

AWARD AGREEMENT

THIS AWARD AGREEMENT (this “Agreement”) is made and entered into as of _____ (the “Effective Date”) by and between CORNELL UNIVERSITY, a not-for-profit education corporation having an address for purposes of this Agreement at 165 Day Hall, Ithaca, New York 14853 (the “University”) and _____, a _____ corporation having its principal address at _____ (the “Recipient”).

1. Purpose of Agreement. Pursuant to the terms of an Upstate Revitalization Initiative – Incentive Proposal and Grant Disbursement Agreement (“GDA”) between Empire State Development (“ESD”) and the University, the New York Food & Agriculture Challenge (Grow-NY) business competition (the “Competition”) was established. The Competition is designed to position New York State as a global leader in agriculture and food innovation through the attraction, mentoring and awarding of prize money to food and agriculture start-up firms that show promising high-impact business growth in the Southern Tier, Finger Lakes and Central regions of New York State (the “Upstate Region”). Under the GDA, the University was awarded certain grant funds to administer the Competition. Recipient applied for and participated in the Competition and was selected as a successful company entitled to receive from the University the Award (defined below) and other benefits, subject to the terms and conditions of this Agreement. The University and Recipient are entering into this Agreement to memorialize the terms and conditions applicable to the Award.

2. Grant of Equity Investment Award. Subject to Recipient’s achievement of the Milestones (defined below), continued compliance with the Project Requirements (define below), and all other terms and conditions of this Agreement, the University shall award and disburse to Recipient as an equity investment in Recipient the total amount of _____ (\$_____) (the “Award”). The Award shall be disbursed at the times and in the amounts based on Recipient’s achievement of certain milestones, all of which are detailed in Exhibit A attached hereto (each a “Milestone” and all Milestones collectively as the “Project”). Recipient shall also be entitled to certain other non-monetary benefits as detailed in the Terms and Conditions (defined below). The Award represents the maximum aggregate amount payable by the University to Recipient. The University shall not be liable for any costs or expenses in excess of such amount incurred by Recipient in the performance and completion of the Project.

3. Disbursement Terms. Disbursement of all Award amounts will be U.S. dollars. The Award, and all disbursements of the Award, shall at all times be contingent upon (a) the availability of funding from ESD under the GDA, (b) Recipient’s compliance with this Agreement, (c) Recipient timely meeting the applicable Milestones, and (d) Recipient’s continuing fulfillment and compliance with all eligibility, location and other requirements as set forth in the Terms and Conditions for New York Food & Agriculture Challenge (Grow-NY) Competition (“Terms and Conditions”) applicable to Recipient’s application to participate in and participation in the Competition (collectively, the “Project Requirements”). Recipient shall provide to the University a written statement signed by the Project Director (defined below) certifying that the applicable Milestone and all Project Requirements were met. The certification shall be in a form acceptable to the University, and shall be accompanied by documentation, as applicable, demonstrating completion and fulfillment of the applicable Milestones and Project Requirements. The University

reserves the right, but shall not be obligated, to verify each Milestone and Project Requirement prior to disbursing any Award amount. All disbursements are subject to correction and adjustment upon audit or any disallowance. Recipient shall promptly reimburse the University for amounts disbursed, but which are subsequently disallowed or subject to recapture as provided for in this Agreement. Any non-compliance with the terms and conditions of this Agreement by Recipient may result in the withholding of disbursement of Award amounts and/or immediate termination of this Agreement.

4. Performance by Recipient; Certifications. Recipient shall complete and fulfill the Milestones and all other Project Requirements within the time periods indicated on Exhibit A. Further, Recipient agrees that it shall fully comply with any requirements which the University is mandated to flow down to Recipient as set forth in the GDA or otherwise as is required by ESD from time to time. Recipient must expeditiously and efficiently perform its obligations and demonstrate to the University in its quarterly and other required reports substantial progress towards meeting the Milestones and other Project Requirements.

5. Warrant Agreement or SAFE. As a condition of the University entering into this Agreement and to Recipient's receipt of the Award, Recipient agrees to grant to the University an equity position with respect to Recipient through Recipient's execution and delivery to the University of the Warrant Agreement or SAFE (Simple Agreement for Future Equity) substantially in the form attached to this Agreement respectively as Exhibit B and Exhibit C. The University and Recipient shall mutually agree as to whether the Warrant Agreement or SAFE shall be used.

6. Use of Award Funds. If at any time it is determined that Award amounts disbursed under this Agreement have been or are being used other than in a lawful manner, other than in compliance with the terms of this Agreement, or other than in furtherance of the Project, the University may stop Award disbursements under this Agreement and may terminate all future Award disbursements and this Agreement, and may recapture from Recipient all previously disbursed Award amounts.

7. Budget. Recipient's budget, attached hereto as Exhibit D, sets forth Recipient's anticipated costs and categories of costs for the Project. Recipient will undertake the Project in accordance with the budget.

8. Recipient's Project Director. Recipient's performance under this Agreement shall be under the direction of the individual identified on Exhibit E attached hereto (the "Project Director"). The Project Director shall be an officer of Recipient with authority to act for and bind Recipient. The Project Director is essential to Recipient's performance under this Agreement. No substitutions or substantial reduction in Project Director's level of effort or involvement with the Project will be permitted without prior written approval of the University, such approval not to be unreasonably withheld.

9. Maintenance of Records; Audit Rights.

a. Recipient shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of the later of six (6) years after the final

Award disbursement or six (6) years after termination of this Agreement full and detailed books, accounts, and records pertaining to this Agreement and the Project.

b. The University and its authorized representatives shall have access to and the right to inspect from time to time any and all of Recipient's (i) records related to this Agreement or the Project for the purpose of making audits, examination excerpts and transcriptions, and (ii) premises upon which Recipient conducts its operations. Upon reasonable notice the University shall have access to Recipient's records and premises during normal business hours. The period of access for records relating to appeals under a dispute, litigation or settlement of claims arising from the performance of this Agreement or otherwise with respect to the Project, or costs and expenses of this Agreement to which exception has been taken, shall continue until such appeals, litigation, claims, or exceptions are finally disposed of.

10. Reporting Requirements. Recipient shall submit a detailed written report to the University promptly upon the completion of each Milestone. In addition, Recipient shall furnish such additional reports with respect to the Project as reasonably requested by the University from time to time. Each report shall include a certification signed by the Project Director that the report and its contents are true, accurate and complete.

11. Compliance With Laws. Recipient shall at all times in the operation of its business and in all respects as it relates to the Project comply with all applicable federal, state and local laws, rules, regulations and ordinances.

12. Permits and Licenses. Recipient has in place or will procure and will maintain in good standing, and shall comply with the terms of, all permits, licenses, consents and other approvals as are necessary in the operation of its business and in all respects as it relates to the Project (collectively, "Licenses"). Recipient shall, upon request of the University from time to time, provide the University with copies of all such Licenses.

13. Term of Agreement; Termination. Subject to earlier termination as set forth in this Agreement, this Agreement shall terminate one (1) year after the Effective Date without any further notice to Recipient. Upon termination of this Agreement, Recipient shall refund to the University any unexpended or unobligated balance of Award amounts advanced and no further Award amounts shall be disbursed to Recipient. In addition, upon termination, all Award amounts previously disbursed shall be subject to recapture as provided for in this Agreement.

14. Defaults and Remedies. Without limiting any other breaches or defaults under this Agreement or any other remedies available to the University, the following terms shall apply:

a. Each of the following shall constitute a default by Recipient under this Agreement:

i. Failure to comply with any provision of, or failure to perform or observe any obligation, representation, warranty or covenant of Recipient contained in, this Agreement, including, but not limited to, the Project

Requirements, or the failure by Recipient to complete the Milestones or perform its other obligations within the timeframes established under this Agreement.

ii. Recipient fails to show substantial progress towards meeting any of the Milestones.

iii. Failure to comply with any request for information reasonably made by the University to determine compliance by Recipient with the terms of this Agreement.

iv. The making by Recipient of any false statement or the omission by Recipient to state any material fact in or in connection with this Agreement or the Award, including information provided in the application to participate in the Competition.

v. Recipient (1) being generally not able to pay its debts as they become due, (2) filing or consenting by answer or otherwise to the filing against it of a petition under the United States Bankruptcy Code or under any other bankruptcy or insolvency law of any jurisdiction, (3) making a general assignment for the benefit of its general creditors, (4) consenting to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (5) being adjudicated insolvent or being liquidated, (6) taking corporate action for the purpose of any of the foregoing, (7) having an order of a court having jurisdiction shall be made directing the sale, disposition or distribution of all or substantially all of the property belonging to Recipient, which order shall remain undismissed or unstayed for an aggregate of thirty (30) days, or (8) abandoning the Project prior to its completion.

vi. Recipient is found to have falsified or modified any documents submitted in connection with the Competition.

vii. Utilizing any Award amounts disbursed to Recipient for any purpose other than the Project.

b. Upon the occurrence of a default by Recipient and written notice by the University indicating the nature of the default, the University shall have the right to terminate this Agreement.

c. Upon any such termination, the University may withhold any Award amount not yet disbursed and may recapture such Award amounts already disbursed by requiring Recipient to pay such amounts to the University. If the University determines that any Award amounts had previously been released based upon fraudulent representations or other willful misconduct, the University may require repayment of those funds and may refer the matter to the appropriate authorities for prosecution. The University shall be entitled to exercise any other rights and seek any other remedies provided by law.

15. Conflicts of Interest. Recipient agrees to report to the University all actual and potential conflicts of interest identified by Recipient prior to executing this Agreement and prior to the disbursement of any Award amounts under this Agreement. Additionally, Recipient agrees to promptly and fully disclose to the University any new or previously unknown conflict of interest that arises during the term of this Agreement.

16. Recipient's Representations, Warranties and Covenants. Recipient hereby represents, warrants and covenants to the University as follows:

a. All information provided and all representations made by Recipient as a part of its application for participation in the Competition and all supplemental and other information provided throughout the course of the Competition and/or to obtain the Award and the benefits of this Agreement were complete, true and accurate in all respects when provided or made.

b. Recipient is qualified to perform the Project, and is qualified to do business and is in good standing in the State of New York and all other jurisdictions necessary for Recipient to perform its obligations under this Agreement.

c. Recipient has full power and authority to execute and deliver the Agreement and to perform its obligations hereunder.

d. The Agreement was duly authorized, executed and delivered by Recipient and is binding on and enforceable against Recipient in accordance with its terms.

e. Recipient has read and understands this Agreement and agrees to be bound by the terms of this Agreement.

f. There are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect Recipient, the Project or the University's rights hereunder.

g. No information, document or statement furnished by Recipient in connection with the Competition or this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and all facts have been disclosed that would materially adversely affect the Project or the University's decision to make the Award.

h. Recipient is solely responsible for all Project costs and other amounts in excess of the amount of the Award.

17. Confidentiality. Any non-public information contained in reports made to the University or obtained by the University as a result of any audit or examination of Recipient's documents or relating to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, provided that such information is clearly marked as "confidential" by Recipient or

such information would reasonably be understood by the nature of the information to be confidential shall be considered confidential and shall not be disclosed to any third party without prior written authorization from the Recipient. The following information shall not be deemed confidential: (a) that which is or becomes generally known in the public domain by reason of generally available publication or otherwise, through no fault of the University, (b) that which was already known to the University at the time of disclosure by Recipient, (c) that which was, after execution of this Agreement, obtained or learned by the University in good faith from a third party who was legally entitled to disclose it, or (d) that which is developed by the University without use or reference to such information. Notwithstanding anything in this Section to the contrary, the University shall be entitled to disclose and shall not be liable for any such disclosure which the University reasonably determines is required pursuant to applicable law, regulation, subpoena, court order or other legal process or which must be disclosed to ESD or otherwise in connection with the Competition.

18. No Liability; Indemnification. Neither the University nor ESD shall in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project. Recipient agrees to and shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the University and its trustees, officers, employees, agents, representatives and contractors and ESD (the “Indemnified Parties”) from and against any and all claims, demands, actions, losses, damages, liabilities, costs and expenses, including, but not limited to, reasonable attorneys’ fees (including those in the University’s Office of University Counsel) based upon or arising out of the Project, or any activities, services performed, work done or acts or omissions by Recipient or its employees, agents or representatives under this Agreement. This Section shall survive the termination of this Agreement.

19. Insurance. Recipient agrees to maintain in force for the duration of this Agreement the following kinds and amounts of insurance:

a. Workers’ Compensation. Recipient shall maintain workers’ compensation and disability insurance meeting the required statutory minimums.

b. General Liability. Recipient shall maintain comprehensive general liability insurance coverage for bodily injury liability, broad form property damage liability, contractual liability, and completed operations coverage with limits of at least \$1,000,000.00 for each occurrence. Completed operations insurance shall be maintained for a minimum period of three (3) years following termination of this Agreement. Any exclusion limiting cross liability in the insurance policy contract shall be eliminated.

The Indemnified Parties shall be named as additional insured on Recipient’s General Liability policy. Recipient shall provide the University, prior to execution of this Agreement, one or more certificates of insurance evidencing Recipient’s compliance with the insurance requirements outlined in this Section. In the event of threatened legal action, claims, or liabilities that may affect the Indemnified Parties, or if it is deemed necessary by the University, upon request Recipient shall deliver to the University a certified copy of each policy. All policies of insurance shall be primary and non-contributory with respect to any insurance maintained by the Indemnified Parties.

Each policy of insurance shall provide that it may not be cancelled or modified until at least 30 days after receipt by the University of written notice thereof. Each policy of insurance shall be reasonably satisfactory to the University in all other respects. The University may, from time to time in its reasonable discretion, require additional types and amounts of insurance coverage.

20. Incorporation of Application and Terms and Conditions. The information contained in the application submitted by Recipient in connection with the Competition, and any supplemental documentation requested by the University in connection with the Competition, and the Terms and Conditions, are incorporated by reference herein in their entirety. In the event of an inconsistency between the terms of this Agreement and those contained in such incorporated materials, the provisions of this Agreement shall govern.

21. Independent Contractor. The relationship between Recipient and the University as created by this Agreement shall be independent contractors. Recipient covenants and agrees that it will conduct itself in a manner consistent with such status, that it will not hold itself out as, or claim to be, an officer, employee, agent or representative of the University by reason hereof, or transact business, enter into agreements, or otherwise make commitments on behalf of the University.

22. Publicity. Recipient shall collaborate with the University to prepare a coordinated press release and participation in any news conference concerning the Competition, Award and/or Project, all of which shall be subject to mutual agreement of the parties. Recipient agrees to provide attribution to the University and ESD as may be reasonably determined by the University from time to time.

23. Assignment. Recipient may not assign, transfer or subcontract any part of this Agreement or any interest herein or claims hereunder, without the prior, written approval of the University. Any attempted or purported assignment, transfer or subcontracting arrangement in violation of the preceding is void.

24. Reorganization of Recipient. In the event Recipient proposes to consolidate or merge into or with another corporation or entity, or to sell or dispose of all or a majority of the assets of Recipient, or to otherwise undertake a reorganization which alters or changes the rights of the University as provided in this Agreement, before any such action shall be taken, Recipient shall assign or otherwise transfer to a new entity Recipient's obligations under this Agreement, which such new entity shall assume in writing all such obligations. Such assignment or transfer shall be subject to the prior written approval of the University, such approval not to be unreasonably withheld.

25. All Legal Provisions Deemed Included. It is the intent and understanding of Recipient and the University that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either Recipient or the University, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

26. Release. As a condition of Recipient's acceptance of disbursement of the final Award amount under this Agreement, Recipient agrees to and hereby releases the University, to the fullest extent permitted by law, from all claims of Recipient, and from all liability to Recipient concerning this Agreement and the Project, except where such claims or liabilities arise from any grossly negligent act or omission of the University. This Section shall survive the termination of this Agreement.

27. Use of University's Name. Except as necessary to comply with its obligation to provide attribution hereunder, Recipient shall not make use of the University's name, logo, marks or other indicia for any publicity, advertising or other purpose without prior written approval the University. Once Recipient receives such approval, Recipient may continue the approved use subject to the University's restrictions on the use of the University's name and trademarks in effect from time to time.

28. Changes. By mutual agreement, Recipient and the University may make changes to the Project and/or to the terms of this Agreement. Any such changes shall be in the form of a written amendment signed by authorized representatives of Recipient and the University.

29. Information Requests. In response to any request by ESD or pursuant to any other lawful request which requires that the University disclose information, records or data created under or related to this Agreement or the Project, Recipient consents to the disclosure of such information, records and data, and further shall, upon the request of the University, provide to the University all such information, records and data as are necessary to respond to such request.

30. Setoff Rights. The University shall have all common law and statutory rights of setoff. These rights shall include, but not be limited to, the University's option to withhold for the purposes of setoff any Award amounts to be paid to Recipient under this Agreement, plus any amounts due and owing to the University for any other reason.

31. Export Control. Recipient agrees to comply with all export control laws and regulations identified in the Arms Control Act, the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR).

32. Severability. The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

33. Governing Law; Venue. This Agreement shall be governed by and construed under the laws of the State of New York, without regard to principles of conflicts of laws. The parties consent to jurisdiction in and consent to the exclusive place of jurisdiction for any disputes which may arise relating to or arising from this Agreement shall be in the State or Federal courts located in and for Tompkins County, New York.

34. Notices. All notices, requests, reports, consents, approvals and other communications which may or are required to be given by either party to the other under this

Agreement shall be in writing and shall be transmitted either: (a) via certified or registered United States mail, return receipt requested; (b) by personal delivery; (c) by expedited delivery service; or (d) by e-mail, return receipt requested. Such notices shall be addressed as follows, or to such different addresses as the parties may from time to time designate as set forth in this Section:

If to Recipient:

If to the University:

165 DAY HALL
ITHACA, NEW YORK, 14853

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein.

35. Non-Waiver. The delay or failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

36. Entire Agreement. This Agreement, together with all Exhibits attached hereto and all other documents incorporated herein by reference, represents the complete agreement of the Recipient and the University and supersedes all prior understandings regarding the Competition and the Project.

37. Attorneys' Fees and Costs. In the event that any action, suit or other proceeding is instituted concerning or arising out of this Agreement or any transaction contemplated hereunder, the prevailing party shall be entitled to recover from the other party all of such party's costs and attorneys' fees incurred in such action, suit or other proceeding, including any and all appeals therefrom.

38. Survival. All provisions in this Agreement which are expressly stated as surviving its termination and/or which by their terms should survive to give effect to the particular provision at issue shall survive the termination of this Agreement. Termination of this agreement will not relieve either party of any claims against it that arise under this Agreement prior to its termination.

39. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means, or by combination of such means, shall constitute effective execution and delivery of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the respective parties have executed this Award Agreement as of the date first written above.

CORNELL UNIVERSITY

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

Exhibit A

Milestones; Time for Completion; Award Amounts

Exhibit B

Form of Warrant Agreement

Exhibit C

Form of SAFE (Simple Agreement for Future Equity)

Exhibit D

Budget

Exhibit E

Project Director