

CONVERTIBLE NOTE PURCHASE AGREEMENT

THIS CONVERTIBLE NOTE PURCHASE AGREEMENT (the "Agreement") is effective as of the _____ day of _____, 20__ (the "Effective Date") by and between the **Maryland Technology Development Corporation**, a body politic and corporate and a public instrumentality of the State of Maryland ("TEDCO"), and _____, a [name of state] [corporation, limited liability company, etc.] (the "Company").

RECITALS

A. Under §10-402 of the Economic Development Article of the Maryland Annotated Code, TEDCO was established to: (1) assist in transferring to the private sector and commercializing the results and products of scientific research and development conducted by colleges and universities; and (2) assist in the commercialization of technology developed in the private sector to create and sustain businesses throughout the State of Maryland.

B. TEDCO, through its Maryland Technology Transfer & Commercialization Fund ("MTTCF") Program, makes investments to assist companies that are collaborating with or licensing technology from Maryland colleges and universities or federal laboratories located in Maryland, or are located in or affiliated with Maryland business technology incubators, to develop and commercialize new services and products.

C. Company has submitted its commercialization plan and any other written information required by TEDCO (collectively the "Application", and the objectives described therein the "Milestones"), attached hereto as Exhibit A and incorporated herein to the extent that it is consistent herewith. TEDCO approved Company's Application, as evidenced by the letter of intent from TEDCO to Company under date of _____, 20__.

NOW, THEREFORE in consideration of the mutual promises and covenants contained in this Agreement, including but not limited to TEDCO's agreement to invest in Company and Company's agreement to issue the Convertible Promissory Note described in Section 2(a) below ("Note") to TEDCO, all as provided in this Agreement, TEDCO and Company agree as follows:

1. Term. The term of this Agreement shall be from the Effective Date until all of Company's obligations under the Agreement have been satisfied, including but not limited to the reporting provisions of Section 5 ("Termination Date").

2. Purchase of Note; Disbursement.

- a. Company shall issue, sell and deliver to TEDCO, and subject to the further terms and conditions hereof, and the continuing availability of funds for such purpose, as determined by TEDCO in its sole discretion, TEDCO shall purchase from Company, a Series A Convertible Promissory Note, substantially in the form set forth in Exhibit B attached hereto, in an aggregate principal amount of up to _____ and 00/100 Dollars (\$_____).
- b. An initial payment will be made at Closing and subsequent payments will be made based upon based upon the successful completion, as determined by TEDCO in its sole discretion, of the Milestones defined in Exhibit A.
- c. Contemporaneously with the Milestone Reports specified in Section 5(a)(ii)(a) below, the Company may submit requests for the additional disbursement associated with the completion of the Milestones as listed in Exhibit A during the Funding Period (as defined in Section 4, below) using the format and enclosing such documentation as is periodically set forth in the TEDCO Funds System (www.tedcofunds.org) (a Disbursement Request”), and each such Disbursement Request shall be filed electronically on-line in the TEDCO Funds System. The Company’s final Disbursement Request shall be submitted no later than 90 days after the end of the Funding Period.
- d. Each Disbursement Request shall include certification of the Company’s [2.1][1:1][1:2] matching investment of cash or approved in-kind goods or services (“Company’s Match”). The Company shall submit such additional documentation of any Disbursement Request or Company’s Match as TEDCO may reasonably require.

3. Closing. The closing in connection with this Agreement (the “Closing”) shall take place on _____, 20__, (the “Closing Date”) in the offices of TEDCO located at 5565 Sterrett Place, Suite 214, Columbia, Maryland 21044 or at some other place and time mutually agreed upon. At the Closing Company shall deliver the Note to TEDCO and TEDCO will deliver the initial disbursement under the Note to the Company.

4. Use of Proceeds. Company shall use the proceeds of the Note only for purposes set forth in Exhibit A during the period beginning with the Effective Date and ending on or before [_____, 200_] [__ months after the Effective Date] (the “Funding Period”), the expected completion date of the final Milestone listed in Exhibit A.

5. Conditions Precedent to Closing. The obligations of TEDCO to complete the transaction contemplated by this Agreement are subject to the fulfillment prior to or at Closing of the following conditions (any of which may, at its sole option, be waived by TEDCO):
- a. The representations and warranties contained in Paragraph 10 of this Agreement and any certificate, financial statement or document delivered to TEDCO in connection with this transaction, including but not limited to Exhibit A, shall be true and correct when made and shall be true and correct as of the Closing Date with the same force and effect as if they had been made on and as of the Closing Date.
 - b. The Company shall execute and deliver to TEDCO the Application Affidavit attached hereto as Exhibit C.
 - c. The Company shall execute and deliver to TEDCO the certificate attached hereto as Exhibit D, dated as of the Closing Date.
 - d. The Company shall deliver to TEDCO the certificate attached hereto as Exhibit E, dated as of the Closing Date.
 - e. The Company shall deliver to TEDCO a good standing certificate from the Maryland Department of Assessments and Taxation dated no more than 30 days prior to the Closing Date.
 - f. [IF COMPANY IS A FOREIGN CORPORATION OR OTHER ENTITY:]
The Company shall deliver to TEDCO a good standing certificate from the state in which it was formed, dated no more than 30 days prior to the Closing Date.
 - f.[g.] The Company shall deliver to TEDCO a copy of its two (2) most recent annual financial statements and complete State and federal income and payroll tax returns.
 - g.[h.] The Company shall demonstrate to TEDCO that it has, and shall upon request furnish a copy of, a legally sufficient and binding agreement with [_____ University/ _____ Federal Lab for the advancement of the goals contained in the Application] [_____ (“Incubator”) for tenancy in or affiliation with the Incubator].

(b) Within 90 days after the end of the Funding Period, the Company shall submit to TEDCO a final Milestone Report which shall detail its accomplishments related to the proposed specific aims of and its progress against achieving the final milestones listed in Exhibit A, any technology and associated intellectual property developed or improved through Project activities or otherwise (the "Technology"), any licensing or other commercialization activities pertaining to the Technology, and current employment data (the "Final Report"). The format for the Final Report shall be as is then set forth in the TEDCO Funds System (www.tedcofunds.org), and such Final Report shall be filed electronically on-line in the TEDCO Funds System and shall be accompanied by Company's final Disbursement Request.

(c) Company shall submit to TEDCO an annual economic impact report consisting of Company's complete State and federal income and payroll tax returns, as and when filed, , but in no event later than one-hundred and eighty (180) days after the end of the fiscal year, and financial statements for the previous calendar year, as well as an employee census reflecting its current number of full-time equivalent employees who are Maryland residents (the "Annual Economic Impact Statement"). The initial Annual Economic Impact Statement shall be due on the first April 30 after the expected date of last Milestone completion, and subsequent Annual Economic Impact Statements shall be due on each April 30 thereafter until either five (5) years after the Funding Period, or TEDCO shall no longer hold any Notes or Securities (as defined in Section 8, below), whichever shall last occur.

(iii) Such other reports or information which TEDCO may reasonably request from time to time.

b. TEDCO shall hold Company's Application, Milestone Reports and Financial Reports in confidence to the extent reasonably permitted by Title 10, Subtitle 6 of the State Government Article of the Annotated Code of Maryland. Notwithstanding the foregoing, TEDCO shall not be obligated to maintain in confidence any information: 1) which was already known to TEDCO; or 2) which is or comes into the public domain through no fault of TEDCO; or 3) which is independently developed by TEDCO; or 4) which comes to TEDCO from a third party which is not in violation of any obligation of confidentiality to Company or TEDCO.

6. Inspection of Records. Company shall allow any authorized representative of TEDCO to inspect and audit, at reasonable times, its financial, business and State

and federal tax records. The Company shall retain such records until three years after the period during which the company is required to file an Economic Impact Statement.

7. Visitation. Company shall allow any authorized representative of TEDCO to visit and inspect, with reasonable notice and at reasonable times, all property, offices and production facilities owned, leased or otherwise controlled by Company.
8. Conversion to Equity. Upon the occurrence of certain conditions as specified in the Note, the amount due and owing under the Note, as amended, and any other monies owed TEDCO under this Agreement, as amended, may be exchanged by TEDCO for securities then outstanding in or proposed to be issued by the Company (collectively, "Securities"). Concurrent with any such conversion to equity, the Company and TEDCO shall enter into a termination and release agreement whereby this Agreement shall be terminated and the Company and TEDCO shall be released from all obligations hereunder.
9. TEDCO's Representations and Warranties. TEDCO hereby represents and warrants to the Company that:
 - a. Any Securities will be acquired for TEDCO's own account for investment, and not with a view to, or for resale in connection with, any distribution or public offering within the meaning of the Securities Act of 1933 (the "Act") or Maryland law.
 - b. TEDCO understands that regarding any Securities that have not been registered under the Act by reason of their issuance in a transaction exempt from the registration and prospectus delivery requirements of the Act, the Company has no present intention of registering the Securities, that the Securities must be held by TEDCO indefinitely, and that TEDCO must therefore bear the economic risk of such an investment indefinitely.
10. Company's Representations and Warranties. The Company hereby represents and warrants to TEDCO that:
 - a. Company is duly organized and in good standing in the State of _____ [and is [registered][qualified] as a foreign corporation in the State of Maryland]. The Company has all requisite power and authority to own its properties and conduct its business as currently being conducted and as presently proposed to be conducted. The Company's principal place of business is located in the State of Maryland.

- b. Company has all requisite power and authority to execute and deliver this Agreement, the Note, and all other documents in connection with this Agreement, and to perform the terms of this Agreement, and has taken all actions necessary or required on its part for the execution, delivery and performance of this Agreement and the Note. This Agreement and the Note are the legal, valid and binding obligations of the Company, enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy laws and general principles of equity.
- c. Neither this Agreement, the Note, nor the Application or any other written information provided to TEDCO by the Company in connection with the Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein or herein not misleading.
- d. Neither the Company nor any of its directors, officers, partners or members, as the case may be, has been charged with or convicted of a felony or debarred from participating in contracts with the State of Maryland.
- e. Company has filed all federal, State and local tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes, assessments and governmental charges when due, except those contested in good faith. The Company has withheld or collected from its employees all required taxes, and has paid the same to the proper tax receiving officers or authorized depositories. No deficiency assessment with respect to or proposed adjustment of the Company's federal, state, county or local taxes is pending or, to the best of the Company's knowledge, threatened. There is no tax lien (other than for current taxes not yet due and payable), whether imposed by any Federal, state, county, local taxing authority, outstanding against the assets, properties or business of the Company.
- f. No third party has claimed or, to the best of the Company's knowledge has reason to claim, that any principal of the Company or other person employed by or affiliated with the Company has: (i) violated or, may be violating any of the terms of his employment, non-competition or non-disclosure agreement with such third party; (ii) disclosed or may be disclosing or utilized or may be utilizing any trade secret or proprietary information of such third party; or (iii) interfered or may be interfering in the employment relationship between such third party and any of its present or former employees.

- g. Company and its property are in compliance with all federal, state, and local environmental and health laws.
- h. There is no litigation or other governmental proceeding, including bankruptcy proceedings, currently pending or, to the best of the Company's knowledge threatened, against the Company.
- i. The execution, delivery and performance of this Agreement and/or the Note does not and will not conflict with or constitute a material default under any contract, promissory note, mortgage or other instrument.
- j. The Company owns, or has a license for, all patents, copyrights, trademarks, trade names, service marks, trade secrets and other intellectual and proprietary property (collectively, "Intellectual Property") which are necessary to conduct its business and commercially develop and market its services or products. Except as has been disclosed to TEDCO, the Company has no obligation to compensate any party for the use of any such Intellectual Property and has not granted to any Party any license, assignment or other right to use such Intellectual Property in any manner (whether requiring the payment of royalties or not). The Company owns, or will upon development own, all Intellectual Property relating to its services or products. Each party that may have or assert rights in any aspect of the services or products has delivered to the Company written agreements evidencing assignment to the Company of all such rights, and all employees of the Company involved with the services or products have delivered to the Company written agreements acknowledging and agreeing that all Intellectual Property conceived or developed by such employees and related in any manner to the services or products shall be the exclusive property of the Company.
- k. There is no liability or obligation of the Company of any nature, whether absolute, accrued, contingent, or otherwise, in the amount of \$2,500 or more individually, or \$20,000 or more in the aggregate, and the Company is not signatory to, and is not in any manner a guarantor, endorser, assumpor or otherwise primarily or secondarily liable for or responsible for the payment of any notes payable or other obligations other than those set forth in the financial statements submitted in connection with the Closing.
- l. The company does not control directly or indirectly or have any direct or indirect equity participation in any corporation, partnership, trust, or other business association.

- m. Attached as Exhibit F is a true and complete list of [the member of the company, showing the number of units or each class held by each member as of the date of this Agreement. Except as contemplated by this Agreement, the Operating Agreement, or as set forth in Exhibit F, there are no agreements, written or oral, between the Company and any member, or to the best of the Company's knowledge, among any of its members, relating to the acquisition (including without limitation rights or first refusal or preemptive rights, disposition, registration under the Act or voting) of units of the Company.] [the stockholders of the Company, showing the number of shares of each class held by each stockholder as of the date of this Agreement. Except as contemplated by this agreement as set forth in Exhibit F, there are no agreements, written or oral, between the company and any holder of its capital stock, or to the best of the Company's knowledge, among any of its stockholders, relating to the acquisition (including without limitation rights of first refusal or preemptive rights), disposition, registration under the Act, or voting of the capital stock of the company.]
 - n. The issuance, sale and delivery of the Note has been duly authorized by all necessary action on the part of the Company, and the Note when so issued, sold and delivered against payment therefore in accordance with the provisions of this Agreement, the shares of [Preferred Stock][Stock][Units][Membership Interests] issuable upon conversion of the Note when issued upon such conversion will be duly and validly issued, fully paid and non-assessable.
 - o. No consent, approval, order or authorization of, registration, qualification, designation, declaration, or filing with, any governmental authority is required on the part of the Company in connection with the execution and delivery of this Agreement or the offer to issue, sale or delivery of the Note except (i) requisite filings with appropriate federal and state securities authorities, which the Company hereby covenants to make on a timely basis, and (ii) such filings as shall have been made prior to and shall be effective on and as of the Closing. Based on the representations made by purchasers in Section 10 of this Agreement, and the making of such filings, the offer and sale of the Note to TEDCO will be in compliance with applicable Federal and state securities laws.
11. Covenants of the Company. Until the Termination Date, the Company:
- a. shall maintain its corporate or other existence, in good standing, in and in each other jurisdiction where the failure to so qualify

would have a material effect on the Company's business or financial condition.

- b. shall maintain its principal place of business in Maryland until all of its duties hereunder and under the Note have been fully satisfied.
- c. shall file all federal, State and local tax returns and reports as required by law. The returns and reports to be filed shall be true and correct in all material respects. The Company shall pay all taxes, assessments and governmental charges when due, except those contested in good faith prior to the date penalties attach thereto. The Company shall withhold or collect from its employees all required taxes, and shall pay the same to the proper tax receiving officers or authorized depositories.
- d. shall, in the sole determination of TEDCO, use its best efforts to develop its business in accordance with the Application,
- e. shall notify TEDCO within 10 days of: (i) any lawsuit or proceedings before a governmental agency which, if successful, would materially affect the Company's financial condition or operations; and (ii) any agreement by the Company to merge, consolidate, or sell its assets (other than in the normal course of business) to a third party.
- f. shall not, without prior written consent of TEDCO:
 - i) change the nature of its business as described in the Application.
 - ii) sell or otherwise transfer all or a material portion of its assets or sell or otherwise transfer a controlling interest in the Company;
 - iii) transfer any interest in its services or products, other than in the ordinary course of business, provided that the Company may license another party to manufacture components thereof for the exclusive benefit of the Company;
 - iv) license, sell or transfer any of the Intellectual Property, other than in the ordinary course of business;
 - v) enter into any merger or consolidation;
 - vi) declare or pay any dividend, or other distribution on its stock, if a corporation; other than as may be necessary and proper to effect a tax distribution by a Sub-chapter S corporation;

- vii) permit any issuance or transfer of more than a 50% equity interest in the Company;
- viii) redeem or repurchase any of its equity interest;
- ix) materially change the nature of its business;
- x) guarantee, or in any way become liable for, a debt or obligation of any other party;
- xi) make any loan or advance to any officer, shareholder, director, member, partner, employee, or affiliate of the Company except for temporary, commercially reasonable advances in the ordinary course of business;
- xii) prepay any debt or obligation owed to any party other than TEDCO;
- xiii) pledge or grant a security interest in the Intellectual Property;
- xiv) take any action having the effect of diminishing or circumventing TEDCO's rights under this Agreement or the Note;
- xv) materially increase executive compensation; or
- xvi) accept any investment, whether equity or debt without offering TEDCO the opportunity to participate in the investment on a pari-passu basis.

12. Default.

- a. The Company shall be in default under this Agreement upon the occurrence of any of the following; provided, however, that TEDCO shall first provide Company with written notice of default and an opportunity to cure such default within fifteen (15) days after notice, unless such default is not, in the sole determination of TEDCO, curable:
 - (i) The Company fails to submit any report to TEDCO due pursuant to Section 5 or any other provision of this Agreement;
 - (ii) The Company fails to make any payment to TEDCO due pursuant to the Note;

- (iii) The Company relocates its principal place of business to a location outside of Maryland before the Termination Date;
 - (iv) Any representation or warranty under Section 10 of this Agreement shall not be true;
 - (v) The Company fails to perform, comply with or observe any of the conditions, terms or covenants contained under this Agreement;
 - (vi) Any document submitted or to be submitted in connection with this Agreement and/or the Note contains any untrue statement of material fact or omits to state a material fact necessary to make the statements therein not misleading;
 - (vii) The Company or any of its directors, officers, partners or members, as the case may be, are charged with or convicted of a felony;
 - (vii) The Company has been declared by TEDCO to be in default under the Note or any other agreement with TEDCO.
- b. Upon the occurrence of a default, TEDCO may:
- (i) Accelerate amounts due under the Note
 - (ii) Require full repayment of any unpaid Principal Amount (as defined in the Note) and the balance of unpaid and accrued interest and any other amounts payable under the Note in cash or by certified check within 15 days of written notice to Company of a default; and
 - (iii) Charge fifteen percent (15%) interest on the unpaid Principal Amount (as defines in the Note) and the balance of unpaid and accrued interest and any other amounts payable under the Note to TEDCO pursuant to this Agreement for the period starting 15 days after TEDCO's written notice of default until full payment is made.
 - (iv) At any time or from time to time proceed to protect and enforce all rights and remedies available to TEDCO under this Agreement by suit or by any other appropriate proceedings, whether for specific performance of any covenant or agreement contained in the Agreement, or damages permitted under applicable law or regulations.

- c. All remedies provided for in this Agreement are cumulative and shall be in addition to any and all other rights and remedies available to TEDCO at law or in equity. The exercise of any right or remedy by TEDCO shall not in any way constitute a cure or waiver of any default, nor invalidate any act done pursuant to any notice of default, nor prejudice TEDCO in the exercise of those rights.
 - d. The failure of TEDCO to insist upon performance of any term of this Agreement at any time and from time to time shall not be deemed to be a waiver of any term of this Agreement.
 - e. If TEDCO suspends or terminates this Agreement, the rights and remedies available to TEDCO shall survive such suspension or termination.
 - f. The Company shall notify TEDCO of an event of default within 5 days of its occurrence. The notice shall set forth the nature of the default and the Company's proposed action(s) to cure such default.
13. Indemnification. Company shall indemnify, defend and hold TEDCO, the State and their employees and agents harmless from and against any loss, damage, claim or other expense suffered or incurred by them or any of them by reason of Company's negligence or failure to perform any of the obligations required herein (including any reasonable costs, fees, and expenses in connection with TEDCO's efforts to collect any monies owed pursuant to, or enforce a provision of, this Agreement, including costs and fees to collect costs and fees).
14. Compliance with Applicable Law.
- (a) Company agrees to comply with all applicable federal, state and local law, including all such laws that prohibit discrimination. Company covenants that it will not discriminate on the basis of race, color, sex, sexual orientation, religion or national or ethnic origin in its hiring of contractors, and shall prohibit its contractors from engaging in such discrimination in the hiring of subcontractors.
 - (b) Company certifies and covenants that it shall make a good faith effort to eliminate illegal drug use and alcohol and drug abuse from its workplace during the term of this Agreement. Specifically, Company shall: (i) prohibit the unlawful manufacture, distribution, dispensation, possession, or use of drugs in its workplace; (ii) prohibit its employees from working under the influence of alcohol or drugs; (iii) not hire or assign to work on an activity funded in whole or part with State funds, anyone whom it

knows, or in the exercise of due diligence should know, currently abuses alcohol or drugs and is not actively engaged in a bona fide rehabilitation program; (iv) Promptly inform the appropriate law enforcement agency of every drug related crime that occurs in its workplace if the Company or any of its employees has observed the violation or otherwise has reliable information that a violation has occurred; and (v) Notify employees that drugs and alcohol abuse are banned in the workplace, impose sanctions on employees who abuse drugs and alcohol in the workplace, and institute steps to maintain a drug and alcohol free workplace.

15. Insurance. The Company has, and will maintain insurance covering property damage and liability sufficient in an amount and type to fully protect its assets, operations and business.
16. Entire Agreement and Amendment. This Agreement, and the exhibits, represent the entire Agreement between TEDCO and Company and supersede any and all prior understandings or oral or written agreements regarding the investment by TEDCO in Company. This Agreement may be amended from time to time only in a writing executed by Company and TEDCO.
17. Assignment. No right, benefit or advantage inuring to Company under this Agreement may be assigned, and no burden imposed on Company hereunder may be delegated, without the prior written approval of TEDCO.
18. Notices. All communications concerning this Agreement shall be addressed as follows:

To TEDCO: Maryland Technology Development Corporation
5565 Sterrett Place, Suite 214
Columbia, Maryland 21044
ATTN: Vice President, Tech Transfer &
Commercialization

To COMPANY:

[Redacted]

ATTN:

[Redacted]

19. Successors and Assigns. This Agreement shall be binding upon the Company and its successors and assigns, and shall inure to the benefit of TEDCO and its successors and assigns.

20. Maryland Law. This Agreement shall be governed by and construed in accordance with Maryland law. The Company and TEDCO hereby agree and consent that any lawsuit, action or proceeding arising out of or brought to enforce the provisions of this Agreement shall be brought in any appropriate court of the State of Maryland.
21. Waiver of Right to Jury Trial. NO PARTY SHALL ELECT A TRIAL BY JURY WITH RESPECT TO ANY MATTER ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
22. Severability. The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof, except that any invalidity of the repayment obligations of the Company under this Agreement shall constitute an Event of Default hereunder.
23. Press Releases. TEDCO may issue press releases or other promotional materials describing in general terms the investment by TEDCO and the specific purposes for which the investment was made.
23. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Company and TEDCO have caused this Agreement to be executed, delivered, and witnessed by their duly authorized officers effective the date first above written.

COMPANY

WITNESS: _____

By: _____
Name: _____
Title: _____

**MARYLAND TECHNOLOGY
DEVELOPMENT CORPORATION**

WITNESS: _____

By: _____
Robert A. Rosenbaum
President and Executive Director

Approved for Form and Legal Sufficiency:

Ira Schwartz, Esq., TEDCO Counsel

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EXHIBIT A

PROJECT DESCRIPTION AND MILESTONES

**[INSERT PROJECT SUMMARY, MILESTONES AND ASSOCIATED
INVESTMENT HERE]**

EXHIBIT B

CONVERTIBLE PROMISSORY NOTE

THIS PROMISSORY NOTE AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE MORTGAGED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AVAILABILITY OF AN EXEMPTION UNDER SUCH ACT,.

CONVERTIBLE PROMISSORY NOTE

\$ _____, 20__

FOR VALUE RECEIVED, the undersigned, _____, a _____ [State] _____ [Form of Business Organization] (the "Company"), promises unconditionally to pay to the order of the **Maryland Technology Development Corporation** or its assigns ("Holder") the principal amount of _____ and 00/100 Dollars (\$_____.00) or such lesser amounts as shall equal the total sum disbursed pursuant to Section 2 of the Convertible Note Purchase Agreement (the "Note Purchase Agreement") entered into by and between the Company and the Holder of even date herewith (the "Principal Amount") in accordance with the following terms:

1. **Interest Rate.** Interest shall accrue and be payable on the outstanding Principal Amount at a fixed rate equal to eight percent (8%) per annum. Interest shall be calculated on the basis of a year of three hundred sixty (360) days applied to the actual days on which there exists an unpaid balance under this Note.
2. **Maturity; Principal and Interest Repayment.** The unpaid Principal Amount, together with the balance of unpaid and accrued interest and any other amounts payable hereunder, shall be due and payable on demand upon the earlier of: (i) five (5) years after the date of this Note (the "Maturity Date"); (ii) when such amounts are declared due and payable by the Holder upon or after declining to exercise an option to convert to equity pursuant to the provisions of Section 9 below; or (iii) upon or after the occurrence of an Event of Default (as defined below). This Note is issued pursuant to the Note Purchase Agreement.
3. **Repayment Extension.** If any payment of principal or interest shall be due on a Saturday, Sunday or any other day on which banking institutions in or government institutions of the State of Maryland are required or permitted to be closed, such payment shall be made on the next succeeding business day and such extension of time shall be included in computing interest under this Note.

4. Manner and Application of Payments. All payments due hereunder shall be paid in lawful money of the United States of America at the address of Holder set forth below, or at such other place as may be designated by Holder in accordance with this Note. Each payment shall be applied first to the payment of any and all costs, fees and expenses incurred by or payable to Holder in connection with the collection or enforcement of this Note, second, to the payment of all accrued and unpaid interest hereunder and finally, to the payment of the unpaid Principal Amount due hereunder.

5. Prepayment. This Note may not be prepaid in whole or in part at any time by the Company without the prior written consent of the Holder.

6. Events of Default. The occurrence of any one or more of the following events shall constitute an “Event of Default” under this Note: (a) the failure of the Company to pay any sum due under this Note or to deliver any securities to be issued under this Note within 10 days after the date due; (b) the Company shall (i) apply for or consent to the appointment of, or there shall be a taking of possession by, a receiver, custodian, trustee or liquidator for the Company, or any of the Company’s property, (ii) become generally unable to pay the Company’s debts as they become due, (iii) make a general assignment for the benefit of creditors or become insolvent, or (iv) become the debtor party, voluntarily or involuntarily, to any proceeding under the U.S. Bankruptcy Code or any similar federal or state statute; (c) a default of any provision of this Note or the Note Purchase Agreement; (d) a breach of or default of any provision of any other agreement or document between the Company and Holder; (e) entry of judgments against the Company for amounts in excess of \$100,000.00 or claims against the Company in excess of \$100,000.00 or based upon infringement of intellectual property; or (f) the sale by the Company or its [shareholders] [members], whether by merger, sale, or transfer of more than fifty percent (50%) of [its capital stock] [the membership interest of], or sale of all or substantially all of its assets, other than a transaction with Holder.

7. Rights and Remedies of Holder Upon Default. Upon the occurrence or existence of any Event of Default and at any time thereafter during the continuance of the Event of Default, Holder may declare the entire outstanding Principal Amount, together with all accrued interest and any other sums due hereunder, to be immediately due and payable without presentment, demand, protest, or any other notice, all of which the Company expressly waives. Holder may further charge a default rate of interest of fifteen percent (15%) per annum on the entire outstanding Principal Amount for the period starting 15 days after written notice of default until full payment is made. In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, Holder may exercise any other right or remedy granted to it or otherwise permitted to it by law, either by suit in equity or by action at law, or both.

8. Subordination. The indebtedness evidenced by this Note is expressly subordinated in right of payment, to the extent and in the manner set forth below, to the prior payment in full of all of Company’s “Senior Indebtedness” as defined below.

(a) “Senior Indebtedness” means, unless expressly subordinated to or made on a parity with the amounts due under this Note, the principal of (and premium, if any), unpaid interest on, and amounts reimbursed, fees, expenses, costs of enforcement, and other amounts

due in connection with, indebtedness of Company, or with respect to which Company is a guarantor, to banks, commercial finance lenders, insurance companies, leasing or equipment financing institutions, or other lending institutions regularly engaged in the business of lending money (excluding venture capital, investment banking, or similar institutions that are primarily engaged in investments in equity securities) that represents money borrowed, or the purchase or leasing of equipment in the case of lease or other equipment financing, by the Company, whether or not secured.

(b) Subrogation. Subject to the payment in full of all Senior Indebtedness as of the date of this Note, the Holder shall be subrogated to the rights of the holders of any such Senior Indebtedness, to the extent of the payments or distributions made to the holders of such Senior Indebtedness pursuant to the provisions of this Section 8, to receive payments and distributions of assets of the Company applicable to the Senior Indebtedness.

(c) No Impairment. Subject only to the rights of a holder of Senior Indebtedness as provided in this Section 8, nothing in this Section shall impair the obligation of the Company to pay to the Holder any sum hereunder when due and payable or prevent the Holder, upon default hereunder, from exercising all rights and remedies otherwise provided herein or by applicable law.

9. Conversion.

(a) In the event that before the Maturity Date the Company: (i) engages in a subsequent issuance of securities in an aggregate amount of \$500,000.00 or more from one or more investors (a "Subsequent Investor"); or (ii) is acquired by another entity by means of any transaction or series of related transactions, including any transfer of more than 50% of the voting power of the Company, reorganization, merger, or consolidation; or (iii) sells or otherwise transfers all or substantially all of the assets of the Company, then upon the occurrence of any such event (a "Conversion Event") a sum equal to the entire outstanding Principal Amount, together with all accrued interest and any other sums due hereunder may, upon Holder's request and in Holder's sole discretion:

(i) be exchanged for an equity investment by Holder in the Company immediately prior to closing the contemplated investment by the Subsequent Investor or other Conversion Event; any such equity investment by Holder shall otherwise be at the same price, including fractional shares if applicable, and on the same terms and conditions as the securities acquired by the Subsequent Investor(s); or

(ii) accelerate all amounts due under this Note.

(b) Prompt written notice shall be delivered to the Holder, at the address reflected in Section 18 of the Note Purchase Agreement, of the receipt by the Company of any offer in any form, the acceptance of which would constitute or cause the occurrence of any Conversion Event. Such notice shall include, as applicable, the terms offered by the Subsequent

Investor(s) or purchaser(s)/acquirer(s), the conversion price, the principal and accrued interest outstanding on the Note, and all other pertinent terms and conditions.

(c) On full conversion or acceleration, the Company shall be released from all of its obligations and liabilities under this Note and TEDCO shall return the Note to the Company marked "paid in full".

10. Waivers.

(a) No provision of this Note may be waived, amended, or modified without the written consent of both the Company and the Holder.

(b) The Company 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 Note.

(c) No failure or delay by Holder to insist upon the strict performance of any one or more provisions of this Note or to exercise any right, power or remedy consequent upon a breach thereof or default hereunder shall constitute a waiver thereof or preclude Holder from exercising any such right, power or remedy, or preclude the Lender from exercising any such right, power, or remedy in the event of any such breach or default at any later time or times. By accepting full or partial payment after the due date of any amount of principal of or interest on this Note, or other amounts payable on demand, Holder shall not be deemed to have waived the right either to require prompt payment when due and payable of all other amounts of principal of or interest on this Note or other amounts payable on demand, or to exercise any rights and remedies available to it in order to collect all such other amounts due and payable under this Note.

11. Successors and Assigns. This Note shall be binding upon the Company and its permitted successors and assigns, and shall inure to the benefit of Holder and its successors and assigns.

12. Assignment. No right, benefit or advantage inuring to Company under this Note may be assigned, and no burden imposed on Company hereunder may be delegated, without the prior written approval of Holder.

13. Expenses. If this Note is placed in the hands of an attorney for collection following an Event of Default, Company shall pay to Holder upon demand all costs and expenses, including reasonable attorney's fees, incurred by Holder in connection with the enforcement or collection hereof, including costs and fees to collect costs and fees.

14. Maryland Law. This Note shall be governed by and construed in accordance with Maryland law. The Company and Holder hereby agree and consent that any lawsuit, action or proceeding arising out of or brought to enforce the provisions of this Note shall be brought in any appropriate court of the State of Maryland.

15. Waiver of Right to Jury Trial. NO PARTY SHALL ELECT A TRIAL BY JURY WITH RESPECT TO ANY MATTER ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

15. Notice. Any notice to be given hereunder shall be in writing, and shall be personally delivered, sent by courier, or posted by United States certified mail, postage prepaid, return receipt requested. Such notices shall be effective when delivered, sent or posted, and shall be addressed as provided in Section 18 of the Note Purchase Agreement, or to such other addresses as the parties may designate by like notice.

IN WITNESS WHEREOF, the Company has duly executed this Note under seal as of the day and year first hereinabove set forth.

WITNESS/ATTEST:

By: _____ (SEAL)

Name: _____

Title: _____

EXHIBIT C

APPLICATION AFFIDAVIT

A. **AUTHORIZED REPRESENTATIVE:** I HEREBY AFFIRM THAT I am the [redacted] and the duly authorized representative of [redacted], and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. **CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT:** I FURTHER AFFIRM THAT:

(1) The business named above is a [redacted] formed in [redacted] and registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is: [redacted]

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due all government entities including the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, the Department of Labor, Licensing and Regulation (DLLR) and all other taxing authorities, as applicable, and will have paid all withholding taxes due to the State of Maryland and all other government entities prior to final settlement.

C. **AFFIRMATION REGARDING BRIBERY CONVICTIONS:** I FURTHER AFFIRM THAT neither I, nor to the best of my knowledge, information, and belief, the above business, (as is defined in §16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), nor any of its officers, directors, or partners, nor any of its employees directly involved in obtaining or performing contracts with the public bodies (as is defined in §16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Article 27, §641 of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows [indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved, and their current

positions and responsibilities with the business]:

D. **AFFIRMATION REGARDING OTHER CONVICTIONS:** I FURTHER AFFIRM THAT neither I, nor to the best of my knowledge, information, and belief, the above business, nor any of its officers, directors, or partners, nor any of its employees directly involved in obtaining or performing contracts with public bodies, has:

(a) been convicted under the state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

(b) been convicted of any criminal violation of a state or federal antitrust statute;

(c) been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§1341, et seq., or Mail Fraud Act, 18 U.S.C. §§1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract;

(d) been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(e) been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (a), (b), (c), or (d) above;

(f) been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(g) admitted in writing or under oath, during the course of an official investigation or other proceeding, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, **except as follows** [indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment]:

E. **AFFIRMATION REGARDING DEBARMENT: I FURTHER AFFIRM THAT** neither I, nor to the best of my knowledge, information, and belief, the above business, nor any of its officers, directors, or partners, nor any of its employees directly involved in obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, **except as follows** [list each debarment or suspension providing the date of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds for the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds for the debarment or suspension]:

F. **AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES: I FURTHER AFFIRM THAT:**

(1) The business was not established to, nor does it operate in a manner designed to, evade the application of or defeat the purpose of debarment pursuant to §§16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows [indicate the reasons(s) why the affirmations cannot be given without qualification]:

G. **SUB-CONTRACT AFFIRMATION: I FURTHER AFFIRM THAT** neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. **ACKNOWLEDGMENT: I ACKNOWLEDGE THAT** this Affidavit is to be furnished to the Maryland Technology Development Corporation and may be distributed to units and agents of (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states and their subdivisions; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any agreement resulting from the submission of this application shall be construed to supersede, amend, modify, or waive, on behalf of the State of Maryland, or any unit or agent of the State of Maryland having

jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the proposed contract, and (3) other Affidavits comprising part of the proposed contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

Signature

Name: _____

Authorized Representative and Affiant

EXHIBIT D

CERTIFICATE OF OFFICER/AUTHORIZED MEMBER/GENERAL PARTNER

I, _____, am the [President] [Authorized Member][Manager] [General Partner] of _____ (the "Company") and do hereby certify to the Maryland Technology Development Corporation ("TEDCO") that:

1. The representations and warranties contained in the Convertible Note Purchase Agreement of even date herewith between the Company and TEDCO (the "Agreement") and in any other document submitted by the Company in connection with the Agreement are true and correct as of the date hereof.
2. The Company has performed and complied with all agreements, obligations, and conditions contained in the Agreement that are required to be performed or complied with by it on or before the closing.
3. The Company has provided TEDCO with all information the Company believes is reasonably necessary to enable TEDCO to make its investment decision. Neither the Agreement nor any other written certificates, documents, including the Application and attachments thereto submitted to TEDCO, and any financial statements delivered to TEDCO in connection with the investment, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein not misleading.
4. The Company has timely filed all tax returns and reports (federal, state and local) as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and other assessments due, except those contested in good faith.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be executed as of the _____ day of _____, 20__.

[Name, Title]

EXHIBIT E

CERTIFICATE OF SECRETARY/AUTHORIZED MEMBER/GENERAL PARTNER

I, _____, am the [Secretary] [Authorized Member] [General Partner] of _____, (the "Company") and do hereby certify to the Maryland Technology Development Corporation ("TEDCO") that:

1. Attached hereto as Exhibit E-1 is a true and correct copy of the Company's [Articles of Incorporation] [Articles of Organization] [Certificate of Limited Partnership] as in effect on the date hereof.

2. Attached hereto as Exhibit E-2 is a true and correct copy of the Company's [Bylaws] [Operating Agreement] [Limited Partnership Agreement] as amended, in effect on the date hereof.

3. Attached hereto as Exhibit E-3 is a true and correct copy of the resolutions duly adopted by the Company's Board of Directors (and stockholders if necessary) authorizing the Company to enter into the Convertible Note Purchase Agreement (the "Agreement") and to execute all documents and certificates in connection therewith, and such resolutions are in full force and effect on the date hereof.

4. Each person who, as a director, officer, member, manager or partner of the Company, signed the Agreement or any other document submitted in connection with the Agreement, was at the respective times of such signing and delivery, and is now, duly elected or appointed, qualified and acting as such, and the signatures of such persons on such documents are true and correct.

5. The following persons are the duly elected, qualified and acting directors, officers, members, managers, or partners of the Company, who are authorized to execute, deliver and perform the Agreement and all other documents in connection with the TEDCO MTTCF Program investment: [name(s), title(s)]

6. The address of the Company's principal place of business is _____.

7. The name and address of the Company's resident agent in the State of Maryland is: _____.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be executed as of the _____ day of _____, 20__.

[Name, Title]

EXHIBIT F

[INSERT STOCKHOLDER/MEMBER LIST]