

\_\_\_ day of \_\_\_, 20\_\_\_

[ADDRESS]

RE: [COMPANY]

Ladies and Gentlemen:

This letter agreement (as may be amended from time to time, this “*Side Letter*” or “*Letter*”) sets forth the agreement between [COMPANY], a [JURISDICTION] [ENTITY TYPE] (the “*Company*”), and The Research Foundation for The State University of New York (“*Investor*”), in connection with the [Simple Agreement for Equity/Note Purchase Agreement] (the “*Agreement*”) by and between the Investor and the Company dated the \_\_\_ day of \_\_\_, 20\_\_\_. Capitalized terms used herein without definition shall have the meanings set forth in the Agreement.

The Investor is a non-profit, educational corporation which exists to serve the charitable mission of, among other things, supporting innovation across The State University of New York (“*SUNY*”) research community, for the provision of more extensive and robust educational and research opportunities available to SUNY students, faculty, staff and alumni.

In furtherance of this mission, the Investor created SUNY Summer Startup School (“*S4*”) and Technology Accelerator Fund (“*TAF*”) which are comprehensive educational, applied learning, and technology commercialization initiatives which identify opportunities to give SUNY researchers a means to gain funding for select technologies to accelerate their development and commercialization.

Company was a Participating Start-up in S4 and the Investor desires to make an investment from TAF into the Company by way of purchasing a convertible promissory note/SAFE in the principal amount set forth opposite such Investor’s Name on Schedule 1 of the Purchase Agreement, and Company is willing to sell such convertible promissory note or notes to the Investors, all in accordance with the terms and conditions set forth herein and in the Agreement.

1. Reporting. The Company agrees that, for so long as any amounts remain payable under the Note, the Company will provide Investor, or any permitted assignee of the Note, with the following financial reporting and business-related reporting: (a) quarterly financial statements for the immediately preceding month (including balance sheet, income statement, capitalization table, cash flow statement and retained earnings) on or before the 25<sup>th</sup> of the month; (b) completion of a jobs creation report, in a format provided by Investor in the timeframes established by Investor within 10 days of receipt; and (c) other reports as Investor, or such permitted assignee, may reasonably require from time-to-time in the timeframes requested.
2. Special Representations, Warranties and Covenants. TAF was created to provide funding to incentivize new business formation and growth in the State of New York and facilitate the transition from ideas and research to marketable products. Accordingly, TAF is required to include, and Company is required to provide and

confirm, certain special representations, warranties and covenants of the Company as set out on Schedule 1 hereto.

3. Investor. Notwithstanding anything to the contrary in the [Note/SAFE] regardless of any termination or amendment of the [Notes/SAFEs], for so long as Investor and its affiliates, including without limitation SUNY (each, an “*Investor Affiliate*”) collectively hold any equity or debt securities of the Company or any securities issued in respect or exchange thereof, Investor and such Investor Affiliate shall have the rights set forth thereunder as an “Investor” with respect to the issuer of such securities, subject to the restrictions and limits currently contained therein with respect to the rights of an Investor therein. For the avoidance of doubt, during the period during which Investor holds any securities of the Company, Investor shall be entitled to receive the information and shall have the same rights as other Investors holding the same securities.
4. Use of Other Party's Name. Neither party may use the other party's name, logos, trademarks or symbols in any form of business promotion, written advertisement or publicity without the prior written approval of the other party. In furtherance of the foregoing, Company hereby approves the use of its name, logo, trademarks and symbols by Investor for the sole purpose of announcing and promoting Company’s participation in S4 in all forms of media. Investor may disclose Company’s name and funding amounts in compliance with any regulatory obligations.
5. Termination. The rights and obligations described in this Letter shall terminate and be of no further force and effect when Investor no longer holds any equity or debt securities of the Company or SAFE[s] issued by the Company. Notwithstanding the foregoing, paragraphs 3, 4 and this paragraph 5 will survive any termination.
6. Amendment. This Letter may only be amended in writing executed by duly authorized representatives of each party hereto. This Letter, as well as the agreements and other documents referred to herein, constitute the entire and complete understanding and agreement of the parties relating to its subject matter and supersedes any prior or contemporaneous (oral or written) understanding, agreement, representation or warranty related to its subject matter. This Letter is governed by, and will be construed and enforced in accordance with, the internal laws of the State of New York without regard to any conflicts of law rule or principle that might otherwise result in the application of the law of another jurisdiction.
7. Counterparts. This Letter may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Facsimile or electronic copies (in .PDF or other similar electronic format) of signed signature pages will be deemed binding originals.

Please confirm your agreement with the foregoing by signing and returning a copy of this Letter to the undersigned.

*[Signature Page Follows]*

By: _____	By: _____
Name:	Name: _____
Title:	Title: _____
	Company: _____

SAMPLE

## Schedule 1

### Special Representations, Warranties and Covenants

1. **Representations and Warranties.** The Company represents and warrants the following:

- a. The principal place of business of the Company is located in New York State.
- b. The Company is not owned or controlled, directly or indirectly, by any full time employee or employees of the State of New York or any agency, department, authority or public benefit corporation thereof, or by a family member of such an employee, or by such an employee and one or more such family members when the interests of such persons are aggregated.
- c. The equity or other securities of the Company are not traded on a public market.
- d. The Company is not a pooled investment vehicle.
- e. The Company is not engaged in any business relating to real estate.
- f. The Company is not a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company Community Development Financial Institutions as defined by the United States Department of the Treasury; or a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution; or a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.
- g. The proceeds of the Investor's investment in the Company through TAF will not be used to repay delinquent federal or state income taxes; or repay taxes held in trust or escrow, e.g. payroll or sales taxes; or reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or to purchase any portion of the ownership interest of any owner of the business; or to pay a prior debt that is or was owed by Company to the Investor or to any of their respective affiliated persons or entities; or to refinance an investment previously made to Company by the Investor or by any of their respective affiliated persons or entities.

h. The Company is not (i) an executive officer, director, or principal of Investor or SUNY; (ii) a member of the immediate family of an executive officer, director, or principal of Investor or SUNY; or (iii) the investment manager of Investor or SUNY or a related interest of such an executive officer, director, principal shareholder, or member of the immediate family. For the purposes of this subparagraph, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to the Investor or SUNY and the investment manager of the Investor or SUNY as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

i. Neither the Company nor any of its board of directors or other governing body or their employees shall have given anything of value to anyone to procure the investment herein by the Investor or to influence any official act or the judgment of any person in the performance of any of the terms of the agreement pursuant to which Investor invests in the Company.

j. The Company authorizes Investor to report such information regarding the Investor's investment in the Company as the Investor may reasonably request and require.

k. To the best of Company's knowledge, the Company is not an entity that would cause Investor to be required to file a tax return in any non-U.S. jurisdiction or to be subject to net income tax in such jurisdiction on income from the Company as a result of the Investor's investment in the Company.

2. **Covenants.** The Company covenants and agrees that it (a) shall maintain its principal place of business within New York State for one year following the date of an investment by Investor in the Company through TAF; and (b) retain all financial records, supporting documents, statistical records and all other records pertinent to Company and the Investor's investment therein (collectively, the "**Records**") for a period of three years from the date of the Agreement except as the Company may be otherwise notified by the Investor.

3. **Rights and Remedies.**

- a. Investor shall have the following rights and remedies that it may exercise, in its sole discretion, in the event the Company breaches any of these Special Representations, Warranties or Covenants:

i. Investor may maintain its ownership of the shares in the Company and all rights associated therewith;

ii. Investor may require that the Company redeem any or all of its equity, rights in future equity, or its other investment in the Company at a per share price equal to the greater of (1) the then current fair market value of the shares (as mutually determined by the Company's board of directors and the Investor in good faith, taking into consideration, among other things, the price per share at which the most recent shares of capital stock of the Company were sold), or (2) 110% of the price per share either paid by the Investor or, in such cases where Investor received such shares by virtue of a conversion of a Convertible Promissory Note or by operation of a Simple Agreement

For Equity, utilized for purposes of calculating the number of shares to be received by the Investor; or

- iii. In the event the Company is unable to redeem the shares at the highest price set forth in Section 3(a)(ii), and Investor is able to identify a third party willing to purchase the shares, Investor may sell to such third party with the prior written consent of the Company (which consent will not be unreasonably withheld, conditioned or delayed), and Investor shall not be required to comply with any rights of first refusal, right of co-sale, rights of tag-along or any similar rights that the Company or other shareholders have with respect to the shares.
- b. To the extent Investor desires to redeem shares pursuant to their rights under 1(c)(1)(ii), Investor shall provide written notice to the Company, which notice shall contain the date and place for the redemption as well as the Investor's proposed redemption price for the shares. In the event the Company and the Investor are unable, after negotiating in good faith for at least 30 days, to agree upon a fair market value for the shares, the fair market value shall be determined by an independent appraiser selected by the Investor and reasonably satisfactory to the Company, and the decision of such independent appraiser shall be final and binding on the Company and the Investor. Any redemption shall be accomplished by the Investor selling the shares back to the Company within 20 business days following resolution of the redemption price as set forth above. The Company shall, in addition to the foregoing, pay to the Investor all of the Investor's reasonable costs and expenses with respect to such redemption, including, without limitation, reasonable fees and costs with respect to appraisals, legal counsel, and enforcement of this provision.
- c. Upon reasonable advanced written notice to the Company, the Comptroller of the State of New York, the State of New York, the Investor, or any of their duly authorized representatives, shall have the right to inspect any books, documents, papers, or other records of the Company that are pertinent to the Investor's investment therein and the Records and the transactions contemplated thereby, in order to make audits, investigations, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to the officers, directors, employees, and personnel of the Company, for the purpose of interview and discussion related to such documents. This right of access shall last for ten (10) years after the date of this Letter. Notwithstanding anything to the contrary in this Section, the Company shall not be obligated under this Section to provide information (x) that the Company deems in good faith to be a trade secret or highly confidential information, (y) the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel or breach any agreement between Company and Company's clients, or (z) if the Company determines that the Investor is in conflict of interest with respect to such information. The Investor agrees to maintain the confidentiality of all of the information provided to the Investor under or pursuant to this Letter and agrees not to use such information other than for a purpose reasonably related to the Investor's investment in the Company.

*[Signature Page Follows]*

**SIGNATURE PAGE FOR SPECIAL REPRESENTATIONS,  
WARRANTIES AND COVENANTS**

[COMPANY]

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

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

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