, provided that the position is included in the order of date of hire and is not the basis for any other incentive award. If a Qualified Business Facility comprises a Complex of Buildings with different factors affecting the tax credit calculation, the Company shall meet the employment requirements related to the Retained Full-Time Jobs at each building before receiving benefits for New Full-Time Jobs at any building. The Company shall include as a Retained Full-Time Job a new Eligible Position that is filled by a Full-Time Employee, regardless of the location of such position, provided that the position is included in the order of date of hire and is not the basis for any other incentive award, and shall be paid at the lower of the tax credit for the new Eligible Position filled by a Full-Time Employee or the tax credit for the Retained Full-Time Job that no longer exists.
- ii. Any reduction in the number of New or Retained Full-Time Jobs indicated in the Annual Compliance Report below the Grow Jobs shall proportionately reduce the amount of tax credits the Company may apply against liability in the relevant Tax Period and the credits that may no longer be applied for the relevant Tax Period shall be forfeited. For projects not located in a Garden State Growth Zone, the per Retained Full-Time Job tax credit calculation will be established by dividing the number of Grow Jobs into the amount of Capital Investment in the Project Completion Certification over the number of years in the Eligibility Period,

provided that the annual amount per Retained Full-Time Job shall not exceed the amount set forth in paragraph (a) in Section 2.

- iii. If in an Annual Compliance Report, the Company fails to provide evidence acceptable to the Authority that all criteria and requirements for any applicable Bonus Award has been met, the amount of tax credits the Company may apply against liability in the relevant Tax Period shall be reduced by the amount otherwise allocable to the Company due to the Bonus Award and the credits that may no longer be applied for the relevant Tax Period shall be forfeited.
- iv. If the Withholding Cap is less than the amount of tax credits otherwise allocable to the Company, then the amount of tax credits the Company may apply in the Relevant Tax Period shall be reduced to the Withholding Cap and the credits that may no longer be applied for the relevant Tax Period shall be forfeited.

(b) Forfeiture:

- i. If, in any Tax Period during the Eligibility Period, the number of Full-Time Employees employed by Company at the Qualified Business Facility drops below 80 percent of the number of the Grow Jobs ("Program Minimum"), then the Company shall forfeit its credit amount for that Tax Period and each subsequent Tax Period until the first Tax Period for which documentation demonstrating the restoration of the number of Full-Time Employees employed by the Company at the Qualified Business Facility to at least the Program Minimum has been reviewed and approved by the Authority.
- ii. If, in any Tax Period during the Eligibility Period, the number of Full-Time Employees employed by the Company statewide has been reduced below 80% of the Statewide Workforce ("Statewide Minimum"), the Company shall forfeit its credit amount for that Tax Period and each subsequent Tax Period, until the first Tax Period for which documentation demonstrating the restoration of the number of Full-Time Employees to at least the Statewide Minimum has been reviewed and approved by the Authority, for which Tax Period and each subsequent conforming Tax Period the full amount of the annual credit shall be allowed. The number of Full-Time Employees employed by the Company statewide shall include the statewide Full-Time Employees of any Affiliate that contributed to the Full-Time Employees at the Qualified Business Facility for the Tax Period or contributed Capital Investment to the Project. Unless the award includes Full-Time Employees engaged in final point of sale retail, no Full-Time Employees at any point-of-final-purchase retail facilities shall be included in the number of Full-Time Employees employed by the Company statewide. The number of Full-Time Employees employed by the Company statewide shall not include a new Eligible Position at the Qualified Business Facility unless the new Eligible Position is in addition to the number of Grow Jobs and the Company is not receiving an additional tax credit award for the new Eligible Position.
- iii. If the Qualified Business Facility is sold by the owner in whole or in part during the Eligibility Period, the new owner shall not acquire the Capital Investment of the seller and the seller shall forfeit all credits for the Tax Period in which the sale occurs and all subsequent Tax Periods, except that any credits of the Company shall remain unaffected if it remains as a tenant and otherwise continues to comply

with all other requirements in the approval, the Act, this Agreement, and the implementing Regulations. If the Company merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

- iv. Unless otherwise permitted in the Act or Regulations, if the Company leases or subleases its Qualified Business Facility in whole or in part during the Eligibility Period, the new tenant shall not acquire the credit of the Company, and the Company shall forfeit all credits for the Tax Period of its lease or sublease and all subsequent Tax Periods. Notwithstanding the foregoing, the Company may lease or sublease an amount up to five percent of the Qualified Business Facility to a new tenant without forfeiting any of the Company's tax credit; however, no full-time employees or capital investment by the new tenant shall contribute to the Company's eligible Full-Time Employees or Capital Investment.

(c) Recapture: The following shall constitute Events of Recapture:

- i. During the Eligibility Period, failure to maintain the Program Minimum in any Tax Period beginning with the second consecutive Tax Period in which the Company fails to maintain the Program Minimum. If the Company fails to maintain the Program Minimum for additional consecutive Tax Periods, such failure in each Tax Period shall each separately constitute an Event of Recapture.
- ii. During the Compliance Period, the failure in any Tax Period to maintain the Program Minimum. If the Company fails to maintain the Program Minimum for additional consecutive Tax Periods, such failure in each Tax Period shall each separately constitute an Event of Recapture.

For each Event of Recapture, the Company shall pay an amount calculated as the Aggregate Tax Credits Allowed as of the Event of Recapture divided by the number of years in the Commitment Period (the calculated amount shall be referred to as the "Annual Recapture Amount") and prorated as follows: The Annual Recapture Amount for that Tax Period shall be prorated based on the percentage by which the number of New and Retained Full-Time Jobs has been reduced from the Program Minimum. For purposes of illustration, if the Grow Jobs is 500, the Program Minimum is 400, and in the relevant Tax Period the number of New and Retained Full-Time Jobs is 300, the Company will pay 25% of the Annual Recapture Amount.

In addition to the Annual Recapture Amount, the Company will also pay the Tax Credit Repayment Amount.

Upon the occurrence of an Event of Recapture by the Company, the Authority may demand the payment of the prorated Annual Recapture Amount and the Tax Credit Repayment Amount, and in its sole discretion, may request that the Director recover the prorated Annual Recapture Amount and the Tax Credit Repayment Amount. Payment by the Company shall be made within 30 days of any demand by the Authority or the Director. The Authority will pursue recapture from the Company and not from a tax credit transfer certificate purchaser. Tax credit transfer certificate purchasers shall be subject to all other limitations and conditions that apply to the use of the tax credits by the Company,

including, but not limited to, reduction and forfeiture provisions and the requirement of a Letter of Compliance for the relevant Tax Period.

SECTION 13. EXTENSION OF STATUTE OF LIMITATIONS.

The Company agrees that the four (4) year statute of limitations for the collection and assessment of corporation business tax, or insurance premiums tax, as appropriate, will be extended to the period of the Commitment Period, pursuant to the attached form of consent at **Appendix C** of this Agreement.

SECTION 14. 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 a reduction, forfeiture or an Event of Recapture under Section 12 shall not constitute an Event of Default, with the exception of the events listed below in (d), (e), and the Company’s failure to pay the Section 12 Repayment Amount in (h):

- (a) The Company fails to strictly observe or comply with the law relating to the use or sale of the Tax Credit Certificate, the Letter of Compliance or a Tax Credit Transfer Certificate; or
- (b) Any representation or warranty made by the Company in its Application, the approval letter or in this Agreement is false, misleading, or inaccurate in any material respect as of the date made; or
- (c) The Company ceases operations at the Qualified Business Facility during the Term; or
- (d) The Company reduces its Statewide workforce below the Statewide Minimum, as defined in Section 12, as a result of a relocation outside of the State; or
- (e) The Company forfeits all credits for the current Tax Period and all subsequent Tax Periods due to a sale, lease, or sublease of the Qualified Business Facility as described in Section 12(b); or
- (f) The Company fails to timely submit the Annual Compliance Report for two consecutive years; or
- (g) The Company has been debarred, disqualified, or suspended by the Authority for a period of two years or more; or
- (h) The Company fails to observe or perform in any other material respect any other term, covenant or condition of the Company under this Agreement, including the repayment of the Section 12 Repayment Amount, and such failure shall have continued for thirty (30) days after the earlier of (1) delivery to the Company of written notice thereof from the Authority or (2) the Company'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 Company is 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

- (i) A declaration of default under any existing or new financial assistance or incentive provided by the Authority to the Company and/or any of its Affiliates; or
- (j) During the Recoupment Period, if any, the Company reduces the number of Full-Time Employees employed by Company at the Qualified Business Facility below the Program Minimum, as defined in Section 12, or reduces its Statewide workforce below the Statewide Minimum, as defined in Section 12.

SECTION 15. REMEDIES.

- (a) Upon the occurrence of any Event of Default by the Company 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 of Taxation may have on account of such Event of Default:
 - 1. The Authority may require the surrender by the Company to the Authority of the Tax Credit Certificate for suspension or cancellation.
 - 2. 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: (i) requiring payment in the amount equal to all or a portion of the Aggregate Tax Credits Allowed based on years in compliance with this Agreement (less any amounts paid as a recapture under Section 12) by notifying the Director, who shall issue a recapture assessment; (ii) recovering damages for loss of a bargain for any Event of Default during the Commitment Period, the actual damages for which the Parties agree would be difficult to predict, and therefore agree the payment of an amount equal to all or a portion of the Aggregate Tax Credits Allowed based on years in compliance with this Agreement (less any amounts paid as a recapture under Section 12), plus costs of recovery represents a reasonable approximation of such amount; (iii) terminating this Agreement; or (iv) proceeding by appropriate court action (legal or equitable) to enforce the terms hereof. During the Commitment Period, the Company shall owe all the Aggregate Tax Credits Allowed (less any amounts paid as a recapture under Section 12) if the Event of Default is based on the Company relocating the operations from the Qualified Business Facility or Statewide workforce positions out of State. During the Recoupment Period, if any, for any Event of Default, the Company shall owe the amount shown in Appendix E based on the year of the Term in which the Event of Default occurs.
- (b) Damages payable by the Company under this Section 15 shall be limited to the amount specified in (a); provided, however, that nothing in this subsection (b) shall limit the Company's obligation to make payments to the Indemnified Parties pursuant to Section 8 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 of Taxation 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 Company 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 Company 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 Company be continued or repeated.

- (d) Notwithstanding the provisions of this Section 15, upon the occurrence and continuation of an Event of Default, the Authority will not seek an injunction against the Company to prevent its relocation out of State or use equitable remedies to force the Company to invest, build, create or maintain jobs or continue operations.

SECTION 16. SET OFF.

In the event the Company has received financial assistance through any other State program administered by the Authority, defaulted on that program, and such default has been reduced to judgment, the Authority may set off the benefit provided under this Program, on a dollar for dollar basis.

SECTION 17. AUDITS AND INSPECTIONS; RECORDS.

- (a) At any time during normal business hours upon written notice and as often as the Authority may reasonably deem necessary, the Company shall make available to the Authority, any other State agency, or their duly authorized representative for examination all of the Company's evidence and documentation supporting the Project Completion Certifications, the Annual Compliance Reports, and the addition of Affiliates and shall permit the Authority, any other State agency, or their duly authorized representative to audit, examine and make excerpts or transcripts from such evidence and documentation.
- (b) In addition to any other period of time required by law, including, but not limited to, any tax law, the Company shall establish and maintain during the Commitment Period, any Recoupment Period, and for five (5) years thereafter such records as are required by the Authority in subsection (a) above and all relevant supporting documentation. If any litigation, claim, negotiation, action or audit involving the records is started before the expiration of the five-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period, whichever is later. The Company shall maintain and organize its records 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 its Project Completion Certifications and Annual Compliance Reports.

SECTION 18. MISCELLANEOUS.

- (a) Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a Party's own negligence) or otherwise, shall either Party be liable to the other Party or to any other person or Party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise; provided, however, that this provision shall not limit in any way the Authority's right to enforce payment of the Annual Recapture Amount and/or the Tax Credit Repayment Amount to the State, or indemnification pursuant to Section 8 hereof from the Company for costs incurred by the Authority with respect to defense of any claims

of, or any damage awards obtained by, any person against the Authority with respect to the Project.

- (b) Entire Agreement. This Agreement, together with the 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.
- (c) 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.
- (d) 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 the Company 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 Project approvals issued pursuant to the Act.
- (e) No Waiver. No failure by the Authority or the Company 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.
- (f) 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, or (c) sent by registered or certified mail, return receipt requested to the address provided herein.

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 - Incentives Compliance

If to the Company, to: (Company to complete)
Konica Minolta Business Solutions USA, Inc.
100 Williams Drive
Ramsey, NJ 07446
Attn: John Thielke

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.

- (g) 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 Company shall include a successor, as determined by the Authority in its sole discretion, to the Company and a successor, as determined by the Authority in its sole discretion, to an Affiliate if the Company applied for a credit based upon any Capital Investment made by or Full-Time Employees of the Affiliate, provided any successor must execute this Agreement, which shall include: the obligation to not reduce the number of Full-Time Employees in the successor's Statewide employment in the last tax period prior to the Authority's Approval; an agreement that all parties to the Agreement are jointly and severally liable under the Agreement; and an acknowledgment that the Grant of Tax Credits will be allocated to each party to the Agreement in accordance with the number of Full-Time Employees that each employs at the Qualified Business Facility.
- (h) 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.
- (i) Counterparts. 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, and may be delivered by telecopier, e-mail, PDF or other facsimile transmission all with the same force and effect as if the same were a fully executed and delivered original manual counterpart. You ratify Your prior confirmation that You accept and are bound by an electronic signature on this Agreement.
- (j) Governing Law. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State without regard to the conflicts of law principles.
- (k) 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.
- (l) Conflicts. No conflict between the provisions of this Agreement and any other document shall render ineffective any provision of this Agreement, relieve the Company of the obligation to fully perform any provision hereof or prevent the Authority from exercising any of its rights and remedies hereunder.
- (m) 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 set forth in this Agreement, employees of the Company are employed on an "at will" basis and nothing in this Agreement shall give any employee of the Company any right to employment with the Company.
- (n) Contractual Liability Act. The rights and remedies of the Company under this Agreement shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., the provisions of which are hereby incorporated herein by reference.

- (o) 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 Company 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.

[SIGNATURE PAGE FOLLOWS]

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**

Renee Caverly Digitally signed by Renee Caverly
Date: 2020.05.06 10:22:20 -04'00'

By: **Arlene M. Clark** Digitally signed by
Arlene M. Clark
Date: 2020.05.06
10:14:48 -04'00'

Arlene M. Clark
Director – Closing Services

Date: _____

WITNESS:

KONICA MINOLTA BUSINESS SOLUTIONS U.S.A., INC.

DocuSigned by:
Holly DeSantis
F0F8DF342D75485...

DocuSigned by:
John Thielke
8C9F18ACE704458...

By: _____
Name: **John Thielke**
Title: **EVP & CFO**
Date: **5/5/2020**

APPENDIX A

STATE OF NEW JERSEY NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Qualified Business Facility:

(In File) Fully executed lease dated March 19, 2018 between LCN KMI Ramsey NJ LLC (“Landlord”) and Konica Minolta Business Solutions U.S.A., Inc. (“Tenant”) for 106,400 square feet of the Qualified Business Facility located at 100 Williams Drive, Ramsey Borough, Bergen County, New Jersey for a term of 16 years with four 5 year extensions for a total of 36 years.

(In File) Fully executed lease dated February 19, 2020 between LCN KMI Ramsey NJ II LLC (“Landlord”) and Konica Minolta Business Solutions U.S.A., Inc. (“Tenant”) for 117,169 square feet of the Qualified Business Facility located at 101 Williams Drive, Ramsey Borough, Bergen County, New Jersey for a term of 15 years with four 5 year extensions for a total of 35 years.

APPENDIX B**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY****PROJECT SUMMARY – GROW NEW JERSEY ASSISTANCE PROGRAM**

Applicant Name: Konica Minolta Business Solutions U.S.A., Inc. P44585 PROD00128504

Eligibility Period: 10 years

Base Credit Category: Priority Area

Recoupment Period: 0 years

Approved Maximum Award: \$29,398,660

Net Positive Economic Benefit to the State Prior to Taking into Account Award: \$94,825,204

Net Positive Economic Benefit to the State after Taking into Account Award and

Other State Assistance: \$65,426,544

Tax Credit Certificate Documents Due Date: November 17, 2020 (3 years from date of approval)

Qualified Business Facility Information:

Location: 100 & 101 Williams Drive, Ramsey Borough, Bergen County, New Jersey

(X) Lease	Date of Lease: March 19, 2018	Term of lease: 16 yrs. w/Four 5 yr. renewals for a total of 36 yrs.
	Date of Lease: February 19, 2020	Term of lease: 15 yrs. w/Four 5 yr. renewals for a total of 35 yrs.

() Deed Date of Deed:

Square Footage: 223,569

Estimated Eligible Capital Investment Amount: \$19,763,624

Minimum Capital Investment Required per Square Foot: \$40

Total Minimum Capital Investment Required (based on the above Square Footage): \$8,942,760.00

() New Construction (X) Rehabilitation, Improvement, Fit-Out, or Retrofit of Existing Building

() Industrial Premises (X) Not Industrial Premises

(X) Expansion () Relocation

From: N/A

To: N/A

Employment Information:

Median Salary: \$65,000

Proposed New Full Time Jobs: 391

Proposed Retained Jobs: 474

Statewide Workforce (including the Affiliates listed in Section 9 as of the Commencement Date): 805

Full-Time Jobs that Must Be Filled Before Jobs Can Be Counted for Award: N/A

BEIP Jobs: N/A

BRRAG Jobs: N/A

Previously Awarded Grow NJ Jobs: N/A

APPENDIX C

STATE OF NEW JERSEY
Department of the Treasury
DIVISION OF TAXATION

Consent Fixing Period of Limitation Upon Assessment of New Jersey Taxes

Pursuant to existing New Jersey tax statutes, N.J.S.A. 54:32B-27(c) and N.J.S.A. 54:49-6,

(Taxpayer): Konica Minolta Business Solutions U.S.A., Inc.

(Address): 100 Williams Drive, Ramsey, NJ 07446

(Federal ID#): [REDACTED]

hereby consents and agrees as follows:

That any New Jersey corporation, business or insurance premium taxes due under any return(s) made by or on behalf of the above-named taxpayer pursuant to the Grant of Tax Credits set forth in the Agreement entered into between the above Taxpayer and the New Jersey Economic Development Authority under the authority of P.L. 2011, c. 149, as amended, may be assessed at any time during or before the termination of the Commitment Period as specified in the Agreement, executed by the Company on: 5/5/2020 _____ and executed by the New Jersey Economic Development Authority on: 5/6/2020 _____.

This consent may be signed by an attorney or agent of the Taxpayer(s) provided such action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

If the Taxpayer is a corporation, this consent must be signed with the corporate name followed by the signature of the officer(s) authorized to sign.

The execution and acceptance of this consent will not deprive the Taxpayer(s) of any appeal or protest rights to which the Taxpayer(s) would otherwise be entitled.

Taxpayer: Konica Minolta Business Solutions U.S.A., Inc.

Taxpayer's Representative: _____

Corporate Name: Konica Minolta Business Solutions U.S.A., Inc.

Corporate Officer: John Thielke (print name and sign) DocuSigned by: John Thielke Date: 5/5/2020

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**MUST BE COMPLETED AND SIGNED PRIOR TO RETURNING TO THE AUTHORITY.
 DOCUMENT WILL NOT BE ACCEPTED WITHOUT IT.**

APPENDIX D

AFFILIATE AGREEMENT

THIS AFFILIATE AGREEMENT made and entered into by _____ (“New Entity”), having its principal offices located at _____, is an additional agreement to the Incentive Agreement (“Agreement”) made as of _____ between _____ (“Applicant”), the New Jersey Economic Development Authority (“Authority”), and such other parties as may have previously entered into an Affiliate Agreement.

WHEREAS, Applicant and New Entity have requested that New Entity be added to the Incentive Agreement as an Affiliate; and

WHEREAS, New Entity has demonstrated to the Authority that it meets the definition of Affiliate in the Act and implementing Regulations.

NOW, THEREFORE, in consideration of being added as an Affiliate and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, New Entity agrees with all present and future parties to the Agreement as follows:

1. New Entity represents and warrants that it is an Affiliate.
2. New Entity hereby agrees to comply with and be bound by all the terms and conditions of the Agreement from the Commencement Date as if New Entity were a signatory to the Agreement.
3. New Entity hereby agrees to be bound by any current and future amendment to the Agreement that the Applicant may request and execute.
4. All capitalized terms used but not defined herein have the meaning set forth in the Agreement.
5. New Entity (i) is a **C corporation or a partnership or an S corporation or limited liability company or a non-profit corporation** duly organized, validly existing and in good standing under the laws of the State of _____, (ii) is duly qualified to do business in the State of New Jersey, (iii) is not in violation of any provision of its certificate of incorporation or by-laws (**LLC use certificate of formation or operating agreement**), and (iv) 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.
6. The execution, delivery and performance of this Agreement and the consummation of the transactions by New Entity herein contemplated have been duly authorized by all requisite action on the part of New Entity and will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or bylaws (**LLC use certificate of formation or operating agreement**) of New Entity, or any indenture, agreement or other instrument to which New Entity 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.
7. New Entity agrees that the four (4) year statute of limitations for the collection and assessment of corporation business tax, or insurance premiums tax, as appropriate, will be extended to the period of the Commitment Period, pursuant to the attached form of consent at Appendix C of the Agreement.
8. This Affiliate 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, and may be delivered by telecopier, e-mail, PDF or other facsimile transmission all with the same force and effect as if the same were a fully executed and delivered original manual counterpart.

IN WITNESS WHEREOF, New Entity hereto has caused this Affiliate Agreement to be executed and delivered by its respective officers duly authorized as of the date and year set forth below, and the Authority has agreed that New Entity is an Affiliate and can be added to the Agreement.

WITNESS:

**NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY**

By: _____

Arlene M. Clark
Director of Closing Services

Date: _____

WITNESS:

NEW ENTITY NAME

By: _____

Name:

Title:

Date: _____

APPENDIX E

RECOUPMENT SCHEDULE

	<u>YEAR</u>	<u>RECOUPMENT AMOUNT</u>
IF THE COMPANY LEAVES IN YEAR:	N/A	N/A