

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAW (COLLECTIVELY, THE "ACTS"), AND MAY NOT BE OFFERED, SOLD, OR OTHERWISE TRANSFERRED, ASSIGNED OR DISPOSED OF EXCEPT PURSUANT TO REGISTRATION UNDER SUCH ACTS OR UNLESS OFFERED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACTS OR AN OPINION OF COUNSEL SATISFACTORY TO THE PAYOR THAT SUCH REGISTRATION IS NOT REQUIRED.

[NAME OF COMPANY]

CONVERTIBLE PROMISSORY NOTE

Date of Issuance: _____, 20__ (the "Date of Issuance")

Payor: [_____] (the "Recipient")

Principal Amount: \$[_____] (the "Principal Amount")

FOR VALUE RECEIVED, [Name of Recipient], a [State of Formation] [Type of Entity] (the "Recipient"), promises to pay to The Texas Technology Development Center ("T3DC"), or its registered assigns, in lawful money of the United States of America the Principal Amount, or so much thereof as may be advanced to Recipient under the Award Agreement (as defined below) and outstanding from time to time, together with Interest (as defined below) thereon, in lawful money of the United States of America and in immediately available funds at the time and place and in the manner set forth in this convertible promissory note ("Note").

1. **Definitions.** As used in this Note, the following capitalized terms have the following meanings:

(a) "Award Agreement" has the meaning given in Section 2 hereof

(b) "Equity Interest" means (a) with respect to a corporation, any and all shares of capital stock of such corporation, (b) with respect to a partnership, limited liability company, trust, or similar Person, any and all units, interests, or other partnership/limited liability company interests, and (c) any other direct or indirect equity, capital, ownership or participation in a Person or rights convertible thereto.

(c) "Event of Default" has the meaning given in Section 7 hereof.

(d) “Indebtedness” has the meaning given in Section 6(a) hereof.

(e) “Interest” has the meaning given in Section 4 hereof.

(f) “Liquidation Event” shall mean each of (i) a liquidation, dissolution or winding up of the Recipient, either voluntary or involuntary, (ii) a consolidation or merger (within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended) of the Recipient with or into one or more other corporations or other business organizations, unless the owners of Equity Interest immediately prior to such transaction, including any of their affiliates, hold immediately after such transaction more than 50% of the voting equity of the acquiring or resulting entity, (iii) the sale, lease or transfer of all or substantially all of the assets of the Recipient, (iv) any form of corporate reorganization in which Equity Interests representing more than 50% of the outstanding voting power of the Recipient are exchanged for or converted into cash, securities of another corporation or business organization or other property or (v) any other form of corporate reorganization or transaction in which the holders of Equity Interest immediately prior to such transaction, including any of their affiliates, hold immediately after such transaction less than 50% of the voting equity of the acquiring or resulting entity.

(g) “Maturity Date” has the meaning given in Section 3 hereof.

(h) “Obligations” shall have the same meaning as provided in the Award Agreement.

(i) “Person” shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

(j) “Qualified Financing” has the meaning given in Section 6(d) hereof.

(k) “Repayment Events” the meaning given in Section 5(c) hereof.

(l) “Repayment Triggers” has the meaning given in Section 5(a) hereof.

(m) “Securities Act” shall mean the Securities Act of 1933, as amended.

2. **Reference to Other Agreement.** This Note is made by the Recipient in connection with and pursuant to that certain McDermott Pre-Seed Fund Award Agreement, dated as of _____, 20__ (the “Award Agreement”) by and between T3DC and the Recipient. Capitalized terms used but not defined in this Note will have the meanings ascribed thereto in the Award Agreement.

3. **Maturity.** Except as set forth in Section 5, Section 6 and Section 7, the entire outstanding Principal Amount, together with all accrued and unpaid Interest thereon, shall be due and payable on _____, 20____ (the "Maturity Date").

4. **Interest.** This Note shall bear interest ("Interest") on the outstanding Principal Amount at the rate of ____% per annum, compounded annually, except as provided in Section 13. All accrued and unpaid Interest will be payable on the Maturity Date, unless the Note is prepaid in full, converted into an Equity Interest of the Recipient (as described below), or otherwise satisfied in full in accordance with the terms hereof.

5. **Repayments.**

(a) Conditional Repayment. This Note shall be repaid to the extent (and only to the extent) that (a) any Repayment Event occurs; or (b) an Event of Default occurs (collectively, the "Repayment Triggers").

(b) Maturity Date. If a Repayment Trigger occurs, the Award must be repaid on or before the Maturity Date.

(c) Repayment Event. T3DC may require Recipient to begin repayment when, in the sole opinion of T3DC, one, or a combination, of the following events occurs: (i) the Recipient achieves steady sales and positive cash flow from operations; (ii) the Recipient, once cash-flow positive, begins to receive a royalty stream or license fees are received from the commercialization of the product that is connected to or supported by the Award; (iii) the Recipient receives an infusion of capital in excess of an amount high enough to capitalize the Recipient beyond the need for Award funds; (iv) when off-balance sheet financing occurs or a development fee sufficient to sustain the commercial viability of the Recipient is received; or (v) there is a Liquidation Event, initial public offering under the Securities Act or equivalent foreign public securities offering, or a Qualified Financing (collectively referred to as the "Repayment Events").

(d) Repayment Schedule. Upon occurrence of any of the Repayment Events, the Recipient shall notify T3DC, and T3DC may develop a repayment schedule with payments to be completed by Recipient no later than the Maturity Date. This repayment schedule will be developed to allow recipient to be in compliance with any SBIC regulations involving distributions, if applicable.

(e) Repayment Event. If there is a Repayment Trigger other than an Event of Default, the Recipient shall pay T3DC an amount equal to the greater of the Principal and Interest on the Note or an amount equal to 2 times the total Award amounts that are disbursed to Recipient.

(f) Cancellation of Note. If there is no Repayment Trigger and if T3DC does not elect to convert the Note as provided below in Section 6, the Note shall be canceled, and the Award amount shall be contributed to the Recipient in its entirety and the Recipient shall be released of all covenants, liabilities and Obligations under this Agreement on and after the Maturity Date. The cancellation of this Note, if such event occurs, constitutes a contribution of capital to the Recipient to facilitate the public purposes described in the Award Agreement.

(g) Prepayment. The Recipient may prepay this Note in whole or in part at any time or from time to time.

6. *Conversion.*

(a) Conversion at T3DC's Option. T3DC shall have the right and option to convert the entire outstanding Principal Amount of this Note and all accrued and unpaid Interest thereon (collectively, the "Indebtedness"), or any portion of the Indebtedness, into an Equity Interest in the Recipient that is the greater of (i) a number of shares that equals ___% of the principal owner's shares at the time of conversion, or (ii) a number of shares determined in accordance with the formula in section 6(c). If T3DC elects to convert this Note, T3DC shall have the option of receiving shares from the most recent or currently open round of funding. T3DC will notify the Recipient of its intent to convert when a "Repayment Event" occurs or annually 90 days prior to the annual anniversary date of the agreement.

(b) Liquidation Event; Initial Public Offering. In the event of a Liquidation Event or an initial public offering under the Securities Act or equivalent foreign public securities offering of capital stock of the Recipient, T3DC shall have the option of converting all or any portion of the Indebtedness into an Equity Interest in the Recipient. If T3DC elects to convert this Note, T3DC shall have the option of receiving shares from the most recent or currently open round of funding.

(c) Conversion Price. The number of units or shares of Equity Interest to be issued to T3DC upon such exercise in subsections (a) and (b) of this Section 6 will equal *[the dollar amount of the Indebtedness being converted divided by \$ _____] / [\$ _____ per unit or share of Equity Interest] [_____ \$ of the total Equity Interest in the Recipient, if T3DC converts all of the Indebtedness]*, as adjusted proportionately from time to time for any equity splits, reclassifications and dividends that have the effect of altering the number of Equity Interests outstanding.

(d) Qualified Financing. At the closing of the Recipient's next transaction or series of related transactions which the Recipient issues and sells an Equity Interest and in which the gross proceeds to the Recipient exceed \$ _____ (excluding this Note) (the "Qualified Financing"), T3DC shall have the option to convert the entire Indebtedness into fully paid and non-assessable Equity Interest in the Recipient of the same

series that was issued and sold to third party investors, at a conversion price equal to 90% of the purchase price paid by those investors.

(e) Notice of Sale. The Recipient will give T3DC 10 business days prior written notice of any Liquidation Event, public offering, Qualified Financing, sale of the Recipient either through merger, a sale of all or mostly all of the material assets of the Recipient or otherwise, such that T3DC may exercise T3DC's rights to convert this Note as set forth in this section.

(f) Fractional Equity Interest; Interest; Effect of Conversion. No fractional unit or share Equity Interest shall be issued upon conversion of this Note. In lieu of the Recipient issuing any fractional unit or share to T3DC upon the conversion of this Note, the Recipient shall pay to T3DC an amount equal to the product obtained by multiplying the conversion price set forth in this Section by the fraction of a unit or share of Equity Interest not issued pursuant to the previous sentence.

(g) Conversion to Royalty Interest. Instead of converting the Indebtedness into an Equity Interest, T3DC shall have the right and option in accordance with section 6(a) to convert all or part of the Indebtedness into a royalty interest on any property of the Recipient which is or was (or is or was intended to be) developed, commercialized, or benefited as a result of an Award under the Award Agreement. The terms of the royalty interest will be contained in a royalty agreement attached as Exhibit A.

(h) Repayment Obligation Ends Upon Conversion. Upon conversion of this Note in full, the Recipient shall be forever released from all its Obligations and liabilities under this Note.

(i) Reservation of Equity Interest. The Recipient will at all times reserve and keep available, solely for issuance, sale and delivery upon the conversion of this Note a number of units or shares of Equity Interest equal to the number of units or shares issuable upon the conversion of this Note. The Recipient shall not sell, mortgage, or assign any interest in its property without the consent of T3DC.

7. ***Events of Default***. The occurrence of any of the following shall constitute an “Event of Default” under this Note and under the Award Agreement:

(a) Non-Payment of Amounts Due T3DC. Default in the payment when due under this Note or with respect to any other Obligation owed to T3DC.

(b) Bankruptcy, Insolvency, Etc. Recipient becomes insolvent or generally fails to pay, or admits in writing its inability to pay, debts as they become due; or Recipient applies for, consents to, or acquiesces in the appointment of a trustee, receiver, or other

custodian for Recipient or any property of, or makes a general assignment for the benefit of creditors; or, in the absence of such application, consent, or acquiescence, a trustee, receiver, or other custodian is appointed for Recipient or for a substantial part of the property of Recipient and is not discharged within 30 days; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding is commenced in respect of Recipient, and if such case or proceeding is not commenced by Recipient, it is consented to or acquiesced in by Recipient, or remains for 30 days un-dismissed; or Recipient takes any action to authorize, or in furtherance of, any of the foregoing.

(c) Breach of Agreement. Breach of this Note or the Award Agreement or failure by Recipient to comply with or to perform any of the Obligations and continuance of such failure for 10 days after notice thereof to Recipient from T3DC.

(d) Warranties. Any warranty made by Recipient under this Note or the Award Agreement is breached or is false or misleading in any material respect, or any schedule, certificate, financial statement, report, notice, or other writing furnished by Recipient to T3DC is false or misleading in any material respect.

(e) Death, Etc. of an Officer. Any Officer of the Recipient dies or becomes incapable of managing his or her own affairs; or serious illness or incapacity of any Officer occurs for a period exceeding 6 months; or a trustee, receiver, guardian, custodian, or other legal representative is appointed for the person or any of the estate or assets of any Officer; or any Officer fails, neglects, or refuses for any reason to be or remain as manager of the Business. Notwithstanding any other provision to the contrary, the events described in this subsection (e) will not constitute an automatic Event of Default. The described events must be timely reported to T3DC, which will then determine whether to declare a default.

(f) Change in Ownership of Capital Equity. A change in control, directly or indirectly, of 50% or more of the ownership of Recipient from the date hereof.

(g) Competition by an Officer. Without T3DC's prior written consent, any Officer becomes an employee of, or a 5% or more investor directly or indirectly in, any other business, or any Officer becomes involved with any other business operation, directly or indirectly, as owner, director, officer, shareholder, partner, venturer, manager, consultant, or otherwise, that competes with the Business.

8. ***Rights of T3DC upon Default***. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of T3DC, T3DC may enforce any or all of the following remedies.

(a) T3DC may refrain from disbursing the Award and any amount of the Award not previously disbursed; provided, however, T3DC may make such a disbursement after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

(b) T3DC may declare the entire Indebtedness under this Note to be immediately due and payable in full, and in such event, the entire Indebtedness under this Note shall become immediately due and payable, without notice of any kind. Notwithstanding the foregoing, the effect of an Event of Default may be waived by T3DC, but only by a written document signed by T3DC.

(c) T3DC may enforce any additional remedies it has in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that T3DC would otherwise possess.

9. ***Successors and Assigns.*** Subject to the restrictions on transfer described in Section 11 below, the rights and obligations of the Recipient and T3DC shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

10. ***Waiver and Amendment.*** Any provision of this Note may be amended, waived or modified only upon the written consent of the Recipient and T3DC.

11. ***Assignment by the Recipient.*** Neither this Note nor any of the rights, interests or Obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Recipient without the prior written consent of T3DC.

12. ***Notices.*** All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed or delivered to each party at the respective addresses of the parties as set forth in the Award Agreement, or at such other address or facsimile number as the Recipient shall have furnished to T3DC in writing. All such notices and communications will be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one business day after being delivered by facsimile (with receipt of appropriate confirmation), (iv) one business day after being deposited with an overnight courier service of recognized standing or (v) four days after being deposited in the U.S. mail, first class with postage prepaid.

13. ***Payment.*** Any payments due hereunder shall be made in lawful money of the United States.

14. ***Default Rate; Usury.*** During any period in which an Event of Default has occurred and is continuing, the Recipient shall pay interest on the unpaid principal balance hereof at a

rate per annum equal to 18%. The parties expressly agree that the Obligations under this Note are not subject to usury laws because they contingent upon a future event that might not ever occur, rather than an absolute obligation, and thus cannot be characterized as a “loan” under Section 301.002(a)(10) of the Texas Finance Code. The Recipient hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action or proceeding, any claim that the Obligations under this Note are loans that subject to federal or Texas usury laws. However, regardless of any provisions contained herein and in the Award Agreement, T3DC shall never be deemed to have contracted for or be entitled to receive, collect or apply as interest on this Note any amount in excess of the highest lawful rate, and, in the event that T3DC ever receives, collects or applies as interest any such excess, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance of the Note, and, if the principal balance of the Note is paid in full, then any remaining excess shall forthwith be paid to the Recipient. In determining whether or not the interest paid or payable under any specific contingency exceeds the highest lawful rate, the Recipient and T3DC shall, to the maximum extent permitted under applicable law,

(a) characterize any non-principal payment (other than payments which are expressly designated as Interest payments hereunder) as an expense, fee or premium, rather than as interest,

(b) exclude voluntary prepayments and the effect thereof, and

(c) spread the total amount of Interest throughout the entire contemplated term of the Note so that the interest rate is uniform throughout such term.

15. **Expenses; Waivers.** If action is instituted to collect this Note, the Recipient promises to pay all costs and expenses, including without limitation reasonable attorneys’ fees and costs, incurred in connection with such action. The Recipient hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.

16. **Governing Law.** This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions of the State of Texas, or of any other state.

[Remainder of page intentionally left blank.]

The Recipient has caused this Note to be issued as of the date first written above.

[Recipient Name]

By: _____
[Name and Title]