

\$ 50,000.00

_____ [insert date]
Pittsburgh, Pennsylvania

CONVERTIBLE PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned _____, a _____ (“Maker”), hereby promises to pay to the order of Carnegie Mellon University, a Pennsylvania nonprofit corporation with its offices at 5000 Forbes Avenue, Pittsburgh, PA 15213 (“Holder”), in lawful money of the United States of America at such place as Holder may direct, the amount of Fifty Thousand Dollars (\$50,000.00) (the “Principal”). This Convertible Promissory Note, as the same may be amended or supplemented from time to time, is referred to hereinafter as this “Note.”

The terms and conditions of this Note are as follows:

1. **OFEF Investment; Terms of Payment.** The Principal balance of this Note represents the amount of the cash investment made by Holder in Maker pursuant to Holder’s Open Field Entrepreneurial Fund (OFEF) program after application made by Maker and/or its representatives for same.

Except with respect to any Principal that is converted as provided in Section 2, the Principal will remain payable in perpetuity. Maker will have the right to prepay the Principal in full, together with interest thereon at the rate of 10% per annum, without penalty or premium, upon not less than 30 days written notice, during which 30 days Holder will have the option to convert pursuant to Section 2.1.3. For the avoidance of doubt, and notwithstanding any other provisions herein to the contrary, this Note is not payable to Holder at any time unless and until one of the events for Conversion (as described in Section 2 below) occurs. At such time, Holder will have the right to convert the Principal into Equity Securities (as described in Section 2 below).

2. **Conversion Rights.**

2.1 **Conversion.** Subject to the procedures set forth in Sections 2.2 and 2.3, Holder will have the right to convert the outstanding Principal into such number of fully paid and non-assessable shares of Equity Securities (as defined in Section 2.6.1) as is equal to the quotient of (x) the Principal, divided by (y) the product of the Established Price Per Share (as defined in Section 2.6.3) and the Conversion Discount Rate (as defined in Section 2.6.2) as follows:

2.1.1 Immediately prior to the closing of any merger or consolidation of Maker with or into another entity (a “Merger”); or the sale or other disposition of all or substantially all of the assets of Maker (a “Sale of Assets”); or the transfer by the equity holders of Maker of more than 50% of the then issued and outstanding Equity Securities of Maker (a “Stock Sale”, and each of the foregoing, a “Sale”), or

2.1.2 At any time after Maker issues Equity Securities in a round or rounds of financing of \$500,000 or more in the aggregate, including upon any conversion of any convertible debt (a “Financing”), or

2.1.3 During the 30-day period after Maker gives a notice of prepayment pursuant to Section 1 (a “Prepayment”).

Further, in the event a Sale, Financing or Prepayment event does not occur prior to the third anniversary of the date of this Note, then the outstanding Principal of this Note together with any and all accrued but unpaid interest shall as of third anniversary of the date of this Note be automatically converted into such number of fully paid and non-assessable shares of Equity Securities as is equal five percent (5%) of the then-outstanding Equity Securities of Maker calculated on a Fully Diluted Basis (as defined in Section 2.6.4) (an “Automatic Conversion”).

Equity Securities issued to Holder pursuant to this Section 2 will be “Conversion Securities.”

2.2 **Notice of Transaction.** If Maker proposes to undertake a Sale, a Financing or a Prepayment (each, a “Transaction”), it will give Holder written notice (a “Notice of Proposed Transaction”) of its intention not less than 30 days prior to the closing for the Transaction, describing the proposed Transaction, including the proposed price and/or enterprise value of Maker to be paid or imputed in connection with such Transaction, and the terms and conditions upon which Maker proposes to consummate such Transaction. Maker will inform Holder of the status of the negotiations relating

to any proposed Transaction and the scheduled closing date. Maker will not consummate any Transaction within the 30 day period after giving a Notice of Proposed Transaction without Holder's prior written consent.

2.3 Notice of Conversion.

2.3.1 In the case of a Sale or Prepayment, Holder will have 30 days from the date of receipt of a Notice of Proposed Transaction to give notice to Maker of its intention to convert all of the Principal into Conversion Securities in connection with the Transaction.

2.3.2 At any time at the closing of or following a Financing, Holder may convert the Principal of this Note by giving written notice to Maker of its intent to exercise its rights under Section 2.1 and stating the effective date of such conversion and the basis for calculating the Established Price Per Share shall, if such Financing has not occurred within the past year, be determined in accordance with Section 2.6.3(d) (otherwise it shall be determined in accordance with Section 2.6.3(a) for the most recent Financing).

2.3.3 Maker will, as soon as practicable after the effective date of any conversion, issue and deliver to Holder a certificate or certificates for the number of shares of Conversion Securities to which Holder is entitled. If the Transaction (other than a Prepayment) does not close, no conversion of this Note on account of that Transaction will occur.

2.4 No Fractional Shares. No fractional shares of Equity Securities will be issued upon conversion of this Note. In lieu of any fractional shares to which Holder would otherwise be entitled upon conversion of this Note, Maker will pay Holder a cash amount equal to such fraction multiplied by the product of the Established Price Per Share and the Conversion Discount Rate.

2.5 Reservation of Equity Securities. Maker will reserve and keep available out of its authorized but unissued shares, Equity Securities in an amount sufficient to effect the conversion of this Note.

2.6 Definitions.

2.6.1 "Equity Securities" means any shares of capital stock or other equity interests of or in Maker, including common stock and preferred stock, membership interests and limited liability company units, in each case whether or not authorized as of the date hereof and including any series or class of capital stock other equity interests, and all rights, options, or warrants to purchase any such shares. "Equity Securities" will not include (a) shares of Equity Securities that are issued by Maker to employees, consultants, officers, directors, and advisors or Maker pursuant to any option, grant, purchase or other similar plan approved by the board of directors or board of managers (or equivalent governance body) of Maker, (b) shares of Equity Securities issued by Maker in connection with any share split, share dividend/distribution or other recapitalization of Maker, or (c) shares of Equity Securities issued pursuant to commitments outstanding as of the date of this Note, including without limitation, warrants, notes or options.

2.6.2 "Conversion Discount Rate" equals (a) 90% if the Transaction occurs before the first anniversary of this Note, (b) 80% if the Transaction occurs on or after the first anniversary of this Note but prior to the second anniversary of this Note, and (c) 70% if the issuance of Transaction occurs on or after the second anniversary of this Note.

2.6.3 "Established Price Per Share" means (a) with respect to a Financing, the consideration received by Maker per share of Equity Securities that were issued by Maker in such Financing, (b) with respect to a Merger, the value imputed by such Merger to a common (or equivalent) share of Equity Securities on a Fully Diluted Basis, (c) with respect to a Sale of Assets or Stock Sale, the post-sale or post-transfer value, as applicable, of a common (or equivalent) share of Equity Securities on a Fully Diluted Basis, or (d) with respect to a Prepayment, the fair market value of a common (or equivalent) share of Equity Securities on a Fully Diluted Basis determined in good faith by the board of directors or board of managers (or equivalent governance body) of Maker and approved by Holder, which approval will not be unreasonably withheld. If the consideration received by Maker consists of services or property other than cash, such consideration will be computed at the fair market value thereof at the time of the relevant Transaction, as determined in good faith by the board of directors or board of managers (or equivalent governance body) of Maker and approved by Holder, which approval will not be unreasonably withheld.

2.6.4 "On a Fully Diluted Basis" means the total number of common (or equivalent) shares of capital stock or other equity interests of or in Maker which are issued and outstanding, plus the total number of shares which would

otherwise be issued and outstanding assuming the exercise of all granted and unretired options whether vested or unvested, warrants and other rights to purchase common (or equivalent) shares of capital stock or other equity interests, all vested and unvested shares of capital stock and other equity interests and the conversion of all outstanding convertible securities and debt in accordance with the terms thereof.

2.7 No Impairment. Maker will not, by amendment of its Articles or Certificate of Incorporation or Organization, bylaws, operating agreement and/or similar or equivalent documents, or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by Maker, but will at all times in good faith assist in the carrying out of all the provisions of this Section 2 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion right against impairment.

3. **Shareholders/Operating Agreement.** In connection with a conversion of this Note, Holder will execute Maker's shareholders' or operating agreement, purchase or similar agreement if and to the extent (i) its provisions do not require or authorize any person or entity to act for or on behalf of Holder or require Holder to assume or incur any financial-, confidentiality- and/or non-competition-related obligation or liability to or involving Maker (including any obligation to make any capital contributions to Maker), and (ii) it is executed by all other owners of outstanding Equity Securities of Maker, and (iii) it gives to Holder the rights and protections which are at least as favorable as, and contains restrictions which are no more onerous than, the restrictions and rights provided to the persons or entities who acquired Maker's Equity Securities in the Transaction that caused this Note to be converted or in the case of a conversion on account of a Prepayment or Automatic Conversion, in the then most recent issuance of Maker's Equity Securities.

4. **Representations and Warranties of Holder.** Holder hereby represents and warrants to Maker that:

4.1 Purchase Entirely for Own Account. This Note and the Conversion Securities (collectively, the "Securities") are being acquired for investment for Holder's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and Holder has no present intention of selling, granting any participation in, or otherwise distributing the same.

4.2 Restricted Securities. Holder understands and acknowledges that (a) the Securities have not been, and will not be, registered under the Securities Act; (b) the Securities are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, Holder must hold the Securities indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available; (c) Maker has no obligation to register or qualify the Securities for resale; and (d) if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Securities, and on requirements relating to Maker which are outside of Holder's control, and which Maker is under no obligation and may not be able to satisfy.

4.3 New Venture; No Public Market. Holder understands that (a) Maker is a start-up venture and that investment in the Securities involves a high degree of risk; (b) Holder could lose its entire investment in the Securities; and (c) no public market now exists for any of the securities issued by Maker, and Maker has made no assurances that a public market will ever exist for the Securities.

5. **Miscellaneous.**

5.1 Waiver; Remedies. No waiver by Holder of any right or remedy under this Note will be effective unless in a writing signed by Holder. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by Holder will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power, or privilege. The rights and remedies of Holder are cumulative and recourse to one or more right or remedy will not constitute a waiver of the others. Maker will be liable for all costs, expenses and attorneys' fees incurred by Holder in connection with the enforcement of Holder's rights under this Note.

5.2 Financial Information. So long as this Note is outstanding, within thirty (30) days after (i) the end of each of Maker's fiscal quarters excluding the last fiscal quarter of its fiscal year, Maker shall provide to Holder Maker's financial statements for that fiscal quarter (generally including, at a minimum, an income statement, a statement of cash flows and a

balance sheet) that have been certified by Maker's treasurer or chief financial officer (or Maker's equivalent thereto, such as Maker's managing member) or an independent auditor, and (ii) the end of each of Maker's fiscal years, Maker shall provide to Holder Maker's financial statements for that fiscal year (generally including, at a minimum, an income statement, a statement of cash flows and a balance sheet) that have been certified by Maker's treasurer or chief financial officer (or Maker's equivalent thereto, such as Maker's managing member), or an independent auditor.

5.3 Board of Directors with Outside Director. Maker agrees to establish and/or maintain a board of directors or board of managers (or equivalent governance body) with at least one outside director/manager/equivalent (i.e., a non-founder, non-employee and non-family member) within ninety (90) days of the date of this Note.

5.4 Notices. All notices or other communications hereunder will be sufficient if given in writing and delivered personally (including by way of Fed Ex or similar service) or sent by registered or certified mail, postage prepaid, as follows:

If to Maker, to:

If to Holder, to:

Carnegie Mellon University
5000 Forbes Avenue
Pittsburgh, PA 15213

Attention: Dave Mawhinney, Managing Director, Open Field Entrepreneurs Fund

or at such other address as the addressee may from time to time designate in a notice duly given as provided herein. All such notices will be deemed to have been given on the date delivered or four business days after being mailed.

5.5 Severability. If any provision of this Note is or is deemed to be invalid, illegal or unenforceable in any jurisdiction, such provision will be deemed to be amended to conform to applicable laws so as to be valid and enforceable and the remainder of this Note will remain in full force and effect.

5.6 Successors and Assigns. This Note will be binding upon and inure to the benefit of the parties and their successors and assigns.

5.7 Governing Law. **This Note will be governed by the laws of the Commonwealth of Pennsylvania without regard to conflict of laws principles. Maker and Holder hereby waive all rights each may have to trial by jury in any action, proceeding or claim arising out of or related to this Note. Maker and Holder acknowledge that the foregoing waiver is knowing and voluntary.**

IN WITNESS WHEREOF, Maker has duly executed this Note as of the date first above written.

Holder: Carnegie Mellon University

Maker: _____

By: _____

By: _____

Name: Mark Kamlet

Name: _____

Title: Provost & Executive Vice President

Title: _____