

APPSTART CHALLENGE FINALIST AGREEMENT

This APPStart Challenge Finalist Agreement (“**Agreement**”) is made effective the ___th day of _____, 2019 (“**Effective Date**”), by and between WiSys Technology Foundation (“**WiSys**”), a nonstock, nonprofit Wisconsin corporation, [Name Of APPStart Challenge Finalist], an individual residing at _____ (“**Finalist**”); and _____ (“**Company**”), a corporation organized and existing under the laws of _____.

WHEREAS, Finalist is a faculty, staff, student, or alumni of UW-Eau Claire, UW-Green Bay, or UW-La Crosse and participated in the 2019 WiSys APPStart Challenge (“**APPStart Challenge**”) by submitting and pitching an idea titled _____. Finalist was selected as a winner of the 2019 APPStart Challenge and subsequently formed the start-up Company; and

WHEREAS, WiSys offers APPStart Challenge winners Awards, as defined below, and this Agreement sets forth the terms of the Awards and memorializes the Finalist and Company’s acceptance of the Awards.

NOW THEREFORE, in consideration of the covenants, representations, and warranties set forth herein, the sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Definitions.

For the purpose of this Agreement, the Appendix A definitions will apply.

Section 2. Award Grant.

Pursuant to the Terms and Conditions of the APPStart Challenge, and in consideration of Finalists opportunity to participate in the APPStart Challenge, WiSys has provided or hereby agrees to provide Finalist and Company the following “Awards”:

(i) Ability for Finalist to participate in two (2) different entrepreneurship programs. The first entrepreneurship program will be offered at the respective UW campus of Finalist and the second program will be offered by WiSys. WiSys and the respective UW campus will provide the programs and have control over their timing, format and content; and

(ii) WiSys will supply at no charge a third party software developer (“**App Development Partner**”) to work with Company in order to develop a “minimum viable product” level design for a mobile app based on the Finalist’s original pitch idea (“**Software**”). (In the event that Finalist and Company desire further design and development of the Software (e.g., backend work and source code), Finalist and Company will separately and independently contract with App Development Partner or another developer.); and

(iii) A prize payment of \$5,000 if the Finalist has won the first place position in the APPStart Challenge, \$2,500 if the Finalist has won the runner-up position, and \$1,500 if the Finalist has won the second runner-up position. The Finalist will use such prize payment towards creating the Company and developing the Software; and

(iv) WiSys will promote and provide exposure to Finalist and Company throughout Wisconsin (e.g., at local entrepreneurial events and events sponsored by the University of Wisconsin).

Section 3. Software License.

(i) *Ownership.* WiSys shall own all right, title, and interest in and to the Software created and developed by App Development Partner and associated intellectual property rights of the Software.

(ii) *License.* WiSys hereby grants to Company a license under WiSys's rights in the Software to access and use the Software for purposes of developing and commercializing an operational mobile app.

(iii) *Limited Scope.* The parties understand and agree that, because this Agreement is limited to the specific Software, WiSys will not have any obligation to provide any updates, bug fixes, revisions, future versions, enhancements, or other modifications to the Software, nor any rights in or to any other intellectual property owned or controlled by WiSys. This Agreement is a license only; WiSys will not supply any technical support, troubleshooting, hosting, or other services to Finalist and Company.

(iv) *WARRANTIES.* THE SOFTWARE IS BEING PROVIDED "AS IS", WITHOUT ANY WARRANTY EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, MARKETABILITY, NON-INFRINGEMENT, TITLE, SUITABILITY, FREEDOM OF DEFECTS, REGULATORY APPROVAL, SAFETY, OR ACCURACY OR THE LIKE. NOTHING STATED IN THIS AGREEMENT WILL IMPLY THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ERRORS WILL BE CORRECTED. OTHER WRITTEN OR ORAL STATEMENTS BY APP DEVELOPMENT PARTNER, ITS REPRESENTATIVES, OR OTHERS DO NOT CONSTITUTE WARRANTIES OF WISYS.

Section 4. Diligence.

Finalist and Company shall diligently take affirmative actions towards developing and commercializing the Software throughout the term of this Agreement. Such activities shall include developing the functionality and integration of the Software towards operational use on a mobile platform. On an annual basis, Finalist and Company shall provide WiSys with a written development report summarizing Finalist and Company's development activities for the prior year. Each development report shall be due on December 31 for each respective calendar year, and shall set forth sufficient detail to enable WiSys to ascertain Finalist and Company's progress towards commercializing the Software. WiSys reserves the right to audit Finalist and Company's records relating to the development activities required hereunder.

Section 5. Promotion and Publicity.

The parties agree that WiSys shall retain the ability to use the name of Finalist and Company, in sales promotion, advertising, or other forms of publicity to: (i) announce the Finalist as a winner of the 2019 APPStart challenge, (ii) advertise and promote the APPStart Challenge for future years, and (iii) in association with publications, articles, and events held by WiSys that further the mission of WiSys.

Section 6. Consideration.

A. Exit Fee.

(i) If a Liquidation Event occurs during the term of this Agreement or the twelve (12) month period thereafter, Company will pay WiSys a fee equal to one percent (1%) of the Aggregate Consideration (and Trailing Consideration, if any) for such Liquidation Event (hereafter referred to as the “**Commission**”).

(ii) From the Effective Date until nine (9) months after full payment has been received by WiSys under this Section 6 (“**Liquidation Event Notice Period**”), Company shall notify WiSys of any anticipated Liquidation Event and shall provide financial information to WiSys to the same extent and at least as often as provided to Company’s stakeholders and board of directors.

(iii) The Commission shall be paid upon the closing of and contemporaneously with the Liquidation Event; except for that portion of the Commission associated with any Trailing Consideration, which shall be payable within thirty (30) days after the actual receipt of such Trailing Consideration by Company or its successors/assigns, or its security holders. If the Trailing Consideration is to be paid to Company’s successors, assigns, or security holders, then as a condition of this Agreement Company must ensure that the applicable individuals or entities agree in writing prior to the closing of the Liquidation Event (naming WiSys a third party beneficiary) to pay to WiSys the portion of the Commission relating to such Trailing Consideration as set forth herein.

(iv) The Commission shall be payable in the form(s) of the proceeds payable to Company and its security holders in relation to the Liquidation Event, whether in cash, securities or other property, and in the same proportion such form(s) of consideration are payable to Company or its security holders. Notwithstanding the foregoing, in the event any such form of consideration includes securities for which there is not an active public market, in lieu of paying that portion of the Commission with such securities, Company will make a cash payment to WiSys equal to the fair market value of such securities. The valuation of such securities shall be determined in accordance with the definition of Aggregate Consideration.

(v) The parties recognize, however, that while the Company is currently expected to commercialize products and/or services relating to the APPStart submission or Software, it may be the case that other business entities or types of entities take over commercialization efforts. Accordingly, the Finalist, as the original founder of the Company, hereby agrees to ensure that the Exit Fee obligations of the “Company” herein are effectively transferred to any successor business entity of the Company that takes on such commercialization activities. For example, if the Company converts its corporate status (e.g.

from an LLC to a C Corp) or forms a wholly or partially owned affiliate, in order to commercialize products and/or services relating to the APPStart submission or Software, the Finalist will ensure that such entity or affiliate is bound to the Exit Fee terms hereof.

B. Payments.

All amounts owing to WiSys will be paid in U.S. dollars using the address provided in Section 12(a), unless otherwise agreed upon. All fees accruing in currencies other than U.S. dollars will be converted at the rate that is the arithmetic average of the rate shown in the Wall Street Journal, New York Edition on the last business day of each month of the calendar quarter on the day preceding the payment due date. WiSys is exempt from paying income taxes under U.S. law. Therefore, all payments due under this Agreement will be made without deduction for taxes, assessments, or other charges of any kind which may be imposed on WiSys by any government outside of the United States or any political subdivision of such government with respect to any amounts payable to WiSys pursuant to this Agreement. All such taxes, assessments, or other charges that may reduce WiSys's payment, such as bank transfer fees, will be assumed by Finalist and Company.

Section 7. Certain Warranties.

Nothing in this Agreement will be construed as: (i) a warranty or representation by WiSys as to the validity or scope of protection of WiSys' rights in the Software; (ii) a warranty or representation by WiSys as to the work performed by the App Development Partner; (iii) a warranty or representation that the Company will be a viable or profitable business; (iv) a warranty or representation that the publication of the Software is or will be free from infringement of the patent or copyright rights of third parties; (v) a warranty or representation that any product or process made, used, sold, or otherwise disposed of under or in association with the Software is or will be free from any claim of infringement or misappropriation of any intellectual property rights; or (vi) an obligation to furnish, any manuals or other documentation, technical support, or any know-how or expertise as of the Effective Date, or to provide access or a license to any other intellectual property owned or controlled by WiSys.

Section 8. Recordkeeping.

Finalist and Company will keep records sufficient to verify the accuracy and completeness of Finalist and Company's diligence requirements as provided under this Agreement, and compliance with this Agreement, including development reports and invoices for services to develop the Software (e.g., additional development work performed by App Development Partner), specifications and revision histories, proposed mobile app versions and accessories, and other regular accounting data. Such records will be preserved at least six (6) years after they are created during and after the term of this Agreement.

Section 9. Term and Termination.

A. The term of this license and Agreement will begin on the Effective Date and continue until this Agreement is terminated as provided for herein.

B. If Finalist or Company provides any false information with respect thereto, fails to actively pursue development efforts to develop the Software, or commits any breach of any other covenant,

representation, or warranty herein contained, and fails to remedy any such breach or default within ninety (90) days after written notice thereof by WiSys, or if Finalist or Company commits any act of bankruptcy, becomes insolvent, is unable to pay its debts as they become due, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it which is not dismissed within sixty (60) days, WiSys may, at its option, terminate this Agreement immediately by giving notice of termination to Finalist or Company. For clarity, the termination of this Agreement (no matter the reason) will in no way affect Company's obligation to pay to WiSys the Exit Fee, which obligation shall instead survive pursuant to its terms.

C. Waiver by either party of a single breach or default, or a succession of breaches or defaults, will not deprive such party of any right to terminate this Agreement in the event of any subsequent breach or default.

Section 10. Assignability. This Agreement may not be transferred or assigned by Finalist and Company, whether pursuant to a change of control event or otherwise, without the prior written consent of WiSys. Any transfer or assignment in breach of this Section 10 will be deemed null and void, and immediately ineffective.

Section 11. Product Liability; Conduct of Business.

A. Finalist and Company will, at all times during the term of this Agreement and thereafter, indemnify, defend, and hold harmless the organizers of the APPStart Challenge, WiSys and the University of Wisconsin, and their respective employees, trustees, contractors, and agents against all claims, proceedings, demands, expenses (including legal expenses and reasonable attorney's fees), losses, and liabilities of any kind whatsoever resulting from : (1) the development, design, production, manufacture, sale, use, lease, consumption, marketing, import/export, or advertisement of the Software, (2) the exercise of any right or the performance or non-performance of any obligation of Finalist or Company hereunder, or (3) the negligent, reckless, or willful actions or omissions of Finalist or Company. WiSys at all times reserves the right to select and retain counsel of its own to defend WiSys's interests.

B. Finalist and Company warrant that it will, on or before the launch of any products associated with or resulting from the Software, maintain and will continue to maintain liability insurance coverage appropriate to the risk involved in marketing products subject to this Agreement and that such insurance coverage lists WiSys as additional insureds. Upon WiSys's request, Finalist and Company will present evidence to WiSys that such coverage is being maintained.

Section 12. Notices. Any notice to be provided under this Agreement will be in writing and will be deemed to have been given at the earlier of (a) the time when actually received, if sent by any effective method of delivery, including but not limited to hand delivery or electronic transmission, i.e., email, or delivery by a professional courier service; or (b) the time when sent by certified or registered mail addressed to the party for whom intended at the address below or at such changed address as the party will have specified by written notice, provided that any notice of change of address will be effective only upon actual receipt.

(a) WiSys Technology Foundation
Attn: Intellectual Property and Contracts Associate
401 Charmany Drive, Suite 205
Madison, Wisconsin 53719
Phone: (608) 316-4037
Email: contracts@WiSys.org

(b) Finalist
Attn:
Phone:
Email:

(c) Company
Attn:
Phone:
Email:

Section 13. Confidentiality.

A. The parties agree to keep any information identified as confidential by the disclosing party confidential using methods at least as stringent as each party uses to protect its own confidential information, but in no case less than a reasonable degree of care. "Confidential Information" will include the terms of this Agreement, Finalist and Company's development reports and plans, financial reports and forecasts, discussions between Finalist and Wisys regarding the Software, the Software and all information concerning it (including without limitation all know-how, research results and similar information provided by or on behalf of WiSys) and any other information either (i) marked confidential or accompanied by correspondence indicating such information is exchanged in confidence between the parties, or (ii) that is, or should be, reasonably understood to be otherwise proprietary or confidential to a party. Except as may be authorized in advance in writing by WiSys, Finalist and Company will only grant access to WiSys's Confidential Information to those employees of Company involved in development of the Software. Company will require all such employees to be bound by terms of confidentiality no less restrictive than those set forth in this Section 13. Finalist and Company will not use any Confidential Information to WiSys's detriment.

B. The confidentiality obligations set forth above apply except to the extent that: (i) the receiving party can show by competent evidence that it possessed the information prior to its receipt from the disclosing party; (ii) the information was already available to the public or became so through no fault of the receiving party; (iii) the information is subsequently disclosed to the receiving party by a third party that has the right to disclose it free of any obligations of confidentiality; (iv) the information is required by law, rule, regulation, or judicial process to be disclosed (if such requirement arises, the receiving party will, prior to any such disclosure, promptly notify the disclosing party and provide assistance in any reasonable effort to obtain confidential treatment with respect to such disclosure); or (v) five (5) years have elapsed from the expiration or termination of this Agreement.

Section 14. Miscellaneous. This Agreement will be governed by and construed in all respects in accordance with the laws of the State of Wisconsin. If any provisions of this Agreement are or will come into conflict with the laws or regulations of any jurisdiction or any governmental entity having jurisdiction over the parties or this Agreement, those provisions will be deemed automatically deleted, if such deletion is allowed by relevant law, and the remaining terms and conditions of this Agreement will remain in full force and effect. If such a deletion is not so allowed or if such a deletion leaves terms thereby made clearly illogical or inappropriate in effect, the parties agree to substitute new terms as similar in effect to the present terms of this Agreement as may be allowed under the applicable laws and regulations. The parties hereto are independent contractors and not joint venturers or partners.

Section 15. Integration; Execution.

A. This Agreement constitutes the full understanding between the parties with reference to the subject matter hereof, and no statements or agreements by or between the parties, whether orally or in writing made prior to or at the signing hereof, will vary or modify the written terms of this Agreement. Neither party will claim any amendment, modification, or release from any provisions of this Agreement by mutual agreement, acknowledgment, or otherwise, unless such mutual agreement is in writing, signed by the other party, and specifically states that it is an amendment to this Agreement.

B. The persons signing on behalf of WiSys, Finalist, and Company hereby warrant and represent that they have authority to execute this Agreement on behalf of the party for whom they have signed. This Agreement may be executed in one or more counterparts by the parties by signature of a person having authority to bind the party, each of which when executed and delivered by facsimile, electronic transmission, or by mail delivery, will be an original and all of which will constitute but one and the same Agreement. The parties agree this Agreement may be electronically signed and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility. No agreement between the parties will exist unless the duly authorized representatives of Finalist, Company, and WiSys have signed this document within sixty (60) days of the Effective Date written on the first page of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates indicated below.

WISYS TECHNOLOGY FOUNDATION

By: _____ Date: _____,
Arjun Sanga, President

FINALIST

By: _____ Date: _____,
Name and Title: _____

COMPANY

By: _____ Date: _____,
Name and Title: _____

APPENDIX A

DEFINITIONS

A. “Aggregate Consideration” means:

(1) the amount equal to:

(a) in the case of an Asset Sale, the sum of (a) all cash, and the fair market value of all securities, property, and other consideration transferred to Company at the time of the transaction (or a series of transactions), and (b) all cash, and the fair market value of all securities, property, and other consideration for Trailing Consideration payable to the Company, when and if actually paid; or

(b) in the case of a Merger or Stock Sale, the sum of (a) all cash, and the fair market value of all securities, property, and other consideration transferred to the stockholders of Company (and any option holders or warrant holders) in relation to and at the time of the transaction (or a series of transactions), and (b) all cash, and the fair market value of all securities, property, and other consideration transferred to the stockholders of Company (and any option holders or warrant holders) for Trailing Consideration payable to the holders of Company’s securities, when and if actually paid.

(2) The valuation of any securities or other property shall be determined by reference to the operative transaction agreement for a respective Merger, Stock Sale or Asset Sale, provided that, if no such valuation is readily determinable from such operative transaction agreement, then for securities for which there is an active public market;

(a) if traded on a securities exchange or the NASDAQ Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the 30-day period ending three days prior to the closing of such transaction; or

(b) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three days prior to the closing of such transaction.

(3) For securities for which there is no active public market, the value shall be the fair market value thereof as determined in good faith by the Board of Directors of Company and approved by WiSys, such approval not to be unreasonably withheld.

B. “Liquidation Event” means a transaction (or a series of related transactions) that effectuates: (i) a merger, consolidation or other reorganization (“Merger”), (ii) the sale of a majority of the voting power of Company (including, without limitation, any sale of membership interests or shares in the Company, depending on Company’s form of entity at the occurrence of the Liquidation Event) (“Stock Sale”) or (iii) a sale of all or substantially all of the assets of Company (or a sale of only that portion of its assets related to the subject matter of this Agreement) (“Asset Sale”) in which for (i), (ii), and (iii) above,

the owners of Company prior to such transaction do not own a majority of the voting power of the acquiring, surviving or successor entity, as the case may be; provided, however, that a transaction will not constitute a Liquidation Event if the transaction's sole purpose is converting the Company to a new form of entity. For example, the conversion of Company from a limited liability company to a C-corporation will not constitute a Liquidation Event. Notwithstanding the foregoing, a Liquidation Event shall not include a bona fide financing transaction in which voting control of Company transfers to one or more persons or entities who acquire an equity interest in Company from Company in exchange for either an investment in Company or the cancellation of indebtedness owed by Company, or a combination thereof.

C. "Trailing Consideration" means any payments due for any deferred or contingent consideration payable to Company or its security holders including, without limitation, any post-closing milestone payment, escrow or holdback of consideration.