

**THE BEN FRANKLIN TECHNOLOGY CENTER
OF CENTRAL AND
NORTHERN PENNSYLVANIA, INC.**

2016/2017

FUNDING AGREEMENT

Early-Stage Company

THIS AGREEMENT, having an effective date as of the last date of signature, by and between THE BEN FRANKLIN TECHNOLOGY CENTER OF CENTRAL AND NORTHERN PENNSYLVANIA, INC., hereinafter referred to as the “*Center*”,

- AND -

hereinafter referred to as “*Company*”, for a project titled

“” – *Project No. 16C.XXXXXXR-1.*

RECITALS

A. The Center has been designated by the Commonwealth of Pennsylvania (“*Commonwealth*”) as the recipient of an award from the Ben Franklin Technology Development Authority, created by Act No. 38, approved June 22, 2001.

B. The Center has entered into one or more Ben Franklin Technology Development Authority Grant Contracts (the “*State Contract*”) with the Commonwealth acting through the Ben Franklin Technology Development Authority, for the administration, management, and fiscal responsibility for the program and project requirements of the Ben Franklin Technology Partners Program (the “*BFTP Program*”).

C. The Ben Franklin Technology Partners Program Guidelines (the “*Guidelines*”) set forth guidelines to be followed by the Center in awarding grants or making loans or other investments with Ben Franklin Technology Development Authority funds.

D. Company desires to participate in the BFTP Program and has submitted an application for funding to the Center in order to undertake certain work described therein (the “*Project*”).

E. Company has agreed to provide a matching share of the funds necessary for completion of the Project, as required by the Center.

F. Company's Project has been approved by Center's Board of Directors as the recipient of funding subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth herein and with intent to be legally bound, the parties hereto agree as follows:

I. NATURE OF PROJECT; COMPANY FUNDING AND REPORTING REQUIREMENTS

1.1 Project Commencement: Upon the effective date, the Company agrees to diligently undertake the work and services as required by the Project, and to complete such work and services on or before **June 30, 2017** ("**Funding Period**"). A summary of the application describing the Project is attached hereto and made a part hereof, marked Appendix 1.1 (the "Project Summary Report").

1.2. Company Funding: The Company agrees to provide the funding set forth in the Project Summary Report and to document all expenditures in accordance with this Agreement. Company acknowledges that if this funding is not expended and documented in accordance with this Agreement that Center, at its sole discretion, may reduce funding of the Project in Section 3.1 below in direct proportion to the reduction in Company funding.

1.3. Project Reports:

(a) Progress Reports. Company shall submit progress reports in such form as Center may direct, describing in detail the activities, which Company has undertaken in furtherance of the Project, and specifying the funds expended on behalf of the Project, including the source of such funds. Such progress report shall be submitted on the following date:

April 30, 2017

(b) Final Report. Upon completion of the Project or upon any prior Project termination, Company shall submit a comprehensive Final Report within 30 days of the completion or termination of the Project and will include a final statement of funds expended on behalf of the Project and the source of such funds. This report shall be in a form consistent with Center requirements and contain such additional information as Center may specify.

1.4. Impact Reports:

(a) Impact Report. Beginning with the effective date of this Agreement and continuing annually for a period of five (5) calendar years following the end of the Funding Period (the "**Reporting Period**"), the Company shall be responsible to complete and return to the Center, within thirty (30) days after receipt, all Impact Report Forms provided to the Company, a copy of which is included here as Appendix 1.4. The completed documents are to be signed by a person authorized to bind the Company.

(b) Failure to Provide Timely Impact Reports. In the event that the Company does not comply with section 1.4(a) of this Agreement, Impact Reports, pursuant to Section 6.2, the Center may increase the amount required to be repaid by an amount equal to 15% of the total amount of the funds disbursed by Center hereunder for each failure to provide the Impact Report.

1.5. Site Visit: Company agrees that the Center shall have the right to conduct at least one on-site visit of the Company's facility during the Project.

II. ADDITIONAL COMPANY COVENANTS; CONDITIONS OF CENTER FUNDING

2.1. (a) Compliance with Guidelines/State Contract: Company understands that Center's funding is provided under and subject to the terms and conditions of the Guidelines for *2016/2017 (A copy of these Guidelines are available upon request or view online at: http://cnp.benfranklin.org/wp-content/uploads/2016/09/BenFranklinTechnologyPartnersChallenge_Guidelines_2016.pdf)* and the State Contract. Company agrees to comply with all guidelines, requirements, conditions or limitations made applicable to the Project by the Commonwealth in conduct of Project. The Guidelines and the applicable requirements of the State Contract are incorporated herein.

(b) Additional Terms. As a condition of funding hereunder, Company agrees to comply with any additional conditions set forth in Appendix 2.1(b).

2.2. Recordkeeping:

(a) Company shall maintain, at its principal office or place of business, full, accurate and verifiable records with respect to all matters necessary to fulfill any reporting requirements of the Center or Commonwealth. These records shall include all pertinent data, documents, proceedings, and records and notes of activities and operations. Center acknowledges and agrees that such records are confidential and proprietary information of Company and are subject to Article IV hereof.

(b) The Company shall establish and maintain all records in a manner enabling identification and documentation of both the funds provided pursuant to this Agreement and the funds furnished by Company or other sources, including proper documentation regarding the date and nature of any expenditure thereof. The Company shall maintain such records as are necessary to assure accuracy and validity of any performance data submitted to the Center or Commonwealth.

(c) With seven (7) days advance written notice, the Center or its authorized representatives shall be entitled to inspect and copy any such records, files and books of account in the possession, custody or control of Company during regular business hours at the Company's principal place of business. The Company agrees to comply with this section during the project and until completion of the repayment obligations under Section 3.2.

2.3. Financial Statements: Beginning with the effective date of this Agreement and continuing until such time as the Company has fully satisfied its repayment obligations set forth in Section 3.2, the Company agrees to provide the Center with quarterly unaudited financial statements within thirty (30) days after the end of each fiscal quarter and annual accountant-prepared financial statements within ninety (90) days of the close of the Company's fiscal year. Quarterly and annual Financial Statements shall, at a minimum, consist of a Company balance sheet and income statement prepared in accordance with generally accepted accounting principles applied on a consistent basis.

2.4. Insurance: Company shall obtain and maintain shall maintain, at its sole expense, with financially sound and reputable insurers, insurance with respect to its properties and business and against such liabilities, casualties and contingencies and of such types and in such amounts as is customary in the case of corporations or other entities of Company's size and stage of development engaged in the same or similar business, including, but not limited to, workers' compensation insurance, property insurance and comprehensive general liability insurance as reasonably determined by Company. The Company shall provide Center with evidence of such insurance coverage upon Center's request.

2.5. Company status:

(a) Pennsylvania Manufacturing Requirement; Obligation to Remain in Pennsylvania. Company agrees to (i) manufacture, produce or otherwise commercialize the Project results within Pennsylvania and (ii) maintain facilities and a significant percentage of its employees within Pennsylvania, during the Reporting Period. In the event the Company ceases to have a significant operational presence in Pennsylvania at any time during Reporting Period, Company shall immediately owe a full payback to Center of the balance due and owing on the Note referred to in paragraph 3.2(a). Notwithstanding the repayment in full or any conversion of the obligations under the Note, the impact reporting obligations under paragraph 1.4 shall remain in effect. Center shall have sole discretion in determining whether Company has a significant presence in Pennsylvania.

(b) Successor Companies. All obligations of the Company, including without limitation, the reporting (Sections 1.3, 1.4, and 2.3) and repayment (Section 3.2) obligations set forth herein shall be binding upon any entity which acquires the Company, whether by merger, acquisition of stock or assets or other transaction or series of transactions. In

addition, if such acquisition occurs during the Reporting Period, in the event the acquiring company does not have a significant operational presence in Pennsylvania or does not promptly establish a significant operational presence in Pennsylvania, there shall be a penalty assessed against the Company in an amount equal to two (2X) times the total amount of the funds disbursed by Center hereunder. It is specifically acknowledged and agreed by the Company that the penalty shall be paid in addition to, and not in lieu of, any other amounts owed under this Agreement or the Note. In addition, Company shall at Center's sole option, immediately owe a full payback to Center of the balance due and owing on the Note referred to in paragraph 3.2(a). Notwithstanding the repayment in full of the obligations under the Note, the obligations under paragraph 1.4 shall remain in effect. Center shall have sole discretion in determining whether the acquiring entity has a significant presence in Pennsylvania.

(c) **Transfer of Technology.** Without the prior written consent of Center, the Company shall not license or transfer rights to any Project Technology (defined in Section 5.1) to another company. If Center, in its sole discretion, approves such license or transfer, the reporting and repayment obligations set forth herein shall also be binding upon the licensing or acquiring company. Center shall have sole discretion in determining whether any licensing or acquiring company has a significant presence in Pennsylvania.

2.6 **Bank Deposits:** Company shall deposit funds paid to the Company hereunder in a FDIC insured bank account and all expenditures shall be auditable and accounted for in accordance with generally accepted accounting principles.

2.7 **Board Meetings; Observer's Rights:** Company shall be required to conduct at least semi-annual Board meetings. Center shall have the right to appoint a representative to attend Board meetings of Company in a nonvoting observer capacity, which representative shall have the right to receive copies of all notices, minutes, consents, and other material provided to its directors (excluding information protected by attorney-client privilege).

2.8 **Prohibition:** Until such time as Company has fully satisfied the repayment obligations under the Note and any other amounts due hereunder, Company shall not undertake any action having the effect of diminishing or circumventing the Center's rights under this Agreement or the Note.

2.9 The Company agrees to comply with applicable federal, state and local laws, regulations and standards in performing its obligations under this Agreement, including those related to the environment. Notwithstanding the general nature of this provision, as required under the State Contract, Company agrees to comply with (i) the nondiscrimination/sexual harassment provisions set forth in Appendix 2.9(a) attached hereto and made a part hereof and (ii) the Contractor Responsibility Program provisions set forth in Appendix 2.9(b) attached hereto and made a part hereof.

III. FINANCIAL OBLIGATIONS OF COMPANY AND CENTER

3.1. Center Funding:

(a) Subject to Company's compliance with all provisions of this Agreement, the Center shall award Company up to _____ **DOLLARS** (\$_____) for the conduct of the work described in the Project Summary Report. The Funds will be provided to the Company according to the payment schedule set forth in Appendix 3.1(a) and may be adjusted in accordance with Section 1.2. The Company agrees to use the Funds to complete the Project and for other general corporate purposes related thereto in accordance with the terms and conditions of this Agreement. The Company shall not (a) use the Funds for (i) the purchase of any equipment or (ii) any capital expenditures, in each case without the prior written consent of Center, which consent may be withheld in Center's sole discretion, or (b) use the Funds (i) to extinguish any presently existing liabilities or indebtedness, (ii) to purchase any land or buildings or (iii) to pay for the cost of any university or other institutional overhead.

(b) In the event that the Company fails to submit any of the reports or information required by this Agreement after notice of Default and an opportunity to cure, the Center may, in its sole discretion, withhold payments to Company or demand reimbursement of all or part of the Funds received by Company until the reports or information is received or may immediately terminate this Agreement in whole or in part.

(c) Center's obligation to award Funds specified hereunder may be terminated by Center in whole or in part at any time if (1) there is any termination, revocation, reduction or delay in payment, in whole or in part, of the Commonwealth's grant of funds to Center under the Ben Franklin Technology Development Authority, or (2) Center

determines in its sole discretion, that Company will be unable to adequately perform the work and services necessary to complete the Project within the time specified in this Agreement or (3) Company fails to comply with any of the material terms and conditions of this Agreement.

(d) If at any time the Center determines that the amounts paid by Center to Company exceed the Funds authorized herein, Company shall refund this overpayment to Center. Payment of any refund due Center hereunder shall be made within thirty (30) days Payment after written notice from Center.

3.2 Company Repayment Obligation:

The Company agrees to repay the Funds to the Center pursuant to the terms of a promissory note, which will contain at a minimum the following terms (the “*Note*”):

(a) The interest rate on the Note shall be the prime rate (in effect as of the date the Center’s Board approved the Project) plus two (2%) percent. The agreed upon repayment Schedule is attached to the Note and any changes thereto, including early repayment or payoff, shall be mutually agreed upon and set forth in the Note.

(b) Conversion Rights. The unpaid balance of the Note shall, at Center’s sole option, be convertible by the Center into stock or other equity interest in the Company, upon the occurrence of a Triggering Event. “*Triggering Event*” shall mean: a) the closing on a round of private equity financing by Company wherein Company raised in excess of three (3) times the amount of the Note within any twelve (12) month period; b) any public offering under SEC regulations; c) upon Company merging with, acquiring, or being acquired by another entity; or d) selling all or substantially all of its assets. In the event of a) above, the Center shall receive the same class and series of stock offered in that investment round. In the event of a) or b) above, the conversion price shall be 80% of the relevant offering price. In the event of c) above, the conversion price shall be 80% of the value attributed to Company’s stock in the plan of merger or acquisition agreement. In the event of d) above, the conversion price shall be 80% of the fair market value of the stock of the entity acquiring the assets.

(c) Effect of Company Failure. In the event Company intends to cease operations and/or legally dissolve, Center, in its sole discretion, may waive the repayment obligations under this Section 3.2.

IV. CONFIDENTIALITY AND COMMERCIALY SENSITIVE INFORMATION

4.1 Confidentiality: The Center shall treat all data provided to it by the Company as confidential and will not willfully disclose any information except those disclosures made in connection with the Center’s rights under this Agreement.

4.2 Acknowledgment: The Company acknowledges that its participation in the BFTP Program is a matter of public record and that general, non-proprietary or non-confidential information about the Project may be disclosed to the Ben Franklin Technology Development Authority, the Commonwealth, and the other Ben Franklin Centers. Company agrees to mark any information sent by Company to Center that is considered confidential and/or proprietary as “CONFIDENTIAL” or “PROPRIETARY”, which shall be sent directly to Center.

V. TECHNOLOGY RIGHTS

5.1. Technology Ownership: Company shall own all rights to Project Technology, subject to the terms and conditions set forth herein. “*Project Technology*” shall mean any work, art, method, product, process, program, data, software, machine, manufacture, materials, design, or composition of matter, or any new and useful improvement or derivative thereof, or any variety of plant or organism, whether patentable or otherwise, relating to the Project. In the event Center waives the Company’s obligation to repay the obligations pursuant to Section 3.2 or Company fails to commercialize Project results for any reason, before satisfying the repayment obligations under the Note Company agrees to assign all of its right, title and interest in the Project results, including Project Technology, to Center.

5.2 Company agrees to enter into legally binding, written agreements with all employees, agents and subcontractors to ensure that Company maintains the right to own the Project Technology.

5.3 In addition to any security interest granted pursuant to the Note, until Company has satisfied its repayment obligations under paragraph 3.2, Center shall have the right to require Company to execute the agreement attached as Appendix 5.3 providing Center with a security interest in the Project Technology, and to undertake whatever actions are necessary to perfect said security interest. Company hereby appoints Center as the true and lawful attorney for Company for the sole purpose of executing documents necessary to create and perfect said security interest. Center agrees to subordinate its security interest to the security interest of any bona fide third party equity or debt investors in Company who have invested at least two times the amount of funds disbursed or to be disbursed hereunder.

VI. COMPANY DEFAULT; CHANGE OF STATUS

6.1. Default: Any of the following shall constitute an Event of Default by Company:

6.1.1 The Company does not meet the repayment obligations of this Agreement, Section 3.2.

6.1.2 The Company does not comply with any of the reporting requirements, including Financial Statements or Impact Reports, Sections 1.3, 1.4, and 2.3.

6.1.3 The Company fails to maintain title to Project Technology, as required under paragraph 5.2.

6.1.4 If Company fails to pay any other sums due Center under this Agreement within thirty (30) days following the due date.

6.1.5 Company fails to meet its obligations to provide written notice to Center under 6.3 or 6.4.

6.1.6 Company violates any provision of paragraph 6.5.

6.1.7 Company knowingly provides false information to Center

6.2. Effect of Event of Default: In the case of an Event of Default under 6.1.1 through 6.1.4, Center will provide written notification to Company and Company will have thirty (30) days to correct the Event of Default to the satisfaction of the Center without penalty. Following the expiration of this thirty (30) day period without cure or in the case of an Event of Default under paragraph 6.1.5 through 6.1.7, Center, without further action, shall have the right, at its sole option, to accelerate all obligations under the Note as immediately due and payable, and in addition, the amount of principal due shall be increased by an amount equal to 15% of the original amount of the Note, plus any other amounts due the Center in accordance with this Agreement, as due and payable and the Center shall have the right to exercise any remedy provided by this Agreement or under applicable law. In the case of an Event of a Default under paragraph 6.1.5 relating to notice under 6.3.1, Center shall have the right, at its sole option, to receive either the outstanding principal plus 15% of the original note, or stock or equity as though it had been notified of the Triggering Event, provided that the conversion price shall be reduced to 70% of the relevant stock value or price. The Company shall pay any and all expenses and costs (including Center's reasonable legal fees), incurred by the Center in enforcing this Agreement. This penalty shall be assumed by any acquiring or merged entity.

6.3. Company's Notification of Significant Event: Until such time as Company has fully satisfied the repayment obligations, Company shall provide thirty (30) days prior written notification to Center of any fact, condition or event that may materially or adversely affect the ability of the Company to meet its obligations under this Agreement, including, but not limited to, any of the following listed actions:

6.3.1 Sign any term sheet or enter any contractual relationship regarding a Triggering Event under paragraph 3.2(b);

6.3.2 Declare or pay any dividend, or other distribution on its stock;

6.3.3 Issuance or transfer of controlling equity interest in the Company;

6.3.4 Redeem or repurchase of any of its equity interests;

6.3.5 Make any material changes in the nature of its business;

6.3.6 Guarantee, or in any way accept liability for, debt or obligation of any Person or Organization;

6.3.7 Prepay any obligation owed to any Person/any other Organization or business other than Center;

6.3.8 Make any Pledge or grant a security interest in the Technology to any Person, Organization or business;

6.3.9 Make any significant changes in senior management; or

6.3.10 Declare Bankruptcy, become subject to Receivership, be legally dissolved or subject to winding up procedures, or otherwise cease operations.

6.4. Company Changes: In addition to the notification requirements in Section 6.3, Company will give the Center thirty (30) days prior written notice of any change in the Company's name, place of business, equity ownership

exceeding in aggregate ten (10) percent, transactions involving the Company's technology assets or any transaction outside the ordinary course of business.

6.5 **Prohibited Activities:** Company covenants that until it has satisfied its Repayment Obligations under Section 3.2 and any other sums due hereunder, it shall not, without written consent of Center:

6.5.1 Make a loan or advance to any officer, shareholder, director, partner, employee, or Affiliate of the Company except for temporary, commercially reasonable, advances in the ordinary course of business;

6.5.2 Sell, lease or make any other transfer of Company property except in the ordinary course of business and for fair consideration; or

6.5.3 Assign, license, or transfer any portion of Project Technology to another party or entity.

VII. LIABILITY AND INDEMNITY

7.1 The Company agrees to indemnify, defend and save harmless the Center and the Commonwealth, and their respective directors, officers, agents and employees from and against any and all claims, demands, actions, damages, expense (including reasonable attorneys' fees) and/or losses arising out of or in any manner related to the Company's use of the Funds under this Agreement including, but not limited to, those arising out of or related to (i) the use, application, performance, operation, or any other function of any invention, product, process, software, or other technology developed in whole or in part with Funds, including any Project Technology, or (ii) the violation or alleged violation of any proprietary rights, or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this Agreement or based on any libelous or other unlawful matter contained in such data or (iii) the breach of any obligation of Company under this Agreement, or (iv) any breach of any representation or warranty by the Company contained in this Agreement or in any documents furnished by the Company.

7.2 The Commonwealth of Pennsylvania and its agencies, officers, employees and agents are not parties to this contract. Consequently, Company acknowledges and agrees that it has no right pursuant to this contract for breach of this contract against the Commonwealth of Pennsylvania, its agencies, officers, employees, and agents.

7.3 Center's approval of the Project and subsequent review of Company's compliance with the terms of this Agreement is not intended and shall not be construed as a representation or warranty by the Center as to the effectiveness, adequacy of performance, reliability or safety of any invention, product, process, software or other technology, including Project Technology, developed in connection with the Project.

7.4 THE COMPANY AGREES THAT CENTER, AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES, SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, COMPENSATORY, SPECIAL, INCIDENTAL, EXEMPLARY, LOST PROFITS, LOSS OF REVENUE, OR CONSEQUENTIAL DAMAGES ARISING DIRECTLY OR INDIRECTLY OUT OF THE PROVISION (OR NON-PROVISION) OF ASSISTANCE OR FUNDS. ALL SUCH ASSISTANCE AND FUNDS ARE PROVIDED "AS-IS," AND TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, CENTER DISCLAIMS ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, RELATED TO THE SAME.

VIII. REPRESENTATIONS AND WARRANTIES

(a) **Organization, Principal Place of Business and Good Standing.** The Company is a legal entity duly organized, validly existing and in good standing under the laws of the **Commonwealth of Pennsylvania**. The Company's headquarters and principal place of business are located in the Commonwealth of Pennsylvania. The Company has all requisite power and authority and, to the best of the Company's knowledge, holds all licenses, permits and other required authorizations from governmental authorities necessary to own its properties and assets and to conduct its businesses as presently conducted. True and complete copies of the Company's organizational documents (e.g., Articles of Incorporation,

Certificate of Organization, Bylaws, Operating Agreement), (“Organizational Documents”), as presently in effect, have been delivered to Center.

(b) Capitalization and Related Companies. The Company’s application sets forth a true and accurate list of the equityholders of the Company and their respective equity interests (e.g., stocks, options, membership interests). Except as disclosed to Center, there are no outstanding or authorized rights, warrants, options, subscriptions, agreements or commitments of any character giving anyone any right to require the Company to sell or issue, or the Company to sell, any equity interests or other securities, nor are there any voting trusts or any other agreements or understandings with respect to the voting securities of the Company. All issuances and sales of securities by Company have been effected pursuant to and in compliance with available exemptions from registration under both federal and applicable state securities laws and, to Company’s knowledge, no party has rescission rights thereunder.

(c) Authorization, Validity and Enforceability. The Company has all requisite power and authority to enter into this Agreement and all other transaction documents contemplated hereby and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance by the Company of this Agreement and all other transaction documents contemplated hereby and the consummation of the transactions contemplated hereby have been duly authorized and approved by all necessary company action. The execution and delivery of this Agreement and all other transaction documents contemplated hereby will not, to the Company’s knowledge, violate any provision of law and will not conflict with, or result in a breach of any of the terms of, or constitute a default under, the Company’s Organizational Documents or, to the Company’s knowledge, any material agreement, instrument or other restriction to which the Company is a party or by which the Company or any of its properties or assets is bound. This Agreement and all other transaction documents contemplated hereby, when executed, will constitute the legal, valid and binding obligations of the Company, enforceable against it in accordance with their respective terms, except as limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors’ rights and (ii) general principles of equity that restrict the availability of equitable remedies.

(d) Securities. All equity securities of the Company to be issued pursuant to this Agreement, when issued and delivered and paid for in compliance with the provisions of this Agreement will be validly issued, fully paid and nonassessable.

(e) Government Consents, Etc. No consent, approval or authorization of, or declaration, registration or filing with, any person, entity or governmental authority on the part of the Company is required for the valid execution, delivery and performance of this Agreement and all other transaction documents contemplated hereby, or the valid consummation of the transactions contemplated hereby and thereby.

(f) No Defaults in Agreements. The Company is not in violation of its Organizational Documents, each as presently in effect, nor is the Company in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, lease, note, or other instrument to which it is a party or by which it may be bound, the effect of which, upon default or upon the passage of time, would have a material adverse effect on the business, operations, financial condition, property, or affairs of the Company. Litigation. There is no action or proceeding at law or in equity pending or, to the knowledge of the Company, threatened against the Company or any of its properties before any court or governmental commission, foreign or domestic; and there is no such proceeding pending or, to the knowledge of the Company, threatened, in arbitration or before any administrative agency. There is no judgment, consent decree, injunction, rule or other judicial or administrative order outstanding against the Company.

(g) Taxes. The Company has timely filed all tax returns and reports as required by law and such returns and reports are true and correct in all material respects. The Company has paid all taxes and other assessments due as of the date hereof to all federal, state and local authorities.

(h) Certain Transactions. Except as previously disclosed to Center, the Company is not indebted, directly or indirectly, to any of its officers or directors or to their respective spouses or children, in any amount whatsoever; none of said officers or directors or any members of their immediate families are indebted to the Company or have any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has

a business relationship. No officer or director or any member of his or her immediate families has entered into, or to the Company's knowledge, has a direct or indirect financial interest in any material contract with the Company other than employment agreements entered into in the ordinary course of business. The Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation.

(i) Compliance. To the Company's knowledge, the Company has complied in all material respects with all laws, regulations and orders, foreign or domestic, applicable to its business as now conducted, and the present uses by the Company of its properties, and the conduct by the Company of its business as now conducted, do not in any material respect violate any laws, regulations or orders. The Company has obtained all approvals, permits and licenses necessary for the operation of its business as presently operated, except where the failure to have such approvals, permits and licenses would not have a material adverse effect on the business or financial condition of the Company.

(j) Knowledge Defined. References herein to "knowledge" or "aware" or words of similar connotation refer to the actual knowledge of the Company's senior executive officer who shall in each case have a duty to make due inquiry of relevant employees of the Company into the matters raised.

8.2 The Company represents and warrants that it is an independent entity lawfully organized and so shall not represent itself as an employee or agent of the Commonwealth or Center, nor does entering into this Agreement make Company an employee or agent of the Commonwealth or Center. All expenses incurred by Company are its sole responsibility except as specified in this Agreement.

8.3 Company represents and warrants that Company and its subcontractors are not currently under suspension or debarment by the Commonwealth, any other state, or the federal government. Center shall have the right to require Company to terminate subcontracts with companies that are under suspension or debarment.

8.4 Company acknowledges that Center has adopted a Conflict of Interest Policy attached hereto as Appendix 8.4. Company represents and warrants that it h neither it nor its officers, directors, employees, or agents has any interest, direct or indirect, which would represent a conflict of interest under said policy or conflict with or influence, in any material manner or degree, the operations or purpose of the Center or the Ben Franklin Technology Development Authority. Company shall immediately disclose to Center, in writing, if any such conflict or influence should arise. Company shall include substantially similar language in all of its subcontracts entered into pursuant to this Agreement.

IX. MISCELLANEOUS

9.1 Nothing in this Agreement shall prohibit the Commonwealth or Center from undertaking or awarding other grants or contracts with third parties for projects that may be related in scope or nature of this Project. Nothing in this agreement shall imply or infer that the parties are joint venturers or partners, and Company is solely responsible for its corporate activities funded in whole or in part hereunder.

9.2 This contract constitutes the entire agreement between the parties and supersedes any prior oral or written negotiations, discussions or agreements. Any addition, modification or amendment to this contract must be in writing and executed by authorized agents of the parties.

9.3 (a) This contract shall be governed by and construed under the laws of the Commonwealth of Pennsylvania. Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the *status quo* or prevent irreparable harm, any and all claims, disputes or controversies arising under, out of, or in connection with this Agreement which the parties shall be unable to resolve within sixty (60) days, shall be mediated in good faith. The party raising such dispute shall promptly advise the other party of such claim, dispute or controversy in a writing which describes in reasonable detail the nature of such dispute. By not later than five (5) business days after the recipient has received such notice of dispute, each party shall have selected for itself a representative who shall have the authority to bind such party, and shall additionally have advised the other party in writing of the name and title of such representative. By not later than ten (10) business days after the date of such notice of dispute, the party against whom the dispute shall be raised shall select a mediation firm in Pennsylvania and such representatives shall schedule a date with such firm for a mediation hearing. The parties shall enter into good faith mediation and each party will pay its own costs. If the representatives of the parties have not been able to resolve the dispute within

fifteen (15) business days after such mediation hearing, the parties shall have the right to pursue any other remedies legally available to resolve such dispute in either the Centre County Court of Common Pleas or in the United States District Court for the Middle District of Pennsylvania, to whose jurisdiction for such purposes Center and Company each hereby irrevocably consents and submits.

(b) Notwithstanding the foregoing, nothing in this Article shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.

(c) Any notices required by this Agreement shall be given in writing and shall be by overnight courier service, or by certified mail, and with a copy by telefax, as follows:

For Center: **The Ben Franklin Technology Center of
Central and Northern Pennsylvania, Inc.
200 Innovation Boulevard, Suite 150
State College, PA 16803
Fax No.: (814) 865-0960**

For Company:

**THE BEN FRANKLIN TECHNOLOGY CENTER
OF CENTRAL AND NORTHERN PENNSYLVANIA, INC.**

Company Name

By _____

By _____

Name _____

Name _____

Date _____

Date _____

Appendix 3.1(a)

Payment Schedule

Payments will be made to Company according to the following schedule:

1 st Payment	<i>Upon Signing of Agreement</i>	Amount: \$
2 nd Payment	<i>Upon Approval of First Quarterly Report and Submission of First Quarter 2017 Financials</i>	Amount: \$
Final Payment	<i>Following Approval of Final Report in Accordance with Sections (a) below and Submission of Second Quarter 2017 Financials</i>	Amount: \$

(a) Upon Center's receipt of the final report required by 1.3(b), Center shall determine (i) whether the Project was completed in accordance with specifications in the Project Summary Report and (ii) the final actual Project cost.

1. If Center determines that the Project has been completed in accordance with all applicable requirements, payment of the balance of the award, if any, shall be made within thirty (30) days following receipt of Company's final report.

2. If Center determines that the Project has not been completed in accordance with all applicable requirements, no further payments will be made to Company and may demand reimbursement of funds until Company's full compliance herewith and satisfactory completion of the Project.