

## DEVELOPMENT SUPPORT AGREEMENT

This **DEVELOPMENT SUPPORT AGREEMENT** (as it may be amended, restated, supplemented or otherwise modified from time to time, this “**Agreement**”), dated as of [\_\_\_\_\_] (the “**Effective Date**”), is entered into by and between [INSERT INVESTOR LEGAL NAME] (“**Investor**”), [INSERT STATE OF CORPORATION] and [INSERT COMPANY LEGAL NAME] (“[**COMPANY NAME**]”), a [INSERT STATE OF CORPORATION] corporation. Each of Investor and [COMPANY NAME] are sometimes referred to herein as a “**Party**” and collectively as the “**Parties**.”

### W I T N E S S E T H:

**WHEREAS**, [COMPANY NAME] is in the business of [INSERT SHORT DESCRIPTION OF BUSINESS];

**WHEREAS**, [COMPANY NAME] desires to [INSERT COMPANY’S PURPOSE FOR THIS PROJECT];

**WHEREAS**, Investor desires to [INSERT INVESTOR’S PURPOSE FOR SUPPORT]; and

**WHEREAS**, the Parties have agreed that, subject to the terms and conditions of this Agreement, Investor and [COMPANY NAME] shall execute certain development simple agreements for future equity (each, a “**D-SAFE**,” and collectively, the “**D-SAFES**”) upon the satisfaction of certain Milestone Conditions (as hereinafter defined).

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

**1.1 Definitions** - As used in this Agreement, the following terms and phrases shall have the meanings as set forth below:

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. For the purposes of this definition, “control” and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise. “Control” may be deemed to exist notwithstanding that a Person owns or holds, directly or indirectly, less than fifty percent (50%) of the beneficial equity interest in another Person.

“**Agreement**” has the meaning as set forth in the preamble.

“**Applicable Law**” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or

requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“**Business Day**” means a day that is not a Saturday, Sunday or a day upon which banks are required or permitted to be closed in California.

“**[COMPANY NAME]**” has the meaning set forth in the preamble.

“**Company Call Option Milestones**” means each of the milestones set forth in **Exhibit CD** hereto.

“**Conditions Precedent**” has the meaning set forth in Section 4.1.

“**Confidential Information**” shall mean the terms of this Agreement and any and all information concerning the business and affairs of a Party which is of a non-public, proprietary or of a confidential nature, however such information is documented, stored or presented, and including without limitation, financial statements, financial projections and budgets, and development plans.

“**D-SAFE**” has the meaning set forth in the preamble. Each D-SAFE shall be in substantially the form attached hereto as **Exhibit B**.

“**Default**” has the meaning set forth in Section 7.3.

“**Direct Losses**” means all damage, losses, liabilities, taxes, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract, at common law or otherwise, except Indirect Losses.

“**Disclosing Party**” has the meaning set forth in Section 9.12.2.

“**Effective Date**” has the meaning set forth in the preamble to this Agreement.

“**Investor Commitment Amount**” means \_\_\_\_\_.

“**Investor Commitment Period**” means the period commencing on the Effective Date and ending on the date that is three years after the Effective Date (or earlier upon issuance of D-SAFEs in an amount equal to the entire Investor Commitment Amount), which period may be extended by Investor in its sole discretion.

“**Execution Date**” means the execution date of any D-SAFE entered into pursuant to the terms hereof.

“**Force Majeure Event**” means the occurrence of any event or circumstance that (i) is beyond the reasonable control of a Party, (ii) results in the failure or delay by such Party of some performance under this Agreement, in full or part, and (iii) does not arise, nor is contributed to, directly or indirectly, as a result of a Party’s willful misconduct, negligent act or omission, or non-compliance with the terms of this Agreement.

**“Funding Amount”** means, with respect to any Milestone, the amounts associated with such Milestone as set forth on **Exhibit A** hereto.

**“Governmental Approval”** means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

**“Governmental Authority”** means any federal, state, town, city, or municipal government, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

**“Indirect Losses”** has the meaning set forth in Section 8.5.

**“Insolvency Event”** means, with respect to any Person, the occurrence of any of the following events: (i) such Person is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (ii) such Person begins an Insolvency Proceeding; or (iii) an Insolvency Proceeding is begun against such Person and is not dismissed or stayed within thirty (30) days.

**“Insolvency Proceeding”** means any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, receivership or other relief.

**“Milestones”** means each of the milestones set forth in **Exhibit A** hereto.

**“Milestone Acceptance Date”** has the meaning set forth in Section 3.1.5.

**“Milestone Acceptance Notice”** has the meaning set forth in Section 3.1.3.

**“Milestone Conditions”** means, with respect to each Milestone, each of the conditions precedent to the satisfaction of such Milestone set forth in **Exhibit A** hereto.

**“Milestone Disqualification Notice”** has the meaning set forth in Section 3.1.3.

**“Milestone Submission”** has the meaning set forth in Section 3.1.2.

**“Party”** or **“Parties”** has the meaning set forth in the preamble hereof.

**“Person”** means an individual, partnership, corporation, limited liability company, joint venture, trust or unincorporated association, Governmental Authority or any other entity.

**“Proceeds”** means any funds distributed by Investor to [COMPANY NAME] pursuant to the terms of a D-SAFE issued hereunder.

**“Project”** means [a project that is based on substantially similar technology or assets as the project or projects that are the subject of this Agreement].<sup>1</sup>

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<sup>1</sup> **Note to User:** To be updated on a case-by-case basis to describe the applicable technology/projects.

“**ProjectCo**” means a direct or indirect special purpose subsidiary or 50% or greater controlled affiliate of [COMPANY NAME], whose sole business purpose is the development, financing, construction and operation of one or more Projects.

“**Project Overview**” means the project overview and expectations to be completed by the parties in the form as set forth in **Exhibit C** hereto.

“**Recipient**” has the meaning set forth in Section 9.12.2.

**1.2 Interpretation** - The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to “Exhibits”, “Articles” and “Sections” refer to Exhibits, Articles and Sections of this Agreement. Any reference to an agreement, contract or instrument means such agreement, contract or instrument as amended, supplemented, modified or amended and restated from time to time.

## ARTICLE 2

### USE OF PROCEEDS AND DEVELOPMENT

**2.1 Use of Proceeds** - Unless Investor provides prior written consent, the Proceeds shall only be used for the following purpose: [INSERT COMPANY’S USE OF PROCEEDS]

## ARTICLE 3

### MILESTONE PROCESS AND TIMELINE; PROJECT OVERVIEW

#### **3.1 Milestones** -

**3.1.1** During the term of this Agreement, [COMPANY NAME] shall use commercially reasonable efforts to achieve each of the Milestones set forth in **Exhibit A**.

**3.1.2** When [COMPANY NAME] believes that a Milestone has been achieved, it shall submit to Investor such information and deliverables as are reasonably required to validate the occurrence of each of the Milestone Conditions set forth in **Exhibit A** and such other information, notices, or certificates necessary to satisfy the Conditions Precedent set forth in Section 4.1 with respect to such Milestone (collectively, the “**Milestone Submission**”). In connection therewith, [COMPANY NAME] shall make available all necessary employees, officers, agents and advisors with knowledge of the applicable Milestone to address any questions and provide any supplemental information which Investor may reasonably request in connection with the consideration by Investor of the satisfaction of such Milestone.

**3.1.3** With respect to any Milestone, (i) within twenty (20) Business Days after delivery of the applicable Milestone Submission, or (ii) if Investor raises any further supplemental information requests with respect to the applicable Milestone Submission within the twenty (20) Business Day period after delivery of such Milestone Submission, then within ten (10) Business Days after [COMPANY NAME] has responded to such supplemental information requests, Investor shall give written notice to [COMPANY NAME] with respect to such Milestone:

(a) stating that Investor accepts such Milestone as completed (a “**Milestone Acceptance Notice**”); or

(b) stating with reasonable detail the specific reason(s) Investor believes one or more of the Conditions Precedent have not been met with respect to such Milestone and, at its option, the proposed course of action for [COMPANY NAME] to remedy such deficiency (a “**Milestone Disqualification Notice**”).

**3.1.4** If Investor issues a Milestone Disqualification Notice for any Milestone, [COMPANY NAME] may continue to use commercially reasonable efforts to achieve such Milestone.

**3.1.5** If Investor issues a Milestone Acceptance Notice for any Milestone, within ten (10) Business Days after the date [COMPANY NAME] receives such notice (the “**Milestone Acceptance Date**”), Investor and [COMPANY NAME] shall duly execute and/or deliver, or cause to be executed and/or delivered, a D-SAFE, substantially in the form of **Exhibit B** hereto, in an amount equal to the Funding Amount associated with such Milestone.

**3.2 Project Overview** - The Parties agree to complete the Project Overview template such that there is agreement as to what aspects of the project may be shared externally, what shall remain confidential, including, but not limited to, the community engagement plan.

## ARTICLE 4

### CONDITIONS PRECEDENT

**4.1 Conditions Precedent to D-SAFE Execution** – The obligation of Investor to execute a D-SAFE upon achievement of a Milestone in accordance with the terms and conditions of this Agreement is subject to satisfaction (or waiver in writing by Investor) of the following conditions, as applicable (collectively, the “**Conditions Precedent**”):

**4.1.1** the representations and warranties of [COMPANY NAME] in this Agreement shall be true and correct in all material respects as of the Execution Date (except (1) to the extent that any representation or warranty is qualified by materiality, in which case such representation or warranty shall be true and correct in all respects, and (2) for those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date);

**4.1.2** each of the Milestone Conditions with respect to such Milestone has been satisfied (or waived in writing by Investor);

**4.1.3** if requested by Investor, [COMPANY NAME] shall have delivered to Investor a certificate from [COMPANY NAME] signed by a duly authorized officer of [COMPANY NAME], dated as of the Execution Date, certifying that the Conditions Precedent set forth in Sections 4.1.1 and 4.1.2 have been satisfied;

**4.1.4** if requested by Investor, [COMPANY NAME] has provided Investor with sufficient receipts, invoices, or quotations with respect to the use of the Proceeds to be utilized by execution of such D-SAFE or any Proceeds associated with a prior D-SAFE; and

**4.1.5** there is sufficient remaining Investor Commitment Amount.

## **ARTICLE 5**

### **[COMPANY NAME] REPRESENTATIONS AND WARRANTIES**

[COMPANY NAME] represents and warrants to Investor as of the Effective Date and as of each Execution Date:

**5.1 *Organization, Power, Authority and Good Standing*** - [COMPANY NAME] is a [corporation] duly organized and validly existing and in good standing under the laws of the State of [INSERT COMPANY INCORPORATION STATE] and has all requisite power and authority to carry on its business as presently conducted.

**5.2 *Authorization of Agreement; No Violation*** - The execution, delivery and performance by [COMPANY NAME] of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite action on the part of [COMPANY NAME], and this Agreement, upon the execution thereof, will be duly and validly executed and delivered by [COMPANY NAME], and upon its execution and delivery will constitute a valid and binding obligation of [COMPANY NAME], enforceable against [COMPANY NAME] in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforceability of creditors' rights generally and to general equity principles. The execution, delivery and performance by [COMPANY NAME] of this Agreement does not and will not violate or conflict with, or constitute a default under (i) its constating, formation or organizational documents, including by-laws, (ii) any Applicable Law, or (iii) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of their properties or assets is bound.

**5.3 *No Litigation*** - There are no actions, suits, investigations or proceedings pending or, to [COMPANY NAME]'s knowledge, threatened before any Governmental Authority, nor any outstanding unsatisfied claim or judgment that could, individually or in the aggregate, have a material adverse effect on [COMPANY NAME] or [COMPANY NAME]'s ability to perform its obligations under this Agreement.

**5.4 *No Untrue Statements*** - No statement by [COMPANY NAME] contained in this Agreement and no written statement contained in any certificate or other document required to be furnished by [COMPANY NAME] or any officer, employee or agent of [COMPANY NAME] to Investor

pursuant to or in connection with this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary in order to make the statements therein contained not misleading.

**5.5 *Performance*** - [COMPANY NAME] has performed and complied in all material respects with all the terms, provisions and conditions of this Agreement to be performed and complied with by [COMPANY NAME] at or before the Effective Date and the Execution Date, as applicable.

**5.6 *Compliance with Laws*** - [COMPANY NAME] has complied, and is now complying, with all Applicable Laws applicable to it or its business, properties and assets.

**5.7 *Use of Proceeds*** - [COMPANY NAME] has utilized any prior Proceeds issued by Investor in accordance with Section 2.1.

**5.8 *Bankruptcy and Insolvency*** - [COMPANY NAME] is not, and immediately following the execution of any D-SAFE will not be, subject to an Insolvency Event.

## **ARTICLE 6**

### **COVENANTS**

[COMPANY NAME] covenants and agrees with Investor as follows:

**6.1 *Access, Information and Documents*** - [COMPANY NAME] shall give to Investor and Investor's officers, employees, agents and representatives (including, but not limited to, accountants, engineers, technical advisors, lawyers and appraisers) full and complete access to any and all books, records, instruments, documents and other information (in whatever form) reasonably requested by Investor to validate the occurrence of a Milestone hereunder and to make such examination of the business, properties, assets, books, records, instruments documents and other information of [COMPANY NAME] as Investor shall reasonably request.

**6.2 *Financial Statements*** – If [COMPANY NAME] prepares such financial statements, it will deliver to Investor:

**6.2.1** within 120 days after the end of each fiscal year of [COMPANY NAME], an unaudited income statement for such fiscal year (unless an audited income statement is available), an unaudited balance sheet of [COMPANY NAME] (unless an audited balance sheet is available) as of the end of such year, and a statement of cash flows for such year, such year-end financial reports to be in reasonable detail and prepared on a consistent basis; and

**6.2.2** such other information relating to the financial condition, business or corporate affairs of [COMPANY NAME] as Investor may from time to time reasonably request; provided, however, that [COMPANY NAME] will not be obligated to provide information (A) that [COMPANY NAME] reasonably determines in good faith to be a trade secret or highly confidential information (unless covered by an enforceable confidentiality agreement, in a form acceptable to [COMPANY NAME] and Investor); or (B) the disclosure of which would adversely affect the attorney-client privilege between [COMPANY NAME] and its counsel.

**6.3** *[Pro Rata Right]* – At any time that the Investor holds a D-SAFE, the Investor shall have the right to purchase its pro rata share of Standard Preferred Stock being sold in any 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 issued or issuable from the conversion of all of the Investor’s D-Safes with a “Discount Rate” 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. Capitalized terms used but not defined in this Section 6.3 shall have the meanings ascribed to such terms in the form of D-SAFE attached hereto as Exhibit B.<sup>2 3</sup>

**6.4** *[ProjectCo Participation Right]*. In the event that a ProjectCo proposes to either (1) arrange non-recourse project-level debt for a Project from one or more commercial banks or other privately-held financial institutions or (2) to issue equity securities to one or more third parties (collectively, a “**ProjectCo Financing**”), [COMPANY NAME] shall deliver to Investor written notice of such ProjectCo Financing that includes reasonable detail of the proposed terms of such ProjectCo Financing. [COMPANY NAME] shall provide Investor with a reasonable opportunity to submit an offer to provide such ProjectCo Financing and the [COMPANY NAME] agrees to consider such offer in good faith.<sup>4</sup>

**6.5** *Reports, Cooperation* – [COMPANY NAME] shall use commercially reasonable efforts to (i) develop a community local benefit and engagement plan for each Project, in partnership with Investor’s team, consultants and company resources, and (ii) subject to Section 9.12, develop press releases and other marketing materials highlighting Investors involvement with each Project.

## **ARTICLE 7**

### **DEFAULT AND TERMINATION**

**7.1** *Term* - This Agreement shall commence on the Effective Date and continue until the end of the Investor Commitment Period.

**7.2** *Force Majeure* - Except as expressly provided herein, no Party hereto will be deemed to be in default of this Agreement to the extent that the performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any Force Majeure Event which arises after the Effective Date.

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<sup>2</sup> **Note to User:** As is customary in SAFE financings, We we have included an optional pro rata rights section which would allow the investor to exercise pro rata rights in the Company’s future preferred stock financings.

<sup>3</sup> **Note to User:** Equity participation is one way to increase the investor’s potential return. Although not provided for in these form agreements, the parties can also consider adding warrant coverage/ milestone based warrant coverage.

<sup>4</sup> **Note to User:** We have included an optional provision here which may be considered in circumstances where the investor would have an interest in having a preferential right to consider an investment in the Projects, an investment thesis that has experience growth in recent years. Please note that this provision is designed as a relatively Company-friendly right of first offer, where the Company's obligation is solely to provide notice and give the Investor the right to bid for the ProjectCo equity or debt financing opportunity. Additional constructs do exist in the market, such as ROFRs, ROFOs, ROFNs or forward flow agreements at the asset-level, but that is beyond the scope of this annotated form of DSA.



**7.3** *Event of Default* - The following events shall constitute a “**Default**” by a Party hereto:

**7.3.1** Such Party has materially breached this Agreement, including for greater certainty, the failure to observe or perform any covenant hereunder, and either (a) such breach is not capable of being cured or (b) if such breach is capable of being cured, such breach continues uncured for a period of thirty (30) days after the other Party hereto notifies the breaching Party in writing;

**7.3.2** Such Party shall have failed to make any payment due to another Party hereunder when due within fifteen (15) Business Days of written notice to the Party failing to so make such payment;

**7.3.3** Such Party makes a representation or warranty herein that is false or misleading when made and in the case of a false or misleading representation or warranty that is capable of being remedied or the effects of which are capable of being remedied, the defaulting Party has not remedied such breach and/or its effects, as applicable, within thirty (30) days; or

**7.3.4** The occurrence of an Insolvency Event in respect of a Party.

**7.3.5** *Remedies upon Default* - If at any time during the term of this Agreement, either Party is in Default, in addition to such other rights and remedies as may be available at law or in equity, the other Party shall be entitled to terminate this Agreement immediately upon written notice.

## **ARTICLE 8**

### **SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION**

**8.1** *Survival of Representations and Warranties* - All representations and warranties contained in this Agreement shall be deemed to have been relied upon notwithstanding any investigation heretofore or hereafter made or omitted by any Party and shall survive until one (1) year after termination of this Agreement.

**8.2** *Indemnification (General)* - Each Party will hold harmless, indemnify and defend the other Parties and its Affiliates and their directors, officers and employees against any and all Direct Losses and will pay all costs, damages and reasonable attorneys’ fees, arising directly or indirectly out of or resulting from: (i) any negligent, reckless, or intentionally wrongful acts or omissions on the part of the indemnifying Party; (ii) the indemnifying Party’s breach of any representation or warranty or failure to comply with the obligations set forth in this Agreement; and (iii) any material breaches of Applicable Law by the indemnifying Party.

**8.3** *Indemnification (Third Party Claims)* - Each Party will hold harmless, indemnify and defend the other Parties and its Affiliates and their directors, officers and employees against all third-party claims and will pay all costs, damages and reasonable attorneys’ fees, arising directly or indirectly out of or resulting from: (i) any negligent, reckless, or intentionally wrongful acts or omissions on the part of the indemnifying Party; (ii) the indemnifying Party’s failure to comply with the obligations set forth in this Agreement; and (iii) any material breaches of Applicable Law by the indemnifying Party.

**8.4 Indemnification Procedure** - If an indemnified Party determines that it is entitled to indemnification under Sections 8.2 or 8.3, such indemnified Party shall promptly notify the indemnifying Party in writing of the loss, and provide all reasonably necessary or useful information, assistance and authority to settle and/or defend any loss. In the event of a loss claimed by a third party, the selection of counsel, the conduct of the defense of any lawsuit, arbitration, or other proceeding, and any settlement shall solely be within the indemnifying Party's control, provided that the indemnified Party shall have the right to participate in the defense of such loss using counsel of its choice, at its expense. No settlement that would impose any costs or expense upon the indemnified Party shall be made without such Party's prior written consent.

**8.5 No Consequential Damages** - EXCEPT FOR BREACHES OF SECTION 9.12, IN NO EVENT WILL A PARTY BE LIABLE FOR ANY LOST PROFITS OR ANY SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND (COLLECTIVELY, "**INDIRECT LOSSES**"), ARISING OUT OF OR RELATING TO THIS AGREEMENT REGARDLESS OF THE CAUSE OF ACTION (INCLUDING NEGLIGENCE), EVEN IF THE OTHER PARTY HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OTHER THAN (A) INDIRECT LOSSES RELATED TO FRAUD AND (B) INDIRECT LOSSES PAYABLE UNDER A THIRD PARTY CLAIM IN RESPECT OF WHICH A PARTY IS INDEMNIFIED HEREUNDER.

## ARTICLE 9

### MISCELLANEOUS

**9.1 Expenses** - Each of the Parties will pay all of its own legal and accounting fees and other expenses incurred in the preparation of this Agreement and, except to the extent otherwise expressly contemplated hereunder, the performance of the terms and provisions of this Agreement.

**9.2 Dispute Resolution** - Any controversy, dispute, or claim of any nature arising out of, in connection with, or in relation to the interpretation, performance, enforcement or breach of this Agreement, including any claim based on contract, tort or statute and any dispute concerning arbitrability, shall be resolved at the written request of any party to this Agreement by binding arbitration. The arbitration shall be administered in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association by a single arbitrator in San Francisco, California. If the parties are unable to agree on an arbitrator within thirty (30) days after written demand therefor, then the American Arbitration Association shall designate an arbitrator in accordance with the Commercial Arbitration Rules. The parties and the arbitrator must agree to treat the arbitration, and all evidence and other information presented by the Parties in connection with the arbitration as Confidential Information. The arbitration shall be final and binding, and enforceable in any court of competent jurisdiction. The arbitrator shall award reasonable attorneys' fees and costs to the prevailing Party and charge the cost of arbitration to the Party which is not the prevailing Party. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

**9.3 Waiver** - The Parties may by written agreement (i) extend the time for or waive or modify the performance of any of the obligations or other acts of the Parties or (ii) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant to this Agreement. No failure to exercise, and no delay in exercising, any right, power or privilege hereunder

shall operate as a waiver thereof. No waiver of any breach of any provision shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision. No extension of time of performance of any obligations or other acts hereunder or under any other agreement shall be deemed to be an extension of the time for performance of any other obligations or any other acts. The rights and remedies of a Party hereunder or under any certificate or document delivered pursuant to the provisions hereof are in addition to any other rights and remedies, at law or equity, that such Party may have against the other Party.

**9.4 Notices** - All notices and other communications given hereunder shall be in writing and be delivered by email transmission to the following:

To [COMPANY NAME]:

[INSERT COMPANY LEGAL NAME]

[INSERT COMPANY ADDRESS]

[\_\_\_\_\_]

Attn:

[INSERT CONTACT EMAIL]

To Investor:

[INSERT INVESTOR LEGAL NAME]

[INSERT INVESTOR ADDRESS]

[\_\_\_\_\_]

Attn:

[INSERT CONTACT EMAIL]

Any Party may change the address or number to which notices are to be delivered to him, her or it by giving the other Persons named above notice of the change in the manner set forth above.

**9.5 Entire Agreement** - This Agreement embodies the Parties' entire agreements with respect to the subject matter hereof and supersedes all prior agreements, representations or warranties, oral or written between the Parties other than those set forth or provided for in this Agreement. This Agreement may not be modified or changed, in whole or in part, except by a supplemental agreement signed by each of the Parties.

**9.6 Rights Under this Agreement; Nonassignability** - This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign its rights or obligations under this Agreement without the non-assigning Parties' prior written consent which will not be unreasonably withheld, delayed or conditioned.

**9.7 Further Assurances** - Each of the Parties agrees to perform all reasonable further acts and things, and execute and deliver (or ensure the execution and delivery of) such further documents, as may be required by Applicable Law or as may be necessary to implement and/or give effect to this Agreement.

**9.8 *Governing Law*** - This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law. Any legal claim, suit, proceeding, or action hereunder shall be brought in a court of competent jurisdiction located in San Francisco, California. By execution and delivery of this Agreement, each of the Parties hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts and appellate courts lying therein. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

**9.9 *Headings; References to Sections, Exhibits and Schedules*** - The headings of the sections, paragraphs and subparagraphs of this Agreement are solely for convenience and reference and shall not limit or otherwise affect the meaning of any of the terms or provisions of this Agreement.

**9.10 *Exhibits*** - The following are the Exhibits attached to this Agreement:

**Exhibit A** – Milestones

**Exhibit B** – Form of D-SAFE

**Exhibit C** – Form of Project Overview

**Exhibit CD** – Company Call Option Milestones

**9.11 *Counterparts*** - This Agreement may be executed in any number of counterparts, each of which may be delivered by facsimile transmission or electronically in .PDF format and each of which shall be an original, but which together constitute one and the same instrument.

**9.12 *Confidentiality*** -

**9.12.1 Confidential Information**. Each Party hereby agrees not to disclose to any third party (other than its (i) Affiliates and their directors, officers, employees, agents, representatives and contractors who have a need to know in order for such Party to perform its obligations hereunder, (ii) tax, financial, legal and other business advisors, and (iii) investors, lenders and potential acquirers who agree to comply with the confidentiality provisions hereof), or use in any way (other than as necessitated by the duties and obligations required of such Party under the terms of this Agreement) any Confidential Information. Notwithstanding the foregoing, the existence of an investment by Investor in [COMPANY NAME] may be communicated by Investor.

**9.12.2 Exceptions to Confidentiality**. The obligations and restrictions in Section 9.12.1 do not apply to that part of Confidential Information that the Party receiving the information (the “**Recipient**”) demonstrates: (a) was lawfully in the possession of the Recipient prior to the date such Party received the information from another Party (the “**Disclosing Party**”), (b) was independently developed by the Recipient without reference to or use of Confidential Information, (c) was or becomes generally available to the public other than as a result of a disclosure by the Recipient or Recipient’s representative(s), or (d) was available, or becomes available, to the Recipient on a non-confidential basis prior to its disclosure by the Disclosing Party, or one of the Disclosing Party’s representatives, to the Recipient, but only if, to Recipient’s actual knowledge after reasonable inquiry, the source of such information is not bound by a confidentiality agreement with the Disclosing Party or is not otherwise prohibited from disclosure by a contractual, legal, fiduciary or other obligation.

**9.12.3** Legal Proceedings. If the Recipient or any of the Recipient's representatives is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, or similar process) or is required by a regulatory body to make any disclosure that is prohibited or otherwise restricted by this Agreement, the Recipient or such representative, as the case may be, will provide the Disclosing Party with prompt notice of such request so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy. Subject to the foregoing sentence, the Recipient or such representative may furnish that portion (and only that portion) of the Confidential Information that, in the written opinion of its counsel, Recipient or such representative is legally compelled or is otherwise required to disclose or else stand liable for contempt or suffer other material censure or material penalty.

**9.12.4** Destruction of Confidential Information. Upon termination of this Agreement and upon the written request of a Disclosing Party, the Recipient will destroy materials generated by the Recipient and the Recipient's representatives that include or refer to any part of the Confidential Information, without retaining a copy of any such material. Any such destruction pursuant to the foregoing sentence must be confirmed by the Recipient in writing to the Disclosing Party, which confirmation must include a list of the destroyed materials. Notwithstanding the foregoing, nothing herein shall require the alteration, modification, deletion or destruction of back-up tapes or other back-up media made in the ordinary course of business, provided that said back-up tapes or other back-up media is stored in a manner that prevents unauthorized access to, or use of, Confidential Information. Any Confidential Information that cannot be returned or destroyed (including oral Confidential Information) shall remain confidential, subject to the terms of this Agreement.

**9.13** Term and Termination. Sections 9.12.1 through 9.12.4 shall survive termination of this Agreement.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, this Development Support Agreement has been duly executed by  
[INVESTOR LEGAL NAME] and [COMPANY LEGAL NAME] as of and on the date first above written.

**[INVESTOR LEGAL NAME]**  
a [INSERT STATE OF INCORPORATION] corporation

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By:

Title:

**[COMPANY LEGAL NAME]**  
a [INSERT STATE OF INCORPORATION] corporation

---

By:

Title:

**EXHIBIT A**

**MILESTONES**

**EXHIBIT B**

**FORM OF D-SAFE**

**[*See attached.*]**



**EXHIBIT C**

**PROJECT OVERVIEW FORM**

**[*See attached.*]**

**EXHIBIT CD**

**COMPANY CALL OPTION MILESTONES**

[\_\_\_\_\_]