
**COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND GRANT
PERFORMANCE AGREEMENT**

This **COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND GRANT PERFORMANCE AGREEMENT** (this "**Agreement**") made and entered this ____ day of _____, 2016, by and among the **COUNTY BOARD OF ARLINGTON, VIRGINIA** (the "**County**"), a body corporate and politic of the Commonwealth of Virginia (the "**Commonwealth**"), **APPLIED PREDICTIVE TECHNOLOGIES, INC.** ("**APT**"), a Delaware corporation authorized to transact business in the Commonwealth, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY** (the "**IDA**"), a political subdivision of the Commonwealth. Individually, the County, APT, and the IDA may each be referred to hereinafter as the "**Party**," or collectively as the "**Parties**."

RECITALS:

WHEREAS, on July 22, 2016, the County submitted a letter to the Virginia Economic Development Partnership Authority ("**VEDP**") in order to apply for certain grant funds from the Commonwealth's Development Opportunity Fund (the "**Fund**") for the purpose of inducing APT to expand, improve, operate, and maintain its office from which it provides analytics using its cloud-based software in Arlington County (the "**Facility**"); and

WHEREAS, on July 13, 2016, pursuant to the VEDP application procedures, APT submitted a letter to VEDP indicating, among other things, that without the support from the Fund, there is a possibility that it may locate its Facility outside of Virginia; and

WHEREAS, on July 27, 2016, the Office of the Governor of the Commonwealth of Virginia awarded a Commonwealth's Development Opportunity Fund grant in the amount of One Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$1,750,000.00) (the "**COF Grant**") to the County for the purpose of inducing APT to expand, improve, operate, and/or maintain the Facility in Arlington County through making a Capital Investment, as hereinafter defined, and creating and Maintaining, as hereinafter defined, New Jobs, as hereinafter defined; and

WHEREAS, pursuant to Section 2.2-115 of the Code of Virginia of 1950, as amended ("**Virginia Code**"), the County has agreed to disburse the COF Grant to the IDA, and the IDA has agreed to accept and disburse the COF Grant to APT, pursuant to the terms of this Agreement; and

WHEREAS, APT has agreed to accept the COF Grant from the IDA as an incentive to make or have made on its behalf a Capital Investment of at least Six Million Eight Hundred Thousand and 00/100 Dollars (\$6,800,000.00), of which approximately Two Million Eight Hundred Fifty-Six Thousand and 00/100 Dollars (\$2,856,000.00) will be invested in furniture, fixtures, machinery, and equipment, and approximately Three Million Nine Hundred Forty-Four Thousand and 00/100 Dollars (\$3,944,000.00) will be invested in the construction and up-fit of the Facility, and to create and Maintain a minimum of three hundred sixty-eight (368) New Jobs

at the Facility, all as of the Performance Date, as hereinafter defined, pursuant and subject to the terms and conditions of this Agreement; and

WHEREAS, the County, the IDA, and APT desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of APT regarding Capital Investment and New Job creation and Maintenance, and the repayment by APT of all or part of the COF Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the Parties hereto, as are hereinafter set forth, and for other good and valuable considerations, mutual benefits, promises and undertakings of the Parties to this Agreement, the receipt and adequacy of which are hereby acknowledged by each Party hereto, the Parties covenant and agree as follows:

SECTION 1. INCORPORATION OF RECITALS AND DEFINITIONS.

a) **Incorporation of Recitals.** The foregoing recitals are an integral part of this Agreement and set forth the intentions of the Parties and the premises on which the Parties have decided to enter into this Agreement. Accordingly, the foregoing recitals are fully incorporated into this Agreement by this reference as if fully set forth herein.

b) **Specific.** In addition to any other capitalized term for which a meaning is expressly defined in this Agreement, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

“Baseline” means 257 full-time jobs at the Facility, upon which the determination of value for the COF Grant was based.

“Capital Investment” means a capital expenditure on or after March 1, 2016, by or on behalf of APT or an affiliate of APT in taxable real property, taxable tangible personal property, or both, at the Facility, excluding existing real property improvements.

A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of APT” if a lease between a developer (or other lessor) and APT is a capital lease or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for APT’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by APT will count as Capital Investment.

The purchase or lease of furniture, fixtures, machinery, and equipment, including under an operating lease, and expected tenant improvements and building up-fit by or on behalf of APT, will qualify as Capital Investment.

“Maintain” means, in relation to a specific New Job, that the New Job created will continue without interruption from the date of creation through the date on which the number of such New Jobs is being measured, provided that a New Job will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in APT’s employment levels (so long as there is active recruitment for open positions), (ii) strikes or other force majeure events, and (iii) other temporary work stoppages.

“New Job” means a new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by APT or an affiliate of APT for the employee that increases the number of full-time jobs at the Facility above the Baseline. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of APT’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The average annual cash compensation for the full time APT employees on the date of measurement of the New Job must be equal to or greater than One Hundred Forty-Eight Thousand Two Hundred Thirty-One and 00/100 Dollars (\$148,231.00) If the annual average cash compensation for all full time APT employees on the date of measurement for the New Jobs is less than One Hundred Forty-Eight Thousand Two Hundred Thirty-One and 00/100 Dollars (\$148,231.00), APT will remove the lowest paying job(s) one by one and, after each job is removed, recalculate the average annual cash compensation for all full time APT employees until such point at which it is equal to or exceeds such amount (and not count any removed jobs as a New Job).

“Performance Date” means June 30, 2021. The Performance Date is not subject to extension.

“Targets” means APT’s target to make or have made on its behalf Capital Investment at the Facility of at least Six Million Eight Hundred Thousand and 00/100 Dollars (\$6,800,000.00) (the **“Capital Investment Target”**) and to create and Maintain at least three hundred sixty-eight (368) New Jobs at the Facility (the **“New Jobs Target”**), all as of the Performance Date. Together, the Capital Investment Target and the New Jobs Target may be referred to hereinafter as the **“Targets.”**

SECTION 2. TARGETS.

a) APT covenants and agrees to locate, equip, operate, and maintain the Facility in Arlington County, make or have made on its behalf a Capital Investment of at least Six

Million Eight Hundred Thousand and 00/100 Dollars (\$6,800,000.00) at the Facility, and create and Maintain at least three hundred sixty-eight (368) New Jobs at the Facility, all as of the Performance Date. Of the Capital Investment, approximately Two Million Eight Hundred Fifty-Six Thousand and 00/100 Dollars (\$2,856,000.00) will be invested in furniture, fixtures, machinery, and equipment, and approximately Three Million Nine Hundred Forty-Four Thousand and 00/100 Dollars (\$3,944,000.00) will be invested in construction and up-fit of the Facility.

b) APT covenants and agrees that the average annual cash compensation for all employees at the Facility as of the Performance Date will be at least One Hundred Forty-Eight Thousand Two Hundred Thirty-One and 00/100 Dollars (\$148,231.00), which is more than the prevailing average annual wage in the County of Eighty-Three Thousand Seven Hundred Twenty and 00/100 Dollars (\$83,720.00).

c) APT acknowledges that it is encouraged to offer at least thirty percent (30%) of the New Jobs to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

d) APT covenants and agrees to use its reasonable efforts to assist the County and the IDA from time-to-time in promoting the County’s attributes as a place to do business.

e) The County is not a high-unemployment locality, with an unemployment rate for 2014, which is the last year for which such data is available, of 3.2% as compared to the 2014 statewide unemployment rate of 5.2%. The County is not a high-poverty locality, with a poverty rate for 2014, which is the last year for which such data is available, of 8.5% as compared to the 2014 statewide poverty rate of 11.8%.

f) APT acknowledges that the name of APT will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. APT acknowledges that within 18 months of the date of this Performance Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than \$100 provided by APT to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of APT’s application for the COF Grant through the one-year period immediately after the date of this Agreement.

g) APT’s sole and exclusive liability and the County and IDA’s sole and exclusive remedy for APT’s failure to hit the Targets or comply with any other obligation in Sections numbered 2(a) through 2(d) will be as set forth in Section 5. In no event will APT have any other liability for any failure to meet its covenants in Sections numbered 2(a) through 2(d).

h) For clarity, for the purpose of APT meeting its obligations hereunder, Capital Investment made by an affiliate of APT and New Jobs at the Facility where an APT affiliate is the employer will be considered for purposes of this Agreement to have been performed by APT.

SECTION 3. DISBURSEMENT OF COF GRANT.

a) **Disbursement to the County.** By its signature below, the County requests of VEDP the disbursement of the COF Grant. VEDP has informed the County and APT that the time period for the disbursement of the COF Grant from the Commonwealth to the County is likely to be 30-45 days. It is anticipated that, upon request as set forth above, VEDP will transfer to the County the COF Grant in the amount of One Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$1,750,000.00).

b) **Disbursement to the APT.** The COF Grant proceeds shall be retained by the County and disbursed as follows:

i) Within thirty (30) days of its receipt of the COF Grant proceeds, the County will disburse One Million and 00/100 Dollars (\$1,000,000.00) to the IDA. Within thirty (30) days of its receipt of such COF Grant proceeds, the IDA will disburse such COF Grant proceeds to APT.

ii) On June 30, 2019, the County will disburse the remaining Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) of the COF Grant proceeds to the IDA. Within thirty (30) days of its receipt of such COF Grant proceeds, the IDA will disburse such COF Grant proceeds to APT. However, if APT has not met the statutory requirements described in Section 5(a) on or by such date, the remaining disbursement will be delayed on a day-by-day basis until such requirements are met.

c) **Return of COF Grant Proceeds Not Disbursed.** Any COF Grant proceeds not disbursed to the IDA within ninety (90) days of the Performance Date will be promptly returned by the County to VEDP for redeposit to the Commonwealth's Development Opportunity Fund.

d) **Use of the COF Grant Proceeds.** The COF Grant proceeds shall be used to pay for or reimburse the cost for the leasehold improvements at the Facility, employee recruiting, training and onboarding, as permitted by Section 2.2-115(D) of the Virginia Code.

SECTION 4. BREAK-EVEN POINT; STATE AND LOCAL INCENTIVES.

a) **Break-Even Point.** VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. According to VEDP, the break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to, the COF Grant.

b) **State Incentives.** In addition to the COF Grant, in order to induce APT to make a Capital Investment of at least Six Million Eight Hundred Thousand and 00/100 Dollars (\$6,800,000.00) and to create and Maintain a minimum of three hundred sixty-eight (368) new jobs (in excess of the Baseline) by expanding, improving, equipping, operating, and maintaining the Facility in Arlington County, the Commonwealth will provide up to Three Hundred Sixty-Eight Thousand and 00/100 Dollars (\$368,000.00) from the Virginia Jobs Investment Program, which shall be used by APT to pay or reimburse itself for recruitment and training costs for such new jobs. APT will receive One Thousand Dollars (\$1,000.00) per each qualifying new job from the Virginia Jobs Investment Program, to be paid by the Commonwealth promptly following an application by APT following the new job having been employed by APT for ninety (90) days.

c) **Local Matching Funds and Incentives.** As permitted by Virginia Code Section 2.2-115 and required by VEDP's Commonwealth's Development Opportunity Fund guidelines, and as an additional inducement to APT, the County has agreed to match the COF Grant by making the following local incentives:

(i) **BPOL Reduction.** As part of the required local matching funds and incentives, subject to an annual designation as a "qualified new or expansion technology business" pursuant to Chapter 66 of the Arlington County Code, as amended, APT will receive the reduced Qualified Technology Business – Business, Professional and Occupational License (BPOL) tax rate as provided in Section 11-86 of the Arlington County Code, as amended (the "**BPOL Reduction Incentive**"). The BPOL Reduction Incentive has an estimated value to APT of approximately Eight Hundred and Seventy Thousand 00/100 Dollars (\$870,000.00) in years one (1) through five (5) of this Agreement and an estimated total value to APT of approximately Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) over ten (10) years. The BPOL Reduction Incentive will be applied through at least 2024.

(ii) **IDA Grant.** In addition to the BPOL Reduction Incentive, as part of the required local matching funds, subject to appropriation, the County, through the IDA, will fund an incentive grant (the "**IDA Grant**") of up to One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) pursuant to the terms of that certain Arlington County Economic Development Incentive Grant Agreement, dated the date herewith, by and among the Parties. During years two (2) through five (5) of this Agreement, the County, through the IDA, will fund an IDA Grant of up to Three Hundred Seventy-Five Thousand and 00/100 Dollars (\$375,000.00) in each such year for an estimated total value to APT of up to One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00).

If, by the Performance Date, the value of the BPOL Reduction Incentive and the IDA Grant paid or committed to be paid by the County total less than the One Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$1,750,000.00) COF Grant local match requirement,

the County through the IDA, subject to appropriation, will make an additional grant to APT of the difference at the Performance Date, so long as APT has met its Targets.

SECTION 5. REPAYMENT OBLIGATION.

a) **If Statutory Minimum Eligibility Requirements are Not Met.** Section 2.2-115 of the Virginia Code requires that APT make a Capital Investment of at least \$5,000,000 in the Facility and create and Maintain at least 50 New Jobs at the Facility in order to be eligible for the COF Grant. Failure by APT to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire COF Grant must be repaid. APT must repay to the IDA any COF Grant proceeds received and the IDA shall repay such COF Grant proceeds to the County. The County must repay to VEDP any COF Grant proceeds received from the IDA and any COF Grant proceeds being held for disbursement.

b) **If Statutory Minimum Eligibility Requirements are Met.** The provisions of this subsection b) are applicable only if APT has met the statutory minimum eligibility requirements set forth in subsection a). For purposes of repayment, the COF Grant is to be allocated as Eight Hundred Seventy-Five Thousand and 00/100 Dollars (\$875,000.00) or fifty percent (50%) to the Capital Investment Target and Eight Hundred Seventy-Five Thousand and 00/100 Dollars (\$875,000.00) or fifty percent (50%) to the New Jobs Target. If APT has met at least ninety percent (90%) of both of the Targets as of the Performance Date, then and thereafter APT is no longer obligated to repay any portion the COF Grant. If APT has not met at least ninety percent (90%) of either or both of its Targets as of the Performance Date, APT shall repay to the IDA that part of the COF Grant that is proportional to the shortfall from the Target or Targets for which it received COF proceeds. For example, if as of the Performance Date, APT has received all One Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$1,750,000.00) of the COF Grant proceeds, but the Capital Investment is only Five Million One Hundred Thousand and 00/100 Dollars (\$5,100,000.00) or seventy-five percent (75%) of the Capital Investment Target, and only two hundred seventy-six (276) New Jobs have been Maintained or seventy-five percent (75%) of the New Jobs Target, APT shall repay to the IDA twenty-five percent (25%) of the moneys that it received allocated to the Capital Investment Target or Two Hundred Eighteen Thousand Seven Hundred Fifty and 00/100 Dollars (\$218,750.00) and twenty percent (25%) of the moneys that it received allocated to the New Jobs Target or Two Hundred Eighteen Thousand Seven Hundred Fifty and 00/100 Dollars (\$218,750.00). For example, if as of the Performance Date, APT has received all One Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$1,750,000.00) of the COF Grant proceeds and met the Capital Investment Target, but only two hundred seventy-six (276) New Jobs have been Maintained or seventy-five percent (75%) of the New Jobs Target, APT shall repay to the IDA only twenty five percent (25%) of the moneys that it received allocated to the New Jobs Target or Two Hundred Eighteen Thousand Seven Hundred Fifty and 00/100 Dollars (\$218,750.00). In such event, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed through the IDA to APT.

c) **Determination of Inability to Comply.** If the County, the IDA, or VEDP shall reasonably believe in good faith at any time prior to the Performance Date that APT is unable or unwilling to meet the Targets by and through the Performance Date, the County, the IDA, or VEDP shall promptly notify APT of such determination in writing and the parties shall meet within thirty (30) days to discuss such situation. If APT is unable to provide reasonable evidence or data that it is able and willing to meet the Targets, the County, the IDA, and VEDP may notify APT in writing that APT will be deemed to not have met the Targets (the date such writing is received, the “**Determination Date**”) and, APT must repay to the IDA the COF Grant proceeds previously disbursed to APT; such repayment to be in full if the statutory minimum requirements set forth in clause 5(a) have not been achieved or in part if the statutory minimum requirements have been achieved, using the formula set forth in clause 5(b). Such a determination will be based on circumstances of a filing by or on behalf of APT under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of APT, an abandonment of the Facility by APT, or other similar significant event that demonstrates that APT will be unable or is unwilling to satisfy the Targets for the COF Grant. In such event, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed through the IDA to APT.

d) **Repayment Dates.** *Such repayment shall be due from APT to the IDA within ninety days after the Performance Date, or the Determination Date, as applicable.* Any moneys repaid by APT to the IDA hereunder shall be repaid by the IDA to the County. The County shall repay any moneys received from the IDA or any moneys being held for disbursement promptly to VEDP for redeposit into the COF Grant Fund. The County and IDA shall use its best efforts to recover such funds, including legal action for breach of this Agreement. Neither the County nor the IDA shall have any responsibility for the repayment of any sums due from APT hereunder unless said sums have been received by the IDA from APT.

SECTION 6. APT REPORTING.

a) APT shall provide, at APT’s expense, detailed verification reasonably satisfactory to the County, the IDA, and VEDP of APT’s progress on the Targets. Such progress reports will be provided annually, starting at October 1, 2017, and covering the period through the prior June 30. Further, APT shall provide progress reports at such other times as the County, the IDA or VEDP may reasonably require.

b) As applicable, APT shall be responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on its behalf.

c) With each such progress report, APT shall report to VEDP the amount paid by APT in the prior calendar year in Virginia corporate income tax or, as applicable, shall provide to VEDP a copy of its Virginia income tax form filed with respect to its status as a pass-through entity. VEDP has represented to APT that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate

return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

d) APT hereby authorizes the County's Department of Real Estate Assessment and Commissioner of Revenue's Business Tax Division to release to VEDP, APT's real estate tax, business personal property tax, and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If VEDP should require additional documentation or consents from APT to access such information, APT shall promptly provide, at APT's expense, such additional documentation or consents as the County, the IDA, or VEDP may request.

e) If requested by VEDP, APT shall provide to VEDP copies of the APT's quarterly filings with the Virginia Employment Commission covering the period from the date of this Agreement through the Performance Date.

f) Unless otherwise required by applicable law, VEDP, the County, and IDA will use reasonable efforts to keep all reports and other information submitted by APT as confidential and not make such reports available publicly or as part of any FOIA request. If such reports and information are required to be made public or otherwise disclosed, VEDP, the County, or IDA will notify APT and cooperate with APT to redact any components of such reports or information that are legally permitted to be redacted. For clarity, nothing in this section (g) is intended to prohibit VEDP, the County, or IDA from fulfilling any applicable requirement under an applicable law or regulation.

SECTION 7. NOTICES.

a) **Notices, Demands, and Communications Between the Parties.** Formal notices and communications among the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed to:

To the County: County of Arlington
2100 Clarendon Boulevard, Suite 302
Arlington, Virginia 22201
Attn: Mark Schwartz, County Manager
Fax: (703) 228-3218
Email: MSchwartz@ArlingtonVA.US

With Copies to: County of Arlington
Office of the Arlington County Attorney

2100 Clarendon Blvd, Suite 403
Arlington, Virginia 22201
Attn: Robert E. Dawson, Assistant County Attorney
Fax: (703) 228-7106
Email: RDawson@ArlingtonVA.US

County of Arlington
Department of Economic Development
1100 North Glebe Road, Suite 1500
Arlington, Virginia 22201
Attn: Victor L. Hoskins, Director
Fax: (703) 228-0805
Email: VHoskins@ArlingtonVA.US

To APT: Applied Predictive Technologies, Inc.
901 N Stuart Street, Suite 1000
Arlington, VA 22203
Attn: Cathy Baker
Fax: (703)243-8742
Email: cbaker@aptmail.com

With a Copy to: Applied Predictive Technologies, Inc.
901 N Stuart Street, Suite 1000
Arlington, VA 22203
Attn: General Counsel
Fax: (703) 243-8742
Email: legal@aptmail.com

To the IDA: Industrial Development Authority of Arlington County
2100 Clarendon Blvd, Suite 501
Arlington, Virginia 22201
Attn: Jason Friess, Secretary/Treasurer
Fax: (703) 224-3401
Email: JFriess@arlingtonva.us

With a Copy to: McGuireWoods, LLP
1750 Tysons Blvd, Suite 1800
Tysons Corner, Virginia 22102
Attn: Michael W. Graff, Jr.
Fax: (703) 712-5191
Email: mgraff@mcguirewoods.com

To VEDP: Virginia Development Economic Partnership
901 East Cary Street, Suite 900

Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attn: Daniel C. Gundersen, Interim President and CEO and COO
Fax: (804) 545-5611
Email: dgundersen@yesvirginia.org

With a Copy to: Virginia Development Economic Partnership
901 East Cary Street, Suite 900
Richmond, Virginia 23219
Post Office Box 798 (zip: 23218-0798)
Attn: Sandra Jones McNinch, General Counsel
Fax: (804) 545-5611
Email: smcninch@yesvirginia.org

b) Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. APT may change its address on written notice. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as any Party may from time to time designate in writing.

SECTION 8. MISCELLANEOUS.

a) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement among the Parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the Parties hereto. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. APT may not assign its rights and obligations under this Agreement without the prior written consent of the County, the IDA and VEDP, provided that no such consent will be required for an assignment to an affiliate of APT.

b) **Governing Law; Venue.** This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Arlington, and such litigation shall be brought only in such court.

c) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

d) **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the

remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. In the event that all or any portion of this Agreement is found to be unenforceable, this Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and the Parties further agree that in such event, and to the maximum extent permitted by law, they shall take all steps necessary to comply with such procedures or requirements as may be necessary in order to make valid this Agreement or that portion which is found to be unenforceable.

e) **Relationship of Parties.** The provisions of this Agreement are intended solely for the purpose of defining the relative rights of the Parties and no relationship of partnership, joint venture, or other joint enterprise shall be deemed to be created hereby by and among the Parties pursuant to this Agreement.

f) **Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

g) **No Waiver of Sovereign Immunity by County.** Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by the County pursuant to this Agreement nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the County's elected and appointed officials, officers and employees.

h) **Force Majeure.** If APT is delayed or prevented in whole or in part from meeting any Target as a direct result of an event not reasonably within its control (e.g., acts of God, acts of terrorism whether actual or threatened, damage or destruction to a Facility or potential Facility rendering such Facility either non-operational or aesthetically unsatisfactory in the determination of APT in its reasonable discretion, or acts of any governmental body), APT will notify the County and the Parties will discuss such event and situation in good faith to discuss potential modifications to the Targets, timeline, and repayment obligations under Section 5.

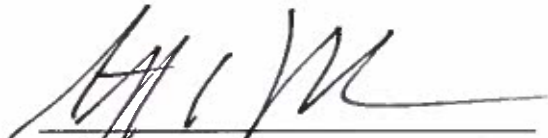
i) **Attorney's Fees.** Attorney's fees shall be paid by the party incurring such fees.

[Signatures and acknowledgments appear on the following pages]

IN WITNESS WHEREOF, the County, the IDA, and APT have each executed, or caused to be duly executed, this Commonwealth's Development Opportunity Fund Grant Performance Agreement under seal in duplicate, in the name and behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, thereunto duly authorized) as of the day and year first written above.

Approved as to form:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic of the Commonwealth of Virginia


Stephen A. MacIsaac, County Attorney

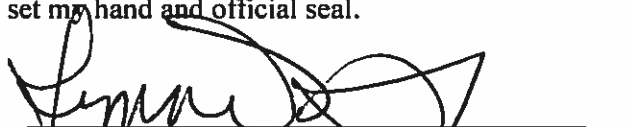
By: 
Mark Schwartz, County Manager

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the 1st day of October, 2016, before me, personally appeared Mark Schwartz, who acknowledged himself to be the County Manager of Arlington County in the above instrument, and that he, as County Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the County Board of Arlington County, Virginia, a body corporate and politic of the Commonwealth of Virginia by himself as County Manager of Arlington County, Virginia

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires: 1/31/19



**INDUSTRIAL DEVELOPMENT
AUTHORITY OF ARLINGTON
COUNTY**, a political subdivision of the
Commonwealth of Virginia

By: 
John Washington, Chairman

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the 20th day of October, 2016, before me, personally appeared John Washington, who acknowledged himself to be the Chairman of the Industrial Development Authority of Arlington County, Virginia in the above instrument, and that he, as Chairman, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Industrial Development Authority of Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia by himself as Chairman of the Industrial Development Authority of Arlington County, Virginia.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires: 10/31/16

JOANNA B. COLES
NOTARY PUBLIC
REGISTRATION # 225916
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
OCTOBER 31, 2016

**APPLIED PREDICTIVE
TECHNOLOGIES, INC.**, a Delaware
corporation

By: Patrick O'Reilly
Patrick O'Reilly, President and Chief
Operating Officer

ACKNOWLEDGMENT

STATE OF Virginia
COUNTY OF Fairfax

On this the 4th day of October, 2016, before me, personally appeared Patrick O'Reilly, who acknowledged himself to be the President & COO of Applied Predictive Technologies, Inc. in the above instrument, and that he, as President & COO, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Applied Predictive Technologies, Inc., a Delaware corporation by himself as President & COO of Applied Predictive Technologies, Inc.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

ELIZABETH JANE COMPSON
Notary Public
Commission #: 7578113
Commonwealth of Virginia
My Commission Expires Nov. 30, 2018

Elizabeth Jane Compson
Notary Public

My Commission Expires: _____