

**SUNY TECHNOLOGY ACCELERATOR FUND
SUNY STARTUP SUMMER SCHOOL CATALYST INVESTMENT**

NOTE PURCHASE AGREEMENT

THIS NOTE PURCHASE AGREEMENT (this “Agreement”) is made as of [Month] [____], 20____ (the “Effective Date”), by and among The Research Foundation for The State University of New York, a New York non-profit educational corporation with a primary office address of 35 State Street, Albany New York 12207 (the “Foundation”), and [Insert Company Name], a [Insert Entity Information and State of Incorporation] with a primary office address of [Include Address] (the “Company”). The Foundation and the Company are sometimes referred to herein as a “Party” and, collectively, as the “Parties”.

WHEREAS, the Foundation exists to further develop and expand the facilities and resources of The State University of New York (“SUNY”) in order to allow for the provision of more extensive and robust educational and research opportunities to SUNY students, faculty, staff and alumni and to the people of the State of New York, including by increasing SUNY student and faculty access to experiential learning opportunities and cutting-edge technology by engaging in various activities to foster an entrepreneurial environment in the State of New York; and

WHEREAS, in furtherance of this charitable mission, the Foundation has created the SUNY Technology Accelerator Fund SUNY Startup Summer School Catalyst Investment (the “Catalyst Investment”) which serves the dual purpose of fostering the development of new spinout companies while also providing SUNY-affiliated companies with accelerated entrepreneurial education and training to help them secure the initial funding needed to successfully commercialize and get their technology to market; and

WHEREAS, Company has won the Catalyst Investment and, as a result thereof, Foundation is investing Ten Thousand and 00/100 U.S. Dollars (\$10,000.00) in the Company pursuant and subject to the terms and conditions contained in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions**. Capitalized terms used herein which are not otherwise defined shall have the following meanings:

(a) “Affiliate” means an affiliate as defined in Rule 405 promulgated under the Securities Act.

(b) “Common Stock” means the Common Stock of the Company, par value \$[Include Par Value] per share.

(c) “Conversion Shares”, for purposes of determining the type of Equity Securities issuable upon conversion of the Note, means:

(i) if the Note is converted to equity pursuant to Section 2.2(a) below, the Equity Securities issued in the Next Equity Financing; and

(ii) if the Note is converted to equity pursuant to either Section 2.2(b) or Section 2.2(c) below, shares of the most senior and preferred Equity Securities previously issued by the Company (i.e., if Preferred Stock has been issued by the Company, the Conversion Shares shall likewise be Preferred Stock).

(d) “Conversion Price” means:

(i) with respect to a conversion pursuant to Section 2.2(a) below, the lesser of (A) eighty percent (80%) of the price paid per share for Equity Securities by the investors in the Next Equity Financing, and (B) the per share price derived by dividing (x) an equity valuation of the Company equal to the sum of Two Million Five Hundred and 00/100 U.S. Dollars (\$2,500,000.00), by (y) the number of shares of the Company’s Common Stock outstanding immediately prior to the Equity Financing, as calculated on a fully diluted and as converted basis (but excluding any Equity Securities issuable upon conversion of the Note);

(ii) with respect to a conversion pursuant to Section 2.2(b) or Section 2.2(c) below, the per share price derived by dividing (x) an equity valuation of the Company equal to the sum of Two Million and 00/100 U.S. Dollars (\$2,000,000.00), by (y) the number of shares of the Company’s Common Stock outstanding immediately prior to such conversion, as calculated on a fully diluted and as converted basis (but excluding any Equity Securities issuable upon conversion of the Note);

(e) “Corporate Transaction” includes (A) the closing of the sale, transfer or other disposition of all or substantially all of the Company’s assets, (B) the consummation of the merger or consolidation of the Company with or into another entity (except a merger or consolidation in which the holders of capital stock of the Company immediately prior to such merger or consolidation continue to hold at least fifty percent (50%) of the voting power of the capital stock of the Company or the surviving or acquiring entity), (C) the closing of the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter of the Company’s securities) of the Company’s Equity Securities if, after such closing, such person or group of affiliated persons would hold fifty percent (50%) or more of the outstanding voting stock of the Company (or the surviving or acquiring entity), (D) a liquidation, dissolution or winding up of the Company, or (E) an Initial Public Offering.

(f) “Equity Securities” means any and all shares of capital stock or other equity, voting or profits interests of or in the Company, as applicable, including without limitation Common Stock or Preferred Stock, as well as all rights, options, conversion rights or warrants to purchase any such shares or interests (with or without additional consideration), in each case whether or not authorized as of the date hereof.

(g) “Initial Public Offering” means the closing of the issuance and sale of shares of Equity Securities of the Company in the Company’s first underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the “Act”).

(h) “Key Employee(s)” means [Company To Complete].

(i) “Maturity Date” means the fourth (4th) anniversary of the Effective Date.

(j) “Material Adverse Effect” means any facts, events, circumstances or changes that, individually or in the aggregate, is or would reasonably be expected to be materially adverse to the condition (financial or otherwise), business, revenue, profitability, assets, liabilities or results of operations of the Company.

(k) “Next Equity Financing” means the next sale (or series of related sales) by the Company of its Equity Securities following the Effective Date to bona-fide third-party purchasers (other than the current holders of the Company’s Equity Securities as of the Effective Date) from which the Company receives gross cash proceeds of not less than One Million and 00/100 U.S. Dollars (\$1,000,000.00) and pursuant to which the Equity Securities sold, in each instance, are priced based upon a pre-money valuation of the Company of greater than Two Million and 00/100 U.S. Dollars (\$2,000,000.00).

(l) “Note” means the Convertible Promissory Note issued to the Foundation pursuant to Section 2.1 below, the form of which is attached hereto as Exhibit A.

(m) “Outstanding Amounts Due” means the total amount remaining due and owing under the terms of this Agreement and the Note as of the date in question, including without limitation outstanding principal, unpaid accrued interest, and, as applicable, any default interest or costs of collection (including without limitation attorneys’ fees and court costs) or other amounts contemplated in Section 6.2 of this Agreement or Section 8 of the Note.

(n) “Preferred Stock” means any and all classes and series of the Company’s capital stock other than Common Stock, whether now in existence or hereafter coming into existence.

(o) “Related Person” means a related person as such term is defined in the instructions to Item 404(a) of Regulation S-K promulgated under the Securities Act.

2. Terms of the Note.

2.1 Issuance of Note; Use of Proceeds. The Company hereby agrees to sell and issue to the Foundation the Note in the principal amount of Ten Thousand and 00/100 U.S. Dollars (\$10,000.00). The Note is payable in accordance with its terms or convertible into Conversion Shares pursuant to Section 2.2 below. The Company represents, warrants and covenants that the Foundation’s Ten Thousand and 00/100 U.S. Dollar (\$10,000.00) investment in the Company shall (i) be used by the Company for the sole purpose of funding the project described in the application submitted by the Company in connection with the Catalyst Investment, and (ii) not be used for the purposes of paying, directly or indirectly, (1) the salary or other employment wages or compensation of the Company’s executive team, (2) construction or renovation costs, (3) legal fees or court costs, (4) patent fees or costs, or (5) permit fees or other facility operating expenses (e.g., insurance, utilities, rent).

2.2 Right to Convert Note.

(a) Next Equity Financing. The Outstanding Amounts Due will be automatically converted into Conversion Shares upon the closing of the Next Equity Financing. The number of Conversion Shares to be issued upon such conversion shall be equal to the quotient

obtained by dividing the Outstanding Amounts Due by the Conversion Price. At least ten (10) days prior to the closing of the Next Equity Financing, the Company shall notify the Foundation in writing of the terms of the Next Equity Financing. Except as otherwise expressly set forth herein, the issuance of Conversion Shares pursuant to the conversion of the Note shall be upon and subject to the same terms and conditions applicable to the Equity Securities sold in the Next Equity Financing.

(b) Corporate Transaction or IPO. In the event of a Corporate Transaction prior to full payment or conversion of the Note as provided herein, the Outstanding Amounts Due may, at the option of the Foundation, (i) be declared due and payable, in whole or in part, prior to the closing of the Corporate Transaction, and/or (ii) converted into Conversion Shares, in whole or in part, with the number of Conversion Shares to be issued upon such conversion equal to the quotient obtained by dividing the amount of the Outstanding Amounts Due elected to be converted by the Foundation on the date of conversion, by the Conversion Price.

(c) Maturity Date Conversion. If the Next Equity Financing or a Corporate Transaction has not occurred on or before the Maturity Date, the Outstanding Amounts Due may be converted, at the option of the Foundation, in whole or in part, into Conversion Shares, with the number of Conversion Shares to be issued upon such conversion equal to the quotient obtained by dividing the amount of the Outstanding Amounts Due elected to be converted by the Foundation on the date of conversion, by the Conversion Price. In the interest of avoidance of doubt, if Foundation does not so elect to convert, or elects to only convert a portion of the Outstanding Amounts Due, then all or the remainder of the Outstanding Amounts Due, respectively, shall become immediately due and payable on the Maturity Date without any further action required on the part of any Party.

(d) No Fractional Shares. Upon the conversion of the Note into Conversion Shares, in lieu of any fractional shares to which the Foundation would otherwise be entitled, the Company shall pay the Foundation cash equal to such fraction multiplied by the Conversion Price.

(e) Mechanics of Conversion. Company shall provide the Foundation with at least thirty (30) days' prior written notice of any pending or proposed Next Equity Financing or Corporate Transaction (the "Transaction Notice"). The Transaction Notice shall (i) contain the material terms of the subject transaction, including without limitation any valuation of the Licensee completed in connection therewith and the consideration exchanged by all parties therein, including without limitation such consideration paid for each share of Equity Securities, to the extent applicable, (ii) attach a current and complete copy of the Company's Certificate of Incorporation, By-Laws, and capitalization chart, and (iii) include copies of any shareholders, voting rights, investor rights, right of refusal or similar agreements by and among the Company and the holders of its Equity Securities which the Foundation will be asked to execute in connection with its receipt of Conversion Shares. At least thirty (30) days' prior to the Maturity Date, Company shall likewise provide the Foundation with the information set forth in the foregoing romanettes "(ii)" and "(iii)". Before the Foundation shall be entitled to convert the Outstanding Amounts Due into Conversion Shares pursuant to Section 2.2(b) or Section 2.2(c), the Foundation shall give written notice to the Company of its election to so convert in accordance with the terms hereof. The Company shall not be required to issue or deliver the Conversion Shares until the Foundation has surrendered the Note to the Company; provided, however, that in the event that

the Note is being converted in part, then Foundation shall not be required to surrender the Note until the Company has paid to Foundation the entirety of the remaining Outstanding Amounts Due which are not being converted into Conversion Shares. In the event of any conversion in connection with a Corporate Transaction, such conversion may be made contingent upon the closing of the subject Corporate Transaction.

3. Closing Mechanics.

3.1 Closing. Contemporaneously with the execution of this Agreement, the Foundation shall deliver to the Company, by certified check or wire transfer of immediately available funds to such account designated by Company to Foundation in writing, the sum of Ten Thousand and 00/100 U.S. Dollars (\$10,000.00), and the Company shall deliver the fully executed Note to the Foundation.

4. Representations and Warranties of the Company. As a material inducement to Foundation to enter into this Agreement and the transactions contemplated herein, the Company hereby represents and warrants to the Foundation that:

4.1 Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the state in which it was incorporated and has all requisite corporate power and authority to carry on its business as now conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a Material Adverse Effect on its business or properties.

4.2 Authorization. All corporate action has been taken on the part of the Company, its officers, directors and stockholders as is necessary for the authorization, execution and delivery of this Agreement and the Note. This Agreement and the Note each constitutes the Company's valid and legally binding obligation, enforceable in accordance with their respective terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, or similar laws relating to or affecting the enforcement of creditors' rights, and (ii) laws relating to the availability of specific performance, injunctive relief or other equitable remedies. None of the execution of this Agreement, the issuance of the Note, nor its subsequent conversion into Conversion Shares, nor the issuance of any other Securities (as defined in Section 5.2 below), will be subject to the preemptive rights of any stockholder of the Company.

4.3 Compliance with Other Instruments. Neither the authorization, execution and delivery of this Agreement, nor the issuance and delivery of the Note, will constitute or result in a default or violation of any law or regulation applicable to the Company or any term or provision of the Company's current Certificate of Incorporation or Bylaws or any agreement or instrument by which it is bound or to which its properties or assets are subject.

4.4 Valid Issuance. The Conversion Shares to be issued, sold and delivered in accordance with the terms of the Note, and any other Securities, will be duly authorized and validly issued, fully paid and nonassessable and, assuming the accuracy of the representations and warranties of the Foundation in this Agreement, will be issued in compliance with all applicable federal and state securities laws.

4.5 Intellectual Property. The Company's Intellectual Property (as defined below) is set forth on Schedule 4.5 to this Agreement. To its knowledge, the Company has sufficient title and ownership of, or licenses to, all patents, trademarks, service marks, trade names, domain names, copyrights, trade secrets, information and all other intellectual property and proprietary rights necessary for its business as now conducted and as currently anticipated to be conducted, without any violation or infringement of the rights of others (such necessary intellectual property and proprietary rights collectively, the "Company Intellectual Property"). There are no outstanding options, licenses, agreements, claims, encumbrances or shared ownership of interests of any kind relating to Company Intellectual Property that is to any extent owned by or exclusively licensed to the Company, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, domain names, copyrights, trade secrets, licenses, information, and/or other intellectual property or proprietary rights of any other person or entity, except, in either case, for standard end-user, object code, internal-use software license and support/maintenance agreements. The Foundation has received a true, complete and correct copy of each agreement set forth on Schedule 4.5, and each such agreement is in full force and effect and has not been amended in any respect from the version provided to the Foundation, and the Company is not in breach of any such agreement (nor, to the knowledge of the Company, is any counterparty to such agreement in breach thereof). The Company has not received any communications alleging that the Company has violated or would violate any of the patents, trademarks, service marks, trade names, copyrights or trade secrets or other intellectual property or proprietary rights of any other person or entity. The Company is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her reasonable best efforts to promote the interests of the Company or that would conflict with the Company's business as now conducted or as currently anticipated to be conducted. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees made prior to or outside the scope of their employment by the Company which have not been or will not be assigned to the Company.

4.6 Capitalization and Relationships. The capitalization chart attached hereto as Schedule 4.6 accurately and completely shows all of the issued and outstanding Equity Securities of or in the Company and the holders thereof as of the Effective Date. The Company does not currently own or control, directly or indirectly, any interest in any other corporation, partnership, trust, joint venture, limited liability company, association, or other business entity. The Company is not a member of or a participant in any joint venture, partnership or similar arrangement.

4.7 Litigation. There are no claims, actions, suits, proceedings, arbitrations, complaints, charges or investigations pending or, to the Company's knowledge, currently threatened in writing (a) against the Company or any director, officer or Key Employee(s) of the Company (i) arising out of their relationship with the Company, or (ii) which could have a material adverse effect on the business of the Company; (b) that questions the validity of this Agreement or the Note, or the right of the Company to enter into them or to consummate the transactions contemplated in this Agreement and the Note; or (c) to the Company's knowledge, that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Neither the Company nor, to the Company's Knowledge, any of its officers,

directors or Key Employees is a party or is named as subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality (in the case of officers, directors or Key Employees, such as would affect the Company). There is no action, suit, proceeding or investigation by the Company pending or which the Company intends to initiate. The foregoing includes, without limitation, actions, suits, proceedings or investigations pending or threatened in writing (or any basis therefor known to the Company) involving the prior employment of any of the Company's employees, their services provided in connection with the Company's business, any information or techniques allegedly proprietary to any of their former employers or their obligations under any agreements with prior employers.

4.8 Property. Except as set forth in Schedule 4.8, the property and assets that the Company owns are free and clear of all mortgages, deeds of trust, liens, loans and encumbrances, except for statutory liens for the payment of current taxes that are not yet delinquent and encumbrances and liens that arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets. With respect to the property and assets it leases, the Company is in compliance with such leases and, to its knowledge, holds a valid leasehold interest free of any liens, claims or encumbrances other than those of the lessors of such property or assets.

4.9 Financial Statements. All financial statements provided to the Foundation by the Company (i) have been prepared in accordance with United States generally accepted accounting principles ("U.S. GAAP") applied on a consistent basis throughout the periods indicated therein, except that such financial statements may not contain all footnotes required by U.S. GAAP, and (ii) fairly present in all material respects the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject to normal year-end audit adjustments. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with U.S. GAAP. To the Company's knowledge, since the date of the most recent financial statements provided to the Foundation, no fact, event, circumstance or change has occurred which has had a Material Adverse Effect.

4.10 Registration Rights. Except as set forth on Schedule 4.10, the Company is not a party to any agreement or commitment that obligates Company to register under the Securities Act any of Company's presently outstanding securities or any of Company's securities that may be issued after the Effective Date.

4.11 Related Person Transactions. Except as disclosed on Schedule 4.11 and other than (i) standard employee benefits generally made available to all employees, (ii) standard director and officer indemnification agreements approved by Company's board of directors, and (iii) the purchase of shares of Company's capital stock and the issuance of options to purchase shares of Common Stock, in each instance, approved in the written minutes of Company's board of directors (previously provided to Foundation or its counsel), there are no agreements, understandings or proposed transactions between the Company and any Related Person, or an Affiliate of a Related Person, in which (a) Company was or is to be a participant, (b) the amount involved in any such agreement, understanding or proposed transaction exceeds Ten Thousand and 00/100 U.S. Dollars (\$10,000.00), and (c) in which any such Related Person had or will have a direct or indirect material interest. Complete and accurate copies of all written agreements and

written descriptions of all oral agreements, in each case, set forth on Schedule 3.1(n) have been delivered to Foundation on or prior to the Closing.

4.12 Employee Matters.

(a) As of the Effective Date, Company employs [] full-time employees and [] part-time employees and engages [] consultants or independent contractors. Schedule 4.12 sets forth a detailed description of all compensation, including salary, bonus, severance obligations and deferred compensation paid or payable for each officer, employee, consultant and independent contractor of the Company who received compensation in excess of One Hundred Thousand and 00/100 U.S. Dollars (\$100,000.00) for the last fiscal year ended immediately prior to the Effective Date or is anticipated to receive compensation in excess of One Hundred Thousand and 00/100 U.S. Dollars (\$100,000.00) in the present fiscal year.

(b) To the best of Company's knowledge, none of its officers, directors or employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreements, or subject to any judgment, decree or order of any court or administrative agency, that would materially interfere with such person's ability to promote the interest of Company or that would conflict with Company's business. Neither the execution or delivery of this Agreement or the Note, nor the carrying on of the Company's business by the officers, directors or employees of Company, nor the conduct of Company's business as now conducted and as presently proposed to be conducted, will, to the best of Company's knowledge, conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract, covenant or instrument under which any officer, director or employee is now obligated.

(c) Company is not delinquent in payments to any of its employees, consultants, or independent contractors for any wages, salaries, commissions, bonuses, or other direct compensation for any service performed for it or amounts required to be reimbursed to such employees, consultants, or independent contractors. Company has complied in all material respects with all applicable state and federal equal employment opportunity laws and with other laws related to employment, including those related to wages, hours, worker classification, and collective bargaining. Company has withheld and paid to the appropriate governmental entity or is holding for payment not yet due to such governmental entity all amounts required to be withheld from employees of Company and is not liable for any arrears of wages, taxes, penalties, or other sums for failure to comply with any of the foregoing.

(d) Company has never maintained, established or sponsored and has never participated in or contributed to an employee benefit plan, which employee benefit plan is subject to the Employee Retirement Income Security Act of 1974, as amended.

4.13 Tax Returns and Payments. There are no federal, state, county, local or foreign taxes due and payable by Company which have not been timely paid. There are no accrued and unpaid federal, state, county, local or foreign taxes of Company which are due, whether or not assessed or disputed. There have been no examinations or audits of any tax returns or reports by any applicable federal, state, local or foreign governmental agency. Company has duly and timely

filed all federal, state, county, local and foreign tax returns required to have been filed by it and there are in effect no waivers of applicable statutes of limitations with respect to taxes for any year.

4.14 Full Disclosure. Company has provided the Foundation with all of the information that the Foundation has requested for deciding whether to invest in the Company and purchase the Note. None of this Agreement, the Note or any exhibits or schedules hereto or thereto contain any untrue statement of a material fact or omits to state a material fact necessary to make the statements in this Agreement or the Note not misleading.

5. Representations and Warranties of the Foundation. In connection with the transactions provided for herein, the Foundation hereby represents and warrants to the Company that:

5.1 Authorization. This Agreement constitutes the Foundation's valid and legally binding obligation, enforceable in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, or similar laws relating to or affecting the enforcement of creditors' rights, (ii) laws relating to the availability of specific performance, injunctive relief or other equitable remedies, and (iii) applicable usury laws. The Foundation represents that it has full power and authority to enter into this Agreement.

5.2 Purchase Entirely for Own Account. The Foundation acknowledges that this Agreement is made with the Foundation in reliance upon the Foundation's representation to the Company that the Note, the Conversion Shares, any Common Stock issuable upon conversion of the Conversion Shares and any additional shares purchased by the Foundation pursuant to **Section 7.1** hereof (collectively, the "Securities") will be acquired for investment for the Foundation's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that Foundation has no present intention of selling, granting any participation in, or otherwise distributing the same; provided, however, that Foundation may transfer or assign any rights which it receives to acquire or participate in subsequent issuances of Securities by the Company to a third-party, including without limitation Osage University Partners or an Affiliate thereof, and hereby informs Company that Foundation reserves the right to transfer to SUNY, in whole or in part, any rights of Foundation under this Agreement or the Note, or any of the Securities.

5.3 Investment Experience. The Foundation is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Securities. The Foundation also represents it has not been organized solely for the purpose of acquiring the Securities.

5.4 Accredited Investor. The Foundation is an "accredited investor" within the meaning of Rule 501 of Regulation D of the Securities and Exchange Commission (the "SEC"), as presently in effect.

5.5 Restricted Securities. The Foundation understands that the Securities are characterized as "restricted securities" under the federal securities laws inasmuch as they are being

acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Act only in certain limited circumstances.

5.6 Legends. It is understood that the Securities may bear the following legend:

“THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT, OR OTHERWISE IN COMPLIANCE WITH THAT CERTAIN NOTE PURCHASE AGREEMENT BETWEEN THE ISSUER AND THE HOLDER, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE ISSUER.”

6. Defaults and Remedies.

6.1 Events of Default. The following events shall be considered events of default with respect to this Agreement and/or the Note (each individually, an “Event of Default”):

(a) The Company shall default in the payment of any part of the principal, unpaid accrued interest or other amounts when due or owing under the Note for more than five (5) days of the due date therefor;

(b) The Company shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a voluntary petition for bankruptcy, or shall file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, dissolution or similar relief under any present or future statute, law or regulation, or shall file any answer admitting the material allegations of a petition filed against the Company in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Company, or of all or any substantial part of the properties of the Company, or the Company or its respective directors or majority stockholders shall take any action looking to the dissolution or liquidation of the Company;

(c) Within thirty (30) days after the commencement of any proceeding against the Company seeking any bankruptcy reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or within thirty (30) days after the appointment without the consent or acquiescence of the Company of any trustee, receiver or liquidator of the Company or of all or any substantial part of the properties of the Company, such appointment shall not have been vacated;

(d) Any default or defined event of default that has not otherwise been cured or forgiven shall occur under any agreement to which the Company or any of its subsidiaries is a

party that evidences indebtedness of Ten Thousand and 00/100 U.S. Dollars (\$10,000.00) or more;
or

(e) a final judgment or order for the payment of money, or any final order granting equitable relief, shall be entered against the Company and such judgment or order has or will have a Materially Adverse Effect on the financial condition of the Company, as reasonably determined by Foundation;

(f) The Company shall fail to observe or perform any other obligation to be observed or performed by it under this Agreement or the Note, or any representation or warranty contained in this Agreement or the Note is reasonably determined by Foundation to be inaccurate, incomplete or misleading, and, in either case, Company does not remedy or cure such failure, non-performance, breach or misrepresentation within thirty (30) days of the date of Foundation's written notice to Company advising it of the same.

6.2 Remedies. Upon the occurrence of an Event of Default, (a) interest shall accrue at a rate equal to the lesser of (i) Fifteen Percent (15%) per annum, or (ii) the maximum rate permitted by law (the "Default Interest") for so long as such Event of Default is continuing; (b) at the Foundation's option, the entire unpaid principal and accrued and unpaid interest on the Note shall, without presentment, demand, protest, or notice of any kind, all of which are hereby expressly waived, be forthwith due and payable; (c) the Foundation may, immediately and without expiration of any period of grace, enforce payment of all amounts due and owing under such Note and exercise any and all other remedies granted to it at law, in equity or otherwise; and (d) the Company shall pay all reasonable expenses (including, without limitation, reasonable attorneys' fees and court costs) incurred by the Foundation in enforcing its rights under this Agreement and the Note, including without limitation in connection with collecting the Outstanding Amounts Due. Company acknowledges and agrees that (i) the occurrence of an Event of Default will require the Lender to incur additional costs and expenses which are extremely difficult and impractical to ascertain at the present time; and (ii) that an amount equal to the Default Interest, plus the other costs and fees imposed under this Agreement and the Note, is a reasonable estimate of the damage to the Foundation in the event of such an Event of Default, regardless of whether there has been an acceleration hereunder.

7. Additional Covenants. The Company covenants and agrees as follows:

7.1 Additional Rights Upon Next Equity Financing. The Company will provide the Foundation proportionate rights of first offer, tag-along rights, pre-emptive rights and/or similar rights to purchase subsequent issuances of Equity Securities (collectively "Pre-Emptive Rights") as are granted to the other purchaser(s) of Equity Securities in the Next Equity Financing, on and subject to such terms as are applicable to such purchaser(s), which Pre-Emptive Rights will provide that they may only be amended, waived or terminated with the consent of the Foundation unless such amendment, waiver or termination applies to all persons acquiring Equity Securities in such Next Equity Financing (the "Next Equity Financing Investors") equally in the same fashion and not in a manner that disproportionately affects the Foundation as compared to the Next Equity Financing Investors.

7.2 Information Rights. As long as the Note remains outstanding:

(a) Observer Right. The Company shall invite a representative of the Foundation to attend all meetings or other deliberative sessions of its Board of Directors in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors, as and when so provided to the directors; provided, however, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets.

(b) Basic Financial Information. In the event that the Company receives more than One Hundred Thousand and 00/100 U.S. Dollars (\$100,000.00) in cash from its operations (excluding any financing activity) in any calendar quarter prior to repayment or conversion of the Note (such a month, a “Cash Flow Positive Month”), then, it will further provide to the Foundation (1) annual unaudited financial statements for each fiscal year of the Company, beginning with the fiscal year that includes the Cash Flow Positive Month, including an unaudited balance sheet as of the end of such fiscal year, an unaudited statement of operations and an unaudited statement of cash flows of the Company for such year, all prepared in accordance with U.S. GAAP; and (2) quarterly unaudited financial statements for each fiscal quarter of the Company (except the last quarter of the Company’s fiscal year), beginning with the fiscal quarter that includes the Cash Flow Positive Month, including an unaudited balance sheet as of the end of such fiscal year, an unaudited statement of operations and an unaudited statement of cash flows of the Company for such quarter, all prepared in accordance with U.S. GAAP, subject to changes resulting from normal year-end audit adjustments. If the Company has audited versions of any of the foregoing, it shall provide those in lieu of the unaudited versions.

(c) Inspection Rights. The Company shall permit the Foundation to visit and inspect the Company’s properties, to examine its books of account and records and to discuss the Company’s affairs, finances and accounts with its officers, all at such reasonable times as may be requested by the Foundation, at the Foundation’s sole cost and expense.

7.3 Authorization of Stock. Prior to the issuance of any Conversion Shares, the Company, at its sole cost and expense, shall take all required corporate action, including effecting an appropriate amendment to its Certificate of Incorporation, to duly authorize the Conversion Shares, and ensure that the Conversion Shares are validly issued, fully paid and nonassessable.

7.4 “Market Stand-Off” Agreement. The Foundation hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the Company’s first firm commitment underwritten public offering under the Act (the “Initial Offering”) and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred twenty (120) days) (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock held immediately prior to the effectiveness of the registration statement for such offering, or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled

by delivery of Common Stock or other securities, in cash or otherwise. The foregoing provisions of this Section 7.4 shall apply only to the Company's initial offering of Equity Securities, shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to Foundation if all officers, directors and greater than one percent (1%) stockholders of the Company enter into similar agreements. The Foundation further agrees to execute such agreements as may be reasonably requested by the underwriters in the Initial Offering that are consistent with this Section 7.4. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply to the Foundation pro rata based on the number of shares subject to such agreements. The Foundation agrees that a legend reading substantially as follows shall be placed on all certificates representing all registrable securities of the Foundation (and the shares or securities of every other person subject to the restriction contained in this Section 7.4):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A LOCK-UP PERIOD AFTER THE EFFECTIVE DATE OF THE ISSUER'S REGISTRATION STATEMENT FILED UNDER THE ACT, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL HOLDER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED AT THE ISSUER'S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

8. Miscellaneous.

8.1 Successors and Assigns. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided, however, that the Company may not delegate its obligations under this Agreement without the written consent of the Foundation. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

8.2 Governing Law. This Agreement and the Note shall be governed by and construed under the laws of the State of New York as applied to agreements among New York residents, made and to be performed entirely within the State of New York.

8.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.4 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

8.5 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not so confirmed, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage

prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the following addresses (or at such other addresses as shall be specified by notice given in accordance with this Section 8.5):

If to the Company:

[Company To Complete]

With a copy to:

[Company To Complete]

If to RF:

To the address for the Foundation set forth in the opening paragraph of this Agreement.

With a copy to:

The Research Foundation for
The State University of New York
P.O. Box 9
Albany, New York 12201-0009
Attn: General Counsel

8.6 Finder's Fee. Each party represents that it neither is nor will be obligated for any finder's fee or commission in connection with this transaction. Each of the Parties (an "Indemnifying Party") agrees to indemnify and to hold harmless the other Party (an "Indemnified Party") from any liability for any commission or compensation in the nature of a finder's fee (and the costs and expenses of defending against such liability or asserted liability) for which such Indemnifying Party or any of its officers, partners, employees or representatives is responsible.

8.7 Entire Agreement; Amendments and Waivers; Severability. This Agreement (including, without limitation, the recitals, schedules and exhibits hereto, all of which are hereby incorporated into this Agreement) and the Note and the other documents delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof. This Agreement and the Note may only be amended with the written consent of the Parties hereto. If any provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

8.8 Acknowledgement. In order to avoid doubt, it is acknowledged that the Foundation shall be entitled to the benefit of all adjustments in the number of shares of Common Stock of the Company issuable upon conversion of the Preferred Stock of the Company or as a result of any splits, recapitalizations, combinations or other similar transaction affecting the

Common Stock or Preferred Stock underlying the Conversion Shares that occur prior to the conversion of the Note.

8.9 Indemnity; Costs, Expenses and Attorneys' Fees. The Company shall indemnify and hold the Foundation harmless from any loss, cost, liability and legal or other expense, including attorneys' fees of the Foundation's counsel and specifically including losses, liabilities and costs in respect of third-party claims against the Foundation, which the Foundation may directly or indirectly suffer or incur by reason of the failure of the Company to perform any of its obligations under this Agreement, the Note, or any agreement executed in connection herewith or therewith.

8.10 Further Assurance. From time to time, the Company shall execute and deliver to the Foundation such additional documents and shall provide such additional information to the Foundation as the Foundation may reasonably require to carry out the terms of this Agreement and the Note and any agreements executed in connection herewith or therewith, or to be informed of the financial and business conditions and prospects of the Company.

[Remainder of Page Intentionally Left Blank; Signature Page(s) Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

COMPANY

[INSERT COMPANY NAME]

By: _____
Name: _____
Title: _____

THE FOUNDATION

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

By: _____
Name: _____
Title: _____

LIST OF SCHEDULES: **[Company to Prepare and Present to Foundation]**

SCHEDULE 4.5 – INTELLECTUAL PROPERTY

SCHEDULE 4.6 – CAPITALIZATION OF COMPANY

SCHEDULE 4.8 – LIENS

SCHEDULE 4.10 – REGISTRATION RIGHTS

SCHEDULE 4.11 – RELATED PERSON TRANSACTIONS

SCHEDULE 4.12 – EMPLOYEE MATTERS

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT, OR OTHERWISE IN COMPLIANCE WITH THAT CERTAIN NOTE PURCHASE AGREEMENT BETWEEN THE COMPANY AND THE HOLDER, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY.

CONVERTIBLE PROMISSORY NOTE

\$10,000.00

[Month] [], 20

FOR VALUE RECEIVED, [Insert Company Name], a [Insert Company Entity Information] (the “Company”), hereby promises to pay to the order of The Research Foundation for the State University of New York (the “Foundation”), in lawful money of the United States of America and in immediately available funds, the principal sum of Ten Thousand and 00/100 Dollars (\$10,000.00) (the “Principal”), together with interest thereon from the date of this Convertible Promissory Note (this “Note”) in accordance with the terms hereof. Unless earlier converted into Conversion Shares pursuant to Section 2.2 of that certain SUNY Technology Accelerator Fund SUNY Startup Summer School Catalyst Investment Note Purchase Agreement, of even date herewith, among the Company and the Foundation (the “Purchase Agreement”), the Principal and accrued interest shall be automatically due and payable by the Company to Foundation on the Maturity Date. This Note is issued pursuant to the Purchase Agreement, and capitalized terms not defined herein shall have the meaning set forth in the Purchase Agreement.

1. **Interest.** In addition to the repayment of the Principal, the Company further promises to pay interest on the sum of the unpaid Principal outstanding on each day, from the date of this Note until the entire Principal shall have been repaid in full or converted, at a rate equal to the lesser of (i) Six Percent (6%) per annum, and (ii) the maximum rate of interest allowed by applicable law. Interest shall be calculated on the basis of a 365-day year for the actual number of days elapsed. All accrued and unpaid interest shall be due and payable on any date on which the outstanding Principal balance is due (whether by acceleration, maturity or otherwise) or otherwise converted in accordance with the provisions of the Purchase Agreement and this Note. In no event shall the amount of interest due or payable under this Note exceed the maximum rate of interest allowed by applicable law and, in the event any such payment is inadvertently paid by the Company or inadvertently received by the Foundation, then such excess sum shall be credited as a payment of Principal.

2. **Payment.** All payments shall be made in lawful money of the United States of America at the principal office of the Company, or at such other place as the holder hereof may from time to time designate in writing to the Company. Payment shall be credited first to Costs (as defined below), if any, then to accrued interest due and payable and any remainder applied to

principal. Prepayment of principal, together with accrued interest, may not be made prior to the Maturity Date without Foundation's prior written consent. The Company hereby waives demand, notice, presentment, protest and notice of dishonor.

3. Security. This Note is a general unsecured obligation of the Company.
4. Priority. This Note shall be pari passu or senior in all respects (including right of repayment) to all other indebtedness of the Company, now existing or hereafter, unless otherwise authorized by the Majority Noteholders.
5. Conversion of the Note. This Note and any amounts due hereunder shall be convertible into Conversion Shares in accordance with the terms of Section 2.2 of the Purchase Agreement. As promptly as practicable after the conversion of this Note, the Company at its expense shall issue and deliver to the holder of this Note, upon surrender of the Note, a certificate or certificates for the number of full Conversion Shares issuable upon such conversion.
6. Amendments and Waivers; Resolutions of Dispute; Notice. The amendment or waiver of any term of this Note, the resolution of any controversy or claim arising out of or relating to this Note and the provision of notice shall be conducted pursuant to the terms of the Purchase Agreement.
7. Successors and Assigns. This Note applies to, inures to the benefit of, and binds the successors and assigns of the parties hereto; provided, however, that the Company may not delegate its obligations under this Note without the written consent of the Majority Noteholders. Any transfer of this Note may be effected only pursuant to the Purchase Agreement and by surrender of this Note to the Company and reissuance of a new note to the transferee. The RF and any subsequent holder of this Note receives this Note subject to the foregoing terms and conditions, and agrees to comply with the foregoing terms and conditions for the benefit of the Company and any other RFs.
8. Expenses. The Company hereby agrees, subject only to any limitation imposed by applicable law, to pay all expenses, including reasonable attorneys' fees and legal expenses, incurred by the holder of this Note in endeavoring to collect any amounts payable hereunder which are not paid when due, whether by declaration or otherwise ("Costs"). The Company agrees that any delay on the part of the holder in exercising any rights hereunder will not operate as a waiver of such rights. The holder of this Note shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies, and no waiver of any kind shall be valid unless in writing and signed by the party or parties waiving such rights or remedies.
9. Governing Law. This Note shall be governed by and construed under the laws of the State of New York as applied to other instruments made by New York residents to be performed entirely within the State of New York.
10. Approval. The Company hereby represents that its board of directors, in the exercise of its fiduciary duty, has approved the Company's execution of this Note based upon a reasonable belief that the principal provided hereunder is appropriate for the Company after reasonable inquiry concerning the Company's financing objectives and financial situation. In

addition, the Company hereby represents that it intends to use the principal of this Note primarily for the operations of its business, and not for any personal, family or household purpose.

COMPANY

[INSERT COMPANY NAME]

By: _____

Name: _____

Title: _____

SAMPLE