

# DEFINITIONS

“Affiliated Business” means a business in which the same entity directly or indirectly owns or controls 5% or more of the voting rights or 5% or more of the value of all classes of stock of both the business and the applicant.

"Allowable expenditures" means costs incurred in connection with the operation of the new or expanding emerging technology or biotechnology business in the State, including, but not limited to, the expenses of fixed assets, such as the construction, acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, and research and development expenditures.

"Authority" means the New Jersey Economic Development Authority.

"Biotechnology" means the continually expanding body of fundamental knowledge about the function of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to the body of fundamental knowledge.

"Biotechnology business" means an emerging corporation that has a headquarters or base of operations located in New Jersey that owns, has filed for, or has a license to use protected, proprietary intellectual property and whose primary business is the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes.

"Buying business" means a business with the financial ability to purchase the unused net operating loss carryover and/or unused research and development tax credits from an unaffiliated selling business. For the purpose of this definition, the test of affiliation is whether the same entity directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of both the selling and buying businesses.

"Camden innovation zone" means the innovation zone in the southern part of the State bounded as follows: in the north by the Ben Franklin Bridge, in the east by Interstate 676, in the south by Kaighns Avenue, and in the west by the Delaware River.

"Certificate" means the certificate issued by the Division of Taxation certifying to the selling business amounts of unused net operating loss carryover and/or unused research and development tax credit carryovers.

"Financial statements" means a statement prepared by an independent Certified Public Accountant (CPA), which shall include an opinion letter indicating the scope of the services performed (compilation, review, or audit) in accordance with Generally Accepted Accounting Principles (GAAP) as determined by the Financial Standards Accounting Board (FASB) and shall include a balance sheet, statement of income and expenses, cash flow statement, other statements as determined by the independent CPA, and footnotes where applicable.

"Full-time employee" means a person employed by a new or expanding emerging technology or biotechnology company for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq., or who is a partner of a new or expanding emerging technology or biotechnology company who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq. To qualify as a "full-time employee," an employee shall also receive from the new or expanding emerging technology or biotechnology company health benefits under a group health plan as defined under section 14 of P.L. 1997, c. 146 (*N.J.S.A. 17B:27-54*), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (*N.J.S.A. 17B:27A-17*), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology business. Full-Time Employee does not include any person who works as an independent contractor or on a consulting basis for the New or Expanding emerging Technology or Biotechnology Business or any person who works as an intern, as a temporary employee, or in a temporary position.

"Greater New Brunswick innovation zone" means the innovation zone bounded as follows: in the north by Route 287 to Stelton Road to Metlars Lane to Route 18, in the east by Route 1, in the south by Suydam Road/Claremont Road/Finnegan's Lane, and in the west by the Millstone River and Raritan River, which includes parts of North Brunswick, New Brunswick, Piscataway and Franklin Township and Rutgers University's Livingston campus.

"Innovation zone" means any of the three zones located in the northern, central and southern portions of New Jersey designated by the Authority as the Newark innovation zone, North/New Brunswick innovation zone and Camden innovation zone, respectively.

"License" means an agreement that states therein that it is granting an exclusive license and that authorizes the applicant to control aspects of the development of the protected proprietary intellectual property. The protected proprietary intellectual property must be directly related to the applicant's primary business of providing a scientific process, product, or service. License shall not include an agreement, such as an exclusive distribution agreement or similar business arrangement that is not registered with the U.S. Federal Government, such as the U.S. Patent and Trademark Office, that does not grant the applicant control of the protected proprietary intellectual property.

"Net operating loss" means the excess of the deductions over the gross income used in computing entire net income in a specific year without regard to the net operating loss carryover to that year and the dividend exclusion, as provided in *N.J.S.A. 54:10A-4(k)(6)(C)*.

"New or expanding" means a technology or biotechnology company that:

1. On June 30 of the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L. 1997, c. 334 (*N.J.S.A.*

34:1B-7.42a et al.) and on the date of the exchange of the corporation business tax benefit certificate, has fewer than 225 employees in the United States of America;

2. On June 30 of the year in which the company files such an application, has at least one full-time employee working in this State if the company has been incorporated for less than three years, has at least five full-time employees working in this State if the company has been incorporated for more than three years but less than five years, and has at least 10 full-time employees working in this State if the company has been incorporated for more than five years; and
3. On the date of the exchange of the corporation business tax benefit certificate, the company has the requisite number of full-time employees in New Jersey that were required on June 30 as set forth in paragraph 2 above.

In calculating the number of employees under this definition, employees of all affiliates and subsidiaries as shown on its consolidated financial statements, employees of any company that owns or controls at least 50 percent of the applicant, as well as the employees of any consolidated group of affiliated corporations as filed for Federal income tax purposes shall be included.

“Protected Proprietary Intellectual Property (PPIP)” means intellectual property that is the technology of the applicant’s primary business as a Technology or Biotechnology Business that is also protected via a patent pending, patent awaiting approval, approved patent or registered copyright or an exclusive license.

"Newark innovation zone" means the innovation zone in the northern part of the State bounded as follows: in the north by Interstate 280, in the east by McCarter Highway (Route 21) and the Pennsylvania Railroad, in the south by Market Street to South Orange Avenue, and in the west by Bergen Street. "Program" means the Technology Business Tax Certificate Transfer Program. "Protected proprietary intellectual property" means intellectual property that is protected via a patent pending, patent awaiting approval, approved patent or registered copyright.

“Recapture of Tax Benefits” means if a Selling Business fails to use the private financial assistance received for the sale of its Corporation Business Tax Benefit Transfer Certificate on Allowable Expenditures, the Selling Business shall forfeit and remit the face value of the Corporation Business Tax Benefit Transfer Certificate. If the Selling Business does not maintain a headquarters or a base of operations in the State during the five years following receipt of the private financial assistance other than due to liquidation, the Selling Business shall remit the face value of the Corporation Business Tax Benefit Transfer Certificate less twenty percent (20%) for each year completed of the five year requirement. For example, if the business relocates out of New Jersey in the third year of its commitment, the recapture percentage shall be sixty percent (60%).

"Research and development tax credits" means a tax credit against corporation business tax liabilities for taxpayer who have performed qualified research activities in New Jersey, calculated in the manner as the Federal tax credit for increasing research activities. The credit is based on qualified expenditures in New Jersey beginning on or after January 1, 1994. It provides a credit of 10 percent of the excess qualified research expenses over a base amount plus 10 percent of the basic research payments. Taxpayers must complete New Jersey Division of Taxation--Corporate Business Tax Form 306 to claim their credit. The amount of credit claimed

for any single tax year cannot exceed 50 percent of that year's tax liability prior to the consideration of this credit and it cannot reduce the tax liability below the statutory minimum, as set forth in *N.J.S.A. 54:10A-5.24*.

"Selling business" means a new or expanding technology and/or biotechnology business that has unused net operating loss carryover and/or unused research and development tax credits which it wishes to "sell."

"Technology business" means an emerging corporation, that has a headquarters or base of operations located in New Jersey, that owns, has filed for, or has a license to use protected, proprietary intellectual property whose primary business is the provision of a scientific process, product, or service and that employs some combination of the following: highly educated and/or trained managers and workers employed in New Jersey who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service. Examples of activities satisfying this definition include: the designing and developing of computing hardware and software; the research, development, production, or provision of materials with engineered properties created through the company's development of specialized processing and synthesis technology and the research, development, production or provision of technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices.

"Unused net operating loss carryover" means net operating loss for any tax year as defined in *N.J.S.A. 54:10A-4(k)(6)(B)*.

"Unused research and development tax credits" means the amount of tax credit otherwise allowable which cannot be applied because it would reduce the tax liability below 50 percent of the liability prior to consideration of the credit or it reduces the tax below the statutory minimum, as provided in *N.J.S.A. 54:10A-5.24(b)*.

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ON [WWW.NJEDA.COM/NOL](http://WWW.NJEDA.COM/NOL) TO ANSWER ANY QUESTIONS. IF THIS  
DOES NOT ANSWER YOUR QUESTIONS, PLEASE EMAIL  
[NOL@NJEDA.COM](mailto:NOL@NJEDA.COM).**