

**AMENDED AND RESTATED AGREEMENT FOR RESEARCH & DEVELOPMENT ALLIANCE  
ON  
ULTRA-HIGH PERFORMANCE LIGHTING TECHNOLOGY AND LED LIGHTING**

This AMENDED AND RESTATED AGREEMENT FOR RESEARCH & DEVELOPMENT ALLIANCE ON ULTRA-HIGH PERFORMANCE LIGHTING TECHNOLOGY AND LED LIGHTING (this "Agreement") is effective as of October 8, 2014 (the "Effective Date") and is by and between THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK ("FOUNDATION"), a non-profit educational corporation existing under the laws of the State of New York, having an office located at 257 Fuller Road, Albany, New York 12203, on behalf of the SUNY Polytechnic Institute ("SUNY Poly"), and SORAA, INC. ("SORAA"), a Delaware corporation with its principal office located at 6500 Kaiser Drive, Fremont, California 94555. FOUNDATION and SORAA are each referred to herein sometimes individually as a "Party" or, collectively, as "Parties."

**I. RECITALS**

- I.1. New York State has led the U.S. in multi-billion dollar strategic investments in high technology programs that cover the entire spectrum of clean energy, smart grid, and nanotechnology industry needs, from long-term innovative research and development, to workforce development and education, to product prototyping and commercialization.
- I.2. New York State's comprehensive job creation and economic growth agenda for New York State provides strategic investments for job creation in emerging high-tech industries across New York State and for fostering critical partnerships between State government, the private sector and New York State's top-flight universities and research institutions, as demonstrated recently by the commitment and growth of SUNY POLY, together with its public and private university and industry partners.
- I.3. SORAA is a corporation duly formed under the laws of the State of Delaware that has become a leader in the field of energy-efficient and reliable LED lighting technology.
- I.4. SORAA acknowledges that SUNY POLY is a critical enabling component in maintaining and bolstering New York State's position as a leader in clean energy and nanotechnologies, and recognizes the mutual benefit that can be attained by: (i) collaborating with SUNY POLY to bring to the State of New York new research, development, and business investments from the various sectors of the clean energy technology industry; (ii) fostering critical partnerships among the Parties and the public and private sectors; and (iii) facilitating the manufacturing of LED lighting products in the State of New York.
- I.5. SUNY POLY recognizes SORAA as a valuable potential collaborator and partner in the development of future generations of lighting technologies.
- I.6. The Parties desire to make joint investments in the State of New York that focus on (i) research and development ("R&D") and prototyping for energy-efficient and reliable LEDs to achieve technological and manufacturing breakthroughs in ultra-high performance lighting technologies while minimizing power consumption and maximize energy efficiency; and (ii) the establishment of SORAA'S manufacturing, business, and other related operations in Central New York.

- 1.7 The Parties entered into that certain Agreement for Research & Development Alliance on Ultra-High Performance Lighting Technology and LED Lighting ("Original Agreement"), effective as of September 21, 2012, which the Parties amended by First Amendment, effective as of January 21, 2014.
- 1.8 The Parties now wish to further amend and to restate the Original Agreement, as previously amended, as set forth in this Agreement.

THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## II. DEFINED TERMS

In addition to the terms defined elsewhere in this Agreement, the following terms have the described meanings listed below.

### 2.1 Affiliate

Affiliate means an entity that controls, is controlled by, or is under common control with, another entity, but only during the period that such control exists. For purposes of this Agreement, FOUNDATION's Affiliates shall be deemed to include, Fort Schuyler Management Corporation ("FSMC"), SUNY POLY and SUNY.

### 2.2 Change of Control

Change of Control means one transaction or a series of transactions that result in a third party obtaining, directly or indirectly, (a) all or a majority of the assets of or (b) Control of, a Party. Change of Control shall not include the sale of capital stock in one or more financing transactions."

### 2.3 SUNY POLY Facilities

SUNY POLY Facilities means, collectively, the Manufacturing Facility and all other FOUNDATION, and SUNY POLY facilities used in the Program (as defined in Exhibit D).

### 2.4 SUNY POLY Tools

SUNY POLY Tools means, collectively, the Manufacturing Equipment and all other FOUNDATION, and SUNY POLY tools and equipment used by a Party in the Program.

### 2.5 Control

Control means the power to direct the affairs of any individual, corporation, partnership, joint venture, trust, business association, governmental entity or other entity by reason of ownership of voting stock, by asset acquisition, by contract or otherwise.

2.6 Knowledge

Knowledge means, for SORAA, the actual knowledge of the officers and directors of SORAA and, for FOUNDATION, the actual knowledge of the Principal Investigator.

2.7 Manufacturing Facility

Manufacturing Facility means, collectively, the approximately 50,000 square foot facility and related infrastructure to be located in Syracuse, New York at the SUNY Poly Central New York Hub for Emerging Nano Industries. The Parties agree to identify such other terms pertaining to the construction and fit-up and/or retrofit, operation and maintenance of the Manufacturing Facility, all of which shall be memorialized by the Parties after the signing of this Agreement in Exhibit B by an amendment to this Agreement and/or such other related lease/use agreement as may be desirable.

2.8 Manufacturing Equipment

Manufacturing Equipment means the equipment listed in Exhibit C of this Agreement, which includes manufacturing tools that are necessary to perform the Manufacturing Operations. After the Parties sign this Agreement, the Parties will mutually agree on the list of Manufacturing Equipment to be set forth in Exhibit C by amending this Agreement.

2.9 Manufacturing Operations

Manufacturing Operations means the SORAA and/or its Affiliates activities in connection with the manufacture of LED and/or any other products and all other activities related thereto, including without limitation such costs required to achieve Full Production Output (as defined in Exhibit A).

**III. OBJECTIVES**

3.1 R&D, Business Outreach, and Economic Development

The Parties are entering into this Agreement for the objective of creating an R&D collaboration and economic partnership agreement for the location of SORAA research and development at SUNY POLY and manufacturing and business operations in Central New York.

3.2 Program "Essential Purposes"

For purposes of this Agreement, the "Essential Purposes" of the Program shall be as follows:

- (a) The technical focus of FOUNDATION-SORAA Program is to develop, demonstrate, and deploy energy-efficient and reliable LEDs to achieve technological and manufacturing breakthroughs in ultra-high performance lighting technologies while minimizing power consumption and maximize energy efficiency; and
- (b) Establishment of SORAA manufacturing, business, and related operations in Central New York in accordance with Sections IV and V.

#### IV. SORAA PROGRAM CONTRIBUTION OBLIGATIONS

##### 4.1 Manufacturing Operations

- (a) SORAA agrees to: (i) establish its next generation LED technology Manufacturing Operation in Central New York at the Manufacturing Facility; (ii) jointly commission, with FOUNDATION, the Manufacturing Operation as soon as possible, with a target date of March 30, 2015 ("Target Commission Date"), provided, however, that the Parties will work in good faith toward that date for operation commencement and will consider existing structures for the Manufacturing Facility; and (iii) complete Full Production Output from the Manufacturing Operation within 5 years of the Target Commission Date. SORAA further agrees in connection with the Manufacturing Operation to the levels of investments over the Term (as defined below) and the creation and retention of high tech jobs during the Term as outlined below and in accordance with the table attached and made an integral part of this Agreement as Exhibit A.
- (b) SORAA, at its expense, shall be responsible for operating and managing all aspects of the Manufacturing Operations at the Manufacturing Facility, including, without limitation, hiring the workforce to perform Manufacturing Operations in accordance with the terms of this Agreement, procuring the raw materials, manufacturing the LED products, selling and distributing the LED products, and maintaining compliance with all applicable laws. Subject to Section VIII, SORAA shall own any and all of the proprietary technology that its Representatives (as defined in Exhibit D) create during the Term in the performance of the Manufacturing Operations at the Manufacturing Facility and that is necessary and useful for manufacturing the LED products. Except for the Manufacturing Facility that will be owned or controlled by or on behalf FOUNDATION and the Manufacturing Equipment that will be owned by FOUNDATION and made available for Manufacturing Operations, SORAA will also own all the inventory, product, output, and other property it purchases or creates associated with running the operations of the Manufacturing Operation. The profit or losses resulting from the Manufacturing Operation shall accrue solely to SORAA. SORAA shall be responsible for all taxes, including, without limitation, federal and local taxes, associated with the Manufacturing Operation.

##### 4.2 Manufacturing Facility

SORAA agrees to lease from FOUNDATION or FOUNDATION's designee the Manufacturing Facility and the Manufacturing Equipment in accordance with the terms set forth in Exhibit A. SORAA is responsible for paying for all costs associated with the Manufacturing Facility and the property on which the Manufacturing Facility is situated, including without limitation maintenance and operating expenses, utilities, municipal charges, and real estate taxes assessed against the Manufacturing Facility and the property on which the Manufacturing Facility is situated or the amount(s) paid pursuant to a PILOT Agreement or such other agreement with a governmental entity, including without limitation payments by contribution. The Parties acknowledge and agree that they are continuing to develop the full scope of terms under which the Parties will conduct this alliance. The Parties acknowledge and agree that the key terms are contained in this Agreement; however, one or more follow on contracts and/or amendments in

addition to this Agreement may be needed to fully detail and complete the Parties' current and expected subsequent understandings. Therefore, it is anticipated that this Agreement will be amended and/or supplemented to accommodate the Parties further agreement on terms.

#### 4.3 SORAA Investment & Spending

In accordance with and subject to the terms set forth in Exhibit A: (a) SORAA commits to invest and spend in the Manufacturing Operation at a level that ensures competitive product costs as determined by the market place for a minimum of ten years from the commission date (to be mutually agreed by the Parties); (b) SORAA will be responsible for and pay all costs associated with operation of the Manufacturing Facility during the Term; and (c) SORAA will spend approximately \$130,000,000 per year during the Term of this Agreement at Full Production Output, at current cost levels, taking into account no major reductions in certain costs for GaN substrate materials.

#### 4.4 SORAA Employment Targets

SORAA agrees to create and hire as SORAA employees personnel for 250 high tech jobs for Full Production Output for the Manufacturing Operation at the Manufacturing Facility in Central New York. SORAA commits to the retention of these jobs for the Term of this Agreement. SORAA also commits to working jointly with FOUNDATION to assist it in attracting and locating an additional 170 support high tech jobs from SORAA contractors and suppliers at the Manufacturing Facility in Central New York. SORAA further commits to working jointly with FOUNDATION to retain these jobs for the Term of this Agreement. The jobs that set forth in this Section are expected to meet the requirements of the funding agency(ies) supporting this Agreement, which such job categories will include without limitation jobs within the Federal Bureau of Labor Statistics NCAIS codes 3341, 3342, 3344, 5182, 5415, and 5417, corresponding to the following Level I high tech industry sectors: Computer and Peripheral Equipment Manufacturers; Communication Equipment Manufacturing; Semiconductor and Other Electronic Component Manufacturing; Data Processing, Hosting, and Related Services; Manufacturing and Reproducing of Optical and Magnetic Media; Computer Systems Design and Related Services; and Scientific Research and Development Services.

#### 4.5 SORAA R&D Funding Targets

SORAA commits to work with FOUNDATION, on behalf of SUNY POLY, to identify sources of funding to develop, demonstrate, and deploy energy-efficient and reliable LEDs to achieve technological and manufacturing breakthroughs in ultra-high performance lighting technologies while minimizing power consumption and maximize energy efficiency. Such funding is projected to be generated from public and private funding sources.

#### 4.6 Contribution Verification and Audit

SORAA shall provide FOUNDATION with reports verifying SORAA's contributions to the Program and the fair market value of such contributions and such other information as reasonably requested by FOUNDATION, with such reports being duly acknowledged by an officer of SORAA and in such form as reasonably requested by FOUNDATION. During such audit, FOUNDATION or its accounting firm may examine and copy SORAA's books, records, documents, and other

supporting data relating to this Agreement and the Program expenditures. SORAA shall maintain accurate books, records, documents, and other supporting data which relate to all financial matters concerning the Program and its obligations under this Agreement for seven (7) years from the date of termination of this Agreement. FOUNDATION will notify SORAA in writing before any audit and will conduct such audit at reasonable times.

**V. FOUNDATION PROGRAM CONTRIBUTION OBLIGATIONS**

**5.1 Manufacturing Facility and Manufacturing Equipment**

- (a) FOUNDATION will use best efforts to generate funding from the State of New York State, to be administered through FOUNDATION or its Affiliate, to construct or retrofit the Manufacturing Facility, as may be mutually agreed to by the Parties and approved by the State, to house SORAA'S Manufacturing Operations in Central New York. The Manufacturing Facility will be constructed and owned or controlled by or on behalf of FOUNDATION or its Affiliate and, in accordance with Exhibit A, leased to SORAA for its exclusive use for a minimum of ten years.
- (b) FOUNDATION will further use best efforts to generate funding from the State of New York State, to be administered through FOUNDATION or its Affiliate, to equip the Manufacturing Facility with the Manufacturing Equipment. The Manufacturing Equipment will be owned by FOUNDATION or its Affiliate and, in accordance with Exhibit A, leased to SORAA for its exclusive use for a minimum of the Term of this Agreement. The lease may contain mutually agreeable renewal terms.
- (c) Under no circumstance will FOUNDATION or its Affiliate's costs for the Manufacturing Facility and Manufacturing Equipment exceed \$90 million, with a not to exceed amount of \$60 million for Manufacturing Equipment and \$30 million for the Manufacturing Facility, with such amount assuming new construction, excluding costs, if any, associated with the acquisition of the land on which the Manufacturing Facility will be located. Contributions associated with retrofitting existing space will be mutually agreed upon by the Parties.
- (d) FOUNDATION or its Affiliate will construct or retrofit the Manufacturing Facility and equip the Manufacturing Facility with the Manufacturing Equipment to facilitate the start of Manufacturing Operations by SORAA at the Manufacturing Facility as soon as possible with a target date of the Target Commission Date, provided, however, that the Parties will work in good faith toward that date for operation commencement and will consider existing structures for the Manufacturing Facility. The Parties will enter into such other terms and/or agreements to give effect to the key terms of this Agreement and implementation of the agreements of the Parties contained in this Agreement.
- (e) The Parties will mutually agree on terms associated with any option to renew the lease for the Manufacturing Facility and the Manufacturing Equipment from FOUNDATION or its Affiliate at the fair market value of the Manufacturing Facility and for use of the Manufacturing Equipment when the date the option is exercised.

5.2 FOUNDATION Assisted Employment Targets

FOUNDATION commits to working jointly with SORAA to attract and locate an additional 170 support high tech jobs from SORAA contractors and suppliers in the proximity of the Manufacturing Facility in Central New York. FOUNDATION further commits to working jointly with SORAA towards the retention of these jobs for a period of no less than 5 years.

5.3 FOUNDATION R&D Funding Targets

FOUNDATION commits to work with SORAA to identify sources of funding to develop, demonstrate, and deploy energy-efficient and reliable LEDs to achieve technological and manufacturing breakthroughs in ultra-high performance lighting technologies while minimizing power consumption and maximize energy efficiency. Such funding is projected to be generated from public and private funding sources.

5.4 Workforce Education and Training/Other Incentives

FOUNDATION commits to work with SORAA to help recruit, relocate, and train the workforce in Central New York as would be reasonably necessary to staff the Manufacturing Facility with the 250 high tech jobs, with such training to consist of training as would reasonably be expected to allow such personnel to participate in various positions within the technology industry.

**VI. FOUNDATION PRINCIPAL INVESTIGATOR**

FOUNDATION shall provide or shall cause to be provided ALAIN KALOYEROS as the principal investigator regarding all technical, programmatic and facilities use requirements in respect of the terms and conditions of this Agreement and regarding the supervision, management and operation of the Program. If ALAIN KALOYEROS's affiliation with SUNY POLY should terminate for any reason, an appropriate replacement shall be appointed by FOUNDATION.

**VII. FOUNDATION/SUNY POLY OR FOUNDATION'S AFFILIATE GUIDELINES**

FOUNDATION/SUNY POLY may provide to SORAA documents setting forth guidelines applicable to (a) SORAA's employees and agents that are resident or working at the SUNY POLY Facilities and, to the extent applicable, such guidelines shall be consistent with the terms and conditions of this Agreement, and (b) SORAA's use of SUNY POLY Facilities for conducting operations of the Program. The Parties shall agree upon and shall document other guidelines that shall apply to the Parties' employees and agents participating in the Program.

**VIII. INTELLECTUAL PROPERTY**

Rights in and obligations with respect to intellectual property created under this Agreement shall be in accordance with the terms of Exhibit D. Except as set forth in Exhibit D, no rights in any intellectual property are conveyed or granted by or under this Agreement.

**IX. PROJECTS**

The Parties may from time to time during the Term of this Agreement mutually agree to define and enter into one or more Statement(s) of Work ("SOW(s)") for Projects in accordance with Exhibit D.

**X. PROGRAM REVIEW AND DISPUTE RESOLUTION**

- 10.1. The Parties will establish an annual program review process with appropriate senior executives of the Parties of at least the level of Vice President or other comparable level as defined by each Party.
- 10.2. Each Party shall designate a "Program Manager" to oversee its participation in Projects and the Program.
- 10.3. The Program Managers will exercise reasonable efforts in attempting to reach mutual agreement on all issues and matters under their consideration. If the Program Managers cannot reach agreement in a reasonable amount of time, the Program Managers shall refer the dispute in writing to the senior executives of the Parties that are designated under Section 10.1, who shall discuss and meet in person, if necessary, in order to negotiate a resolution to the dispute.

**XI. TERM AND TERMINATION**

11.1 Term

The term of this Agreement begins on the Effective Date and shall extend for ten (10) years from the Target Commission Date of the Manufacturing Facility, unless the Parties extend the term of this Agreement in accordance with the terms of this Agreement or unless this Agreement is terminated by a Party in accordance with the terms of this Agreement ("Term"). The Parties may mutually agree in a written amendment to this Agreement to extend the Term of this Agreement for an additional ten (10) years or for such other period of time as the Parties agree. The Parties anticipate the need for SORAA to have subsequent renewal options generally and in the event that the Parties decide not to extend this Agreement or if the Agreement is otherwise terminated. The Parties will mutually agree on terms to renew the lease for the Manufacturing Facility and the Manufacturing Equipment from FOUNDATION at the fair market value of the Manufacturing Facility and the Manufacturing Equipment.

11.2 Agreement Termination for Breach, Default or Failure to Perform

If a Party becomes a breaching Party (the "Breaching Party") by breaching, defaulting or failing to perform any representation, warranty, covenant, obligation or agreement hereunder in any respect that is material to this Agreement, then the other Party (the "Non-Breaching Party") may terminate this Agreement through a written notice to the Breaching Party (the "Breach Notice") enumerating the Breaching Party's breach(es) or failure(s) to perform or event(s) of default under this Agreement; provided, that within ninety (90) calendar days after the date upon which the Breach Notice was delivered to the Breaching Party, the Breaching Party shall be entitled to cure any of the breaches, failures to perform or events of default identified in the



Breach Notice. If at the end of the 90-day cure period, any of the identified breaches, failures to perform or events of default have not been cured, the Non-Breaching Party may, by a signed written notice, terminate this Agreement with respect to the Breaching Party, effective immediately. Notwithstanding the above, if the Breaching Party commences to cure the breaches, failures to perform or events of default identified in the Breach Notice within the 90-day cure period, but is unable to reasonably complete the cure within such period, the Breaching Party may, upon written request to the Non-Breaching Party prior to the end of the original cure period, together with a reasonably detailed explanation of how such cure would be achieved, have an additional 90-day cure period to complete the cure if such written request is granted by the Non-Breaching Party.

### 11.3 Other Agreement Termination Events

If any Party (an "Affected Party") commits, engages in or suffers any of the following events, then the other Party may terminate this Agreement:

- (a) Becomes insolvent, is dissolved or liquidated, files or has filed against it (and it is not dismissed within ninety (90) days of filing) a petition in bankruptcy, reorganization, dissolution or liquidation or similar action, is adjudicated as bankrupt, or has a receiver appointed for its business;
- (b) Has all or a substantial portion of its capital stock or assets expropriated or attached by any government entity;
- (c) Makes an assignment of this Agreement for the benefit of creditors;
- (d) Is subject to property attachment, court injunction, or court order materially affecting its ability to honor its obligations under this Agreement; or
- (e) Suffers a Change of Control, without the prior approval of the other Party, which approval shall not be unreasonably withheld.

### 11.4 Effects of Agreement Termination, Party Termination

- (a) The Parties anticipate the need for SORAA to have renewal options generally and in the event that the Parties decide not to extend this Agreement or if the Agreement is otherwise terminated, the Parties will further discuss and document mutually agreeable renewal terms in the lease once the location for the Manufacturing Facility and related details are determined.
- (b) If a Party's participation in this Agreement is terminated by another Party in accordance with Sections 11.2 or 11.3, such Party shall be termed a "Terminated Party" herein, and the other Party (as to whose participation in this Agreement has not terminated) shall be termed the "Continuing Party" herein.
- (c) Any termination of the entire Agreement shall result in termination of all Projects and all other Program-related activities. Any termination with respect to or withdrawal by a Terminated Party shall terminate the Terminated Party's current and/or prospective

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participation in all Project activities as of the effective date of the Terminated Party's termination, but shall not relieve such Terminated Party of liability under Section 11.5 or as otherwise provided in this Agreement.

- (d) Intentionally Omitted.
- (e) Upon termination of a Terminated Party's participation in this Agreement, the Terminated Party shall destroy or return to the Continuing Party all Confidential Information (as defined in Exhibit E) of the Continuing Party, as well as all copies and resumes thereof (except one (1) copy thereof which may be retained for archival and legal purposes), and the Terminated Party shall so certify such return or destruction in writing to the Continuing Party.

11.5 Liability upon Termination

- (a) If FOUNDATION is the Terminated Party, FOUNDATION'S total cumulative liability for the entirety of any remaining contributions and payments described in Section V of this Agreement shall not, under any circumstances, exceed the total amount of New York State committed contributions that have come due to the Program as of the date of termination minus any payments previously made.
- (b) If SORAA is the Terminated Party, SORAA's total cumulative liability for the entirety of any remaining contributions and payments described in Section IV hereof shall not, under any circumstances, exceed \$90,000,000 minus any payments previously made.

11.6 Intentionally Omitted.

11.7 Failure of State Funding

FOUNDATION is reliant on the allocation of New York State funds to satisfy FOUNDATION's contribution obligations under Section 5.1 of this Agreement. In the event that the requisite New York State funding is not allocated to FOUNDATION, FOUNDATION shall have the right to terminate this Agreement upon thirty (30) days written notice to SORAA. Termination under this Section 11.7 shall not be regarded as termination for breach, default or failure to perform under Section 11.2 or other termination events under Section 11.3, but rather shall be considered termination by reason of impossibility. FOUNDATION shall have no further obligations except those which apply to termination under this Section 11.7 or which otherwise survive termination as set forth in this Agreement.

**XII. PUBLICITY**

- 12.1 Any press releases, public announcements, and publicity regarding this Agreement, the relationship between the Parties, or the content and results of Projects must be approved by both Parties in writing prior to any press release, public announcement, or other publicity by either Party or by the State of New York, excluding any non-public communication that is internal to any individual Party or used solely by the Parties within the Program.
- 12.2 FOUNDATION may publicly reveal the existence of and the total contribution amounts under this Agreement without prior consent from SORAA, notwithstanding the

provisions of Section XIII of this Agreement.

12.3 SORAA may disclose this Agreement to any potential or actual investor, provided that (a) such investor executes a standard non-disclosure agreement consistent with the terms of this Agreement (b) SORAA provides notice of the disclosure to FOUNDATION within seven (7) days after the date of the disclosure, and (c) in the event of a breach by such investor of the non-disclosure agreement, SORAA shall immediately notify FOUNDATION of such breach and provide FOUNDATION with all information related to such breach.

12.4 Any public use by either Party of the names or logos associated with the other Party requires the prior written consent of the other Party.

### **XIII. CONFIDENTIAL INFORMATION**

The Parties agree that the terms set forth in Exhibit E of this Agreement shall govern the handling of Confidential Information disclosed by a Party to another Party during the Term of this Agreement.

### **XIV. INTENTIONALLY OMITTED**

### **XV. REPRESENTATIONS/WARRANTIES/LIABILITIES/INDEMNIFICATION**

15.1 As of the Effective Date, SORAA and FOUNDATION represent and warrant, as applicable, the following:

- (a) Each Party has the authority to enter into this Agreement and perform its obligations under this Agreement and any other documents and instruments contemplated hereby to be executed and delivered by such Party.
- (b) The execution, delivery and performance by such Party of this Agreement and all of the documents and instruments contemplated hereby to be executed and delivered by such Party are within the legal power and authority of such Party and have been duly authorized by all necessary action of such Party. This Agreement is, and the other documents and instruments required hereby to be delivered by it will be, when executed and delivered, the valid and binding obligations of such Party, enforceable against such Party in accordance with their respective terms.
- (c) The execution, delivery and performance of this Agreement and all of the other documents and instruments contemplated hereby to be executed and delivered by such Party does not and will not conflict with or violate any material judgment, order or decree binding on such Party.
- (d) Such Party has the full right, power and authority to grant any licenses to be granted by such Party pursuant to this Agreement.
- (e) There are no outstanding agreements, assignments or encumbrances that have been

made by such Party and by which such Party is bound and that are inconsistent with or are violated by the provisions of or granting of such licenses.

- (f) There is no litigation, governmental investigation, suit, action, proceeding or written claim of any kind pending and to the Knowledge of SORAA, none are threatened against SORAA or any of its subsidiaries or affiliates affecting the ability of SORAA to perform its obligations under this Agreement.

#### 15.2 Injunctive Relief

Notwithstanding the other provisions of this Agreement, either Party may enforce any breach during the term of this Agreement of any of the specific provision(s) of this Agreement by commencing an action for injunctive or other equitable relief at any time.

#### 15.3 Limitations of Liability

- (a) Except for (i) a Party's failure to make the specific payments, contributions, deliveries or provide the services or support under Sections IV and V of this Agreement, (ii) a Party's respective obligations under Sections VIII, 12.3, and XIII, and (iii) matters or claims in respect of this Agreement that relate to workers compensation, bodily injury, death, sickness, disease, disability and damage or destruction to real or personal property, tools and equipment, each Party's total cumulative liability for any and all matters, causes of action or indemnifications in any way relating to this Agreement or for the performance or non-performance or breach of any representation, warranty, covenant, duty or obligation under this Agreement, regardless of the form of action, shall be limited to damages and/or payments which shall not exceed \$10 Million, in the aggregate.
- (b) With respect to only subsections (i) and (iii) of Section 15.3(a) of this Agreement, each Party's total cumulative liability for any and all matters, causes of action or indemnifications (including, but not limited to, Section 15.5 of this Agreement) in any way relating to such subsections or for the performance or non-performance of any covenant, duty or obligation thereunder, regardless of the form of action, shall be limited to damages and/or payments which shall not exceed in the aggregate (1) with respect to Section 15.3(a)(i) of this Agreement, the remaining amount due by such Party under Sections IV and V and (2) with respect to Section 15.3(a)(iii) of this Agreement, only for those matters or claims that relate to damage or destruction to real or personal property, tools and equipment, in each case, the sum of \$65 Million.
- (c) Notwithstanding anything to the contrary contained elsewhere in this Agreement, the Parties agree that any liability or obligations under this Agreement shall not include any special, punitive, indirect, incidental or consequential damages, including, but not limited to, lost profits, even if a Party has been made aware of the possibility of such damages.

#### 15.4 Insurance

SORAA shall obtain the insurance coverage and/or limits in accordance with Exhibit F and agrees

to the terms set forth in Exhibit F.

15.5 Indemnification

- (a) Each Party (the "Indemnitor") to this Agreement shall indemnify, save, hold harmless and defend the other Party and its officers, directors, managers, shareholders, employees, agents, advisors and assigns (collectively, "Indemnatee") and (b) SORAA, as Indemnitor, shall also indemnify, save, hold harmless and defend FSMC, , SUNY POLY, the State of New York and SUNY, and their officers, directors, managers, shareholders, employees, Affiliates, Subsidiaries, agents, advisors and assigns (collectively, "Indemnatee"), in each case from and against any and all claims (including, without limitation, third party claims), damages, demands, actions, judgments, lawsuits, proceedings, assessments, liabilities, losses, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses), whether or not subject to litigation (collectively, "Indemnified Claims"), incurred by any Indemnatee in connection with, by reason of, or arising out of (i) the breach, untruthfulness or inaccuracy of any representation or warranty of the Indemnitor that is contained in this Agreement, (ii) the breach or failure to keep, observe or perform any covenant or obligation of the Indemnitor (or its employees or agents) in this Agreement, (iii) any act or omission, fraud or self-dealing of the Indemnitor (or its employees or agents) in connection with the performance of this Agreement, (iv) any damage or destruction of property, or injury, sickness, disease or death to persons, resulting from the Indemnitor's or its employees' or agents' negligence or misconduct, or (v) any act or omission or violation of statutory duty or regulation by the Indemnitor or any of its employees or agents. SORAA shall also defend, indemnify and hold harmless FOUNDATION and FOUNDATION Affiliates as set forth herein, in connection with any goods and/or services arising under this Agreement, provided, made, sold and/or transferred by SORAA and in connection with any breach by an investor of a non-disclosure agreement entered into by SORAA pursuant to Section 12.3.
- (b) An Indemnatee, for purposes of asserting the indemnifications under this Section, will give the applicable Indemnitor written notice of any Indemnified Claim within thirty (30) days after the Indemnatee (a) receives notice of an Indemnified Claim for which indemnification is sought or (b) determines that an event of which it is aware is likely to give rise to an Indemnified Claim for indemnification, and the Indemnatee will give copies to the Indemnitor of all information and documents relating to such Indemnified Claim or potential Indemnified Claim that are received by the Indemnatee within thirty (30) days after the Indemnatee's receipt thereof or, if applicable, within thirty (30) days after the Indemnatee makes the determination referred to in clause (b); provided, that the failure of the Indemnatee to give notice or deliver copies of information or documents within the specified time periods shall not limit the Indemnatee's right to claim indemnification hereunder, except to the extent that the Indemnitor can demonstrate that it was actually damaged by the failure to give notice or provide information or documents within the specified time periods. The applicable Indemnitor will be obligated to defend any Indemnified Claim for indemnification hereunder, and to select counsel for any third-party Indemnified Claim, which counsel shall be reasonably satisfactory to the Indemnatee, all at the sole cost and expense of

the Indemnitor; provided, that the Indemnitee will be allowed, at its expense, to participate in such defense; provided, further, that no settlement shall be entered into without the approval of the Indemnitee; provided further, that in the event the Indemnitor proposes in good faith to settle an Indemnified Claim that requires solely the payment of money damages by the Indemnitor on terms acceptable to the third-party claimant and the Indemnitor is ready, willing and able to completely satisfy the Indemnified Claim on such terms but the Indemnitee does not consent to the settlement on such terms, the Indemnitee shall be responsible for all liability or expenses (including reasonable legal expenses and costs) with respect to such Indemnified Claim that exceed the proposed settlement amount, including all legal expenses and costs incurred after the date the Indemnitee initially gave notice to the Indemnitor withholding its consent to the proposed settlement. Notice of the Indemnitor's intention to defend any such Indemnified Claim shall be given to the Indemnitee within twenty (20) days after the Indemnitee shall have notified the Indemnitor of the Indemnified Claim (but in all events at least five (5) business days prior to the date that an answer or other response is due to be filed or made), which notice shall contain an acknowledgment in writing of the Indemnitor's obligation to indemnify the Indemnitee with respect to such Indemnified Claim under this Section. In the event the Indemnitor fails or elects not to defend any such Indemnified Claim hereunder, the Indemnitee shall have the right to so defend such Indemnified Claim at the sole obligation, cost and expense of the Indemnitor.

- (c) The indemnifications set forth in this Agreement shall remain operative and in full force and shall survive the execution and performance hereof and the termination or expiration of this Agreement, as well as the withdrawal of either Party from this Agreement for any reason.

15.6 Limitation of FOUNDATION Representations and Warranties

Except to the extent described in this Agreement, FOUNDATION makes no representation or warranty, express or implied, with respect to the condition or suitability of the SUNY POLY Tools, SUNY POLY Facilities or any part thereof in respect of the operations and activities of the Program, including but not limited to any implied warranties of merchantability or fitness for a particular purpose, or warranty of non-infringement of third party intellectual property rights.

15.7 SORAA Assumption of Risk

SORAA assumes all risks involved in the use of and the access to the Manufacturing Facility and Manufacturing Equipment, and shall be solely responsible for any and all accidents and injuries to persons and property which relate to SORAA's use of and access to the Manufacturing Facilities and Manufacturing Equipment in respect of the operations and activities of SORAA under this Agreement and SORAA agrees to accept the Manufacturing Facilities and the Manufacturing Equipment in their "AS-IS" "WHERE-IS" condition throughout the Term of this Agreement.

15.8 Execution, Delivery and Performance

The Parties represent and warrant that the execution, delivery and performance of this

Agreement does not and will not violate or create any material conflict with any of the terms or conditions of another agreement to which they are parties.

**XVI. ASSIGNMENT**

SORAA may not assign this Agreement, or any of rights afforded hereunder, without the prior written consent of FOUNDATION, which consent shall not be unreasonably withheld. In addition, SORAA may not allow any other party, person or entity access to or use of the SUNY POLY Tools or the SUNY POLY Facilities, except employees of SORAA's wholly owned Subsidiaries or Affiliates, or contractors, suppliers, customers, or investors of SORAA, provided they meet the same requirements imposed on SORAA employees by FOUNDATION. Any assignment made in violation of this Section shall be void *ab initio*.

**XVII. COMPLIANCE WITH LAWS, REGULATIONS AND RULES**

- 17.1 Each Party agrees to comply with all applicable laws, rules and regulations of the State of New York, the United States Government and of any other duly constituted governmental authority having jurisdiction over such Party, to the extent applicable to the activities under this Agreement and as may be updated by the applicable governmental authority from time to time. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and SORAA represents and warrants that it will not re-export data or commodities to certain foreign countries or nationals of certain foreign countries without prior approval of the cognizant government agency. While FOUNDATION agrees to cooperate in pursuing any license that the cognizant agency deems necessary in connection with this Agreement, FOUNDATION cannot guarantee that such licenses will be granted. Each Party shall do all things necessary (a) to obtain in a timely manner all required licenses and approvals related to the activities under this Agreement and (b) to comply with all applicable laws, rules and regulations, including, but not limited to, the regulations of the United States Government relating to the export and re-export of technical data and commodities, related to the activities under this Agreement. In addition to the foregoing, SORAA covenants that it will provide written certification by an authorized officer of the applicable corporation(s) that any export or re-export of any technical data and commodities related to activities under this Agreement will have a valid United States Department of Commerce export license or that no export license is required. SORAA will not integrate, promote, sell or otherwise transfer any technical data and/or commodities under this Agreement to any customer or end user for use in any military applications. The Parties hereby acknowledge that stricter United States Government regulations may apply to the export and re-export of technical data and commodities to any of the following countries or to the nationals of any of the following countries: Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Iran, Iraq, Laos, Latvia, Libya, Lithuania, Macao, Moldova, Mongolia, North Korea, People's Republic of China, Romania, Russia, Sudan, Syria, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam or as updated by the U.S. Department of Commerce.
- 17.2 Each Party represents and covenants that it has, or will have in place, established procedures and/or agreements with its employees, agents or others, including subcontractors, whose services the Party may require to fulfill the terms and conditions of this Agreement, sufficient to enable such employees, agents or others to comply with all the terms and conditions of this

Agreement, and covenants that it shall require these employees, agents or others, including subcontractors, and any third-party visitor or guest to the SUNY POLY Facilities, to agree to necessary and sufficient confidentiality and intellectual property provisions in writing. Each Party shall be responsible for the selection and screening of its employees, agents or others who will be assigned to work on the Program. Each Party will ensure, by management direction and if necessary by contract, that its employees, agents or others comply with the laws, rules and regulations of the State of New York, the United States Government and of any other duly constituted governmental authority having jurisdiction over such Party, as well as, the personnel, security and safety practices, procedures and requirements of the SUNY POLY and FOUNDATION while such employees, agents or others are at the SUNY POLY Facilities. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be interpreted such that any person who is not an actual employee of a Party or, in the case of FOUNDATION, an actual employee of an Affiliate, shall be treated or construed as a common law employee of such Party.

**XVIII. LITIGATION/ APPLICABLE LAW/ JURISDICTION/ SERVICE**

- 18.1 The Parties shall attempt in good faith to promptly resolve any controversy, claim or dispute arising out of this Agreement, first in accordance with the provisions of Section X of this Agreement, and then, if the provisions of Section X of this Agreement are not successful, either Party may bring a legal action or proceeding to resolve such controversy, claim or dispute only in any United States Federal District Court located in the State of New York or in any state court of the State of New York. Each Party hereby consents to exclusive jurisdiction and venue of such courts. This Agreement shall be construed and the legal relations created herein between the Parties shall be determined in accordance with the substantive laws of the State of New York, without regard to the conflict of laws principles thereof. In such court proceedings, the Parties agree to submit an appropriate protective order to the court to protect each Party's Confidential Information. The Parties hereby expressly waive any right to a jury trial for any legal action or proceeding brought under this Agreement and agree that any legal action or proceeding hereunder shall be tried by a judge without a jury.
- 18.2 All communications, notices and disclosures required or permitted by this Agreement shall be in writing, shall be provided to the other Party and shall be deemed to have been given at the earlier of the date when actually delivered to the other Party or when deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, by hand delivery, by overnight courier service with signed receipt or by facsimile transmission (with written confirmation of receipt thereof), and addressed as follows, unless and until either Party notifies the other Party in accordance with a change of address:

In the case of FOUNDATION:

SUNY Polytechnic Institute  
NanoFab 300 East  
257 Fuller Road  
Albany, NY 12203  
Attn: Christine Waller  
Facsimile No: 518-437-8603



With a copy to:

SUNY Polytechnic Institute  
Attn: Christine Waller  
257 Fuller Road  
Albany, New York 12203  
cwaller@sunycnse.com  
Facsimile No.: 518-437-8603

And

Attn: SUNY POLY Office for Policy and Regulatory Affairs

Facsimile No.: 518-437-8603

In the case of SORAA:  
Eric Williams  
Chief Financial Officer  
6500 Kaiser Drive  
Fremont, CA 94555

**XIX. MISCELLANEOUS**

- 19.1 Each Party agrees not to use each other's names, the names of any staff members or employees thereof, or trademark or other designation of either Party hereto, in advertising, sales promotion work, or in any other form of publicity except with the written permission of, and to the extent approved by the Party whose name is to be used.
- 19.2 If any term or provision of this Agreement or the application thereof to either Party hereto or set of circumstances shall, in any jurisdiction and to any extent, be finally held to be invalid or unenforceable, such term or provision shall only be ineffective as to such jurisdiction, and only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable any other terms or provisions of this Agreement or under any other circumstances, so long as the remainder of this Agreement still effectuates the Essential Purposes. If the Essential Purposes cannot be effectuated, this Agreement shall be renegotiated and amended with the unanimous consent of the Parties or may be terminated without cause by either Party.
- 19.3 The failure of either Party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that Party of the right to insist later on adherence thereto, or thereafter to insist upon strict adherence to that term or any other term of this Agreement. To be effective, any waiver must be in a writing signed by an authorized representative of the Party granting such waiver.
- 19.4 The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement. The terms "herein", "hereof", "hereunder" and any similar terms used in this Agreement refer to this Agreement

and all references to "this Agreement" refer to this instrument and the Exhibits hereto, as amended from time to time. The terms "including" or "include" shall mean "including, without limitation", or "include, without limitation."

- 19.5 If either Party is rendered wholly or partially unable by Force Majeure to carry out its obligations under this Agreement, and if that Party gives prompt written notice, including a reasonable description of such Force Majeure, to the other Party, the notifying Party shall be excused from performance of its obligations hereunder during the continuance of any inability so caused, but for no longer period. Such cause shall be remedied by the notifying Party as far as possible with reasonable speed and effort, but neither Party shall have any obligation to settle any labor dispute. For the purposes of this Agreement, "Force Majeure" shall mean Acts of God, labor disputes, acts of public enemies or terrorists, war, other military conflicts, blockades, insurrections, riots, epidemics, quarantine restrictions, landslides, lightning, earthquake, fires, conflagration, storms, floods, washouts, arrests, civil disturbances, restraints by or actions of any governmental body (including export or security restrictions on information, material, personnel, equipment or otherwise), industry-wide shortages, industry-wide unavailability, and any other acts or events whatsoever, whether or not similar to the foregoing, not within the control of the Party claiming excuse from performance, which by the exercise of the diligence and reasonable efforts that Party shall not have been able to overcome or avoid. If the notifying Party cannot remedy the Force Majeure situation and resume satisfactory performance within ninety (90) days after delivery of the notice, the other Party may at their option immediately terminate this Agreement and such notifying Party will be treated as a Terminated Party under Section 11.4 hereof.
- 19.6 Each Party shall be responsible for all tax matters, issues or obligations related to the employment of its employees or agents or to the presence of its personal property in any taxing jurisdiction.
- 19.7 During the Term of this Agreement, neither Party shall solicit for employment purposes any employees of the other Party (and in the case of FOUNDATION, FOUNDATION Affiliates) who have performed or are performing Program-related work under this Agreement. Neither Party shall make any payment or any gift of more than a nominal value to any employee of a Party without the employing Party's prior concurrence. Neither Party shall make any representation that an employment relationship exists between that Party and an employee of another Party. The above portions of this Section shall not restrict (a) the ability of the Parties to conduct general solicitations for employment, (b) the right of any employee of a Party, on that employee's own initiative or in response to general solicitations, to seek employment from the other Party, or (c) the ability of SORAA to solicit students employed or working at the SUNY POLY Facilities.
- 19.8 To the extent a particular right, obligation, representation, warranty, covenant or indemnity in this Agreement does not have a specifically identified survival period, then such right, obligation, representation, warranty, covenant and/or indemnity shall remain in effect beyond any expiration or termination of this Agreement and shall bind and inure to the benefit of the Parties, their legal representatives, successors and permitted assigns. Particular Sections of this Agreement that survive any termination or expiration of this Agreement include, but are not limited to, Sections VIII, XIII, and XV hereof.

- 19.9 No amendment or modification of this Agreement shall be valid or binding upon the Parties unless in a writing executed by both of the Parties.
- 19.10 Except as otherwise provided for in this Agreement, neither the provisions of this Agreement nor anything done pursuant to this Agreement shall create any partnership, any employer-employee relationship or any agency relationship between the Parties and the Parties are otherwise independent contractors relative to each other.
- 19.11 Nothing in this Agreement shall obligate either Party to institute any action or suit against third-parties for infringement of any of its patents, or to defend any action or suit brought by a third-party that challenges or concerns the validity of any of its patents. Nothing in this Agreement shall grant either Party the right to institute any action or suit against third-parties for infringement of the other Party's patents. Nothing in this Agreement shall obligate either Party, nor any of its Subsidiaries, to file any patent application, to secure any patent or patent rights, or to maintain any patent in force.
- 19.12 This Agreement, together with the Exhibits hereto, any SOW(s) entered into by the Parties pursuant to Section IX, and any follow on contracts and/or amendments entered into by the Parties pursuant to Sections 2.7, 2.8, 4.2, 5.1 or 11.1 of this Agreement, if and as signed by the Parties, is the complete and exclusive statement of the agreement of the Parties in respect of the subject matter described in this Agreement and shall supersede all prior and contemporaneous agreements, communications, representations, and understandings, either oral or written, between the Parties or any officers, agents or representatives thereof.
- 19.13 This Agreement may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute the same Agreement. Any signed copy of this Agreement made by photocopy, facsimile or PDF Adobe format shall be considered an original.

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IN WITNESS WHEREOF, the Parties hereto have caused this AMENDED AND RESTATED AGREEMENT FOR RESEARCH AND DEVELOPMENT ALLIANCE ON ULTRA-HIGH PERFORMANCE LIGHTING TECHNOLOGY AND LED LIGHTING to be executed and delivered by their duly authorized representatives as of the Effective Date.

THE RESEARCH FOUNDATION FOR  
THE STATE UNIVERSITY OF NEW YORK

By: Christine M Waller  
Name: Christine Waller  
Title: SUNY POLY Operations Manager  
Date: October 8, 2014

SORAA, INC.

By: Eric Williams  
Name: Eric Williams  
Title: Chief Financial Officer  
Date: OCTOBER 8, 2014

*EW*

**EXHIBIT A**  
**TERMS AND CONDITIONS RELATED TO PARTY PROGRAM CONTRIBUTIONS**

MANUFACTURING OPERATION	<p>SORAA shall locate the Manufacturing Operation in Syracuse, New York at the SUNY Poly Central New York Hub for Emerging Nano Industries.</p> <p>Subject to the other terms set forth in the Agreement, FOUNDATION or its Affiliate shall provide a total funding of \$90,000,000 U.S. for the Manufacturing Facility and Manufacturing Equipment. The total funding by FOUNDATION or its Affiliate excludes any costs associated with land.</p>
FACILITY AND EQUIPMENT OWNERSHIP	<p>FOUNDATION or its Affiliate shall own the Manufacturing Facility and Manufacturing Equipment.</p> <p>Subject to Section VIII of the Agreement, SORAA shall own any and all of the proprietary technology necessary and useful for manufacturing the LED products. Except for the Manufacturing Facility that will be owned or controlled by or on behalf FOUNDATION or its Affiliate and the Manufacturing Equipment that will be owned by FOUNDATION or its Affiliate and made available for Manufacturing Operations, SORAA owns all the inventory, product, output, and other property it purchases or creates associated with running the operations of the Manufacturing Operation.</p>
LEASE	<p>SORAA shall lease the Manufacturing Equipment for the Manufacturing Operations from FOUNDATION or FOUNDATION Affiliate for the sole consideration of one dollar \$1.00 US per year.</p>
TIME SCHEDULE AND RAMP	<p>SORAA shall jointly commission, with FOUNDATION or its Affiliate, the Manufacturing Operation as soon as possible with a target date of the Target Commission Date, provided, however, that the Parties will work in good faith toward that date for operation commencement and will consider existing structures for the Manufacturing Facility.</p> <p>SORAA shall ramp up production of the LED products to 1000 4" wafers/week ("Full Production Output") no later than five years from the Target Commission Date. SORAA will cover all costs associated with operation of the Manufacturing Facility.</p>
SORAA'S INVESTMENT	<p>SORAA commits to invest and spend in the Manufacturing Operation at a level that ensures competitive product costs as determined by the market place for a minimum of ten years. For planning purposes, it is anticipated that the company will spend approximately \$130M per year at full capacity and taking into account no major changes in certain costs for GaN substrate materials.</p>
JOB CREATION	<p>SORAA shall create 250 jobs for the purpose of operating the Manufacturing Operation. (These jobs will scale with the ramp of the Manufacturing Operation). SORAA shall also commit to working jointly with FOUNDATION to attract and locate an additional 170 support high tech jobs from SORAA contractors and suppliers at the Manufacturing Facility in Central New York.</p>

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**EXHIBIT B**  
**MANUFACTURING FACILITY SPECIFICATIONS**

[TO BE AGREED UPON AND INSERTED BY THE PARTIES]



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**EXHIBIT C  
MANUFACTURING EQUIPMENT**

[TO BE AGREED UPON AND INSERTED BY THE PARTIES]



**EXHIBIT D**  
**INTELLECTUAL PROPERTY AND JOINT PROJECTS**

1. Definitions

In addition to the terms defined elsewhere in this Agreement, for the purposes of the Agreement, including this Exhibit, the following terms have the described meanings listed below.

a. Foreground Non-Patent IP

Foreground Non-Patent IP" means all know-how, trade secrets, copyrights, rights in computer programs, documentation, and mask layout designs in physical and/or electronic form and other intellectual property (other than Foreground Patent IP) developed during Projects. Foreground Non-Patent IP shall not include the results of any research or project rejected by the Parties and undertaken by a Party or its Representatives outside the Projects, or the results of any other program undertaken by a Party or its Representatives outside the Projects.

b. Foreground Patent IP

Foreground Patent IP means patents and patent applications (including, but not limited to, design, utility, utility model, provisional, continuation, continuation-in-part, divisional, reexamination, reissue or extensions) in any country or jurisdiction of either Party or its Representatives on Project Inventions.

c. FOUNDATION Personnel

FOUNDATION Personnel shall mean the general, administrative and research employees and the independent contractors and consultants of FOUNDATION, SUNY POLY, FSMC, and the faculty, researchers, research assistants, teaching assistants, and students of SUNY POLY, who are or who are expected to be performing activities under or in respect of the Program.

d. Joint Projects

Joint Projects means research program(s) approved by the Parties for performance jointly by the Parties in respect of the Program.

e. Program

Program means the various activities undertaken or conducted by or on behalf of the Parties throughout the Term of and pursuant to the terms and conditions of this Agreement, including, without limitation, activities involving the preparation for and the execution of the Projects.



f. Project Inventions

Project Invention(s) shall mean an invention(s) conceived and/or first reduced to practice (within the meaning of the prevailing US Patent Laws) by an employee, contractor or consultant of a Party in the conduct of a Project(s).

g. Proprietary Technical Projects

Proprietary Technical Project(s) shall mean research programs performed solely for SORAA within the Program that are not Joint Projects.

h. Representatives

Representative(s) shall mean a Party's agents, contractors, or employees and employees, contractors or agents of a Party's Affiliates and, in the case of FOUNDATION, FOUNDATION Personnel.

i. US Patent Law(s)

US Patent Law(s) shall mean 35 U.S.C. Section 1 *et seq.*, 37 C.F.R. Section 1 *et seq.*, and the case law interpreting such statutes, regulations and the rights incident thereto.

2. Treatment of SUNY POLY Facilities

The Parties recognize that, in consideration of SORAA's contributions to be provided pursuant to Section IV of the Agreement, and in conjunction with the SUNY's Cooperative Use of Equipment Policy, the SUNY POLY Facilities will be made available for access and use by SORAA for Proprietary Technical Projects in accordance with the terms of this Agreement. Further, in recognition of each Party's respective contributions to the Program, the SUNY POLY Facilities used jointly by the Parties for Projects will be considered a joint use of facilities. FOUNDATION warrants that the treatment of the SUNY POLY Facilities as a joint use of facilities, as set forth in this Section 2 of this Exhibit, is consistent with and facilitates the ownership of intellectual property created under the Program, as set forth in Section 4 of this Exhibit.

3. Reporting of Joint Project Inventions

Representatives of the Parties performing services under the Joint Projects shall promptly report in a reasonably detailed written disclosure all Joint Project Inventions to their applicable Party. Within sixty (60) days after receipt, each Party shall provide a copy of such invention disclosure(s) received on a Joint Project Invention to the other Party. The Program Managers (or their mutually agreed designee) shall maintain a reasonably detailed written log of all Joint Project Inventions.

4. Ownership of Project Intellectual Property

- (a) Foreground Patent IP shall be owned by the Party or Parties whose Representatives are inventors of the underlying Project Invention as a matter of US Patent Law. The owning Party or Parties shall retain the entire right, title, and interest throughout the world to such Foreground Patent IP including, without limitation, the right to file (or not

to file) for patents for such Project Invention(s). Any Foreground Patent IP on Project Inventions invented jointly by the Parties' Representatives as a matter of U.S. Patent Law shall be jointly owned by the Parties and shall be licensable by each Party without accounting to or permission from the other Party.

- (b) Foreground Non-Patent IP shall be owned by the Party or Parties whose Representatives developed such Foreground Non-Patent IP. The owning Party or Parties shall retain the entire right, title, and interest throughout the world to such Foreground Non-Patent IP including, without limitation, the right to register (or not to register) such Foreground Non-Patent IP. Any Foreground Non-Patent IP developed jointly by the Parties' Representatives shall be jointly owned by the Parties and shall be licensable by each Party without accounting to or permission from the other such Party.

5. Patent Filing for Project Inventions

The decision on filing of patents for Project Inventions shall be made by the Party having an ownership interest in such Project Invention. In the event of a dispute, such Party shall refer the dispute in writing to the senior executives of the Parties, as described in Section X of this Agreement, who shall discuss and meet in person, if necessary, in order to negotiate a resolution of the dispute. If the Parties together own Project Inventions, they shall equitably share the cost of obtaining and maintaining any resulting Foreground Patent IP on such Project Inventions. In the event that a Party owning such a Project Invention elects not to seek patent protection for such Project Invention in any particular country or not to share equally in the expense thereof with the other owning Party, the other owning Party shall have the right to seek or maintain such protection at its own expense in such country and shall have full control over the prosecution and maintenance thereof even though title to any patent issuing therefrom shall be joint among the entities owning such Project Invention. Any election by a Party not to share equally in the expenses associated with seeking patent protection for any Project Invention shall not be construed as a termination event under Section XI.

6. Restriction on Confidential Information in Patent Applications

Neither Party may disclose any Confidential Information of the other Party in any patent application or in the prosecution of such patent application without the written approval of the Party owning such Confidential Information, which approval shall not be unreasonably withheld or delayed.

7. Assistance for Patent Protection

Each Party, at its own expense, shall reasonably assist the other Party in obtaining patent protection for joint Project Inventions. Such assistance shall include, without limitation, provision of invention disclosure documents which include data and examples, causing the execution of assignments and other instruments and provision of such documents as the other Party may reasonably consider necessary or appropriate to the obtaining of patent protection. The Parties shall cooperate to facilitate compliance with the duty of disclosure requirements for patent application filing and/or prosecution.

8. Project Invention Disclosure Review

At least on an annual basis, during the Term of this Agreement, each Party must report in writing to the other Party on the status of all Project Invention disclosures, any corresponding patent applications, and any corresponding issued patents for which it is responsible. For one (1) year after the expiration or earlier termination of this Agreement, each Party must report in writing to the other Party the status of all Project Invention disclosures, any corresponding patent applications, and any corresponding issued patents for which it is responsible.

9. Activity at Other Facilities

Any intellectual property developed by SORAA in any other FOUNDATION-owned facilities outside of those provided for the Program and/or outside of the SUNY POLY Facilities is not part of this Agreement and shall be subject to the terms and conditions of any separate contract or agreement executed between SORAA and FOUNDATION.

10. No Restriction on Licensing Owned Patents

Nothing in this Agreement shall be construed as limiting the ability of either Party to grant non-exclusive licenses under any patents in which that Party has an ownership interest and/or otherwise has the right to grant licenses.

11. Joint Project Costs and Personnel

Except as otherwise expressly agreed to in this Agreement or the corresponding SOW, each Party shall be responsible for and shall bear (a) all of its own costs and expenses for a Joint Project and (b) all responsibility for all personnel that it uses for a Joint Project.

12. Project Approval Process

The Parties shall define each new Joint Project by implementing a signed SOW, substantially in the form of the statement of work set forth in this Exhibit, setting forth the appropriate work items for carrying out each respective Joint Project. All Projects which involve the operation of SUNY POLY Tools by FOUNDATION Personnel will also require a signed SOW setting forth the appropriate work items for carrying out each respective Joint Project. Each SOW shall include a start date, a Joint Project Target End Date, a Joint Project tool description, target process development objectives, milestones, the expected roles of the Parties, and the scope of work, with all dates and time periods in each SOW being targets only. The Program Managers shall be responsible for coordinating communications and execution of actions toward achievement of the milestones. Each Party will use commercially reasonable efforts for the successful completion of milestones. The Parties may from time to time, as new SOWs are developed within the budget, amend Exhibit D to add such SOWs as necessary. Upon written acceptance by the Parties, such additional SOWs will become part of this Agreement and attached in this Exhibit. Failure however to formally amend this Exhibit has no bearing on the agreed Joint Project SOW becoming part of the Program and part of this Agreement.

13. Statement of Work Form

STATEMENT OF WORK

FOUNDATION-SORAA CONFIDENTIAL  
EXECUTION COPY

This Statement of Work ("SOW"), effective as of \_\_\_\_\_, 20\_\_ ("SOW Effective Date"), is entered into by THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK ("FOUNDATION"), a non-profit educational corporation existing under the laws of the State of New York, having an office located at 257 Fuller Road, Albany, New York 12203, on behalf of the SUNY Polytechnic Institute ("SUNY POLY"), and SORAA, INC. ("SORAA"), a Delaware corporation with its principal office located at 6500 Kaiser Drive, Fremont, California 94555, for a project under and pursuant to that certain AGREEMENT FOR RESEARCH & DEVELOPMENT ALLIANCE ON ULTRA-HIGH PERFORMANCE LIGHTING TECHNOLOGY AND LED LIGHTING ("Agreement") between FOUNDATION and SORAA effective as of July 27, 2012. Capitalized terms used and not defined in this SOW have the meanings set forth in the Agreement.

All dates and time periods in this SOW are targets only.

1. Start Date:
2. Joint Project Target End Date:
3. Joint Project Tool Description:
4. Target Process Development Objectives:
5. Milestones:
6. Expected Roles of the Parties:
7. Scope of Work:

IN WITNESS WHEREOF, the Parties hereto have caused this SOW to be executed and delivered by their duly authorized representatives as of the SOW Effective Date.

THE RESEARCH FOUNDATION FOR  
THE STATE UNIVERSITY OF NEW YORK  
By: \_\_\_\_\_  
Name: Christine Waller  
Title: SUNY POLY Operations Manager  
Date: \_\_\_\_\_, 2014

SORAA, INC.  
By: \_\_\_\_\_  
Name: Eric Williams  
Title: Chief Financial Officer  
Date: \_\_\_\_\_, 2014



**EXHIBIT E  
CONFIDENTIALITY**

1. Disclosure of Confidential Information

- (a) Each Party may disclose and receive Confidential Information (defined below) from the other Party.
- (b) "Confidential Information" shall mean all information that (i) is maintained in confidence by a Party ("Owning Party"), (ii) is disclosed to or obtained by the other Party in connection with and during the Term of this Agreement, including, but not limited to, information that relates to such Owning Party's or its Affiliates' past, present or future research, development, manufacturing, or business activities relating to the Essential Purposes, and (iii) is information that may be exempted from disclosure under Articles 6 and 6-A of the New York Public Officers Law. Either Party ("Disclosing Party") may disclose its Confidential Information to the other Party ("Receiving Party") orally, in writing, or by other media or transfer of materials including graphic, photographic, recorded, prototype, sample, or other tangible or permanent form clearly and obviously marked "confidential" or "proprietary". Electronic information will be adequately marked if the container is marked and if a proprietary legend displays when the information runs on a computer system and when the information is printed from its data file.
- (c) When disclosed orally, Disclosing Party shall identify the information as confidential at the time of such disclosure, with subsequent written confirmation to Receiving Party within thirty (30) days of such disclosure indicating the date and type of information disclosed. All restrictions provided herein regarding use and/or disclosure shall apply during such thirty-day period.

2. Protecting confidential information

- (a) Receiving Party will retain Disclosing Party's Confidential Information in confidence for three (3) years from the date of disclosure. Receiving Party will not disclose, disseminate, or publish any of Disclosing Party's Confidential Information to any person except employees or agents of Receiving Party on a need to know basis, except as consistent with the Receiving Party's obligations under Articles 6 and 6-A of the New York Public Officers Law, or other applicable law, regulation or legal process. Receiving Party shall ensure that such employees or agents shall be bound by terms at least as protective as the terms of this Exhibit E. Each Party warrants that employees or agents shall comply with the terms of this Exhibit E. Upon the termination or expiration of this Agreement, the Parties shall confer regarding the status of Confidential Information disclosed and/or created under this Agreement.

3. Ownership

All right, title and interest in Disclosing Party's Confidential Information which is furnished to the Receiving Party shall be and remain the exclusive property of the Disclosing Party.

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4. Standard of Care

The Receiving Party shall be held to the same standard of care in protecting Disclosing Party's Confidential Information as the Receiving Party normally employs to preserve and safeguard its own Confidential Information of similar kind, but in no event less than reasonable care.

5. Exclusions; Required Disclosure

- (a) Receiving Party's obligations regarding Disclosing Party's Confidential Information shall not apply to information (a) that was already known to Receiving Party prior to the disclosure of such information to Receiving Party by Disclosing Party, (b) that is or becomes publicly available through no act or fault of Receiving Party, (c) that is rightfully received by Receiving Party from a third-party having no obligation of confidentiality to Disclosing Party, or (d) that is independently developed by Receiving Party.
- (b) In the event FOUNDATION is required by law, regulation, or court order to disclose any of SORAA's Confidential Information, FOUNDATION will notify SORAA in writing prior to making such disclosure in order to facilitate SORAA seeking a protective order or other appropriate remedy from the appropriate legal body. In the event SORAA is required by law, regulation, or court order to disclose any of FOUNDATION's Confidential Information, SORAA will notify FOUNDATION in writing prior to making such disclosure in order to facilitate FOUNDATION seeking a protective order or other appropriate remedy from the appropriate legal body. The Receiving Party further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from reviewing the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.
- (c) FOUNDATION is required to comply with the New York State Freedom of Information Law, Public Officers Law, Article 6 which provides for public access to information FOUNDATION possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosures for records or portions thereof that are "trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to FOUNDATION that SORAA wishes to have treated as proprietary and confidential, should be identified and labeled as "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted.

6. Protection of Plans and Specifications for SUNY POLY Facilities

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FOUNDATION-SORAA CONFIDENTIAL  
EXECUTION COPY

SORAA agrees that all plans, specifications, drawings and other documents of any kind whatsoever, and in whatever medium expressed, prepared in connection with the SUNY POLY Facilities (collectively, the "SUNY POLY Facilities Documents") and all rights therein (including trademarks, trade names, rights of use, copyrights and/or other proprietary rights) shall be and remain the sole property of FOUNDATION and shall be treated as FOUNDATION's Confidential Information (whether or not the Parties terminate or withdraw from this Agreement for any reason whatsoever). Except as expressly provided for in this Agreement, SORAA shall not use (or distribute) the SUNY POLY Facilities Documents without FOUNDATION's prior written consent. This Section shall survive the term or termination of this Agreement.

Handwritten signature or initials in the bottom right corner of the page.

**EXHIBIT F**  
**SORAA INSURANCE REQUIREMENTS**

SORAA shall obtain the following insurance coverage and/or limits:

- (a) SORAA shall maintain (or cause to be secured and maintained) for the benefit of FOUNDATION, annual comprehensive general public liability insurance (or a combination of commercial general liability insurance, self-insurance and/or umbrella liability insurance) with a combined single limit per occurrence of not less than \$15 Million, and an aggregate limitation of not less than \$15 Million, which insurance covers bodily injury, disease and death and property damage (including, to the extent such insurance is reasonably available therefor, environmental damage), and which applies to any such liabilities SORAA may have under this Agreement.
- (b) Business Automobile Liability with limits of insurance of not less than \$1,000,000.00 each accident.
- (c) Workers Compensation & Employers Liability with limits of insurance of not less than the amount required by New York State. This policy shall contain an All States Endorsement.
- (d) SORAA shall purchase and maintain for the duration of this agreement Property Insurance (PI) in the amount of \$45 Million that includes coverage for the personal property/equipment of others and/or property that is in the care, custody and control of SORAA. This policy should provide "all-risk" coverage and shall include coverage for the perils of "testing", "calibrating" and "mechanical breakdown." FOUNDATION and Fort Schuyler Management Corporation ("FSMC") shall be named as Loss Payees on the PI policy maintained by SORAA.
- (e) SORAA will name FOUNDATION, SUNY POLY, FSMC, SUNY and the State of New York, as Additional Insureds. Purchase and maintenance of such insurance shall in no way be interpreted as relieving SORAA of any of its responsibilities or liabilities hereunder, and SORAA may carry, at its expense, such additional insurance amounts and coverage as it deems necessary. The general public liability insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured party. It shall apply as primary and non-contributing insurance before any insurance maintained by the Additional Insureds. SORAA shall maintain coverage for itself and all Additional Insureds for the duration of the term of this Agreement.
- (f) SORAA shall secure written agreement of its insurance carrier(s) and, upon request, copy same to FOUNDATION and to the parties set forth in the Notice section below, agreeing to notify FOUNDATION in writing no less than thirty (30) days prior to any cancellation, termination or material modification of any of the foregoing policies and coverages.
- (g) SORAA waives all rights against FOUNDATION, SUNY, FSMC, SUNY POLY, the State, as well as such entities' officers, directors, trustees and employees for recovery of damages to the extent these damages are covered by insurance maintained by SORAA per the requirements stated above.



- (h) Upon execution of this Agreement and immediately upon renewal or replacement of any and all insurance policies required hereunder, SORAA shall furnish to FOUNDATION certificates of insurance evidencing all coverages required hereunder, to which copies of all additional named insured endorsements and loss payee endorsements required hereunder, executed by the insurers, shall be attached. FOUNDATION additionally shall have the right to review all insurance policies maintained by SORAA hereunder upon request.

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