



**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, 10th Floor, Berkeley, CA 94704-6701 ("**UNIVERSITY**"), and [company name] ("**COMPANY**"), a [type of corporation], having a principal place of business at [company address].

The parties agree as follows:

1. OVERVIEW

- 1.1. UNIVERSITY employees ("**UC SOFTWARE AUTHORS**") co-authored software described as [Description or UC Case Number & Title] ("**SOFTWARE**").
- 1.2. The co-authoring of **SOFTWARE** by **UC SOFTWARE AUTHORS** 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**; and accordingly, **UNIVERSITY** has an ownership interest in **SOFTWARE**, and the copyright existing in **SOFTWARE**.
- 1.3. In order to maximize **SOFTWARE**'s benefit to the public, **UNIVERSITY** and **UC SOFTWARE AUTHORS** agreed to publicly post **SOFTWARE** and release **SOFTWARE** under the following open source software license ("**OPEN SOURCE LICENSE**"), which excludes software licenses that include express patent grants (e.g. GPL 3.0):

- 1.4. **COMPANY** is pursuing commercial offerings that leverage **SOFTWARE** in accordance with **OPEN SOURCE LICENSE** in order to benefit the public ("**COMMERCIAL OFFERINGS**").
- 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 publicly post and release **SOFTWARE** under **OPEN SOURCE LICENSE**, and accordingly, **COMPANY**'s leveraging of **SOFTWARE** under **OPEN SOURCE LICENSE** 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 acknowledgement for the following:
 - 1.7.a. UNIVERSITY's role in fostering the development of SOFTWARE;
 - 1.7.b. UNIVERSITY's willingness to post and open source license SOFTWARE; and
 - 1.7.c. 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 under OPEN SOURCE LICENSE, 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 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 substantially the form attached hereto as Appendix A.
- 3.2. Future Investment Purchase Right: If COMPANY proposes to sell any equity securities or securities that are convertible into equity securities of COMPANY (collectively "**EQUITY SECURITIES**"), then UNIVERSITY and/or its ASSIGNEE (as defined in Paragraph 3.3) will have the right to purchase EQUITY SECURITIES issued in each offering as follows: (a) on the same terms and conditions as are offered to the other purchasers in each such financing; (b) up to an amount of EQUITY SECURITIES such that UNIVERSITY's shares in COMPANY represent one percent (1.00%) after each financing is completed.
- 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) any entity that is controlled by UNIVERSITY.
- 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 thirty (30) days in advance of the deadline of such transaction. COMPANY will send the notice marked "URGENT" to:

- 3.5.a. Director of Treasury Operations, Treasurer of The Regents, University of California, 1111 Broadway, 14th Floor, Oakland, CA 94607-5200; and
- 3.5.b. Director, Office of Technology Licensing, 2150 Shattuck Ave., Suite 510, Berkeley, CA 94704-1347.

4. GENERIC TERMS & 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

- 4.2.a. Obligations: Except as specified in the 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). 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.
- 4.2.b. Company Exceptions: Notwithstanding the foregoing, 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.
- 4.2.c. 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.

4.5. Miscellaneous

- 4.5.a. 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.
- 4.5.b. 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.
- 4.5.c. Independence: In performing their respective duties under this AGREEMENT, each of the parties will be operating 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 Name]

University of California

By _____
(Signature)

By _____
(Signature)

Name _____
(Print)

Name _____
(Print)

Title _____

Title _____

Date _____

Date _____