SAMPLE

Open Source Software Startup Good-Standing Agreement
between
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA and
[Company].

This agreement ("**AGREEMENT**") is entered into on the date that AGREEMENT is fully executive by both parties ("**EFFECTIVE DATE**"), by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation, having its statewide administrative offices at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200 acting through its Office of Intellectual Property and Industry Research Alliances at the University of California, Berkeley, having an administrative office at 2150 Shattuck Avenue, Suite 408, 4th floor, Berkeley, CA 94704-1362 ("**UNIVERSITY**"), and [Company, Inc.] ("**COMPANY**"), a [State] corporation, having a principal place of business at [Company Address].

The parties agree as follows:

1. OVERVIEW

1.1 UNIVERSITY employees ("**UC SOFTWARE BASE AUTHORS**") co-authored software and model weights as described in Exhibit 1 that either (a) used funding via UNIVERSITY, (b) used material UNIVERSITY resources, or (c) was part of a UC SOFTWARE AUTHOR's scope of employment with UNIVERSITY (collectively, "**SOFTWARE BASE**"); and accordingly, UNIVERSITY has an ownership interest in SOFTWARE BASE, and the copyright existing in SOFTWARE BASE.

1.2 UC SOFTWARE BASE AUTHORS and additional UNIVERSITY employees ("**UC SOFTWARE DERIVATIVE WORKS AUTHORS**") have or may continue to author software and model weights described in future Exhibits amended to this AGREEMENT that:

1.2a Are improvements, derivative works, modifications, enhancements, or updates to SOFTWARE BASE; and

1.2b Either (i) have or may use funding via UNIVERSITY, (ii) have or may use material UNIVERSITY resources, or (iii) are or will be part of a scope of employment with UNIVERSITY

(collectively, "**SOFTWARE UNIVERSITY DERIVATIVE WORKS**"); and accordingly, UNIVERSITY has an ownership interest in SOFTWARE UNIVERSITY DERIVATIVE WORKS, and the copyright existing in SOFTWARE UNIVERSITY DERIVATIVE WORKS.

SOFTWARE BASE and any SOFTWARE UNIVERSITY DERIVATIVE WORKS are collectively, "**SOFTWARE PROJECT**".

UC SOFTWARE BASE AUTHORS and any UC SOFTWARE DERIVATIVE WORKS AUTHORS are collectively, "**UC SOFTWARE PROJECT AUTHORS**".

1.3 To maximize the benefits to the public of SOFTWARE PROJECT, UNIVERSITY agrees that UC SOFTWARE PROJECT AUTHORS may publicly post SOFTWARE PROJECT and release SOFTWARE PROJECT under the following open source software licenses ("**OPEN SOURCE LICENSES**"): (a) any open source software licenses that do not include express patent grants; (b) Educational Community License, Version 2.0 (ECL2) for code in SOFTWARE PROJECT, and/or (c) the MIT License for model weights in SOFTWARE PROJECT. Besides ECL2, licenses that include express patent grants, such as GPL 3.0, are excluded.

1.4 COMPANY is pursuing commercial offerings that leverage SOFTWARE PROJECT in accordance with OPEN SOURCE LICENSES to benefit the public ("**COMMERCIAL OFFERINGS**").

for reference only

Accordingly, authors on behalf of COMPANY have or may author software and model weights that are improvements, derivative works, modifications, enhancements, or updates to the SOFTWARE PROJECT ("**SOFTWARE COMPANY DERIVATIVE WORKS**") for which COMPANY has an ownership interest. This AGREEMENT does not obligate COMPANY to publicly post or release SOFTWARE COMPANY DERIVATIVE WORKS under an open source license.

1.5 COMPANY's ability to successfully develop COMMERCIAL OFFERINGS would benefit from a statement in writing by UNIVERSITY that assures COMPANY's investors, partners, customers, and hires of the following: UNIVERSITY agreed to post publicly and release SOFTWARE PROJECT under OPEN SOURCE LICENSES, and accordingly, COMPANY's leveraging of SOFTWARE PROJECT under OPEN SOURCE LICENSES is consistent with the mission of UNIVERSITY; however, UNIVERSITY does not endorse any commercial offering or company ("**GOOD-STANDING**").

1.6 UNIVERSITY would like to provide the aforementioned benefit to COMPANY with an asset arising from UNIVERSITY's statement in writing via Section 2 of this AGREEMENT.

1.7 COMPANY would like to provide UNIVERSITY with stock equity and investment purchase rights in COMPANY in acknowledgment of the following:

1.7a UNIVERSITY's role in fostering the development of SOFTWARE PROJECT;

1.7b UNIVERSITY's willingness to post and open source license SOFTWARE PROJECT; and

1.7c UNIVERSITY's statement in writing of COMPANY's GOOD-STANDING.

1.8 UNIVERSITY would like to acknowledge COMPANY's interest in supporting UNIVERSITY's research and education activities by accepting stock equity and investment purchase rights in COMPANY.

2. REPRESENTATION

2.1 UNIVERSITY hereby represents and confirms that it granted the UC SOFTWARE AUTHORS permission to post and release SOFTWARE PROJECT under OPEN SOURCE LICENSES, and COMPANY is in GOOD-STANDING as of EFFECTIVE DATE.

2.2 COMPANY hereby acknowledges this AGREEMENT as valuable consideration.

3. EQUITY

3.1 Initial Equity Grant: COMPANY will provide and deliver to UNIVERSITY [number of shares] shares of COMPANY's common stock representing one percent (1.00%) of COMPANY's capital stock after issuance of all initial shares to COMPANY's founders and COMPANY's establishment of its stock option pool, and also in accordance with the terms of the Stock Issuance Agreement by and between UNIVERSITY and COMPANY – in a mutually agreeable form provided by the Company.

3.2 Future Investment Purchase Right: If COMPANY proposes to sell any preferred stock equity securities of COMPANY (collectively "**EQUITY SECURITIES**") in an Equity Financing, then UNIVERSITY and/or its ASSIGNEE (as defined in Paragraph 3.3) will have the right to purchase EQUITY SECURITIES issued in such offering as follows: In accordance with Exhibit 2 of AGREEMENT. "**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.

3.3 Assignee Definition: The term "**ASSIGNEE**" means (a) any entity to which UNIVERSITY's participation rights under this section have been assigned either by UNIVERSITY or another entity, or (b) an entity with a campus affiliation, meaning a venture capital or similar fund now or hereafter existing that has signed an affiliation agreement with UC Berkeley including, without limitation, existing campus-facing shared carry funds or (c) any entity that is controlled by UNIVERSITY.

for reference only

3.4 Surviving Rights: Any termination or expiration of this AGREEMENT will not affect the rights and obligations set forth in this Article 3 of this AGREEMENT.

3.5 Equity Administration: COMPANY will notify UNIVERSITY and its ASSIGNEE of such right to purchase such EQUITY SECURITIES in writing at least [days] days in advance of the deadline of such transaction. COMPANY will send the notice marked "URGENT" to venture@berkeley.edu.

3.6 Securities issued to the UNIVERSITY pursuant to this Agreement will be issued in the name of **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, solely on behalf of the UC Berkeley campus**.

4. GENERAL TERMS AND CONDITIONS

4.1 Warranty and Liability: UNIVERSITY WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY COMPANY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ALL CAUSES OF ACTION OF ANY KIND (INCLUDING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY AND BREACH OF WARRANTY) EVEN IF UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.2 Use of Names and Trademarks

4.2a Obligations: Except as specified in Paragraphs 4.2 and 4.3 below, nothing contained in this AGREEMENT will be construed as conferring any right to either party to use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of the other party (including a contraction, abbreviation or simulation of any of the foregoing). Except as specified in Paragraphs 4.2b below, COMPANY is expressly prohibited from using the name "The Regents of the University of California" or the name of any campus of the University of California in advertising, publicity, or other promotional activities unless consent is obtained by COMPANY from UNIVERSITY to do so.

4.2b Company Exceptions: Notwithstanding the foregoing: (i) UNIVERSITY grants the right, in accordance with Section 1.5 above, for COMPANY to make public-facing statements on its website and in other media statements substantially similar to: "UC Berkeley publicly shares software and model weights under an open-source license and accordingly [Company]'s leveraging of the software and model weights is consistent with the mission of UC Berkeley. UC Berkeley does not endorse [Company] or any commercial offering by [Company]."; and (ii) COMPANY can provide a copy of this AGREEMENT to actual and potential investors, key hires, corporate partners, and strategic early customers to the extent allowed by law, and COMPANY may make the statement of fact that it has this AGREEMENT with UNIVERSITY, and accordingly, granted stock equity to UNIVERSITY.

4.2c University Exceptions: Notwithstanding the foregoing, UNIVERSITY can publicly identify COMPANY's corporate name and contact information as an entity with which UNIVERSITY has an agreement that involves stock equity.

4.3 No Obligations: Nothing in this AGREEMENT is or will be construed as an obligation to: (a) bring or prosecute actions or suits against third parties for patent, copyright, or other intellectual property infringement; (b) confer by implication, estoppel, or otherwise any license or rights under any patents or other rights of UNIVERSITY; or, (c) furnish any new developments, know-how, technology, or technological information.

4.4 Governing Laws; Venue; Attorneys' Fees: This agreement will be interpreted and construed in accordance with the laws of the State of California. Any legal action related to this AGREEMENT will be conducted in San Francisco, California. The prevailing party in any suit related to this AGREEMENT will be entitled to recover its reasonable attorneys' fees in addition to its costs and necessary disbursements.

for reference only

4.5 Miscellaneous

4.5a Severability: If any of the provisions contained in this AGREEMENT are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions hereof, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

4.5b Scope: This AGREEMENT embodies the entire understanding of the parties and supersedes all previous communications, representations, or understandings, whether oral or written, between the parties relating to the subject matter hereof.

4.5c Independence: In performing their respective duties under this Agreement, each party will operate as an independent contractor. Nothing contained herein will in any way constitute any association, partnership, or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the power to bind the other party or incur obligations on the other party's behalf without the other party's prior written consent.

UNIVERSITY and COMPANY have executed this AGREEMENT by their respective duly authorized officers in duplicate originals on the following date.

[Company, Inc.]

By_____
(Signature)

Name_____
(Print)

Title_____

Date_____

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By_____
(Signature)

Name_____
(Print)

Title_____

Date_____

for reference only

Exhibit 1: Software

The SOFTWARE PROJECT covered under this AGREEMENT will include the following SOFTWARE BASE developed by the UC SOFTWARE PROJECT AUTHORS:

- Description 1
- Description 2
- Description N

The parties anticipate that from time to time, the above SOFTWARE PROJECT may be updated with SOFTWARE UNIVERSITY DERIVATIVE WORKS. To the extent that it is able to do so, UNIVERSITY anticipates agreeing with COMPANY to amend this Exhibit 1 to clarify that such SOFTWARE UNIVERSITY DERIVATIVE WORKS are within the scope of this AGREEMENT in writing, under which email is acceptable to expedite and simplify such amendments.

for reference only

Exhibit 2

PRO RATA AGREEMENT

This agreement ("**Pro Rata Agreement**") is entered into on or about date of AGREEMENT in connection with the transaction by THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (the "**Investor**") of that Open Source Software Startup Good-Standing Agreement (the "**Investor's OS3-GS Agreement**") issued by [Company] (the "**Company**") on or about the date of this Pro Rata Agreement. As a material inducement to the Investor's investment, the Company agrees to the provisions set forth in this Pro Rata Agreement. Capitalized terms used herein shall have the meanings set forth in the Investor's OS3-GS Agreement or Schedule A hereto.

The Investor shall have the right to purchase its pro rata share of Standard Preferred Stock being sold in the Equity Financing (the "**Pro Rata Right**"). Pro rata share for purposes of this Pro Rata Right is the ratio of (x) the number of shares of Capital Stock held by the Investor prior to the Equity Financing to (y) the Company Capitalization. The Pro Rata Right described above shall automatically terminate upon the earlier of (i) the initial closing of the Equity Financing; (ii) immediately prior to the closing of a Liquidity Event; or (iii) immediately prior to the Dissolution Event.

Neither this Agreement nor the rights contained herein may be assigned, by operation of law or otherwise, by Investor without the prior written consent of the Company; *provided, however*, that this Pro Rata Agreement and/or the rights contained herein 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.

Any provision of this Agreement may be amended, waived or modified upon the written consent of the Company and the Investor. The Company will promptly notify the Investor of any amendment, waiver or modification that the Investor did not consent to. The choice of law governing any dispute or claim arising out of or in connection with this Agreement shall be consistent with that set forth in the Investor's OS3-GS Agreement.

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

[Company]

By:_____
[*name*] [*title*]

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: _____

Name:_____

Title:_____

for reference only

Schedule A

"**Capital Stock**" means the capital stock of the Company, including, without limitation, "**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.

"**Company Capitalization**" is calculated as of immediately prior to the Equity Financing and (without double-counting, in each case calculated on an as-converted to Common Stock basis):

- Includes all shares of Capital Stock issued and outstanding;
- Includes all Converting Securities;
- Includes all (i) issued and outstanding Options and (ii) Promised Options; and
- Includes the Unissued Option Pool, except that any increase to the Unissued Option Pool in connection with the Equity Financing will only be included to the extent that the number of Promised Options exceeds the Unissued Option Pool prior to such increase.

"**Converting Securities**" includes convertible securities issued by the Company, including but not limited to: (i) 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.

"**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.

"**Direct Listing**" means the Company's initial listing of its Common Stock (other than shares of Common Stock not eligible for resale under Rule 144 under the Securities Act) on a national securities exchange by means of an effective registration statement on Form S-1 filed by the Company with the SEC that registers shares of existing capital stock of the Company for resale, as approved by the Company's board of directors. For the avoidance of doubt, a Direct Listing will not be deemed to be an underwritten offering and will not involve any underwriting services.

"**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 of 1933, As Amended.

"**Liquidity Event**" means a Change of Control, a Direct Listing or an Initial Public Offering.

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

"**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 or letter of intent for the Equity Financing or Liquidity Event, as applicable (or the initial closing of the Equity Financing or consummation of the Liquidity Event, if there is no term sheet or letter of intent), (ii) in the case of an Equity Financing,

for reference only

treated as outstanding Options in the calculation of the Standard Preferred Stock's price per share, or (iii) in the case of a Liquidity Event, treated as outstanding Options in the calculation of the distribution of the Proceeds.

"**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.

"S**tandard 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 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.

for reference only