

AGENT AGREEMENT
BinOptics Corporation (tenant)
9 Brown Road and 20 Thornwood Drive, Village of Lansing

THIS AGREEMENT is made as of the 13 day of November, 2014, by and between the TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its offices at 401 East State Street, Suite 402B, Ithaca, New York 14850 (the "Agency") and BINOPTICS CORPORATION, with a business address of 20 Thornwood Drive, Ithaca, New York 14850 (the "Applicant").

WITNESSETH:

WHEREAS, the Agency was created by Section 895 of the General Municipal Law of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Applicant wishes to equip upon premises to be leased to the Applicant at 9 Brown Road and 20 Thornwood Drive in the Village of Lansing, Tompkins County, New York (currently designated as tax parcel numbers 45.1-1-55.9 and -55.11) (the "Land") an expansion of the existing building at 9 Brown Road, to be used as a clean room, and a renovation of the existing building at 20 Thornwood Drive, to expand the Applicant's testing and assembly facility (the "Project"); and

WHEREAS, by Resolution dated November 13, 2014 (the "Resolution"), the Agency authorized the Applicant to act as its agent for the purposes of constructing and equipping the Project as set forth above, subject to the Applicant entering into this Agent Agreement; and

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Scope of Agency. The Applicant hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the construction and equipping of the Project. The right of the Applicant to act as agent of the Agency shall expire on **November 30, 2016**, unless extended as contemplated by the Resolution.
2. Representations and Covenants of the Applicant. The Applicant makes the following representations and covenants in order to induce the Agency to proceed with the Project:
 - a. The Applicant has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.
 - b. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Applicant is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Applicant under the terms of any such instrument or agreement.

- c. The Project and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project, and the Applicant shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Applicant to comply with the provisions of this subsection.
- d. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Applicant, threatened against or affecting the Applicant, to which the Applicant is a party, an in which an adverse result would in any way diminish or adversely impact on the Applicant's ability to fulfill its obligations under this Agreement.
- e. The Applicant covenants that the Project will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist at the Project except in compliance with all material applicable laws, (ii) the Applicant will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances at the Project or onto any other property, (iii) that no asbestos will be incorporated into or disposed of at the Project; (iv) that no underground storage tanks will be located at the Project, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Applicant, upon receiving any information or notice contrary to the representations contained in this section, shall immediately notify the Agency in writing with full details regarding the same. The Applicant hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents, representatives, successors and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorney's fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Project, the Applicant agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.
- f. The Agency encourages the Applicant to use an open bidding process for construction contracts; to give opportunities for employment in the construction of the Project to persons residing in Tompkins County, New York; and to award contracts for work in connection with the Project to eligible business concerns which are located in, or owned in substantial part by persons residing in, Tompkins County, New York.
- g. In accordance with Section 875(3) of the New York General Municipal Law, the Applicant covenants and agrees that, if it receives New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") from the Agency, and it is determined that: (i) the Applicant is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Applicant; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption

benefits are taken in cases where the Applicant fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project, then the Applicant will (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands in connection therewith. The Applicant further understands and agrees that in the event that the Applicant fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine New York State and local sales and use taxes due from the Applicant, together with any relevant penalties and interest due on such amounts.

h. The Applicant further covenants and agrees that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in amount up to **\$1,200,000.00**, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$96,000.00**.

3. Hold Harmless Provision. The Applicant hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, officers, members, employees, agents (except the Applicant), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Project or breach by the Applicant of this Agreement or (ii) liability arising from or expense incurred by the Agency's financing, rehabilitating, renovation, equipping, owning and leasing of the Project, including without limitation the generality of the foregoing, all causes of action and reasonable attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

4. Insurance Required. Effective as of the date hereof and until the Agency consents in writing to a termination, the Applicant shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

a. (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Project, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Applicant or (ii) as an alternative to the above requirements (including the requirements of periodic appraisal), the Applicant may insure the Project under a blanket insurance policy or policies covering not only the Project but other properties as well.

b. Worker's compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Applicant is required by law to provide, covering loss

resulting from injury, sickness, disability or death of employees of the Applicant who are located at or assigned to the Project.

- c. Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Applicant by any applicable worker's compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Applicant against any loss or liability or damage for personal injury or property damage.

5. Additional Provisions Respecting Insurance.

- a. All insurance required by Section 4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 4 shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Applicant and authorized to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Applicant is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Applicant and the Agency as their respective interests may appear, and (ii) at least thirty (30) days' prior written notice of the cancellation thereof to the Applicant and the Agency.
- b. All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Agency prior to the commencement of the Project. Prior to expiration of any such policy, the Applicant shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

6. Errors and Omissions; Compliance. In consideration for the assistance provided to the Applicant by the Agency, the Applicant agrees, if requested by Agency, to fully cooperate and execute and/or re-execute any document that should have been signed at or before the closing of the transaction described in this Agreement, or a corrected or modified version of any such documents, where the document was inadvertently not executed at or before the closing, or the version executed at or before the closing contained any typographical, clerical or mathematical error, or erroneously contained or omitted any provision that does not conform with the statutory authority and established policies of the Agency.

7. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but which together shall constitute a single instrument.

8. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Tompkins County Industrial Development Agency
401 East State Street, Suite 402B
Ithaca, New York 14850

With a copy to: Mariette Geldenhuys, Attorney and Mediator
401 East State Street, Suite 306
Ithaca, New York 14850

To the Applicant: BinOptics Corporation
20 Thornwood Drive
Ithaca, New York 14850

With a copy to:

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this section.

9. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein, and the parties hereby agree to submit to the personal jurisdiction of the federal or state courts located in Tompkins County, New York.
10. The parties are contemplating that, after any applicable public hearings, the Agency will negotiate and enter into a leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the *Applicant*. The Applicant agrees not to take title to any property as agent for the Agency until the Leaseback Agreement and PILOT Agreement have been executed and delivered. At any time prior to the execution of the Leaseback Agreement and PILOT Agreement, the Agency can transfer title to the Applicant to all assets acquired by the Applicant as agent for the Agency. Additionally, at any time prior to execution of the Leaseback Agreement and PILOT Agreement, the Applicant can demand that the Agency transfer title to the Applicant with respect to all assets acquired by the Applicant as agent for the Agency, provided all amounts owed to the agency have been paid current.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

TOMPKINS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

BINOPTICS CORPORATION

By:

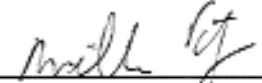


Michael B. Stamm
Administrative Director

By:

Name:

Title:



William J. Fritze
COO