

\$ 50,000.00

\_\_\_\_\_ [insert date]  
Pittsburgh, Pennsylvania

### CONVERTIBLE PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_, a \_\_\_\_\_ having a principal place of business located at \_\_\_\_\_ (“Maker”), hereby promises to pay to the order of Carnegie Mellon University, a Pennsylvania nonprofit corporation with its offices at 5000 Forbes Avenue, Pittsburgh, PA 15213 (“Holder”), in lawful money of the United States of America at such place as Holder may direct, the sum of Fifty Thousand Dollars (\$50,000.00) (the “Principal”), together with simple interest computed at the rate of 0.667% per month on the unpaid Principal balance of this Convertible Promissory Note (“Note”).

The terms and conditions of this Note are as follows:

#### 1. **OFEF Investment; Terms of Payment.**

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

1.2 **Due Date.** Except with respect to the outstanding Principal balance of this Note and accrued but unpaid interest that is converted into Equity Securities (hereinafter defined) as provided in Section 2 hereof, the outstanding Principal balance of this Note together with all accrued but unpaid interest, shall be due and payable on the date which is ninety (90) days following a Conversion Event (hereinafter defined).

1.3 **Manner of Payment.** All payments of Principal and interest on this Note, if any, shall be made by wire transfer of immediately available funds to an account designated by Holder in writing. If any payment of Principal or interest on this Note is due on a day which is not a Business Day, such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Note. "Business Day" means any day other than a Saturday, Sunday or legal holiday in the Commonwealth of Pennsylvania.

1.4 **No Prepayment.** Maker has no right, without Holder’s prior written consent (which may be withheld in Holder’s sole discretion), to prepay, redeem or otherwise acquire this Note prior to the due date.

#### 2. **Optional and Mandatory Conversion.**

2.1 **Optional Conversion.** Subject to the procedures set forth in Sections 2.2 and 2.3, in the event a Conversion Event (hereinafter defined) occurs at any time on or before the date which is one (1) year from the date of this Note, Holder will have the right to convert the outstanding Principal balance of this Note and any accrued but unpaid interest into such number of fully paid and non-assessable shares of Equity Securities as is equal to the quotient of (a) the outstanding Principal and accrued but unpaid interest, divided by (b) the Established Price Per Share (hereinafter defined) if the Conversion Event occurs on or before the date which is sixty (60) days from the date of this Note, or eighty five percent (85%) of the Established Price Per Share if the Conversion Event occurs after the date which is sixty (60) days from the date of this Note. A “Conversion Event” means any one of the following:

2.1.1 The closing of any bona fide merger or consolidation of Maker with or into another entity (a “Merger”); or the bona fide sale or other disposition of all or substantially all of the assets of Maker in one transaction or a series of related transactions (a “Sale of Assets”); or the transfer by the equity holders of Maker of more than 50% of the then issued and outstanding Equity Securities of Maker

in a bona fide transaction or a series of related transactions (a “Stock Sale”, and each of the foregoing, a “Sale”), or

2.1.2 The date on which Maker issues Equity Securities in a round of financing or series of related rounds to one or more venture capital investors, institutional investors and/or angel group or network of investors of at least \$500,000 in the aggregate, including upon any conversion of any convertible debt other than this Note (a “Financing”).

In the event an issue arises as to whether any one of the foregoing has occurred, Holder’s good faith determination as to the matter shall be conclusive and binding.

2.2 Notice of Conversion Event Transaction. If Maker (or in the case of a Stock Sale, Maker’s equity holders) proposes to consummate a Conversion Event (each, a “Transaction”) wherein the Transaction will be consummated at any time on or before the date which is one (1) year from the date of this Note, it will give Holder written notice (a “Notice of Proposed Transaction”) of its intention not less than 30 days prior to the closing for the Transaction, describing the proposed Transaction, including the proposed price and/or enterprise value of Maker to be paid or imputed in connection with such Transaction, and the terms and conditions upon which Maker proposes to consummate such Transaction if applicable. Maker will inform Holder of the status of the negotiations relating to any proposed Transaction and the scheduled closing date. Maker will not consummate any Sale (or, in the case of a Stock Sale, permit the consummation of a Stock Sale by Maker’s equity holders) or Financing within the 30 day period after giving a Notice of Proposed Transaction without Holder’s prior written consent.

2.3 Notice of Conversion.

2.3.1 In the case of a Transaction, Holder will have twenty (20) days from the date of receipt of a Notice of Proposed Transaction to give notice to Maker of its election to convert all of the Principal and accrued but unpaid interest into Conversion Securities (hereinafter defined) in connection with the Transaction (and, in the event that Holder does not give Maker notice of such election within the 20-day period, then Holder shall be deemed not to have elected to convert). In the event that Holder has not elected to convert and/or is deemed to have elected not to convert all of the Principal balance of this Note and accrued but unpaid interest into Conversion Securities in accordance with the foregoing, then the outstanding Principal balance of this Note, together with all accrued but unpaid interest shall be due and payable as provided in Section 1.2.

2.3.2 Maker will, as soon as practicable after the effective date of any Conversion Event, issue and deliver to Holder a certificate or certificates for the number of shares of Conversion Securities to which Holder is entitled. If the Transaction does not close, no conversion will occur.

2.4 Mandatory Conversion. In the event a Conversion Event does not occur on or before the date which is one (1) year from the date of this Note, then the outstanding Principal balance of this Note together with any and all accrued but unpaid interest shall as of the day immediately following the date which is one (1) year from the date of this Note, be automatically converted into such number of fully paid and non-assessable shares of Equity Securities as is equal to the greater of (i) the quotient of the outstanding Principal balance of this Note and accrued but unpaid interest, divided by eighty five percent (85%) of the Established Price Per Share, or (ii) five percent (5%) of the then outstanding Equity Securities of Maker calculated on a Fully Diluted Basis (hereinafter defined). Maker will, as soon as practicable after the effective date of any such mandatory conversion, issue and deliver to Holder a certificate or certificates for the number of shares of Conversion Securities to which Holder is entitled.

2.5 No Fractional Shares. No fractional shares of Equity Securities will be issued upon conversion of this Note. In lieu of any fractional shares to which Holder would otherwise be entitled upon conversion of this Note, Maker will promptly pay to Holder the equivalent cash amount equal to such fractional amount.

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

2.7 Definitions.

2.7.1 “Equity Securities” means any shares of capital stock or other equity interests of or in Maker, including common stock and preferred stock, membership interests and limited liability company units, in each case whether or not authorized as of the date hereof and including any series or class of capital stock other equity interests, and all rights, options, or warrants to purchase any such shares.

2.7.2 “Established Price Per Share” means (a) with respect to a Financing, the consideration received by Maker per share of Equity Securities that were issued by Maker in such Financing, (b) with respect to a Merger, the value imputed by such Merger to a common (or equivalent) share of Equity Securities on a Fully Diluted Basis, as determined in good faith by the board of directors or board of managers (or equivalent governance body) of Maker and approved by Holder, which approval will not be unreasonably withheld, (c) with respect to a Sale of Assets or Stock Sale, the post-sale or post-transfer value, as applicable, immediately after such Sale of Assets or Stock Sale of a common (or equivalent) share of Equity Securities on a Fully Diluted Basis, as determined in good faith by the board of directors or board of managers (or equivalent governance body) of Maker and approved by Holder, which approval will not be unreasonably withheld, or (d) with respect to a mandatory conversion pursuant to Section 2.4, the fair market value of a common (or equivalent) share of Equity Securities on a Fully Diluted Basis determined in good faith by the board of directors or board of managers (or equivalent governance body) of Maker and approved by Holder, which approval will not be unreasonably withheld. If the consideration received by Maker consists of services or property other than cash, such consideration will be computed at the fair market value thereof at the time of such receipt, as determined in good faith by the board of directors or board of managers (or equivalent governance body) of Maker.

2.7.3 “On a Fully Diluted Basis” means the total number of common (or equivalent) shares of capital stock or other equity interests of or in Maker which are issued and outstanding, plus the total number of shares which would otherwise be issued and outstanding assuming the exercise of all granted and unretired options whether vested or unvested, warrants and other rights to purchase common (or equivalent) shares of capital stock or other equity interests, all vested and unvested shares of capital stock and other equity interests and the conversion of all outstanding convertible securities and debt in accordance with the terms thereof.

2.7.4 “Conversion Securities” means Equity Securities issued to Holder pursuant to this Section 2.

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

3. **Shareholders/Operating Agreement; Other Rights.**

3.1 Shareholders/Operating Agreement. In connection with a conversion of this Note, Holder will execute Maker’s shareholders’ or operating agreement, purchase or similar agreement if and to the extent (i) its provisions do not require or authorize any person or entity to act for or on behalf of Holder or require Holder to assume or incur any financial-, confidentiality- and/or non-competition-related obligation or liability to or involving Maker (including any obligation to make any capital contributions to Maker), and (ii) it is executed by all other owners of outstanding Equity Securities of Maker, and (iii) it

gives to Holder the rights and protections which are at least as favorable as, and contains restrictions which are no more onerous than, the restrictions and rights provided to the persons or entities who acquired Maker's Equity Securities in the Transaction that caused this Note to be converted or in the case of a mandatory conversion pursuant to Section 2.4, in the then most recent issuance of Maker's Equity Securities.

3.2 Financial Information. So long as this Note is outstanding, within sixty (60) days after (i) the end of each of Holder's fiscal quarters excluding the last fiscal quarter of its fiscal year, Maker shall provide to Holder Maker's financial statements for that fiscal quarter (generally including, at a minimum, an income statement, a statement of cash flows and a balance sheet) that have been certified by Maker's treasurer or chief financial officer (or Maker's equivalent thereto, such as Maker's managing member) or an independent auditor, and (ii) the end of each of Maker's fiscal years, Maker shall provide to Holder Maker's financial statements for that fiscal year (generally including, at a minimum, an income statement, a statement of cash flows and a balance sheet) that have been certified by Maker's treasurer or chief financial officer (or Maker's equivalent thereto, such as Maker's managing member), or an independent auditor.

3.3 Board of Directors with Outside Director. Maker agrees to establish and/or maintain a board of directors or board of managers (or equivalent governance body) with at least one outside director/manager/equivalent (i.e., a non-founder, non-employee and non-family member) within sixty (60) days of the date of this Note.

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

4.1 Purchase Entirely for Own Account; Accredited Investor Status. This Note and the Conversion Securities (collectively, the "Securities") are being acquired for investment for Holder's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and Holder has no present intention of selling, granting any participation in, or otherwise distributing the same. Holder represents that it is an accredited investor as defined in Rule 501 of Regulation D (Securities Act).

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

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

5. **Miscellaneous.**

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

attorneys fees and expenses) incurred by Holder in connection with the enforcement of Holder's rights under this Note.

5.2 Notices. All notices or other communications hereunder will be sufficient if given in writing and delivered personally, sent by way of Fed Ex or similar internationally recognized express mail service, by e mail or by registered or certified mail, postage prepaid, as follows:

If to Maker, to:

\_\_\_\_\_

If to Holder, to:

Carnegie Mellon University  
5000 Forbes Avenue  
Pittsburgh, PA 15213  
Attention: Richard D. McCullough, VP for Research  
Email: rm5g@andrew.cmu.edu

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

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

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

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

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

Maker: \_\_\_\_\_

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

Name/Title: \_\_\_\_\_

Acknowledged and Agreed, this \_\_\_ day of \_\_\_\_\_, 20\_\_:

Carnegie Mellon University:

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

Name/Title: \_\_\_\_\_