

EXHIBIT I

**INNOVATE NY FUND
RULES AND REGULATIONS**

INNOVATE NY FUND

21 NYCRR Part 4252

Statutory Authority

**Section 16-U of the New York State Urban Development Corporation Act,
Chapter 174 of the Laws of 1968, as amended**

Historical Note

Part 4252 (Sections 4252.1- 4252.12) filed December 22, 2011 eff. December 22, 2011

TABLE OF CONTENTS

<u>SECTIONS</u>	<u>HEADINGS</u>	<u>PAGE #s</u>
4252.1	Purpose	4
4252.2	Definitions	4
4252.3	Investment Objectives	5
4252.4	Selection of Investment Entities	6
4252.5	General Requirements	6
4252.6	Eligible Investments in Beneficiary Companies	7
4252.7	Fund Accounts	8
4252.8	Matching Investment Fund Requirements	8
4252.9	Fees and Capital Gains	8
4252.10	Auditing, Compliance and Reporting	9
4252.11	Confidentiality and State Employees	10
4252.12	Non-Discrimination and Affirmative Action	11

Section 4252.1 Purpose

The purpose of these regulations is to facilitate administration of the Innovate NY Fund (the “Fund” or the “Program”) authorized pursuant to section sixteen-u of the New York State Urban Development Corporation Act (the “Act”).

Section 4252.2 Definitions

The following terms shall have the meanings given below:

1. “Beneficiary Company” shall mean a Seed Stage Business that an Investment Entity selects for a Fund investment (also referred to as a “Portfolio Company” after the Fund investment is made).
2. “Carried Interest on Capital Gains” shall mean the share of any profits that the owners, partners or members of an Investment Entity receive as compensation.
3. “Corporation” shall mean the New York State Urban Development Corporation d/b/a Empire State Development, a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation created by chapter one hundred seventy-four of the Laws of nineteen hundred sixty-eight, as amended.
4. “Disbursement Process” means the process for disbursing Program funds to Investment Entities.
5. “Due Diligence” shall mean an in-depth investigative approach to evaluating the Beneficiary Company and verifying an investment opportunity, which may include assessment of the management team, business plan, financial history, financial projections, and the Beneficiary Company’s technology and products/services.
6. “Emerging Technology Field” shall mean one or more of the emerging technologies, as defined in section thirty-one hundred two-e of the Public Authorities Law, or any field, area or technology that is achieving or has the potential to achieve contemporary technological advances, innovation, transformation or development.

7. "Equity" shall mean common stock, convertible preferred stock, stock warrants or convertible notes or bonds that can also convert to common stock, and similar types of securities.
8. "Follow-on Investment" shall mean a subsequent investment made by an investor after an initial round of investment in a Portfolio Company.
9. "Hybrid Investment" shall mean an investment that combines Equity and debt features, such as preferred stocks, convertible bonds, and convertible notes.
10. "Investment Entity" shall mean a regional and local economic development organization, technology development organization, research university, or investment fund that provides or is otherwise qualified to make seed-stage investments in companies located in the State of New York.
11. "Leveraging" or "leverage" shall mean utilizing investment assets alongside other sources of capital.
12. "Matching Investment Funds" shall mean monies secured in addition to Program funds.
13. "Portfolio Company" shall mean a Beneficiary Company after the Fund investment is made.
14. "Seed-Stage Business" shall mean a Small Business, located in New York State and working in one or more Emerging Technology Fields, which demonstrates a potential for substantial growth and job development, has the potential to generate additional economic activity in New York State, and that is pre-revenue, has only begun to earn revenue, or has not yet received institutional investments.
15. "Small Business" shall have the meaning as set forth in section 131 of the Economic Development Law.
16. "State" shall mean the State of New York.

Section 4252.3 Investment Objectives

The Fund objective is to invest in Seed Stage Businesses through Investment Entities that are selected by and are under contract to the Corporation. Investment priority shall be

given to Seed Stage Businesses involved in commercialization of research and development or high technology manufacturing.

Section 4252.4 Selection of Investment Entities

The Corporation shall identify and select Investment Entities through one or more competitive statewide, regional or local solicitations. Investment Entity applicants shall be evaluated on criteria including, but not limited to, the applicant's: (a) record of success in raising investment funds and successfully investing them; (b) capacity to perform Due Diligence and to provide management expertise and other value-added services to Beneficiary Companies; (c) financial resources for identifying and investing in seed-stage and early-stage companies; (d) ability to secure non-State Matching Investment Funds at a ratio that is equal to or greater than one-to-one (1:1); (e) ability to evaluate the commercial potential of emerging technologies; (f) ability to secure partnerships with local or regional investors; (g) conflict of interest policy acceptable to the Corporation; (h) investment record and capacity to invest in the State; (i) management fees, promotes, share of return and other fees and charges and; (j) other criteria that the Corporation determines is relevant to making investment decisions consistent with the purposes of the Fund. Applicants must specify particular industry sector, regional or other investment strategies. The Corporation shall determine the amount of the Program funds to commit to an Investment Entity. After an Investment Entity is under contract to the Corporation, the Corporation may award additional Program funds to an Investment Entity without an additional solicitation.

Section 4252.5 General Requirements

1. The Corporation and each Investment Entity receiving Program funds shall enter into one or more written agreements governing the Corporation's investment, which may include a Limited Partnership Agreement, that are consistent and in compliance with the Act, including section 16-u thereof, this rule, and other applicable laws and regulations.

2. The Corporation shall distribute Program funds promptly pursuant to a Disbursement Process agreed to between the Corporation and the Investment Entity in order to enable the Investment Entity to fulfill its commitments to Beneficiary Companies in a timely manner.
3. The commitment period for an Investment Entity to make investments with the Program funds shall typically be three years or less.
4. Returns on investments or interest accrued with respect to Program funds received by an Investment Entity through the Fund shall be returned to the Corporation in accordance with the agreements entered into between the Investment Entity and the Corporation.

Section 4252.6 Eligible Investments in Beneficiary Companies

In order to be eligible for an investment, including a Follow-on Investment, that includes Program funds, a Beneficiary Company must be a Seed-Stage Business. Prior to the investment of Program funds in a Beneficiary Company, the Beneficiary Company must agree, pursuant to a written agreement satisfactory to the Corporation, that the Beneficiary Company will be located and remain located within the State for a period satisfactory to the Corporation and that in the event that the Beneficiary Company breaches such obligation, the Corporation shall have all remedies at law and such other remedies as the Corporation may set forth in the agreement with the Beneficiary Company, which may include recovery or recapture, if full or in part, of the Program funds investment.

Investment Entities shall not invest Program funds in a Beneficiary Company in an amount greater than five hundred thousand dollars, or seven hundred fifty thousand dollars in the case of a biotechnology-related Beneficiary Company, at any one time, unless the Beneficiary Company and the Investment Entity can demonstrate to the satisfaction of the Corporation that exceeding the applicable investment limit significantly increases the potential of the investment to result in substantially greater growth, job development, and additional

economic activity in New York State and the Corporation consents to such greater investment in writing. Program funds may be used for Follow-on Investments in Portfolio Companies, subject to the investment amount limits and exceptions set forth above. Investments in Beneficiary Companies may take the form of Equity or Hybrid Investments.

Section 4252.7 Fund Accounts

Each participating Investment Entity shall deposit Program funds and program related investment proceeds (including, without limiting the foregoing, returns and interest) into a bank account in a State or Federally chartered banking institution, satisfactory to the Corporation, or as otherwise agreed in writing between the Corporation and the Investment Entity.

Section 4252.8 Matching Investment Funds Requirements

At such time as an Investment Entity has invested fifty percent of the Program funds committed to such Investment Entity and annually thereafter, the aggregate investments of Program funds by the Investment Entity in Beneficiary Companies shall be leveraged with Matching Investment Funds from private sources of capital, excluding investments after the initial funding round, at a ratio equal to or greater than two to one (2:1). Investments made in funding rounds prior to the date of the initial investment of Program Funds shall not be counted toward satisfying this Matching Investment Funds requirement. Funding provided by the State of New York, including, but not limited to, Small Business Technology Investment Fund proceeds, does not satisfy this Matching Investment Funds requirement.

Section 4252.9 Fees and Capital Gains

The Investment Entities may charge fees, pursuant to a written schedule of fees, and

receive Carried Interest on Capital Gains with the prior written approval of the Corporation. The amount of any fees and the amount of the Carried Interest on Capital Gains will be detailed in the agreements to be entered into between the Investment Entity and the Corporation. Returns to the Corporation, such as capital gains and the return of the investment, will be detailed in the agreements to be entered into between the Investment Entity and the Corporation.

Section 4252.10 Auditing, Compliance and Reporting

The Corporation shall evaluate the investment activities of each participating Investment Entity in conformance with the agreements to be entered into between the Corporation and the Investment Entity, in accordance with the criteria set forth in section 16-u of the Act, and this rule and in accordance with other applicable law and regulations. Each Investment Entity will be required to provide quarterly and annual reports outlining the impact and effectiveness of the investments made, current status, leveraged funds, business revenue, numbers of jobs created, and other items as determined by Corporation. These annual reports and additional reports as requested at the discretion of the Corporation may be required to include:

- a. The number of investments made;
- b. The type of each investment;
- c. The location of each Beneficiary Company;
- d. The amount of Program funds and private funds invested in each Beneficiary Company;
- e. The projected and actual number of jobs created or retained by each Beneficiary Company receiving Program funds;
- f. The type of product or technology being developed or produced by each Beneficiary Company; and
- g. Such other information as the Corporation may require.

The Corporation may conduct or request audits of the Investment Entities in order to ensure compliance with the provisions of section 16-u of the Act, any regulations promulgated with respect thereto and agreements between the Investment Entities and the Corporation of all aspects of the use of Program funds and investment transactions.

In the event that the Corporation finds substantive noncompliance at any time, the Corporation may terminate the Investment Entity's participation in the Program. The agreements between the Corporation and the Investment Entity shall provide that, upon termination of an Investment Entity's participation in the Program, the Investment Entity shall return to the Corporation, promptly after its demand thereof, all Program funds held by the Investment Entity, and provide to the Corporation, promptly after its demand thereof, an accounting of all Program funds, including all currently outstanding investments that were made using Program funds. Notwithstanding such termination, the Investment Entity shall remain liable to the Corporation with respect to any unpaid amounts due from the Investment Entity pursuant to the terms of the agreements between the Corporation and the Investment Entity. In the event that an Investment Entity's participation in the Program is terminated, the Corporation, in its discretion, may transfer to one or more of the other participating Investment Entities without an additional solicitation all or part of the award made to such Investment Entity.

Section 4252.11 Confidentiality and State Employees

To the extent permitted by law, all information regarding the financial condition, marketing plans, customer lists, or other trade secrets and proprietary information of a Beneficiary Company shall be confidential and exempt from public disclosures.

To the extent permitted by law, no full-time employee of the State of New York or any agency, department, authority or public benefit Corporation thereof shall be eligible to receive assistance under this Program.

Section 4252.12 Non-Discrimination and Affirmative Action

The Corporation's affirmative action and non-discrimination policies and programs are grounded in both public policy and applicable law, including but not limited to, Section 2879 of the Public Authorities Law, Article 15-A of the Executive Law and Section 6254 (11) of the Unconsolidated Laws. These laws mandate the Corporation to take affirmative action in implementing programs. The Corporation has charged the affirmative action department with overall responsibility to ensure that the spirit of these mandates is incorporated into the Corporation's policies and projects. Where applicable, the affirmative action department will work with applicants in developing an appropriate Affirmative Action Program for business and employment opportunities generated by the Corporation's participation of the Program.