

THIS INSTRUMENT AND ANY SECURITIES ISSUABLE PURSUANT HERETO HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED IN THIS SAFE AND UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM.

[COMPANY NAME]

**SAFE**  
**(“Simple Agreement for Future Equity”)**

THIS CERTIFIES THAT in exchange for the payment by The Research Foundation for The State University of New York (“**Foundation**” or the “**Investor**”) of \$[TO BE DETERMINED] (the “**Purchase Amount**”) on or about the [ ] day of [ ], 20[ ], [COMPANY], a [JURISDICTION] [ENTITY TYPE] (the “**Company**”), issues to the Investor the right to certain shares of the Company’s Capital Stock, subject to the terms described below.

The “**Discount Rate**” is 80%.

See **Section 2** for certain additional defined terms.

**1. Events**

(a) **Next Equity Financing**. If there is a Next Equity Financing before the termination of this SAFE, on the initial closing of such Next Equity Financing, this SAFE will automatically convert into the number of shares of SAFE Preferred Stock equal to the Purchase Amount divided by the Conversion Price. In connection with the automatic conversion of this SAFE into shares of SAFE Preferred Stock, the Investor will execute and deliver to the Company all of the transaction documents related to the Next Equity Financing; *provided*, that such documents are the same documents to be entered into with the purchasers of Standard Preferred Stock, with appropriate variations for the SAFE Preferred Stock if applicable, and *provided further*, that such documents have customary exceptions to any drag-along applicable to the Investor, including, without limitation, limited representations and warranties and limited liability and indemnification obligations on the part of the Investor.

(b) **Liquidity Event**. If there is a Liquidity Event before the termination of this SAFE, this SAFE will automatically be entitled to receive a portion of Proceeds, due and payable to the Investor immediately prior to, or concurrent with, the consummation of such Liquidity Event, equal to the greater of (i) the Purchase Amount (the “**Cash-Out Amount**”) or (ii) the amount payable on the number of shares of Common Stock equal to the Purchase Amount divided by the Liquidity Price (the “**Conversion Amount**”). If any of the Company’s securityholders are given a choice as to the form and amount of Proceeds to be received in a Liquidity Event, the Investor will be given the same choice, *provided* that the Investor may not choose to receive a form of consideration that the Investor would be ineligible to receive as a result of the Investor’s failure to satisfy any requirement or limitation generally applicable to the Company’s securityholders, or under any applicable laws. Notwithstanding the foregoing, in connection with a Change of Control intended to qualify as a tax-free reorganization,

the Company may reduce the cash portion of Proceeds payable to the Investor by the amount determined by its board of directors in good faith for such Change of Control to qualify as a tax-free reorganization for U.S. federal income tax purposes, provided that such reduction (A) does not reduce the total Proceeds payable to such Investor and (B) is applied in the same manner and on a pro rata basis to all securityholders who have equal priority to the Investor under Section 1(d).

(c) **Dissolution Event**. If there is a Dissolution Event before the termination of this SAFE, the Investor will automatically be entitled to receive a portion of Proceeds equal to the Cash-Out Amount, due and payable to the Investor immediately prior to the consummation of the Dissolution Event.

(d) **Liquidation Priority**. In a Liquidity Event or Dissolution Event, this SAFE is intended to operate like standard non-participating Preferred Stock. The Investor's right to receive its Cash-Out Amount is:

(i) Junior to payment of outstanding indebtedness and creditor claims, including contractual claims for payment and convertible promissory notes (to the extent such convertible promissory notes are not actually or notionally converted into Capital Stock);

(ii) On par with payments for other SAFEs and/or Preferred Stock, and if the applicable Proceeds are insufficient to permit full payments to the Investor and such other SAFEs and/or Preferred Stock, the applicable Proceeds will be distributed pro rata to the Investor and such other SAFEs and/or Preferred Stock in proportion to the full payments that would otherwise be due; and

(iii) Senior to payments for Common Stock.

The Investor's right to receive its Conversion Amount is (A) on par with payments for Common Stock and other SAFEs and/or Preferred Stock who are also receiving Conversion Amounts or Proceeds on a similar as-converted to Common Stock basis, and (B) junior to payments described in clauses (i) and (ii) above (in the latter case, to the extent such payments are Cash-Out Amounts or similar liquidation preferences).

(e) **Termination**. This SAFE will automatically terminate (without relieving the Company of any obligations arising from a prior breach of or non-compliance with this SAFE) immediately following the earliest to occur of: (i) the issuance of Capital Stock to the Investor pursuant to the automatic conversion of this SAFE under Section 1(a); or (ii) the payment, or setting aside for payment, of amounts due the Investor pursuant to Section 1(b) or Section 1(c).

(f) **Event of Default**. For purposes of this Note, "Event of Default" means any one or more of the following events, conditions or acts:

(i) Company shall fail to materially perform or comply with any of the covenants, provisions or agreements contained in this Agreement or any other agreement or instrument between Company and Investor;

(ii) Any representation or warranty made by Company to Investor in this SAFE or any other agreement or instrument between Company and Investor shall prove to be untrue or inaccurate in any material respect;

(iii) Company shall (1) apply for or consent to the appointment of a receiver, trustee, intervener, custodian, or liquidator of itself or of all or a substantial part of its assets, (2) be adjudicated bankrupt or insolvent or file a voluntary petition for bankruptcy or admit in writing that it is unable to pay its debts as they become due, (3) make a general assignment for the benefit of creditors, (4) file a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy or insolvency laws, or (5) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy, reorganization, or insolvency proceeding, or take corporate action for the purpose of affecting any of the foregoing;

(iv) An order, judgment, or decree shall be entered by any court of competent jurisdiction or other competent authority approving a petition seeking reorganization of Company or appointing a receiver, trustee, intervener, or liquidator of Company, or of all or substantially all of its assets, and such order, judgment, or decree shall continue unstayed and in effect for a period greater than ninety (90) days;

(v) Any indebtedness of Company of at least \$50,000.00, individually or in the aggregate, is not paid when due;

(vi) Any other material circumstance or event that occurs which makes it unlawful or impossible for Company to meet its obligations hereunder;

(vii) Founders cease to be actively involved in the Company; or

(viii) Failure of the Company to issue SAFE Preferred Stock to Investor within seven (7) years of the date this SAFE.

(g) **Default.** Upon and after the occurrence of an Event of Default, Investor shall notify Company in writing of such Event of Default (in accordance with the Notice requirements set forth in Section 7(j) of the Note/SAFE Purchase Agreement) and provide a fifteen (15) day cure period for resolving the Event of Default. Provided Company has not resolved the Event of Default within such cure period, an Event of Default shall constitute a Liquidation Event under the terms of this SAFE.

## **2. Definitions**

**“Capital Stock”** means the capital stock of the Company, including, without limitation, the **“Common Stock”** and the **“Preferred Stock.”**

**“Change of Control”** means (i) a transaction or series of related transactions in which any “person” or “group” (within the meaning of Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities

Exchange Act of 1934, as amended), directly or indirectly, of more than 50% of the outstanding voting securities of the Company having the right to vote for the election of members of the Company's board of directors, (ii) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

**"Common Stock"** is all issued and outstanding common stock of the Company.

**"Company Capitalization"** is calculated as of immediately prior to the Next Equity Financing and (without double-counting):

- Includes all shares of Capital Stock issued and outstanding;
- Includes all Converting Securities;
- Includes all (i) issued and outstanding Options and (ii) Promised Options;
- Includes the Unissued Option Pool; and
- Excludes, notwithstanding the foregoing, any increases to the Unissued Option Pool (except to the extent necessary to cover Promised Options that exceed the Unissued Option Pool) in connection with the Next Equity Financing.

**"Conversion Price"** means either: (i) the SAFE Price or (ii) the Discount Price, whichever calculation results in a greater number of shares of SAFE Preferred Stock for Investor.

**"Converting Securities"** includes this SAFE and other convertible securities issued by the Company, including but not limited to: (i) other SAFEs; (ii) convertible promissory notes and other convertible debt instruments; and (iii) convertible securities that have the right to convert into shares of Capital Stock.

**"Discount Price"** means the price per share of the Standard Preferred Stock sold in the Next Equity Financing multiplied by the Discount Rate.

**"Dissolution Event"** means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (**excluding** a Liquidity Event), whether voluntary or involuntary.

**"Dividend Amount"** means, with respect to any date on which the Company pays a dividend on its outstanding Common Stock, the amount of such dividend that is paid per share of Common Stock multiplied by (x) the Purchase Amount divided by (y) the Liquidity Price (treating the dividend date as a Liquidity Event solely for purposes of calculating such Liquidity Price).

**"Next Equity Financing"** means a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which the Company issues and sells Preferred Stock at a fixed valuation, including but not limited to, a pre-money or post-money valuation.

**“Initial Public Offering”** means the closing of the Company’s first firm commitment underwritten initial public offering of Common Stock pursuant to a registration statement filed under the Securities Act.

**“Liquidity Capitalization”** is calculated as of immediately prior to the Liquidity Event, and (without double- counting):

- Includes all shares of Capital Stock issued and outstanding;
- Includes all (i) issued and outstanding Options and (ii) to the extent receiving Proceeds, Promised Options;
- Includes all Converting Securities, other than any SAFEs and other convertible securities (including without limitation shares of Preferred Stock) where the holders of such securities are receiving Cash-Out Amounts or similar liquidation preference payments in lieu of Conversion Amounts or similar “as-converted” payments; and
- Excludes the Unissued Option Pool.

**“Liquidity Event”** means a Change of Control, an Initial Public Offering or the occurrence of uncured Event of Default under Section 1(f) hereof.

**“Liquidity Price”** means the price per share equal to the Pre-Money Valuation Cap divided by the Liquidity Capitalization.

**“Options”** includes options, restricted stock awards or purchases, RSUs, SARs, warrants or similar securities, vested or unvested.

**“Preferred Stock”** is all issued and outstanding preferred stock of the Company.

**“Proceeds”** means cash and other assets (including without limitation stock consideration) that are proceeds from the Liquidity Event or the Dissolution Event, as applicable, and legally available for distribution.

**“Promised Options”** means promised but ungranted Options that are the greater of those (i) promised pursuant to agreements or understandings made prior to the execution of, or in connection with, the term sheet for the Next Equity Financing (or the initial closing of the Next Equity Financing, if there is no term sheet), or (ii) treated as outstanding Options in the calculation of the Standard Preferred Stock’s price per share.

**“SAFE”** means an instrument containing a future right to shares of Capital Stock, similar in form and content to this instrument, purchased by investors for the purpose of funding the Company’s business operations. References to “this SAFE” mean this specific instrument.

**“SAFE Preferred Stock”** means the shares of the series of Preferred Stock issued to the Investor in an Next Equity Financing, having the identical rights, privileges, preferences and restrictions as the shares of Standard Preferred Stock, other than with respect to: (i) the per share liquidation preference and the initial conversion price for purposes of price-based anti-dilution protection, which will equal the Conversion Price; and (ii) the basis for any dividend rights, which will be based on the Conversion Price.

**“SAFE Price”** means the price per share equal to the Pre-Money Valuation Cap divided by the Company Capitalization.

**“Standard Preferred Stock”** means the shares of the series of Preferred Stock issued to the investors investing new money in the Company in connection with the initial closing of the Next Equity Financing.

**“Unissued Option Pool”** means all shares of Capital Stock that are reserved, available for future grant and not subject to any outstanding Options or Promised Options (but in the case of a Liquidity Event, only to the extent Proceeds are payable on such Promised Options) under any equity incentive or similar Company plan.

### **3. Miscellaneous**

(a) Any provision of this SAFE may be amended, waived or modified by written consent of the Company and the Investor.

(b) Any notice required or permitted by this SAFE will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party’s address listed on the signature page, as subsequently modified by written notice.

(c) The Investor is not entitled, as a holder of this SAFE, to vote or be deemed a holder of Capital Stock for any purpose other than tax purposes, nor will anything in this SAFE be construed to confer on the Investor, as such, any rights of a Company stockholder or rights to vote for the election of directors or on any matter submitted to Company stockholders, or to give or withhold consent to any corporate action or to receive notice of meetings, until shares have been issued on the terms described in Section 1. However, if the Company pays a dividend on outstanding shares of Common Stock (that is not payable in shares of Common Stock) while this SAFE is outstanding, the Company will pay the Dividend Amount to the Investor at the same time.

(d) Neither this SAFE nor the rights in this SAFE are transferable or assignable, by operation of law or otherwise, by either party without the prior written consent of the other; *provided, however*, that this SAFE and/or its rights may be assigned without the Company’s consent by the Investor to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Investor, including, without limitation, any general partner, managing member, officer or director of the Investor, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, the Investor; and *provided, further*, that the Company may assign this SAFE in whole, without the consent of the Investor, in connection with a reincorporation to change the Company’s domicile.

(e) In the event any one or more of the provisions of this SAFE is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this SAFE operate or would prospectively operate to invalidate this SAFE, then and in any such event, such provision(s) only will be deemed null and void and will not affect

any other provision of this SAFE and the remaining provisions of this SAFE will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(f) All rights and obligations hereunder will be governed by the laws of the State of New York, without regard to the conflicts of law provisions of such jurisdiction.

(g) The parties acknowledge and agree that for United States federal and state income tax purposes this SAFE is, and at all times has been, intended to be characterized as stock, and more particularly as common stock for purposes of Sections 304, 305, 306, 354, 368, 1036 and 1202 of the Internal Revenue Code of 1986, as amended. Accordingly, the parties agree to treat this SAFE consistent with the foregoing intent for all United States federal and state income tax purposes (including, without limitation, on their respective tax returns or other informational statements).

*[Remainder of Page Intentionally Left Blank. Signature Page Follows.]*

**IN WITNESS WHEREOF**, the undersigned have caused this SAFE to be duly executed and delivered.

**[COMPANY NAME]**

By: \_\_\_\_\_

Name: **[SIGNEE NAME]**

Title: **[SIGNEE TITLE]**

Address: **[COMPANY ADDRESS]**

Email: **[SIGNEE EMAIL]**

**THE RESEARCH FOUNDATION FOR THE STATE  
UNIVERSITY OF NEW YORK**

By: \_\_\_\_\_

Name: Nicholas Querques

Title: Director of New Ventures

Address: 35 State Street, Albany, NY 12207

Email: nicholas.querques@rfsuny.org