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**CONVERTIBLE PROMISSORY NOTE PURCHASE AGREEMENT** [[1]](#footnote-1)

**Convertible Promissory Note Purchase Agreement** (this “*Agreement*”), effective as of \_\_\_\_\_\_\_ is entered into by and between *[Insert Name of the Borrowing/Issuing Corporation]*, a \_\_\_\_ [*Insert State of Incorporation*] corporation[[2]](#footnote-2) (the “*Company*”), and [*Insert Name of Investor or Investment Group*] (the “*Investor*”)[[3]](#footnote-3). Certain capitalized terms used in this Agreement are defined in Section 5.1 of this Agreement.

**RECITALS**

 **WHEREAS**, the Company generally is in need of additional financial sources in order to conduct its business and, more specifically, to finance the costs and expenses associated with \_\_\_\_\_\_\_\_\_\_\_\_; and

 **WHEREAS**, the Investor is willing to loan the funds set forth herein to the Company, subject to the conditions specified herein, to conduct its business;

 **NOW, THEREFORE,** in consideration of the foregoing, and of the mutual representations, warranties, covenants and agreements contained in this Agreement and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

# **Amount and Terms of Loan**.

## **The Investor Loan**.On the basis of the representations, warranties, covenants and agreements contained in this Agreement, and subject to the terms and conditions of this Agreement, the Investor[[4]](#footnote-4) agrees to lend to the Company (the “*Investor Loan*”) at Closing (defined below) \_\_\_\_\_\_\_\_\_\_Dollars ($\_\_\_\_\_\_\_\_\_\_\_) in principal amount (the “*Loan Amount*”) against the issuance and delivery by the Company of a convertible promissory note for such amount, in substantially the form attached hereto as Exhibit A (the, “*Convertible Note*”).[[5]](#footnote-5)

## **The Closing**. The closing of the sale and purchase of the Convertible Note (the “*Closing*”) shall take place at the offices of [***insert name of law firm***] located at [***insert law firm address***] or such other place as the Company and the Investor may mutually agree, concurrently with the execution of this Agreement (the “*Closing Date*”). [[6]](#footnote-6)

## **Deliveries at Closing**. At the Closing[[7]](#footnote-7):

### the Company shall deliver to the Investor:

#### a certificate of the Secretary of the Company, certifying: (a) the Articles of Incorporation of the Company, [certified by the Secretary of State of the State of [insert state of organization]], (b) the Bylaws of the Company as of the Closing, and (c) resolutions or written consents of the Board of Directors of the Company evidencing the taking of all corporate action necessary to authorize and approve the execution and delivery of this Agreement and the Convertible Note (this Agreement and the Convertible Note are referred to collectively as the “*Loan Documents*”), and the consummation of the transactions contemplated thereby; and.

#### concurrently upon receipt of the Loan Amount in accordance with Section 1.3(b), the Company shall issue and deliver the Convertible Note executed by the Company in favor of the Investor, payable in the principal amount of Loan Amount.[[8]](#footnote-8)

### The Investor shall deliver a cash payment of the Loan Amount to the Company by wire transfer fund of immediately available funds to a bank account or bank accounts designated by the Company prior to Closing.

# **Representations, Warranties, and Covenants of the Company**.**[[9]](#footnote-9)** The Company hereby represents and warrants to the Investor as follows:

## **Organization, Standing, and Power.** The Company is a corporation duly incorporated, validly existing, and, as of the date of this Agreement, in good standing under the Laws of the State of [*insert state of incorporation*], and has the requisite corporate power and authority to own, lease, operate and otherwise hold its properties and assets and to carry on its business as it is now being conducted.

## **Authority; Due Execution. T**he Company has all of the requisite corporate power and authority to execute and deliver the Loan Documents, to carry out and perform its obligations under the Loan Documents, and to consummate the transactions contemplated thereby. The execution, delivery, and performance by the Company of the Loan Documents, including the delivery of the Convertible Note, and the consummation of the transactions contemplated thereby, have been duly and validly authorized by all necessary corporate action on the part of the Company. The Loan Documents have been duly executed and delivered by the Company and, assuming due and valid authorization, execution and delivery by the Investor of this Agreement, each of the Loan Documents will constitute legal, valid, and binding obligation of the Company, enforceable against it in accordance with their respective terms (except to the extent enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratoriums, or similar Laws affecting creditors’ rights and remedies generally and except that the availability of the equitable remedy of specific performance and injunctive relief is subject to the discretion of the court before which any proceedings may be brought (the “*Bankruptcy and Equity Exceptions*”).

## **No Conflict or Required Approvals.** [[10]](#footnote-10)

### Neither the execution and delivery of any of the Loan Documents, nor the consummation by the Company of the transactions contemplated hereby, or compliance with any of the terms or provisions herein or therein by the Company will: (i) conflict with or violate any provision of the Articles [Certificate] of Incorporation or Bylaws, of the Company, (ii) conflict with, violate, or constitute or result in a [material] breach of any term, condition, or provision of, or constitute a default (with or without due notice or lapse of time or both) under, or give rise to any right of termination, modification, cancellation, or acceleration of any obligation or the loss of any material benefit under, or require a Consent pursuant to any of the terms, provisions, or conditions of any material loan or credit agreement, note, mortgage, indenture, deed of trust, lease, sublease, license, sublicense, agreement, Permit, concession, franchise, security interest, instrument of indebtedness, plan or other instrument, purchase order, or other agreement or contract to which the Company or by which it is bound or to which its properties or assets are subject, (iii) result in the imposition of any Lien upon any properties or assets of the Company or in the suspension, revocation, forfeiture or nonrenewal of any material Permit or license applicable to the Company, or (iv) conflict with or violate any judgment, order, writ, injunction, decree of any court, governmental, regulatory or administrative agency, commission, authority, instrumentality, or other public body, domestic or foreign (a “*Governmental Entity*”), or material Law applicable to the Company or any of its assets or properties[; except in the case of clauses (ii), (iii), or (iv) of this Section 2.3(a), as would not have a material adverse effect on the Company or its ability to consummate and perform the terms of this Agreement].

### Assuming the accuracy of the representations made by the Investor[s] in Section 3 of this Agreement, no notice to, registration, qualification, designation, declaration of, or filing by the Company with, or the Consent or Permit of, or any action by any Governmental Entity or any other Person is required on the part of the Company in connection with the execution and delivery of any of the Loan Documents, or the consummation the transactions contemplated hereby or thereby, including, without limitation, the offer, issuance, sale, and delivery of the Note, except the filings as may be required under applicable provisions of United States federal securities Laws (including, if applicable, pursuant to Regulation D promulgated under the Securities Act of 1933, as amended (the “*Securities Act*”)), and as may be required under applicable state securities Laws, each of which will be filed timely within the applicable periods therefor.

## **Capitalization**.

### The authorized capital stock of the Company as of the Closing Date, prior to giving effect to the conversion of the Convertible Note hereby, shall consist of (i) \_\_\_\_\_\_\_ shares of common stock, $\_\_\_\_\_ par value per share (the “*Common Stock*”), of which \_\_\_\_\_\_\_\_\_\_\_\_ shares are issued and outstanding[[11]](#footnote-11), and (ii) \_\_\_\_\_\_\_\_\_ of preferred stock, par value $\_\_\_ per share (the “*Preferred Stock*”), [none] of which are issued and outstanding.[[12]](#footnote-12) [Each share of Preferred Stock is convertible into \_\_\_ shares of Common Stock and the outstanding shares of Preferred Stock is convertible into an aggregate of \_\_ shares of Common Stock. None of the Preferred Stock issued by the Company has been converted into shares of Common Stock. The Company has reserved a sufficient number of shares of Common Stock, for issuance upon conversion of all of the outstanding Series A Preferred Stock.][[13]](#footnote-13)

### All issued and outstanding shares of Common Stock [and Preferred Stock] have been duly authorized and validly issued and are fully paid and nonassessable. [All of the issued and outstanding shares of capital stock of the Company have been offered, sold, and issued by the Company in compliance with all [registration or qualification provisions, or exemptions therefrom, under] applicable federal securities Laws and the blue sky and securities Laws of all other applicable jurisdictions.] [[14]](#footnote-14)

### Except as required pursuant to the terms of the Loan Documents or as set forth in Schedule 2.4(c) of this Agreement: (i) no stockholder of the Company or any other Person is entitled to any preemptive rights with respect to the purchase, sale, or issuance of, or any co-sale rights, rights of first refusal or similar restrictions with respect to, any equity securities of the Company [or any of the Company’s Subsidiaries], (ii) there are no outstanding or authorized options, warrants, “phantom” equity rights, agreements, subscriptions, calls, demands, or other rights, commitments, or arrangements (written or oral, or contingent or otherwise) of any character to purchase or acquire any capital stock or other equity investments in any security directly or indirectly convertible into or exchangeable or exercisable for, the capital stock of or other equity interest in the Company, including, without limitation, any convertible indebtedness obligations (collectively, “*Options*”), (iii) the Company has no outstanding obligation (contingent or otherwise) to issue any Options or to issue or distribute to holders of any shares of its capital stock, any evidences of indebtedness, or assets of the Company, (iv) the Company has no outstanding obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any shares of its capital stock or any interest therein or to pay any dividend or make any other distribution in respect thereof, (v) there are no voting trusts, trusts, proxies or other similar agreements, understandings, or similar arrangements to which the Company is a party or by which the Company is bound with respect to the voting of any shares of capital stock of the Company,[[15]](#footnote-15) and (vi) there are no contractual obligations or commitments of any character to which the Company is a party or by which the Company is bound requiring the registration for sale of any capital stock of or other equity interests in the Company.[[16]](#footnote-16) The Company has valid waivers of any rights by other parties to purchase any of the Conversion Shares covered by this Agreement.

### Schedule 2.4(d) of this Agreement sets forth a true and complete list of: (i) the holders of all of the outstanding Common Stock of the Company immediately prior to the Closing, including the number of shares held by each holder and, with respect to restricted stock, the vesting schedule and repurchase price for the shares, and (ii) the holders of all outstanding Options immediately prior to the Closing, including the vesting schedule and the exercise or conversion price and, in the case of “phantom” equity rights, the amount and terms of the payout thereunder[, and (iii) the holders of all outstanding Preferred Stock of the Company immediately prior to the Closing][[17]](#footnote-17).

## **Issuance of the Convertible Note and the Conversion Shares**. The issuance, sale, and delivery of the Convertible Note to the Investor and the issuance of the Common Stock upon conversion of Convertible Note (the “*Conversion Shares*”) have been duly authorized by all necessary corporate action on the part of the Company. The Company has reserved and shall maintain a sufficient number of shares of Common Stock, for issuance upon conversion of all of the Convertible Note. The Conversion Shares, when issued and delivered in compliance with the provisions of the Loan Documents, will be duly and validly issued, fully paid, and nonassessable, and shall be free and clear of any Liens, or preemptive or other similar rights other than those set forth in the Loan Documents, applicable state and federal securities laws, and Liens created by or imposed by the Investor. Assuming the accuracy of the representations and warranties of the Investor contained in Section 3 hereof and subject to the filings described in Section 2.3(b) hereof, the offer, issue, and sale of the Convertible Note and the Conversion Shares (collectively, the “*Securities*”) to the Investor are and will be exempt from the registration under the Securities Act, and will be exempt from registration and qualification the securities Laws of all other applicable jurisdictions.

## **No Subsidiaries**. The Company does not have any Subsidiaries and does not currently own or control, directly or indirectly, any interest in any other corporation, partnership, trust, joint venture, limited liability company, association or other business entity. The Company is not a participant in any joint venture, partnership of similar arrangement.[[18]](#footnote-18)

## **Financial Statements**. The Company has provided the Investor with complete and correct copies of the following financial statements (the “*Financial Statements*”): (a) the [unaudited][audited][consolidated] [[19]](#footnote-19) balance sheets of the Company [and its consolidated subsidiaries] as of \_\_\_\_\_\_\_\_\_ [insert recently ended non-year end period] (the “*Balance Sheet Date*”) and December 31, 201\_ and 201\_\_, and (b) the [unaudited][audited][consolidated] statement of income (loss), stockholders’ equity, and cash flows (including related notes and schedules, if any) of the Company [and its consolidated subsidiaries] for the period ended \_\_\_\_\_\_\_\_\_ [insert recently ended non-year end period] and for each of the fiscal years ended December 31, 201\_ and 201\_\_. The Financial Statements fairly present (except as may be stated in the notes thereto) the financial position and the results of operations of the Company at and as of the dates and for the periods referred to therein (subject, with respect to the unaudited Financial Statements, to normal and recurring year-end adjustments). [Set forth in Section 2.7 of the Disclosure Schedule is true, complete, and accurate copy of the Financial Statements.]

## **No Undisclosed Liabilities**. The Company does not have any [material] liabilities or obligations of any nature (whether accrued, contingent or absolute, unliquidated, matured or unmatured, or known, whether due or to become due and regardless of when asserted) except for those liabilities and obligations that are: (a) disclosed in the Financial Statements (or in the footnotes thereto), (b) incurred or arising in the ordinary course of business since the Balance Sheet Date or in connection with the Investment Transaction, or (c) set forth in the Schedule 2.8 of this Agreement.

## **Absence of Certain Changes or Events**.[[20]](#footnote-20) Since the Balance Sheet Date: (a) the Company has conducted its businesses in all material respects only in the ordinary course of business, (b) there has not occurred, and there is not currently existing any circumstance, event, change, development, or occurrence (including, without limitation, any damage, destruction, or other casualty loss (whether or not covered by insurance)) which has had, or that is reasonably likely to a material adverse effect on the Company, and (c) there has not been any material change in the accounting methods, principals or practices of the Company.

## **Tax Matters**. The Company has duly and timely filed or caused to be filed in a timely manner (within applicable extension periods) all material Tax Returns and forms required to be filed by it and no material penalties or other charges are or will become due with respect to any of Tax Returns as the result of the late filing thereof. The Company has paid all Taxes due or claimed to be due by any Taxing authority in connection with any of the Company’s Tax Returns (without regard to whether or not such Taxes are shown as due on such Tax Returns), as well as all other Taxes, assessments, and governmental charges which have become due and payable, including, without limitation, all Taxes which the Company is obligated to withhold from amounts owing to employees, creditors, and third parties. There is no federal, state, local or foreign action, suit, proceeding, audit, investigation, or claim pending or, to the Knowledge of the Company, threatened in respect of any Taxes for which the Company is or may become liable, nor has any deficiency or claim for any such Taxes been proposed, asserted or, to the Knowledge of the Company, threatened by any Taxing authority. The Company has not consented to any waivers or extensions of any statute of limitations with respect to any taxable year of the Company. Neither the Company nor any of its present or former stockholders has ever filed an election pursuant to Section 1362 of the Internal Revenue Code of 1986 (the “*Code*”), that the Company be taxed as an S corporation.

## **Permits; No Violations; and Compliance with Laws**.[[21]](#footnote-21)

### The Company holds all Permits necessary for it to own, lease, and operate its assets and properties and to lawfully carry on its business as now conducted except as would not have a material adverse effect on the Company. All material Permits are in full force and effect, and the Company is in substantial compliance with all conditions and requirements of such Permits and all rules and regulations relating thereto.

### The Company (i) is not in conflict with, or in default under, or in violation of its Articles [Certificate] of Incorporation or bylaws, (ii) is not in conflict with or in violation or breach of, or in default under (with or without due notice or lapse of time or both) material loan or credit agreement, note, mortgage, indenture, deed of trust, lease, sublease, license, sublicense, agreement, Permit, concession, franchise, security interest, instrument of indebtedness, plan or other instrument, purchase order, or other agreement or Contract to which the Company or by which it is bound or to which its properties or assets are subject, (iii) is not in conflict with or in violation of any judgment, order, writ, or decree of any Governmental Entity to which it the Company is a party or by which it is bound, and (iv) to the knowledge of the Company, has not performed any act, the occurrence of which would result in the Company’s loss of any right granted under any [material] license, distribution or other agreement[; except in the case of clauses (ii), (iii), or (iv) of this Section 2.11(b), as would not have a material adverse effect on the Company or its ability to consummate and perform the terms of this Agreement].

## **No Litigation**. There is not now pending or, to the knowledge of the Company, threatened [in writing], any litigation, suit, claim, action, or proceeding, including, without limitation, arbitration proceeding, mediation, or other alternative dispute resolution proceeding, to which the Company is or will be a party (or, as applicable, to the knowledge of the Company, any of its directors, officers or employees in their capacities as such is or will be a party) or by which its property or assets will or may be bound or affected in or before or by any Governmental Entity that (a) would materially delay, impede, or impair the consummation of the transactions contemplated by this Agreement or (b) which is reasonably likely to have a material adverse effect on the Company.

## **Intellectual Property**.[[22]](#footnote-22) No product or service marketed or sold (or proposed to be marketed or sold) by the Company violates or will violate any license or infringes or, to the knowledge of the Company, will infringe any intellectual property rights of any other party. Except as shown in Schedule 2.13 of this Agreement, and other than with respect to end user license agreements, commercially available works of authorship or software products under standard end-user object code license agreements, there are no outstanding options, licenses, agreements, claims, encumbrances or shared ownership interests of any kind relating to the Company Intellectual Property, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, proprietary rights and processes of any other Person. The Company has not received in writing any communications alleging that the Company has violated or, by conducting its business, would violate any of the patents, trademarks, service marks, tradenames, copyrights, trade secrets, mask works or other proprietary rights or processes of any other Person. The Company has obtained and possesses valid licenses to use all of the software programs present on the computers and other software-enabled electronic devices that it owns or leases in connection with the Company’s business. To the Company’s knowledge, it will not be necessary to use any inventions of any of its employees or consultants made prior to their employment by the Company.

## **Employee Matters**.[[23]](#footnote-23)

### As of the date of this Agreement, the Company employs \_\_\_ full time and \_\_\_ part time employees and engages \_\_\_ consultants or independent contractors.[[24]](#footnote-24) The Company is not aware that any officer or group of employees intends to terminate his, her or their employment with the Company.

### Except as set forth in Schedule 2.14 of this Agreement, the Company is not a party to or bound by any currently effective written employment contract and the employment of each employee or consultant of the Company is terminable at will. To the knowledge of the Company, no employee of the Company or any consultant with whom the Company has contracted is a party to or bound by any Contract or other commitment (including, without limitation, any employment contract, proprietary information agreement or any other agreement) or subject to any judgment, decree, order of any Governmental Entity or any other restrictions that would materially interfere with such Person’s ability to be employed by, or to contract with, the Company or to promote the interest of the Company or that would conflict with the business the Company; and to the Company’s knowledge the continued employment by the Company of its present employees, and the performance of the Company’s contracts with its independent contractors, will not result in any such violation. The Company has not received any notice in writing alleging that any such violation has occurred.

### Each of the current and former employees, officers, consultants, and independent contractors of the Company has entered into a written (i) propriety information and inventions assignment agreement, the form of which has been provided to the Investor (“*PIIA Agreement*”)[[25]](#footnote-25), and (ii) a non-competition and non-solicitation agreement, the form of which has been provided to the Investor (“*Non-Competition Agreement*”). No current and former employees, officers, consultants, or independent contractors has excluded any works or inventions from their respective PIIA Agreement and, to the Knowledge of the Company, none of them is in violation of their respective PIIA Agreements or Non-Competition Agreement.

### The Company has no collective bargaining agreements with any of its employees. There is no labor union organizing activity pending or, to the Company’s knowledge, threatened with respect to the Company.

## **Related-Party Transactions**. [[26]](#footnote-26)

### Except as set forth in Schedule 2.15(a) of this Agreement, the Company is not indebted, directly or indirectly, to any of its directors, officers, employees or to their Immediate Family Members, or to any Affiliate of the foregoing (other than amounts payable in connection with advances of expenses incurred in the ordinary course of business or for employee benefits made available to all employees). None of the directors, officers, employees or stockholders of the Company or the Immediate Family Members of any such Person are indebted, directly or indirectly, to the Company. The term “*Immediate Family Member*” means a Person’s spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, and brothers and sisters-in-law.

### Except as set forth in Schedule 2.15(b) of this Agreement, there are no agreements, understandings or proposed transactions between the Company and any of its directors, officers, employees, consultants, or immediate family member of such Person, or any Affiliate thereof.

## **Insurance**.[[27]](#footnote-27)The Company carries insurance on its properties, assets, business, and personnel (or commercially reasonable terms and subject to reasonable deductibles) in amounts sufficient and adequate for the business in which the Company is engaged and which are customary for companies similarly situated.

## **No Sales or Liquidation Contemplated**.The Company is not in discussions or negotiations with any third party regarding the sale of the business of the Company, whether structured as a merger, reverse merger, share exchange, sale of a controlling interest of its stock, the sale of all or substantially all of the assets of the business of the Company, or otherwise contemplating a liquidation of the Company.

## **No Broker or Finder**. Neither the Company or any of its officers, directors, have retained or used the services of any broker, finder, investment banker, or other financial intermediary, nor has the Company paid or agreed to pay any brokerage, finder’s, or other fee or commission in connection with any of the transactions contemplated by this Agreement.

## **Accuracy of Representations and Warranties**. The Company confirms that the representations and warranties of the Company made to the Investor pursuant to this Agreement are true and correct as of the date of this Agreement.

# **Representations, Warranties, and Covenants of the Investor**. The Investor hereby represents and warrants to the Company as follows:

## **Authority; No Conflict or Required Consents**.

### The Investor is an [individual][[28]](#footnote-28) who has full legal capacity to execute and deliver the Loan Documents, to perform his obligations thereunder, and to consummate the transactions contemplated thereby. The Loan Documents have been duly executed and delivered by the Investor and, assuming valid authorization, execution and delivery hereof by the Company, each constitutes a legal, valid and binding obligation of the Investor enforceable against him or her in accordance with its terms (subject to the Bankruptcy and Equity Exceptions).

### Neither the execution, delivery or performance of this Agreement by the Investor, nor the consummation by the Investor of the transactions hereby, or compliance by the Investor with any of the terms or provisions herein will conflict with or violate any order, writ, Injunction, decree, or Law applicable to the Investor, or any of his properties or assets that will materially impair the ability of the Investor to perform its obligations under this Agreement.

### No notice, registration, qualification, designation, declaration, or filing with, or the Consent or Permit of, or any action by any Governmental Entity is required on the part of an Investor in connection with the execution and delivery of this Agreement or the consummation the transactions contemplated hereby.

## **Investment Intent**.[[29]](#footnote-29)

### The Investor: (i) is the sole and true party in interest, and is acquiring the Convertible Note, and will acquire the Conversion Shares upon conversion of the Convertible Note solely for his/her own account, not as a nominee or agent, for investment purposes only, and not with an intent or a view to the sale or distribution of any part thereof within the meaning of Section 2(a)(11) of the Securities Act, (ii) does not have any present intent of making a Transfer of, granting a participation in, or otherwise distributing any of the Securities in a manner contrary to the Securities Act or the securities Laws of any other applicable jurisdiction, (iii) does not have any contract, undertaking, agreement, or arrangement with any person to Transfer, grant any participation in, or otherwise distribute any of the Securities to such person, and (iv) does not presently have any reason to anticipate any change in circumstances or other particular occasion or event which would cause the Investor to need to sell the Securities, except in accordance with the terms of this Agreement and in compliance with all applicable federal and state securities Laws.

## **Restricted Securities; Transfer Restrictions**.

### The Investor affirms that the Investor been advised and understands that (i) the Securities have not been registered under the Securities Act or registered or qualified under the securities Laws of any other jurisdiction and are being sold in reliance upon an exemption from registration under such Laws, (ii) the Investor may not Transfer the Securities unless they are subsequently registered and qualified under such Laws or, in the opinion of counsel reasonably satisfactory to the Company, an exemption from such registration and qualification is available[[30]](#footnote-30),, and (iii) if an exemption from registration or qualification is available, it may be conditioned on various legal, procedural and other requirements which are outside of the Investor’s control and which the Company has no obligation and may not be able to satisfy.

### The Investor understands and acknowledges that (i) only the Company can register the Securities under applicable securities Laws, and (ii) the Company has no obligation to, and the Company does not have any present intention to, register or qualify the Securities under the Securities Act or the securities Laws of any other jurisdiction.

## **Knowledge, Experience and Financial Capability**. The Investor has sufficient knowledge and experience in financial and business matters and investing in companies similar to the Company so that it is capable of evaluating the merits and risks of the investment contemplated by this Agreement and understands and acknowledges that an investment in the Securities and the Company involves certain risks[, including those risks factors set forth in Exhibit A to this Agreement] [[31]](#footnote-31). The Investor recognizes that no public market for the Securities exists and none is expected to develop and, as result, when considered in relation to the Transfer restrictions identified in Section 3.3 hereof, that an investment in the Securities may not be liquid and that such Investor must bear the economic risk of the investment indefinitely. The Investor is a sophisticated investor and has carefully considered and evaluated the risks and benefits of an investment in the Securities and the Company and the Investor has taken full cognizance of, understands, and is willing to bear the risks related to the purchase of the Securities. The Investor further represents that he/she has adequate means of providing for his/her current needs and possible contingencies, the Investor can afford to bear the economic risk of holding the Securities for an indefinite period of time, the Investor has no need for liquidity in its investment in the Securities, and the Investor has the net worth sufficient to bear the risks of and to sustain a complete loss of such Investor’s entire investment in the Company. The Investor has been represented by counsel and other advisors of its choosing.

## **Accredited Investor; Not a Bad Actor**. The Investor is: (a)an “accredited investor” as such term is defined in Rule 501(a) promulgated under the Securities Act, and (b) is not subject to any “bad actor” disqualification as set forth in Rule 506(d) of Regulation D or any similar disqualification provision that could adversely affect the Company’s reliance on any federal or state securities registration exemption or that could otherwise adversely affect the offering of the Securities.[[32]](#footnote-32) [To the extent the Investor has been formed for the specific purpose of acquiring Securities, such Investor expressly represents and warrants to the Company that each equity holder of such Investor also is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.] [[33]](#footnote-33)

## **Information Provided**. [[34]](#footnote-34)The Investor represents, acknowledges and confirms that prior to the sale of the Convertible Note to him/her pursuant to this Agreement, the Investor: (a) has been given an the opportunity to ask questions of, and receive answers from, representatives of the Company concerning Company and the terms and conditions of the sale of the Convertible Note by the Company to the Investor, and (b) has been given the opportunity to obtain any additional information which the Investor deemed necessary to verify the accuracy of the information supplied to it. The Investor confirms that he has been furnished with all such requested information and all questions asked by such Investor have been answered to his full satisfaction. The Investor represents that in connection with its purchase of the Securities, it has not relied on any statement or representation by the Company, or any of its officers and directors, or any of their attorneys or agents, except as specifically set forth herein or provided pursuant to this Section 3.6. Such Investor confirms that it is aware and understands that no federal or state agency has made any finding or determination as to the fairness of this offering nor has made any recommendation or endorsement of the Securities. None of the representations or warranties of the Investor in this Section 3.6 shall limit or modify the representations and warranties of the Company set forth in Section 2 hereof or the right of the Investors to rely thereon.

## **No General Solicitation**.[[35]](#footnote-35) Such Investor represents and certifies that the Investor is not acquiring the Securities as a result of any form of “general solicitation” or “general advertising” as those terms are used in Rule 502(c) of Regulation D promulgated under the Securities Act.

## **Reliance on Investor’s Representations**. The Investor acknowledges and understands that the representations, warranties, and covenants contained in this Section 3 of the Agreement are being furnished, in part, and will be relied on by the Company in determining whether this offering of the Securities is exempt from registration under the Securities Act and the securities laws of all other applicable jurisdictions and, accordingly, confirms that all such statements contained herein are true, complete, and accurate as of the date hereof, and shall be true, accurate, and complete as of the date that this Agreement is executed and delivered, and shall survive the Closing. If any events occur or circumstances exist prior to the issuance of the Conversion Shares to the Investor which would make any of the representations, warranties, agreements, or other information of the Investor set forth herein untrue or inaccurate, the Investor agrees to immediately notify the Company in writing of such fact specifying which representations, warranties, or covenants are not true, correct, or accurate, and the reasons therefor.

## **Investor’s Funds**.[[36]](#footnote-36) The Investor represents and warrants that he/she has taken, and shall continue to take hereafter, such measures as are required by Law to assure that the funds used to pay to the Company any portion of the Loan Amount are derived from: (i) transactions that do not violate United States Law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) permissible sources under United States Law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.

## **No Broker or Finder**. The Investor has not retained or used the services of any broker, finder, investment banker, or other intermediary, nor has any Investor paid or agreed to pay any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement.

# **Additional Agreements**.

## **Agreement Not to Transfer Securities**. [[37]](#footnote-37) The Investor hereby agrees that he will not, directly or indirectly Transfer, or offer to Transfer any of the Securities (or solicit any offers to buy, purchase, or otherwise acquire or take a pledge of any the Securities), except in compliance with this Agreement, the Securities Act and the securities Laws of all other applicable jurisdictions, as well as the rules and regulations promulgated thereunder.[[38]](#footnote-38) relating to applicable Transfer restrictions.

## **Legends**. The Investor confers full authority upon the Company to affix, when issued, appropriate legends relating to applicable Transfer restrictions to the face of the documents or certificates representing the Securities, including, without limitation, the following:

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION AND MAY NOT BE OFFERED FOR SALE, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND THE SECURITIES LAWS OF ALL OTHER APPLICABLE JURISDICTIONS UNLESS, IN THE OPINION OF COUNSEL TO THE COMPANY, SUCH REGISTRATION IS NOT REQUIRED.”

## **Investor’s Indemnification Agreement**.[[39]](#footnote-39) The Investor acknowledges that understands the meaning and legal consequences of the representations, warranties and covenants contained in Section 3 of this Agreement, especially as it relates to the reliance referenced in Section 3.8 hereof, and agrees to indemnify and hold harmless the Company and its agents, employees, and representatives from and against any and all losses (including reasonable attorney’s fees), damage or liabilities due to or arising out of any misrepresentations, misstatements, or omissions with respect to any of the representations or warranties, or a breach of any of the covenants or agreements, contained in this Agreement by the Investor.

## **Reservation of Convertible Shares**. The Company hereby agrees that:

### it will at all times have authorized and will reserve and keep available, solely for issuance and delivery to the holder of the Note, that number of shares of its Common Stock (or other securities and property) that may be required from time to time for issuance and delivery of the Conversion Shares to the Investor upon conversion of the Convertible Notes.

### it shall take all necessary steps to ensure that the Conversion Shares, when issued in accordance with this Agreement and each of the Convertible Notes, shall be duly and validly issued, shall be fully paid and nonassessable, free and clear of any claim, lien, encumbrance, or security interest of any kind whatsoever, and free from all preemptive rights of any security holders of the Company.

### it shall take all action as may be necessary to assure that such Conversion Shares (and any other securities and property) may be issued and delivered as provided herein and as set forth in the associated Convertible Note without violation of any applicable law or regulation, or of any requirements, of any domestic securities exchange or inter dealer quotation system upon which the Common Stock may be listed; *provided, however*, that the Company shall not be required to effect a registration under federal or state securities laws.

## **Information Rights**. [[40]](#footnote-40)

### The Company covenants and agrees with the Investor that for so long as the Investor continues to own the Note [of record no less than [\_\_\_]% of the issued and outstanding Common Stock of the Company] and until the Company consummates an [initial public offering] of its securities pursuant to a registration statement declared effective by the Securities and Exchange Commission under the Securities Act, the Company [[41]](#footnote-41), the Company shall provide to such Investor:

#### a quarterly management reports[, in a format to be agreed upon by the Company and the Investor[s]], within 45 days after the end of each of the first three quarters of each fiscal year, including an unaudited balance sheet of the Company as of the end of such quarter and statements of income and retained earnings and changes in financial position of the Company (x) for such quarter and (y) for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, setting forth in each case in comparative form the corresponding figures for the corresponding period of the preceding fiscal year; and

#### annual reports within 90 days after the end of each fiscal year of the Company, including a copy of the annual report for such year for the Company, with an unaudited balance sheet of the Company as of the end of such fiscal year and statements of income and retained earnings and changes in financial position of the Company for such fiscal year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, all such statements to be duly certified by the chief financial officer (or other financial manager or controller) of the Company;

### **[**Except as otherwise agreed to by the Company, all information received by such Investor with respect to the Company pursuant to this Section 4.5 shall be subject to, the Investor[s] shall be bound by, the terms of that certain confidentiality agreement, dated \_\_\_\_\_\_, by and between the Company and the Investor[s].][[42]](#footnote-42)

## **Convertible Notes**.The Investor agrees that by acceptance of the Convertible Note pursuant to the terms of this Agreement, he will be bound by the terms of the Convertible Note.

## **Documentary Stamp Taxes**. The Company agrees to pay all documentary stamp taxes required to be paid in connection with the issuance and delivery of the Convertible Note to the Investor.

## **Board of Directors**.The Company agrees that immediately following the later of: (a) the Investor’s exercise of either the [Optional] Conversion Right (as defined in the Convertible Note), or (b) the date the Company obtains directors’ and officers’ liability insurance for each director of the Company, the Company will fix the size of the Board of Directors at \_\_\_\_\_ (\_\_) directors and will appoint the Investor to serve on the board of directors of the Company until the next annual meeting of stockholders.[[43]](#footnote-43)

## **Directors’ and Officers’ Liability Insurance**. The Company shall, within a reasonable time following the Closing Date:

### obtain directors’ and officers’ liability insurance for each director of the Company reasonably satisfactory to the Investors in an amount of no less than $[1,000,000.00] and

### enter into an indemnification agreement with each member of the board of directors of the Company.

## **Further Assurances**.On or after the date of this Agreement, each of the parties shall execute and deliver, or cause to be executed and delivered, such further documents, certificates, and instruments reasonably required to issue and distribute the Securities to the Investor, and to perform such further acts as may be reasonably requested in order to convey the Securities to the Investor, all on terms contained herein, and otherwise to comply with the terms of this Agreement and consummate the transactions herein provided.

# **General Provisions**.

## **Definitions**.

### Except as otherwise provided herein, the capitalized terms set forth below shall have the following meanings:

“*Affiliate*”shall mean, as to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of this definition, the term “*control*” (including the term “*controlling*,” “*controlled by*” and “*under common control*,” or correlative terms) means the possession, direct or indirect, of the power to direct the management and policies of a Person, whether as an officer or director, through the ownership of voting securities, by contract or otherwise.

“*Board of Directors*” or “*Board*” means the board of directors of the Company.

“*Business Day*” shall mean any day other than a Saturday, Sunday, or other day on which commercial banks in the State of \_\_\_\_\_ are authorized or required by Law or executive order to close.

“*Company Intellectual Property*” [[44]](#footnote-44) shall mean all patents, patent applications, trademarks, trademark applications, service marks, service mark applications, tradenames, copyrights, trade secrets, domain names, mask works, information and proprietary rights and processes, similar or other intellectual property rights, subject matter of any of the foregoing, tangible embodiments of any of the foregoing, licenses in, to and under any of the foregoing that are owned and used by the Company in the conduct of the Company’s business as now conducted.

“*Consent*” shall mean any consent, order, approval, authorization, clearance, exemption, exception, waiver, ratification, or similar affirmation by any Person.

 *“Entity”* shall mean any general partnership, limited partnership, corporation, joint venture, trust, limited liability company, limited liability partnership, unincorporated organization, business trust, cooperative or association.

“*Law*” means any code, law, ordinance, regulation, reporting or licensing requirement, rule, or statute applicable to a Person or its assets, properties, liabilities, or business, including those promulgated, interpreted, or enforced by any Governmental Entity.

*“Liens”* shall mean all liens, encumbrances, charges, pledges, claims, security interests, equities, options, warrants, rights to purchase or acquire, and other defects in title.

“*Permits*” shall mean all permits, licenses, variances, certificates, filings, franchises, notices, rights, and Consents of and from all Governmental Entities.

“*Person*” shall mean an individual or an Entity.

“*Subsidiaries*” or “*Subsidiary*” means all corporations, limited liability companies, limited partnerships, and other entities in which the entity in question owns or controls 50% or more of the outstanding equity or voting securities or interests either directly or through an unbroken chain of entities as to each of which 50% or more of the outstanding equity or voting securities or interests are owned directly or indirectly by such entity in question.

“*Transfer*” shall be construed broadly and shall include to mean, in the context of a transfer of any of the Securities, any sale, assignment, participation, gift, bequest, distribution, exchange, pledge, hypothecation, placement of a lien thereon or a grant of a security interest therein or other encumbrances thereon, judicial attachment, contribution to a trust or other Entity, or other transfer or disposition (voluntarily or involuntarily, by operation of law or otherwise, and whether as security or otherwise) by a Holder of all or a portion of its Securities or any right or interest therein. For purposes of this definition, a “*Transfer*” shall include the sale, assignment, participation, gift, bequest, distribution, exchange, pledge, hypothecation, placement of a lien thereon or a grant of a security interest therein or other encumbrances thereon, judicial attachment, contribution to a trust or other Entity, or other transfer or disposition (voluntarily or involuntarily, by operation of law or otherwise, and whether as security or otherwise) of a controlling equity interest in any Person which owns of record any of the Securities.

### The following terms shall have the meanings ascribed thereto in the Section set forth opposite such term[[45]](#footnote-45):

 **Term Section**

Agreement Preamble

 Balance Sheet Date 2.7(a)

 Bankruptcy and Equity Exceptions 2.2(a)

 Board of Directors (or Board) 2.2(b)

 Closing 1.2

 Closing Date 1.2

 Common Stock 2.4(a)

Company Preamble

 Conversion Shares 2.5(a)

 Convertible Note 1.1

 Financial Statements 2.7(a)

 Governmental Entity 2.3(a)

 Immediate Family Member 2.11(a)

 Investor Preamble

 Investor Loan 1.1

 Loan Amount 1.1

 Loan Documents 1.3(a)

 Non-Competition Agreement 2,12(c)

 Options 2.4(c)

 PIIA Agreement 2,12(c)

 Preferred Stock 2.4(a)

 Securities 2.5(b)

 Securities Act 2.5(b)

 State Secretary 1.3(a)

### Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed followed by the words “without limitation.”

## **Survival of Representations**.  The representations and warranties in this Agreement and in any certifi­cate delivered pursuant hereto shall survive the Closing.[[46]](#footnote-46)

## **Expenses**. Except as otherwise provided in this Agreement, whether or not the transactions contemplated herein are consummated, each party hereto shall bear and pay its own fees, costs and expenses incident to preparing, entering into and carrying out this Agreement and to consummating the transactions contemplated hereby.

## **Severability**. The provisions of this Agreement and the Convertible Note shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provisions shall be interpreted to be only so broad as is enforceable.

## **Entire Agreement**. Except as otherwise expressly provided herein, this Agreement and the other documents, agreements, and instruments, executed and delivered pursuant to or in connection with this Agreement, including the Convertible Note, contains the entire agreement among the parties hereto with respect the subject matter hereof, and such Agreement supersedes all prior arrangements or understandings with respect to the subject matter hereof, both written and oral.

## **Amendment and Modification**. Except as otherwise expressly set forth in this Agreement, any term of this Agreement may be amended or terminated and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investor. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

## **Successors and Assigns**. This terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties to this Agreement or their respective successors and permitted assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

## **Notices**. All notices or other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (a) upon personal delivery made by hand to the Person, (b) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient’s next Business Day, (c) three (3) calendar days after the deposit of such notice or communication in the United States Mail, registered or certified, return receipt requested, with proper postage affixed thereto, or (d) the next Business Day after deposit with a nationally recognized overnight courier or package delivery service guaranteeing next Business Day delivery, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth on the signature page to this Agreement, or to such e-mail address, facsimile number or address as subsequently modified by written notice given in accordance with this Section 5.8. If notice is given to the Company, a copy shall also be sent to [insert law firm the company and address of law firm].

## **Governing Law; Jurisdiction; Venue**.[[47]](#footnote-47) This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_\_\_ without giving effect to the choice of law principles thereof that would result in the application of the Laws of any other jurisdiction. Any action, litigation, suit or proceeding arising out of or relating to this Agreement or any transaction contemplated hereby shall be brought solely in federal or state courts of competent jurisdiction in the courts of the State of \_\_\_\_ located in \_\_\_\_\_\_, or, if it has or can acquire jurisdiction, in the United States District Court for the \_\_\_\_\_\_\_\_\_, and each of the parties hereto hereby irrevocably consents and submits to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such action, litigation, suit or proceeding and waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the action, litigation, suit or proceeding shall be heard and determined only in any such court and agrees not to bring any action or proceeding arising out of or relating to this Agreement or any transaction contemplated hereby in any other court. Process in any action or proceeding referred to in the first sentence of this Section 5.9 may be served on any party anywhere in the world.

## **Waiver of Jury Trial**. EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THAT FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.9. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

## **[Attorney Fees**. A party in breach of this Agreement shall, on demand, indemnify and hold harmless the other party or parties for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party or parties by reason of enforcement and protection of its or their rights under this Agreement. The payment of such expenses is in addition to any other relief to which such other party may be entitled.]

## **Captions**. The captions contained in this Agreement are for the convenience of the parties and in no way alter, modify, amend, limit, or restrict the contractual obligations of the parties.

## **Counterparts; Electronic Signatures**. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. A party may deliver this Agreement by transmitting a facsimile or other electronic signature of this Agreement signed by such party (via PDF, TIFF, JPEG or the like) to the other party, which facsimile or other electronic signature shall be deemed an original for all purposes.

**[Remainder of the Page Intentionally Left Blank]**

 **IN WITNESS WHEREOF,** each of the parties has caused this Agreement to be executed on its behalf all as of the date first written above.

**COMPANY:**

**\_\_\_\_\_\_\_\_\_\_\_ Corporation,**

a [***Insert State***] corporation

[INSERT COMPANY NAME].

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address:

E-Mail:

**INVESTOR**:

*[Investor Entity]*

Name:

Title:

Address:

E-Mail:

[Signature page to Convertible Promissory Note Purchase Agreement ([insert date])]

**EXHIBIT A**

THIS CONVERTIBLE PROMISSORY NOTE HAS NOT BEEN REGISTERED UNDER SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION AND MAY NOT BE OFFERED FOR SALE, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED, NOR WILL ANY ASSIGNEE, VENDEE, TRANSFEREE, OR ENDORSEE THEREOF BE RECOGNIZED AS HAVING ACQUIRED ANY SUCH UNITS BY THE ISSUER FOR ANY PURPOSES, EXCEPT (1) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND THE SECURITIES LAWS OF ALL OTHER APPLICABLE JURISDICTIONS OR (2) THE AVAILABILITY OF AN EXEMPTION FROM SUCH REGISTRATION SHALL BE ESTABLISHED TO THE REASONABLE SATISFACTION OF THE ISSUER.

CONVERTIBLE PROMISSORY NOTE

**Note No. \_\_ [Date]**

**U.S. $\_\_\_\_\_\_\_\_ [Place of Issuance]**

 FOR VALUE RECEIVED, the undersigned [Insert Name of the Borrowing/Issuing Corporation], a \_\_\_\_ [Insert State of Incorporation] corporation(the “***Company***”), promises to pay to the order of[Insert Name of Investor or Investor Group](“***Payee***”, and Payee and any subsequent permitted holder(s) of this Note being referred to collectively as “***Holder***”), at Holder’s address set forth below (or by wire transfer to Holder’s wire address set forth below) or at such other place as Holder may designate in writing pursuant to the notice provisions below, the principal sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DOLLARS ($\_\_\_\_\_\_\_\_\_\_\_\_.00) (the “***Principal Amount***”), together with accrued and unpaid interest thereon, said principal and interest to be due and payable as stated below.

 This convertible promissory note (the “***Note***”) is issued pursuant to the terms of that certain Convertible Promissory Note Purchase Agreement (as amended, the “***Purchase*** ***Agreement***”) dated as of \_\_\_\_\_\_\_\_\_\_\_\_by and between the Company and the Payee. Capitalized terms used herein without definition shall have the meanings given to such terms in the Purchase Agreement.

1. **Interest Rate and Accrual**. The Company promises to pay simple interest on the outstanding principal amount of this Note from \_\_\_\_\_\_\_\_\_\_ [Insert the Closing Date](“***Commencement Date***”) until paid in full at the fixed rate of [six] percent ([6.0]%) per annum. Interest shall be calculated on a 365-day year basis and shall be due and payable as set forth below.
2. **Maturity**. Unless this Note has been previously converted in accordance with the terms of Section 6 hereof, all outstanding principal and accrued and unpaid interest on this Note, plus all fees, costs and expenses then due under this Note, become fully due and payable upon [demand by the Holder][Insert Date](the “***Maturity Date***”); [if a demand note, add the following: *provided, however*, that no demand for payment shall be made prior to \_\_\_\_\_\_\_\_\_ [[48]](#footnote-48)(the “***Initial Demand Date***”)].
3. **Payments**. No principal amount of this Note or any accrued interest on the principal balance of this Note is due or payable until the Maturity Date.[[49]](#footnote-49) [In the event any payment due hereunder falls on a date that is not a Business Day, the date for such payment shall be the next Business day following the scheduled date for such payment.] [After the Maturity Date or due date of this Convertible Note, through acceleration or otherwise, interest will accrue on the principal balance remaining unpaid at the highest lawful rate until paid.] All amounts payable hereunder shall be made for the account of the Holder at the address referred to in Section 14 of this Note.
4. **Prepayment**. The Company may not prepay this Note prior to the [Initial Demand Date][Maturity Date] without the consent of the Holder. Following the [Initial Demand Date][Maturity Date], the Company may prepay any part or all of any amount payable under this Note, including principal or interest or both, at any time or times without any premium or penalty whatsoever. Any and all prepayments shall be applied first to reimbursement of Holder for any costs or expenses incurred by Holder to enforce or collect amounts owed hereunder, then to repayment of any accrued and unpaid interest hereunder, and then to principal outstanding hereunder.[[50]](#footnote-50)
5. **Maximum Rate of Interest**. If, at any time, the rate or amount of interest or any other charge payable under this Convertible Note should exceed the maximum rate or amount permitted by applicable law, then for such time as such rate or amount would be excessive, its application shall be suspended and there shall be charged instead the maximum rate or amount permitted under such law, and any excess interest or other charge paid by the Company or collected by the Holder shall be refunded to the Company or credited against the principal amount of this Convertible Note, at the election of Holder or as required by applicable law.
6. **Conversion of Note**.

 **(a) Conversion Rights**.

(i) Optional Conversion Rights**.** The outstanding principal balance of this Note shall be convertible, in whole or in part, at the option of the Holder at any time prior to the Maturity Date, into shares of common stock, par value $\_\_\_\_ per share, of the Company (“***Common Stock***”), at the then-Conversion Price (as defined in Section 6(d) below) (the “***Optional Conversion Right***”)[commencing upon the earliest of any of the following: (A) [Insert Date], (B) Sale of the Company (as defined below), or (C) immediately prior to the closing of any equity financing or issuance of debt securities by the Company in a transaction or a series of related transactions resulting in aggregate proceeds of at least \_\_\_\_\_\_\_\_ Thousand Dollars ($\_\_\_\_\_\_\_)[[51]](#footnote-51). The date that the Optional Conversion Right first becomes available to the Holder is referred to herein as “***Determination Date***.”][[52]](#footnote-52) To the extent that the Holder decides to exercise his or her Optional Conversion Right, then any unpaid interest on this Note shall be converted into Common Stock on the same terms as the principal of the Note.

 [(ii) Automatic Conversion. In the event that the Company issues and sells shares of its equity to investors (the “***Investors***”) in an equity financing resulting in aggregate gross proceeds of at least \_\_\_\_\_\_\_\_ Thousand Dollars ($\_\_\_\_\_\_\_), including the conversion of the Notes and other debt (a “***Qualified Financing***”), on or before [the date of repayment of the Note][[53]](#footnote-53); then the outstanding principal balance of this Note shall automatically convert into shares of Common Stock at a conversion price equal to [the lesser of (A)], \_\_\_% of the per share purchase price of the Investors [or (B) the price equal to the quotient of $\_\_\_\_\_\_\_\_\_\_\_ divided by the aggregate number of outstanding shares of the Company’s Common Stock immediately prior to the closing of the Qualified Financing (assuming full conversion or exercise of all Options then outstanding other than the Notes), and otherwise on the same terms and conditions as the Investors. Any unpaid interest on this Note shall be converted into Common Stock on the same terms as the principal of the Note.]

**(b) Exercise of Optional Conversion Right**. The Optional Conversion Right may be exercised by the Holder, in whole but not in part[[54]](#footnote-54), at any time, and from time to time after the [Commencement Date][Determination Date][[55]](#footnote-55) and prior to the Maturity Date, by the surrender and presentment of this Note accompanied by a duly executed Notice of Exercise in the form attached hereto (the “***Exercise Notice***”), presented to the Company, at its principal office or at such other place as the Company may designate by notice in writing to the Holder.

 **(c) Issuance of Certificates**. As soon as practicable after full [or partial] conversion of this Convertible Note, the Company at its expense (including, without limitation, the payment by it of all taxes and governmental charges applicable to such conversion and issuance of Common Stock) shall cause to be issued to the Holder a certificate representing the total number of shares of Common Stock for which this Convertible Note is being converted (the “***Conversion Shares***”). This Convertible Note shall be deemed to have been converted, and the Conversion Shares acquired thereby shall be deemed issued, and the Holder shall be deemed to have become holders of record of such Conversion Shares, for all purposes, as of the close of business on the date that this Convertible Note and the duly executed and completed Conversion Notice, has been presented and surrendered to the Company in accordance with the provisions of Section 6(b) hereof, notwithstanding that the transfer books of the Company may then be closed.[[56]](#footnote-56)

 **(d) Definitions**. For purposes of this Note:

 (i) The “***Conversion Price***” [for purposes of Section 6(a)(i) hereof,] shall be equal to the quotient of [the Principal Amount][the Principal Amount and all accrued plus unpaid interest under this Note] as of the date of such calculation divided by [the Per Share Value].

 (ii) The “***Per Share Value***” shall be \_\_\_\_ per share of Common Stock, subject to adjustment as provided in Section 6(e) hereof.

 (iii) The term “***Sale of the Company***” shall mean (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the shareholders of the Company immediately prior to such consolidation, merger or reorganization, continue to hold at least a majority of the voting power of the surviving entity in substantially the same proportions (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; (B) any transaction or series of related transactions to which the Company is a party and in which in excess of 50% of the Company’s voting power is transferred to an unrelated third party in such transaction or related transactions; *provided, however*, that a Sale of the Company shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; or (C) a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company.

 **(e) Anti-Dilution Provisions**. The number and kind of securities and other property that may be acquired upon the conversion of this Note and the [Per Share Value] shall be subject to adjustment, from time to time, upon the happening of any of the following events:

 (i) In the event that the Company shall declare, pay, or make any dividend upon its outstanding shares of Common Stock payable in Common Stock or shall effect a subdivision of the outstanding Common Stock into a greater number of shares of Common Stock, then the number of Conversion Shares that may thereafter be purchased upon the exercise of the rights represented hereby shall be increased in proportion to the increase in the number of outstanding shares of Common Stock through such dividend or subdivision, and the [Per Share Value] shall be decreased in such proportion. In case the Company shall at any time combine the outstanding shares of Common Stock into a smaller number of shares of Common Stock, the number of Conversion Shares that may thereafter be acquired upon the exercise of the rights represented hereby shall be decreased in proportion to the decrease through such combination and the [Per Share Value] shall be increased in such proportion.

 (ii) In the event that the Company declares, pays, or makes any dividend or other distribution upon its outstanding shares of Common Stock payable in securities or other property (excluding cash dividends and dividends payable in shares of Common Stock, but including, without limitation, shares of any other class of the Company’s stock or stock or other securities convertible into or exchangeable for shares of Common Stock or any other class of the Company’s stock or other interests in the Company or its assets), a proportionate part of those securities or that other property shall be set aside by the Company and delivered to the Holder in the event that the Holder exercises his Optional Conversion Right with respect to this Note. The securities and other property then deliverable to the Holder upon the conversion of this Note shall be in the same ratio to the total securities and property set aside for the Holder as the number of Conversion Shares with respect to which this Note is then converted is to the total number of Conversion Shares that may be acquired pursuant to this Note at the time the securities or property were set aside for the Holder.

 **(f) [Per Share Value] Adjustments**.Except as otherwise provided in this Section 5, upon any adjustment of the [Per Share Value] the Holder shall be entitled to purchase, based upon the new [Per Share Value], the number of shares of Common Stock, calculated to the nearest full share, obtained by: (i) multiplying the (A) number of Conversion Shares that may be acquired pursuant to this Note immediately prior to the adjustment of the [Per Share Value] by (B) the [Per Share Value] in effect immediately prior to its adjustment, and (ii) dividing the product so obtained in clause (i) by the new [Per Share Value].

 **(g) Prior Notice of a Sale of the Company**. Notwithstanding any provision of this Note to the contrary, in the event that the Company consummates a Sale of the Company prior to the conversion or repayment in full of this Note, the Company will give the Holder at least five days prior written notice of the anticipated closing date of such Sale of the Company.

1. **Expenses and Collection Costs**. In the event of any failure of the Company to pay all amounts due upon a demand made pursuant to Section 2 of this Note, the Company shall pay all reasonable attorneys’ fees and court costs incurred by Holder in enforcing and collecting this Note.
2. **Subordination**.[[57]](#footnote-57) The repayment of this Note is subordinated to the repayment and performance of all amounts owed by the Company under any Senior Indebtedness (as defined below). Upon written notice by the Company to the Holder, after the occurrence and during the continuation of any "event of default" or similar term (after the lapse or expiration of all applicable notice and cure periods) as set forth in any Senior Indebtedness (a "***Senior Default***"), no payment on this Note shall be made by the Company and any amounts received by the Holder following such delivery of written notice of such event of default as payments of amounts due under this Note shall be turned over to the agent or representative under such Senior Indebtedness, to be applied to the payment of amounts due under such Senior Indebtedness. As used herein, "***Senior Indebtedness***" shall mean any indebtedness of the Company, as borrower, for borrowed money from an unrelated third party lender on arm's length terms, and any refinancing thereof, that by its terms is senior in payment and priority to this Note. The Company agrees to use commercially reasonable efforts to promptly cure any Senior Default.
3. **Default**. Each of the following shall constitute an “***Event of Default***” pursuant to this Note: (a) a failure of the Company to make any payment of principal or interest or any other amount under this Note when and as due, which failure is not cured within five (5) days after written notice thereof is received by the Company from Holder; (b) the commencement of a voluntary proceeding under any law or statute of any jurisdiction relating to bankruptcy, insolvency, reorganization, dissolution, liquidation or debtor relief, whether now or hereafter in effect, including, without limitation, the filing of a petition under any chapter of the U.S. Bankruptcy Code, as amended, by the Company; (c) the filing of a proceeding for the appointment of a receiver, custodian, trustee, liquidator or similar official for Company or all or substantially all of the Company’s property and assets or consenting to the appointment of same; (d) the filing of an involuntary petition for relief under the U.S. Bankruptcy Code against the Company; (e) the issuance of a levy or writ of execution, attachment or garnishment against all or substantially all of the properties and assets of the Company; and (f) the dissolution, liquidation, termination or other permanent cessation of business of the Company, or the commencement of any proceedings or the taking of any action to effect any of the foregoing; and, in the cases of clauses 9(d) through 9(f) above, the failure of any such action, petition or proceeding to be stayed, suspended, cancelled or dismissed within sixty (60) days.[[58]](#footnote-58)
4. **Remedies**. If any Event of Default as provided above should occur, all unpaid principal hereunder and all accrued but unpaid interest thereon may, at the option of Holder by written notice delivered to the Company (provided that upon an Event of Default described in clauses 9(b) through 9(f) above this Note and all obligations hereunder shall, without notice or demand) be accelerated and be immediately due and payable, and Holder shall have and be entitled to exercise, from time to time, all the rights and remedies available to it under applicable law and as set forth herein. All of Holder’s rights and remedies shall be cumulative, and any failure of Holder to exercise any such right or remedy shall not be construed as a waiver of the right to exercise the same or any other right or remedy at any time and from time to time thereafter. Holder may, in its sole and absolute discretion, waive any Event of Default only in writing signed by Holder.
5. **Unsecured Obligation**. This Note is not secured by any liens or security interests in, on or covering any assets of the Company.
6. **No Presentment**. The Company, for itself and its successors and assigns, waives presentment, demand, protest and notice thereof or of dishonor, and waives any right to be released by reason of any extension of time or change in the terms of payment.
7. **Cancellation**. After all unpaid principal and interest owed on this Note has been indefeasibly paid in full and/or converted into Conversion Shares pursuant to 6(b) hereof, this Note shall be surrendered to the Company for cancellation and shall not be reissued.
8. **Notices**. Any notice or other communications to be given or that may be given pursuant to this Note shall be deemed to have been given: (x) three (3) calendar days after the deposit of such notice or communication in the United States Mail, registered or certified, return receipt requested, with proper postage affixed thereto; (y) on the first Business Day after depositing such notice of communication with Federal Express, Express Mail, or other expedited mail or package delivery service guaranteeing delivery no later than the next Business Day if next Business Day delivery service has been requested and paid for (or on such subsequent Business Day as such delivery service has been requested, guaranteed and paid for); or (z) upon delivery if hand delivered or telecopied to the appropriate address and person as provided on the signature page to the Purchase Agreement or to the person to whose attention the notice is to be given to the other parties in the manner hereinabove provided; *provided, however*, that any notice changing Holder’s address or wire address shall be effective only upon receipt by the Company.
9. **Governing Law**.

(a) **This Note shall in all respects be governed by and construed in accordance with the laws of the State of \_\_\_\_\_\_\_, without giving effect to the principles of conflict of laws thereof.**

 (b) Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereunder shall be brought solely in the courts of the State of \_\_\_\_ located in \_\_\_\_\_\_ County, [state], or, if it has or can acquire jurisdiction, in the United States District Court for the \_\_\_\_\_ District of [state] (\_\_\_\_\_\_\_ Division), AND EACH OF THE PARTIES HERETO HEREBY (i) CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS (AND OF THE APPROPRIATE APPELLATE COURTS THEREFROM) IN ANY SUCH SUIT, ACTION OR PROCEEDING AND WAIVES ANY OBJECTION TO THE VENUE OR THE CONVENIENCE OF FORUM OF ANY SUCH COURTS AND (ii)  IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE ADDRESS SET FORTH OR REFERRED TO IN SECTION 14, SUCH SERVICE TO BECOME EFFECTIVE TEN DAYS AFTER SUCH MAILING.

1. **Modification; Waiver**. No amendment, modification, forbearance or waiver of any provision of this Note, and no consent with respect to any departure by the Company therefrom, shall be effective unless the same shall be in writing and signed by the Holder and the Company.
2. **Assignment**. Neither the Company nor the Holder may assign or transfer this Note without the prior written consent of the other party (not to be unreasonably withheld) provided that, in no event shall this Note or any interest herein be transferable, in whole or in part, to any person or entity under circumstances that would be reasonably likely to violate or trigger a consent or other approval requirement under applicable laws, including but not limited to U.S. securities laws, the Foreign Corrupt Practices Act, FINSA, laws restricting money transfers and payments to persons or entities located in certain restricted countries, foreign nationals identified on any restricted list, and associated regulations as in existence at the time, and the laws and regulations of any other country. Any such written notice shall set forth in reasonable detail the identity of the new Holder(s) and the terms of transfer of this Note (including a release by the applicable Holder of any right to receive any payments hereunder) and the Company shall be obligated to register the transfer of this Note and make payments to any Holder hereunder only if the Company determines such transfer or payment is not restricted or prohibited by any such laws (and the due date of any such payment shall be extended by the length of time that any such legal restriction or prohibition exists). This Note shall inure to the benefit of Holder, its successors and assigns, and to any person to whom Holder may grant an interest in any of the indebtedness evidenced hereby in compliance with the foregoing restrictions, and shall be binding upon the Company and its successors and assigns. No person or entity not a direct party hereto shall be entitled to enforce any rights or obligations hereunder as a third party beneficiary or otherwise.
3. **Waiver of Jury Trial**. EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THAT FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 15.
4. **Time of Essence**. Time is of the essence of the payment and performance of this Note.
5. **Entire Agreement**.This Note and the Purchase Agreement and other agreements and documents referenced herein and therein constitutes the entire understanding between the parties with respect to the subject matter hereof, and all prior promissory notes and all prior or contemporaneous written and oral agreements, understandings, representations and statements with respect thereto are merged into, and replaced and superseded by, this Note.
6. **Miscellaneous**. The Company and Holder have participated jointly in the negotiation and drafting of this Note. In the event an ambiguity or question of intent or interpretation arises, this Note shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Note. No delay by Holder in enforcing its rights hereunder or otherwise, shall prejudice Holder’s rights to enforce this Note. Neither Party to this Note will be liable to the other for any failure or delay in performance under this Note due to circumstances beyond its reasonable control including, without limitation, Acts of God, labor disruption, war, terrorist threat or government action, or lack of availability of wire transfer systems or other international or national systems; *provided, that* if either party is unable to perform its obligations under this Note for one of these reasons it shall give prompt written notice thereof to the other party and the time for performance, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.
7. **Agreement by Holder**.By its acceptance of this Note, Holder agrees to be bound by the terms hereof.
8. **Documentary Stamp Taxes**. All required \_\_\_\_\_\_ documentary stamp taxes due in connection with this Note have been paid.

[**Signature Page Follows**]

 IN WITNESS WHEREOF, the Company has executed and delivered this Note on the date first written above.

**COMPANY:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Corporation,**

a [Insert State] corporation

By:

Name:

Title:

**HOLDER**:

ACKNOWLEDGED AND ACCEPTED:

By:

Name:

Title:

[Signature page to Convertible Promissory Note No. \_\_\_ of\_\_\_\_\_\_\_\_ Corporation]

**NOTICE OF EXERCISE**

(To be executed by the Holder desiring to exercise the right to convert this Note into shares of Common Stock of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CORPORATION**, a [Insert state] corporation)

The undersigned Holder of a Convertible Promissory Note (Note No. \_\_) hereby elects to exercise his or her Optional Conversion Right, pursuant to the provisions of the Note dated \_\_\_\_\_\_\_\_\_\_\_\_\_ issued to the Holder by \_\_\_\_\_\_\_\_\_\_ Corporation, a [Insert state] corporation, to receive that number of shares of Common Stock into which the outstanding principal amount of, and accrued and unpaid interest on, this Note is convertible at the Conversion Price at the address set forth below.

Dated: ,

Printed Name:

Signature:

Address:

(Signature must conform in all respects to the name of holder as specified on the face of this Note.)

1. This sample Convertible Promissory Note Purchase Agreement is for use in an early round seed financing from an angel investor or investor group which is negotiated directly by both the Company and the investing party. This is not for use pursuant to an offering of convertible notes to several investors pursuant to a private placement offering; but rather in a sale to one or a few sophisticated accredited investors in a negotiated transaction. This sample Convertible Promissory Note Purchase Agreement relates to an unsecured investment. However, an investor may attempt to require that the Company secure the Convertible Note with the assets of the Company and provide a pledge of the outstanding equity securities of the Company (or at least those held by the founders and others which comprise, at a minimum, a majority of the outstanding shares). Please also note that this Agreement contemplates that the offer and sale of the Note(s) will take place in the United States and, as a result, does not address any potential exemptions from registration under applicable securities law relating to completely offshore transactions. [↑](#footnote-ref-1)
2. Although the entity could be a limited liability company, a limited partnership, a corporation, or other entity, the proposed investment reflected in this Subscription Agreement is a transaction with a corporation. [↑](#footnote-ref-2)
3. If there is more than one Investor, the investing parties to the agreement should be referred to as the lending parties listed on Schedule 1 to the agreement and defined as the “Investors.” [↑](#footnote-ref-3)
4. If there is more than one Investor, this sentence should indicate that each Investor has agreed to lend that amount set forth opposite their name in Schedule 1 to be attached to this agreement. [↑](#footnote-ref-4)
5. This transaction contemplates an investment in the form of debt that is convertible into shares of common stock, which is reflected in the corresponding Convertible Note. In essence, this structure provides the Investor with the ability to be in the position of a creditor, while giving the Investor the ability to participate in any upside in the value of the Company by allowing the Investor to convert into Common Stock. As a result, this type of offering is not considered a true debt offering but, instead it is considered to be an equity offering. The Investor, however, could instead require that the Convertible Note be convertible into preferred stock of the Company which would be senior to any existing equity securities and will have priority rights with respect to: (a) any cash distributions (dividends, redemptions, etc.), (b) a return on investment, and (c) authorizing, approving or disapproving various corporate transactions that may adversely affect the preferred stock investment. In that instance, the Convertible Promissory Note Purchase Agreement and its exhibits may include additional provisions similar to those in the sample “Securities Purchase Agreement – Series B Preferred Stock” to provide for the negotiated terms of the preferred stock issuable upon conversion of the Convertible Note. [↑](#footnote-ref-5)
6. If the Investors are not funding the full principal needs of the Company, the agreement may permit the Company to issue and sell additional Convertible Notes under the agreement up to a set principal amount within a specific period of time after the Closing, and Schedule 1 would be amended to include such additional Investors. However, the Company’s representations and warranties typically would remain as of the date of this Agreement and would not be updated through any additional closings. [↑](#footnote-ref-6)
7. This Convertible Promissory Note Purchase Agreement is structured as a simultaneous sign and close transaction. As a result, there are no closing conditions and this section is included to identify deliverables at the Closing. [↑](#footnote-ref-7)
8. If the Company is required to secure the Convertible Note with the assets of the Company and to provide a pledge of the outstanding equity securities of the Company (or at least those held by the founders and others which comprise, at a minimum, a majority of the outstanding shares), the closing deliveries of the Company would include a Security Agreement (relating to the assets pledged as collateral) and a Stock Pledge Agreement (relating to the pledged shares). The Company should consider how and when each such security interest may be asserted and applied by the Investor. [↑](#footnote-ref-8)
9. This form of agreement only contains basic representations and warranties that relate primarily to the organization of the Company, its ability to enter into the Agreement, and its capitalization. This form does not include any detailed representations and warranties relating to the operations of the business, assets, and existing contractual arrangements. However, the Investor may require more detailed representations and warranties from the Company which relate to the its operations, assets, existing contractual commitments of the Company, employees and other matters similar some or all of those contained in the “Stock Purchase Agreement – Common Stock – Early Round”, especially those relating to exiting contractual commitments and intellectual property. Intellectual property often is the most valuable asset (or sometimes the only material asset) of companies engaged in the technology, media, and entertainment industries. [↑](#footnote-ref-9)
10. This purpose of this provision is to confirm that that engaging in the transaction will not cause the Company to violate its corporate governance documents, material contracts, judgments or laws applicable to the Company or result in the creation of lien or acceleration of existing agreements. [↑](#footnote-ref-10)
11. This provision assumes that the start-up company receiving the Investor Loan is in such an early stage that it has not yet issued any options to purchase its equity securities. If, however, the Company has issued options which are outstanding as of the Closing, add this provision to the end of Section 2.4(a)(i): “, and \_\_\_ shares shall have been reserved for issuance pursuant to outstanding options, all of which have been issued under the [Equity Incentive Plan].” [↑](#footnote-ref-11)
12. This provision and Section 2.4(c) provides the Investor with a full understanding of the percentage of shares into which the Convertible Note is convertible and the potential dilution of this position through the issuance of shares under existing rights to purchase. [↑](#footnote-ref-12)
13. Add the bracketed section if there are issued and outstanding shares of Preferred Stock prior to this transaction and, if applicable, identify any series designation. [↑](#footnote-ref-13)
14. Early stage companies need to ensure that the offer and sale of its securities have been made in compliance with applicable securities laws and that it can demonstrate such compliance, or investors may reluctant to invest. However, this clause can become very broad in scope if it does not include the bracketed language limiting it to registration or exemptions from registration. If that bracketed language is not included, the representation covers all aspects of the applicable securities laws, including the anti-fraud provisions of such laws. [↑](#footnote-ref-14)
15. Investors also will often seek a representation that, to the knowledge of the Company, no stockholders of the Company have entered into any voting agreement. Although the representation includes a knowledge qualifier, the Company should resist such a representation as to arrangements between third parties. [↑](#footnote-ref-15)
16. In an Angel Round Financing, it is unlikely that the Company has entered into any other offerings other than with friends and family and, in such cases, it is unlikely that registration rights have been earlier granted any other parties. [↑](#footnote-ref-16)
17. Add the bracketed section if there are issued and outstanding shares of Preferred Stock prior to this transaction. [↑](#footnote-ref-17)
18. If the Company has any Subsidiaries, the representations set forth in this Section 2 should be revised to include any of the company’s Subsidiaries and this Section 2.6 should be expanded to include a representation that the Company owns all of the equity securities of its Subsidiaries, free and clear of any Liens. [↑](#footnote-ref-18)
19. Because this sample Convertible Promissory Note Purchase Agreement relates to an early round financing by a start-up company, the financial statement requirements are not as stringent as in later round deals. The Company is not expected to have audited financial statements or, possibly, any historical financial statements and such financial statements likely are not prepared in accordance with GAAP. The relatively simple representation included in this sample reflects those points. However, certain investors may negotiate more detailed provisions where appropriate. If, however, the Company does have significant historical financial statements or audited financial statements, a more detailed provisions may be required by the Investor, see Section 2.7 of the sample “Securities Purchase Agreement - Series B Preferred Stock” for an example of such a provision. [↑](#footnote-ref-19)
20. This provision provides the Investor with conformation that no material changes that have taken place since the date of the last financial statements (i.e., the Balance Sheet Date). If such changes have occurred, the Company should revise this provision to state “Except as provided in Schedule 2.9 of this Agreement,” and then list any changes on that schedule which will be attached to this Agreement. Investors will sometimes expand this provision to identify a number of specific changes that it will seek to be addressed in any such schedule. See sample “Securities Purchase Agreement – Series B Preferred Stock” for an example of such a provision. [↑](#footnote-ref-20)
21. This provision is similar to Section 2.3 which includes representations and warranties that entering into this Agreement by the Company will not cause a conflict, default, or violation. This provision represents and warrants that the Company does not now have any such a conflict, default, or violation (irrespective of this Agreement). [↑](#footnote-ref-21)
22. Intellectual Property Rights are often some of the most valuable assets of companies engaged in the technology, media, and entertainment industries and, as a result, the Investor may request very detailed representations from such companies as to these assets, whether owed or licensed. The provision included in this sample Convertible Note Purchase Agreement is very simplistic and may not be sufficiently detailed for the Investor, especially if the Company is highly dependent on intellectual property for its products and/or services. The Investor may require a list of the Company’s Intellectual Property Rights and seek to ensure, among other things, that the Company has valid licenses or ownership of Intellectual Property Rights used by it, that its products do not infringe the Intellectual Property Rights of others, and that there are no claims of infringement against the Company. See sample” Stock Purchase Agreement – Common Stock- Early Round Financing” for a more detailed Intellectual Property representation and warranty (as well as a more detailed definition of Intellectual Property). These provisions are often highly negotiated because the Investor will desire unqualified representations (i.e., no “Knowledge” or “materiality” qualifiers), but it may be difficult or impossible for the Company to make such a representation, especially for products in the early stage of development. [↑](#footnote-ref-22)
23. Occasionally Investors will include an additional representation as to the key employees and directors of the Company with respect to whether they (a) have any criminal convictions or are the subject of a criminal proceeding, (b) are subject to any order of a Governmental Entity limiting them from serving as an officer or director of a public company or in the securities or financial industry, (c) have been found by a Governmental Entity to have violated any federal or state securities, commodity, or unfair practices Laws, or (d) have been the subject of any insolvency or bankruptcy laws for his or her business or property. Not only are these significant issues as to the management of the Company, but they also are future disclosure issues if the Company should decide to conduct a private placement offering or an initial public offering of its securities. [↑](#footnote-ref-23)
24. The Investor may require a list of all employees and, perhaps, information relating to amount and type of compensation paid to the most highly compensated employees and independent contractors and the various components of such compensation. However, parties do not generally include this information in a schedule to this agreement because it is often highly sensitive information that the Company seeks to protect, both internally and externally. [↑](#footnote-ref-24)
25. The PIIA Agreement typically includes a confidentially agreement as it relates to the Company’s proprietary information to which the employees, officers, consultants, and independent contractors of the Company have access. It also provides that any inventions or works created by employees in connection with their employment belong to and are owned by the Company. Independent contractors and lower level non-salesperson employees may object to a non-competition agreement and may require the negotiation of an exception or carve-out. The Non-Competition Agreement generally will also include non-solicitation provisions (as to customers and employees of the Company). Often these agreements are combined into a single agreement. [↑](#footnote-ref-25)
26. The purpose of this representation is to require disclosure of transactions with officers, directors, and employees which could be a conflict of interest. Sometime the Investor also will request a representation requiring disclosure of transactions between the Company and entities in which the directors, officers or their respective families have a pecuniary interest. [↑](#footnote-ref-26)
27. This is a basic representation. In certain situations, it may be appropriate to add specific industry-based insurance coverage provisions. [↑](#footnote-ref-27)
28. If the Investor is an entity, this provision would be revised to provide a representation similar to that furnished by the Company in Section 2.1 “The Investor is a limited partnership, limited liability company, or a corporation which has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of formation, organization, or incorporation, as the case may be, and has the requisite power an authority to own, lease, operate and otherwise hold its properties and assets and to carry on its business as it is now being conducted. The Investor has all the requisite power and authority to execute and deliver, and to perform its obligations hereunder and to consummate the transactions contemplated by, the Loan Documents. The execution, delivery, and performance by the Investor of the Loan Documents, and the consummation of the transactions contemplated thereby have been duly and validly authorized by all necessary action on the part of the Investor. ” [↑](#footnote-ref-28)
29. These representations are designed to demonstrate that the Investors meet the required criteria to satisfy the private placement offering exemption from registration under applicable federal and state securities laws (typically Regulation D promulgated under the Securities Act of 1933) for the offer and sale of the securities. Although this Convertible Promissory Note Purchase Agreement describes the transaction as a loan, it is not a commercial debt and will be considered to be a sale of securities under applicable securities laws. In fact, for the reasons stated above, the sale of the Convertible Note likely would be deemed to be a sale of equity in the Company. Because the sale of the Convertible Note is a security, the Investor will need to provide the representations and warranties necessary for the Company to rely on an exemption from registration under applicable securities laws. [↑](#footnote-ref-29)
30. The Securities Act, in general, provides that securities may not be offered or sold except pursuant to a registration statement declared effective under the Securities Act (which will require registration with the SEC under the Securities Act) or pursuant to an exemption from registration thereunder. As indicated above, the shares of Common Stock to be sold in this offering will be offered and sold pursuant to an exemption from registration under the Securities Act. Because of these requirements, Rule 502(d) of Regulation D requires the issuing company to take reasonable care to ensure that the securities sold pursuant to that exemption from registration will not be resold without compliance with such registration requirements or pursuant to an exemption from such registration. Sections 3.2, 3.3(a), 4.1 and 4.2 are designed to demonstrate compliance with this requirement. [↑](#footnote-ref-30)
31. In some instances, as a protective measure, the Company will add an appendix or exhibit which sets forth risk factors relating to the investment as support for any issues raised as to whether the Investor was provided with full disclosure about the risks of the investment. [↑](#footnote-ref-31)
32. As a condition to an exemption from registration pursuant to Regulation D promulgated under the Securities Act of 1933, none of the following parties may have engaged in any disqualifying activities as set forth in Rule 506(d): (i) the issuing company or its predecessor or affiliated issuer, (ii) any director, executive officer, general partner, managing member other officer of the issuing company, (iii) any beneficial owner of 20% or more of the issuing company’s equity voting power, and (iv) any promoter, any person paid for soliciting investors, and any general partner, managing member of an investment manager or solicitor and their directors, executive officers, and other officers participating in such offering. An exhaustive list of disqualifying activities are set forth in the Rule, but generally pertain to prior violations of federal or state securities laws. [↑](#footnote-ref-32)
33. This provision should be added if the Investor is an entity. [↑](#footnote-ref-33)
34. This confirms that the Investor has been given access to the Company’s books, records, and other information necessary to make an investment decision. This is intended to demonstrate compliance with Rule 502(b)(2)(iv) and (v) of Regulation D. [↑](#footnote-ref-34)
35. This was a common provision used to demonstrate compliance with Rule 503(b) of Regulation D which prohibited the use of any general solicitation or general advertising in connection with the private placement offer or sale of securities under Regulation D. However, under the Jumpstart Our Business Startups Act (”JOBS Act”) and the implementing rules promulgated by the Securities and Exchange Commission (Rule 503(c)), general solicitations and advertising under Rule 506(c) are permitted so long as the sale of the securities are sold only to “accredited investors” and the issuer takes reasonable steps to verify their accredited investor status. As a result, if a general solicitation has been used by the Company in connection with the offer and sale of the Securities sold hereby, then this Section 3.7 should be revised to verify the accredited investor status of the Investor. [↑](#footnote-ref-35)
36. If the Investor is a foreign investor using funds from outside of the United States to fund the Loan, the Company should require that the Investor provide representations as to the lawful source of the funds. This is a simple provision to address this issue. Depending on the circumstances, the Company may consider adding more detailed and specific representations relating to regulations of the Office of Foreign Assets Control, U.S. Department of the Treasury and the Anti- Money Laundering laws. See Section 3.11 of the sample Securities Purchase Agreement – Series B Preferred Stock. See Section 3.11 of the sample “Securities Purchase Agreement – Series B Preferred Stock” for a longer form of such representation. If there is a foreign Investor, also consider adding a provision that requires the foreign investor to comply with any Laws of his or her home country jurisdiction that relate to this investment. Please note that this Agreement contemplates and offer and sale of the Note(s) taking place in the United States. and does not address any potential exemptions from registration relating to completely offshore transactions. [↑](#footnote-ref-36)
37. The Investor covenants contained in Sections 4.1 and 4.2 are sometimes rephrased as, and included in, the Investor representations in Section 3. However, these really are covenants and agreements of the Investor and should be cast as such. [↑](#footnote-ref-37)
38. The Transfer of these Securities will need to be restricted and comply with applicable securities laws. [↑](#footnote-ref-38)
39. The Investor will likely object to providing any indemnification to the Company and will take the view that it also is in its best interests to ensure that the offering complies with applicable securities laws. Because the Investor will require the Company to represent that the offering complies with applicable securities laws, the Investor will provide the investment representations in Section 3 but will not likely agree to provide indemnification for such representations. [↑](#footnote-ref-39)
40. This agreement provides only limited information rights to Investors. Investors often require the Company to provide them with periodic financial and other information so that they can monitor their investment in the Company, especially since such information may be material to a decision of whether (or when) to convert the Note and receive Conversion Shares. Depending on the nature of the investment and its potential duration, the investor may seek such information over shorter interval s and may require certain inspection rights. See “Stock Purchase Agreement – Common Stock – Early Round” for an example of more detailed provisions. [↑](#footnote-ref-40)
41. The Company may seek to terminate these special information rights if the Investor no longer maintains a minimum threshold investment in the Company which justifies such rights or the Company should consummate an initial public offering of its securities. At that point, the Investor would be treated the same as any shareholder. [↑](#footnote-ref-41)
42. If the parties have previously entered into a Confidentiality Agreement, the Company should seek to subject all of the information provided to the Investor under this Section 4.5 to the Confidentiality Agreement. If there is no existing confidentiality agreement between the parties, the Company should consider adding a confidentiality provision to Section 4.5. [↑](#footnote-ref-42)
43. In some instances, the Investor may require that he/she or their designate be elected to the Board of Directors. If so, the Investor also typically will require the provisions set forth in Sections 4.8 and 4.9 be added to the Agreement. [↑](#footnote-ref-43)
44. Section 2.14 contains the simplified Intellectual Property Right representation and warranty for this Agreement. This definition is used for that provision. However, if a more detailed representation and warranty is required with respect to Intellectual Property, then a more comprehensive definition of Intellectual Property will be required as well. See sample “Stock Purchase Agreement – Common Stock- Early Round” financing for a more detailed Intellectual Property definition. [↑](#footnote-ref-44)
45. Although not necessary and not included in many securities purchase agreements, it is a convenient cross-reference to make it easier to locate where various definitions within the Agreement can be found. [↑](#footnote-ref-45)
46. This provision provides an open-ended survival of the representations and warranties. The parties can negotiate a more limited survival period. [↑](#footnote-ref-46)
47. If the parties prefer to have their disputes resolved by arbitration, an arbitration provision should be added and Sections 5.9 and 5.10 should be revised to only apply to the exceptions set forth in any such Arbitration Provision. See sample “Securities Purchase Agreement – Series B Preferred Stock” for an example of an arbitration provision. [↑](#footnote-ref-47)
48. Set forth a date or other circumstances which need to exist before which a demand may be made. [↑](#footnote-ref-48)
49. There are a number of ways in which interest and/or principal payments and amounts due may be handled. Some examples include: (a) the entire balance of the Convertible Note may be required to be paid in full, together with any accrued or unpaid interest on the Maturity Date, (b) the Convertible Note could automatically convert into Common Stock on Maturity Date if not otherwise converted (although the Investor will resist because he/she would have converted if that is the investment they desired), (c) interest payments can either accrue until maturity or can be paid periodically (the former may be preferable to the Company since no cash outlays would be required until maturity), and (d) instead of cash interest payments, interest can be paid in kind, especially if converted at Maturity Date (which would result in additional shares being issued to the Investor) . [↑](#footnote-ref-49)
50. Alternatively, the Company may desire a provision which permits it to prepay any part or all of any amount payable under the Convertible Note, including principal or interest or both, at any time or times without any premium or penalty whatsoever. This may not be acceptable to the Investor, especially if there conditions precedent to the exercise of conversion rights and any such prepayment can be made prior to the commencement of the Investor’s conversion rights. If the Conversion Note can be prepaid prior to the Maturity Date, the Investor may require a provision which provides that any such prepayments shall be applied first to reimbursement of Holder for any costs or expenses incurred by Holder to enforce or collect amounts owed hereunder, then to repayment of any accrued and unpaid interest hereunder, and then to principal outstanding hereunder. [↑](#footnote-ref-50)
51. An equity issuance meeting certain thresholds instead can be a trigger for an automatic conversion. See Section 6(a)(ii) below. [↑](#footnote-ref-51)
52. In most cases, the Investor will require that the Convertible Note be convertible at any time following the date of issuance. Sometime the parties will agree to set the date at which the Convertible Note can be converted until some date in the future and, in that situation, that date can be accelerated if there is a Sale of the Company or a pending significant financing. [↑](#footnote-ref-52)
53. If an automatic conversion feature is included, the Company may seek to restrict the availability to exercise an Optional Conversion Right only if the Qualified Financing has not taken place prior to the Maturity Date or some other specified date (which should also terminate the automatic conversion requirement). [↑](#footnote-ref-53)
54. The Investor may request the right to convert only a portion of the Convertible Note. [↑](#footnote-ref-54)
55. The “Commencement Date” if immediately convertible or the “Determination Date” if not immediately convertible. [↑](#footnote-ref-55)
56. In the case of a Mandatory Conversion, if any, conversion would be deemed to occur automatically upon the occurrence of the event requiring conversion. [↑](#footnote-ref-56)
57. The Investor may resist and insist on having the “senior” position against all other creditors are subordinate to the Investor. However, this would make it difficult for the Company to obtain loan financing from commercial financial institutions. As a result, the Company should request that the Note be subordinated indebtedness for borrowed money from an unrelated third party lender which is negotiated on arm's length terms. If accepted, the Investor may require that such subordination will be available only for loans from commercial financial institutions, and not for all third party lenders. [↑](#footnote-ref-57)
58. The Investor also may include a cross-default provisions, such as: “any event or condition that results in any material indebtedness for borrowed money of the Company becoming due prior to its scheduled maturity after the expiration of any applicable grace period provided in the applicable agreement or instrument under which such material indebtedness was created.” [↑](#footnote-ref-58)