**<Incubator Name>**

**CLIENT AGREEMENT**

This Client Agreement (“Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_ , 20\_\_ (the “Effective Date”) by and between The Research Foundation for The State University of New York (“Foundation”), an educational corporation organized and existing under the laws of the State of New York, acting for and on behalf of The State University of New York (“SUNY”) and its component college, <Name of College> and [name of Client], a [corporation]/[LLC]/[other] organized and existing under the laws of the State of New York (*if applicable*)(“Client”).

BACKGROUND

SUNY has established the <Name of Incubator> to provide growth-oriented companies essential business incubation services and access to industry-specific development resources through its connection to SUNY and SUNY’s academic and programmatic resources (the “Program”).The mission of the Program is to devise and support university-industry partnerships that discover, develop, and deploy innovative products for the scientific and technical marketplaces to support new business growth and economic development (the “Mission”). The Program is located at <Address>.

Client has applied for and has been accepted into the Program.

TERMS

In consideration of the mutual promises made herein and as consideration for Client’s acceptance in the Program, the parties hereto agree as follows:

1. **Access to Services.** Under this Agreement Client receives the right to access and use services that are offered in connection with the Program (collectively, “Services”); said Services shall include a nontransferable and revocable right to temporarily use certain space and facilities further designated by Foundation in Exhibit A attached hereto. Services are as further described in the Client Handbook for the Program, as updated from time to time, and are offered on an “as available” basis determined at the sole discretion of Foundation.
2. **Term.** The term of this Agreement (the “Term”) shall be as set forth in Exhibit A attached hereto. The date that this Agreement expires or is terminated for any reason shall be referred to herein as the "Expiration Date."
3. **Equity.** In the event that Client and Foundation agree to an equity arrangement as part of Client's participation in the Program, Client shall enter into an Equity Agreement with Foundation, substantially in the form of Exhibit B attached hereto.
4. **Payments.** Terms related to fees, retainers, and payments will be as set forth in Exhibit A attached hereto.
5. **Client Reporting and Program Participation.** Client agrees to participate in the Program. The Program is intended to assist Client in the Client’s creation, evolution and successful implementation of its Business Plan, as set forth in Exhibit A attached hereto ("Business Plan"). Therefore, Client agrees to regular oral and written communication with Foundation, as represented by the Executive Director of the Program, and to provide regular written reports as set forth below, and acknowledges that these requirements are reasonably required to support both the Mission of the Program and the Client’s achievement of its Business Plan.
	1. **Business Plan and Milestones.** Client agrees to implement its Business Plan, including the Milestones set forth therein (“Milestones”). Client’s progress and participation in the Program will be evaluated in relation to its Business Plan and Milestones. The parties agree to work together in good faith to amend Exhibit A from time to time in the event that Client and Foundation mutually agree to changes to the Business Plan.
	2. **Financial and Operational Reporting.**
6. **Quarterly Financial Reports.** No less frequently than quarterly, Client shall provide to the Executive Director of the Program, on behalf of Foundation, the following reports: i) bookkeeper-prepared financial statements, including an Income Statement, Balance Sheet and Funds Flow/Statement of Changes in Financial Condition. Such reports shall be due within thirty (30) days of the end of each calendar quarter, or Client's financial quarter, and shall include an analysis of any variances to Client’s budget.
7. **Annual Financial Reports.** In addition to the reports in Section 5.2.A, Client shall provide to the Executive Director of the Program, on behalf of Foundation, all compiled, reviewed or audited annual financial statements of the Client, if any; if no such reports are available, Client shall provide the annual bookkeeper-prepared financial reports including the reports defined in Section 5.2.A. Annual Reports are to be provided within ninety (90) days of the close of the calendar year, or Client’s financial year.
8. **Milestone Progress Reports.** Together with the Quarterly and Annual Financial Reports, Client shall provide to the Executive Director of the Program, on behalf of Foundation, a written report that i) details Client’s growth and development; ii) reports Client’s progress toward achieving its Business Plan and Milestones; and, iii) proposes amendments, if any, to the Business Plan and Milestones. These reports will advise Foundation on the status of Client's efforts to achieve the Milestones and its plans for corrective actions for Milestones not achieved. Client shall also provide a written report on the number of employees and independent contractors engaged by Client.
	1. **Remediation.** In the event the Client’s financial or operational status or progress toward achieving its Business Plan and Milestones is deemed deficient by Foundation, or Foundation becomes aware of activities or actions that may negatively impact Client’s operations, financial condition or ability to continue to execute its Business Plan, Foundation may require that a mutually agreed upon plan for corrective action be created and put into place that would include reporting to Foundation on activities and Milestones more frequently than quarterly (“Remediation Plan”).
	2. **Board Meetings.** The Client shall provide Foundation with written notice of all regular and special meetings of Client’s board of directors and/or board of advisors, or equivalent governing or advisory bodies (“Board”) and shall grant a Foundation and/or SUNY representative “observer rights” to attend such meetings. No officer, director, member, manager, employee, agent or representative of SUNY, Foundation, or the Program shall be deemed to be a member of the Client’s Board, unless formally and explicitly elected or appointed to such position, subject to such member's compliance with any applicable SUNY or Foundation conflict of interest policies.
	3. **Events, Seminars and Conferences.** Client agrees to participate in and contribute to Program sponsored events, seminars and conferences to promote the Program, its Services, and its clients, and to stimulate investment interest, provide networking opportunities, communicate industry updates, share best practices, impart knowledge, and for other such purposes which enhance the Program's Mission.
	4. **Responsibility for Facilities.** Client agrees to abide by all applicable policies of Foundation and SUNY with respect to the Program space and facilities, including, but not limited to, the policies and procedures contained within the Client Handbook and SUNY's policies and rules related to hazardous materials and environmental safety.
9. **Termination.**
	1. **By Foundation.** Foundation may immediately terminate this Agreement if it determines in its sole discretion that: (i) Client has failed to make payments when due or otherwise materially breached this Agreement and fails to remedy such breach within ten (10) calendar days of receipt of written notice from Foundation; (ii) the conduct or activities of Client’s employees, representatives or invitees materially adversely affects the ability of other Program clients to carry on their businesses, and such conduct is not remedied within ten (10) calendar days of receipt of written notice from Foundation; (iii) Client fails to progress in accordance with its Business Plan or to achieve Milestones and no amended Business Plan, Milestones, or Remediation Plan are mutually agreed within ten (10) calendar days of receipt of written notice from Foundation; (iv) Client makes an assignment for the benefit of creditors; (v) a petition in bankruptcy or any insolvency proceeding is filed by or against Client and is not dismissed within thirty (30) calendar days from the date of filing; or (vi) all or substantially all of the property of Client is levied upon or sold in any judicial proceeding. For any other reasons, Foundation may terminate this Agreement with thirty (30) calendar days’ written notice to Client.
	2. **Mutual Agreement.** This Agreement may be terminated by mutual consent of the parties, which consent shall not be unreasonably withheld, upon thirty (30) calendar days’ written notice and subject to any terms herein which survive termination.
	3. **Exit interview and reports.** In furtherance of the Program’s Mission, and to allow Foundation to provide aggregate reporting on the Program’s activities, Client agrees to perform an exit interview no later than five (5) business days prior to the Expiration Date, and further agrees to provide Foundation with yearly financial, sales, and employment information for a period of five (5) years after the Expiration Date, each report being due on or before the anniversary of the Expiration Date.
	4. **Survival.** Nothing herein will be construed to release either party of any obligation matured prior to the Expiration Date. All obligations of Client hereunder not fully performed as of the Expiration Date shall survive the Expiration Date.
10. **Insurance.** Client shall, at all times during the Term, and at its own cost and expense, procure and continue in force insurance in the amounts and on the terms set forth in this section. Said insurance shall name Foundation and SUNY as additional insureds, shall be maintained with insurance companies licensed to do business in New York State, shall be primary and non-contributing to any insurance or self-insurance maintained by Foundation, and shall be subject to reasonable approval of Foundation. Client shall be solely responsible for the payment of all deductibles to which such policies are subject. Deductibles must be approved by Foundation, with such approval not unreasonably withheld. Each insurance company must be rated at least “A-” Class “VII” in the most recently published Best’s Insurance Report. Client shall obtain from the insurance companies, or cause the insurance companies to furnish, certificates of coverage. The delivery of proof of such insurance is a condition precedent to this Agreement. All certificates of insurance shall provide that the insurer will provide Foundation twenty (20) calendar days’ notice of cancellation of or any change of said policies by certified mail, return receipt requested or via established overnight courier, receipt acknowledged. In the event Client shall fail to comply with any or all of the provisions of this section, Foundation is hereby authorized to purchase said insurance and charge Client for the premiums of same and any other costs incurred thereon, and such sums shall be deemed an additional fee and may be collected by Foundation as such in the next ensuing Monthly Fee installment. At a minimum, Client shall procure: (a) Comprehensive General Liability Insurance, in the broadest form available in New York State, with a minimum amount of five million ($5,000,000) combined single limit for any one occurrence, and which shall include but not be limited to personal injury liability, fire damage liability on real property, and (b) Workers Compensation Insurance, Employers Liability, and Disability Benefits as required by New York State (Client must submit the following forms to provide proof of Worker’s Compensation and Disability Insurance: C-105.2 and DB-120.1).

Client agrees to use commercially reasonable efforts to include in each of its policies insuring against loss, damage or destruction by fire or other casualty, a waiver of the insurer’s right of subrogation against Foundation and The State University of New York. If such waiver shall not be, or shall cease to be, obtainable without additional charge, or is otherwise not available at all, Client shall promptly so notify Foundation. In such case, if Foundation shall so elect and shall pay the insurer’s additional charge therefore, such waiver shall be included in the policy.

1. **Waiver of Responsibility; Indemnification.** Client shall assume liability for, and shall indemnify, defend and hold harmless the State of New York, Foundation, The State University of New York, and their Regents, officers, trustees, directors, employees, contractors, subcontractors, agents and invitees from and against any and all liabilities, obligations, losses, fines, damages, claims, demands, judgments, penalties, expenses (including, without limitation, attorneys’ fees and costs) arising, directly or indirectly, from (a) any labor dispute involving Client or its contractors or agents, (b) the use or enjoyment of the Program or Services by Client or its contractors, agents, employees and/or customers or invitees, (c) injury to or death of any person or persons, or damage to or destruction of any property (including, without limitation, the cost of investigation, removal or remedial action and disposal of any Hazardous Materials) occurring in, on or about the Program facilities, or (d) a breach of this Agreement by Client or any act or omission of Client or its agents, employees or contractors (“Claims”). To the maximum extent permitted by law, Client’s activities on and use of the Facilities shall be at Client’s sole risk. Client’s obligations under this Section 8 shall survive the Expiration Date.
2. **Limitation of Liability; Waiver.** There shall be no personal liability of the State of New York, Foundation, or SUNY or any of its colleges with respect to any of the terms of this Agreement. If for any reason Foundation is unable to provide Client with the Services under this Agreement, Foundation's liability for such failure is limited to crediting or returning to Client a fair proportion of the relevant fee for the Services for which Client has paid but that were not provided. The State of New York, SUNY, and Foundation shall not be liable for any injury, damage or loss to person, equipment, facilities, or property occurring on or about the Facilities caused by Client, its officers, agents, employees, or visitors. IN NO EVENT SHALL THE STATE OF NEW YORK, SUNY, ORFOUNDATION, THEIR MEMBER INSTITUTIONS, REGENTS, OFFICERS, TRUSTEES, DIRECTORS, EMPLOYEES, STUDENTS, AGENTS OR AFFILIATED ENTERPRISES BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER ANY SUCH PARTY KNOWS OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES. OTHER THAN FOR CLAIMS AGAINST CLIENT FOR INDEMNIFICATION (SECTION 8) OR FOR MISUSE OR MISAPPROPRIATION, CLIENT WILL NOT BE LIABLE TO FOUNDATION OR THE STATE OF NEW YORK,THEIR MEMBER INSTITUTIONS, REGENTS, OFFICERS, TRUSTEES, DIRECTORS, EMPLOYEES, STUDENTS, AGENTS OR AFFILIATED ENTERPRISES FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER CLIENT KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
3. **Use of Name.** Client and the Executive Director of the Program, on behalf of Foundation, will work together cooperatively to publicize Client’s participation in the Program. Client may not use the names of Foundation, SUNY and any of its colleges, or the <Name of Incubator> as an endorsement or reference without the prior express written consent of the applicable party.
4. **Miscellaneous.**
	1. **Notices.** Notices under this Agreement shall be in writing and delivered in person or by courier (such as Federal Express or United Parcel Service), receipt acknowledged, or mailed by certified mail, return receipt requested, postage prepaid, or by electronic mail transmission with return electronic mail receipt confirmation required to the following addresses or to such other address as may from time to time be designated by notice given to the other party in accordance with this section.

To:

<Incubator Name>

<Address>

<Phone Number>

Attn: <Name, Title>

<Email Address>

With a copy to <Name of Campus> at:

<Name of Campus>

<Address>
Phone: <Number>
Attn: <Name, Title>
<Email Address>

Applicable if there is another SUNY Campus: And with a copy to the <Name of Campus> at:

<Name of Campus><Address>
Phone: <Number>
Attn: <Name, Title>

<Email Address>

* 1. **Transfer and Assignment.** Client shall have no right to assign or transfer this Agreement or any rights arising under this Agreement. Any assignment by operation of law or otherwise shall be deemed a prohibited assignment hereunder. The terms, provisions and covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns.
	2. **Counterparts.** This Agreement may be signed in counterparts; each, when taken together, shall constitute one instrument.
	3. **Enforceability.** If any part of this Agreement shall, to any extent, be finally adjudicated to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each and every other part of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
	4. **Governing Law; Forum.** This Agreement shall be governed by, and construed and interpreted in accordance with, New York law, without regard to conflicts of law principles. Jurisdiction of any litigation with respect to this Agreement shall be in the State of New York, with venue in a court of competent jurisdiction located in <County Incubator Located In>.
	5. **Integration.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or otherwise, between the parties shall be of any force or effect if not set forth herein. All amendments to this Agreement must be in a writing signed by all parties. All Exhibits attached to this Agreement are incorporated into this Agreement by reference as if fully set forth herein.
	6. **Interpretation.** The headings of each section are added as a matter of convenience only and shall not be considered in the construction of any provision of this Agreement.
	7. **Compliance with Laws.** Client shall ensure compliance with all applicable county, state, federal or foreign laws, rules, and regulations governing this Agreement. Client agrees to abide by all policies and procedures of Foundation and SUNY applicable to Program clients.
	8. **Force Majeure.** Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including, without limitation, fire, floods, earthquakes, natural disasters, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority.
	9. **No Third-Party Beneficiary.** No term of this Agreement shall be construed to confer any third-party beneficiary rights on any non-party.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**THE RESEARCH FOUNDATION**

**FOR THE STATE UNIVERSITY OF**

**NEW YORK** **CLIENT**

By: By:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit A**

**ADDITIONAL PROGRAM TERMS**

1. Business Plan, including Client’s Milestones

i.) Client’s current Business Plan, as reviewed and accepted by Foundation, is as set forth in Attachment 1 to this Exhibit A.

ii.) Client shall, on an annual basis, submit an updated draft Business Plan and budget not less than 60 days before the end of the calendar year or Client’s financial year. Foundation shall review and comment on Client's proposed drafts, and work with Client to mutually agree on a final Business Plan and budget before the end of the current year.

B. Space Location and Description

 i.) Space consists of the following: <identify space> ("Space").

ii.) Space is configured "as-is." Any deviation from the standard configuration or modifications to any of the physical aspects of the Space including common services and utilities provided must be approved in advance by Foundation, and will be at Client’s expense.

iii.) Foundation reserves the right to change the assigned Space, provided that reasonably equivalent space, equipped with amenities and utilities reasonably comparable to the existing Space, is available for Client's use.

C. Fees and Payments

i) Monthly Fee**.** Client shall pay a monthly fee in consideration for its participation in the Program (“Monthly Fee”): As detailed in Attachment 2 to this Exhibit A, the Monthly Fee shall be due and payable on or before the first day of each month during the Term.

ii) Additional Fees. Client shall pay fees for any additional services requested by Client and provided by Foundation in connection with the Program (“Additional Fees”). Foundation will invoice Client on a monthly basis for Additional Fees incurred in the prior month.

iii) Payments Due. The amounts invoiced in Section C. ii will be due and payable by Client within fifteen (15) calendar days of the date of invoice. If any amount due under this Agreement is not paid by Client within fifteen (15) calendar days of the date on which it is due, a late fee of 1.5% will be assessed on the outstanding balance equivalent to the maximum percentage allowable by law.

iv) Retainer**.** Client has deposited with Foundation a retainer (the “Retainer”) in the following amount: \_\_\_\_\_\_\_\_\_\_\_\_. If Client defaults with respect to payment of any fees or another material term of this Agreement, the Retainer may be credited toward the unpaid fees or costs arising from the default. If Client fully performs its obligations under this Agreement, including timely payment of all fees, then the Retainer, or any remaining balance thereof, shall be returned to Client within thirty (30) calendar days following the Expiration Date.

**D. Term.** This Agreement is intended to be co-terminus with Client's Business Plan, as set forth above in Section A of this Exhibit A. Accordingly, the Term of the Agreement shall begin on the Effective Date and end on the last Milestone date specified in the Business Plan.

**Exhibit B**

EQUITY AGREEMENT

This Equity Agreement (“Equity Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (“Effective Date”) between The Research Foundation for The State University of New York (“Foundation”), on behalf of SUNY <Name of Campus>, and SUNY <Name of Campus, if applicable> and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Client”), a company incorporated in the State of New York.

WHEREAS, Foundation and Client are entering into a Client Agreement (“Client Agreement”) concurrent with this Equity Agreement whereby Client will be provided certain Services as part of the <Name of Incubator> Program (as defined in the Client Agreement); and

WHEREAS, Client benefits from the Services (as defined in the Client Agreement) and resources provided to it under the Program and Client agrees to issue equity to Foundation.

NOW THEREFORE, in consideration of the foregoing, and the agreements set forth below, each of the parties hereby agrees as follows:

1. In partial consideration for the Services provided to Client under the Program Client will, within 30 calendar days after Effective Date, issue to Foundation Client’s capital stock, par value $ \_\_\_\_\_per share, which represents <X%> of the total number of shares of Client’s equity securities on a fully diluted basis at the time of issuance. The term “fully diluted basis” will be calculated to include conversion of all issued and outstanding securities convertible into capital stock, and the exercise of all then outstanding options and warrants to purchase capital stock, whether or not then exercisable. This capital stock shall be of the same character and have the same rights as that capital stock issued to the other major holders of capital stock in Client as of the Effective Date.
2. Client represents and warrants to Foundation that, as of the date hereof, the total number of outstanding shares of Client’s capital stock on a fully diluted basis is \_\_\_\_\_\_\_ and provides the capitalization table as Attachment 1 to this Exhibit B showing all outstanding, committed, and reserved equity securities of Client as of the Effective Date on a fully diluted basis. Upon Foundation’s request, Client shall provide an updated capitalization table that identifies any shareholders who are employees of SUNY or <Name of Campus> or <Name of Campus> along with a certification from Client’s Chief Financial Officer, Chief Executive Officer, or President certifying such table’s completeness and accuracy. Client will also provide Foundation a complete copy of Client’s Certificate of Incorporation, as amended as of the Effective Date, and attached to this Equity Agreement as Attachment 2 to this Exhibit B.
3. Client agrees that for an 18-month period following the initial issuance of capital stock, Client shall issue to Foundation additional shares of its capital stock so that, together with all other stock held by Foundation pursuant to this Equity Agreement, Foundation’s equity interest shall equal 5% of the total number of shares of Client’s equity securities (assuming conversion and/or exercise of all securities) on a fully diluted basis.
4. All shares issued to Foundation will be fully paid, non-assessable, and have no requirement of contribution of any kind to Client. Stock certificates shall be issued in the name of “The Research Foundation for The State University of New York.” The address of record shall be:

The Research Foundation for The State University of New York
**[Office of General Counsel – I.P. Section]**
[Address]

1. Foundation shall be entitled to receive all financial statements, budgets and business plans of Client that Client provides to any other shareholder, lender or prospective investor of Client, at the same time and in the same format as provided to such other parties.
2. Foundation shall have the right to participate in any sales of equity securities on the same terms as other purchasers so as to maintain its percentage ownership interest in Client. The foregoing right of participation may be assigned by Foundation to a third party.
3. Notwithstanding any agreement to the contrary, this Equity Agreement shall survive termination of the Client Agreement.
4. According to the executed board resolutions attached hereto as Attachment 3 to this Exhibit B, Client’s board of directors has approved the issuance of capital stock to Foundation and has determined that the Services provided to client under the Program has a value in excess of the par value of the capital stock and that the capital stock and Monthly Fee (as defined in the Client Agreement) shall constitute full payment for Client’s participation in the Program.

IN WITNESS WHEREOF, the parties have caused this Equity Agreement to be executed by their duly authorized representatives as of the Effective Date set forth above.

|  |  |
| --- | --- |
| CLIENT | THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK |
|  |  |
| By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | Name: |
| Title: | Title: |
|  |  |
|  |  |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Attachment 1 to Equity Agreement**

CAPITALIZATION TABLE

Showing all authorized and outstanding securities of Client including all stock, options, warrants and other rights of any kind, whether oral or written, to purchase or acquire securities

of Client as of the Effective Date

**Attachment 2 to Equity Agreement**

CERTIFICATE OF INCORPORATION

**Attachment 3 to Equity Agreement**

[CLIENT NAME]
ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS

[Date]

In accordance with **[Section 141(f) of the Delaware General Corporation Law][Section 708 of the New York Business Corporations Laws]** and the Bylaws of **[Insert Client Name]**, a **[Delaware][New York]** corporation (the “Client”), the undersigned, constituting all of the members of Client’s Board of Directors (the “Board”), hereby adopt the following resolutions effective as of the date first set forth above:

CAPITAL STOCK ISSUANCE

WHEREAS, the Board has determined that it is in the best interests of the Client to obtain certain Services in connection with the Program (as defined in the Client Agreement) from The Research Foundation for The State University of New York ("Foundation") on behalf of SUNY <Name of Campus> and SUNY <Name of Campus> with the goal that an increase in the value of Client also serves to benefit the Program.

NOW, THEREFORE, BE IT RESOLVED, that the Client Agreement (the “Client Agreement”) and the Equity Agreement (the “Equity Agreement”), each by and between Client and Foundation, in substantially the forms presented to the Board and attached hereto as the Client Agreement, Exhibit A and Exhibit B, be, and the same hereby are, authorized and approved; and further

RESOLVED, that the proper officers of Client be, and each of them hereby is, authorized and directed to execute, deliver and perform the Client Agreement and the Equity Agreement, with such changes as any officer of Client may deem necessary, desirable or appropriate, the necessity, desirability and appropriateness of which shall be conclusively evidenced by the execution and delivery thereof by such officer of Client; and further

RESOLVED, that the proper officers of Client be, and each of them hereby is, authorized and directed, for and on behalf of Client, to grant and issue an aggregate of **[insert # of shares]** of its common stock, **[par value $\_\_\_\_\_]** per share (“Common Stock”) to Foundation on the terms and conditions and in exchange for the consideration set forth in the Equity Agreement; and further

RESOLVED, that the Board hereby determines, after due consideration of all relevant factors, that the fair market value of the Common Stock as of the date hereof is equal to $\_\_\_ per share; and further

RESOLVED, that upon receipt of the Client Agreement and Equity Agreement duly executed by Foundation, Client shall issue to Foundation **[insert # of shares]** shares of Common Stock, represented by a certificate or certificates properly legended as required by law and issued in the name of such entity; and further

RESOLVED, that upon the issuance and sale in accordance with the foregoing resolutions, such shares of Common Stock shall be fully paid and nonassessable shares of Client; and further

RESOLVED, that the proper officers of Client be, and each of them hereby is, authorized and directed, for and on behalf of Client, to take all actions necessary to comply with applicable federal and state securities laws and to execute such forms and notices (including consents to service of process) as may be required or advisable to be filed with applicable federal and state authorities to exempt the offer and sale of stock authorized hereby, within the time prescribed by law.

MISCELLANEOUS

Any copy, facsimile or other reliable reproduction of this action may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction be a complete reproduction of the entire original writing.

This Action by Unanimous Written Consent of the Board may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action.

**[Name of Director]**

**[Name of Director]**

**[Name of Director]**