CVCA VENTURE CAPITAL MODEL TRANSACTION DOCUMENTS

[SECURED] CONVERTIBLE PROMISSORY NOTE

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UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS FOUR MONTHS AND A DAY AFTER THE LATER OF (I) THE ISSUE DATE OF THIS NOTE AND (II) THE DATE THE COMPANY BECAME A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY.[[1]](#footnote-1)

**[SECURED] CONVERTIBLE PROMISSORY NOTE**

|  |  |
| --- | --- |
| $● | ●, 20● (the "**Issue Date**") |

For value received, ● ("**Company**"), promises to pay to the order of ● (the "**Holder**"),the principal sum of $● (the "**Principal Amount**'')[[2]](#footnote-2), together with interest accrued on the Principal Amount as provided in Section 2 below. This Note is subject to the following terms and conditions[[3]](#footnote-3):

1. **Issuance of Note.** This [secured] convertible promissory note ("**Note**") is [one of a series of [secured] convertible promissory notes containing substantially identical terms and conditions[[4]](#footnote-4)] issued under a note purchase agreement dated ●, 20● between the Company and the Holder[, among others] (the "**Purchase Agreement**")[[5]](#footnote-5). [All convertible promissory notes issued are collectively referred to in this Note as the "**Notes**" and their holders are collectively referred to in this Note as the "**Holders**".]
2. **Interest.** Interest will accrue on the balance of the Principal Amount from time to time outstanding at the rate of ●% per year, calculated on the basis of a 365-day year for the actual number of days elapsed [and compounded [annually]], from the Issue Date until conversion or payment in full, both before and after maturity, default or judgment.
3. **Maturity Date.** If this Note is not earlier converted in accordance with Section 4, all unpaid Principal Amount plus all accrued and unpaid interest and all other amounts then owing under this Note will be immediately due and payable on the date that is [● months] from the Issue Date (the "**Maturity Date**").
4. **Conversion[[6]](#footnote-6).**
   1. Definitions. In this Note:
      1. "**Common Shares**" means the common shares in the capital of the Company;
      2. "**Conversion Shares**" means shares in the capital of the Company issued or issuable upon conversion of the Outstanding Amount;
      3. "**Discount**" means ●%;
      4. "**Fully Diluted Capitalization**" means the aggregate number of outstanding Common Shares calculated on a fully diluted basis, assuming conversion of all securities convertible into Common Shares [other than the Notes] and exercise of all outstanding [vested] options and warrants [and including all shares reserved for future issuance under all stock option and other equity compensation plans of the Company];
      5. "**Liquidity Event**" means[[7]](#footnote-7):
         1. an amalgamation, arrangement, or consolidation in which
            1. the Company is a constituent party or
            2. a subsidiary of the Company is a constituent party and the Company issues shares under the amalgamation, arrangement or consolidation,

except any such amalgamation, arrangement or consolidation involving the Company or a subsidiary in which the shares of the Company outstanding immediately before the amalgamation, arrangement or consolidation continue to represent, or are converted into or exchanged for shares that represent, immediately following the amalgamation, arrangement or consolidation, at least a majority, by voting power, of the shares of (x) the surviving or resulting corporation; or (y) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following the amalgamation, arrangement or consolidation, the parent corporation of such surviving or resulting corporation;

* + - 1. (1) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole, or (2) the sale or disposition (whether by amalgamation, arrangement, consolidation or otherwise and whether in a single transaction or a series of related transactions) of one or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where the sale, lease, transfer, exclusive license or other disposition is to a wholly-owned subsidiary of the Company; or
      2. the sale of Common Shares to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the United States Securities Act of 1933, as amended, and/or a prospectus filed with a securities regulatory authority in any of the provinces or territories of Canada, [at a price per Common Share that is not less than [●% of] the Liquidity Conversion Price and] resulting in [gross/net] proceeds to the Company of at least $●, and in connection with such offering the Common Shares are listed for trading on the main board of Nasdaq, the New York Stock Exchange, the Toronto Stock Exchange or another exchange or marketplace approved by the [Majority] Holder[s];
    1. "**Liquidity Conversion Price**" means an amount equal to the Valuation Cap divided by the Fully Diluted Capitalization as of immediately before the completion of the Liquidity Event[[8]](#footnote-8);
    2. "**Optional Conversion Price**" means an amount equal to the Valuation Cap divided by the Fully Diluted Capitalization as of immediately before the date of receipt by the Company of the Optional Conversion Notice[[9]](#footnote-9);
    3. "**Outstanding Amount**" means the entire then‑outstanding and unpaid Principal Amount, together with all accrued but unpaid interest[[10]](#footnote-10) under this Note;
    4. "**Qualified Financing**" means a financing following the Issue Date pursuant to which the Company issues a new class or series of [preferred] shares resulting in aggregate gross proceeds to the Company of at least $●, [including/excluding] the amounts owing under this Note and all other Notes and other outstanding convertible debt instruments that are converted in connection with such financing;
    5. ["**Qualified Financing Conversion Shares**" means shares of a series of the same class as the Qualified Financing Shares and having identical rights, privileges, preferences and restrictions as the Qualified Financing Shares, except that the original issue price of the Qualified Financing Conversion Shares for purposes of (A) the per share liquidation preference, (B) the initial conversion price in respect of price-based anti-dilution protection, and (C) any dividend rights attaching to the Qualified Financing Conversion Shares will be equal to or proportionally based upon the Qualified Financing Price;]
    6. "**Qualified Financing Shares**" means shares of the class or series of shares in the capital of the Company that are issued in the Qualified Financing;
    7. "**Qualified Financing Price**" means [the lesser of (A)] the product of (1) 100% minus the Discount, multiplied by (2) the lowest price per Qualified Financing Share sold for new cash proceeds by the Company in the Qualified Financing [and (B) an amount equal to the Valuation Cap divided by the Fully Diluted Capitalization as of immediately before the initial closing of the Qualified Financing][[11]](#footnote-11); and
    8. "**Valuation Cap**" means $●.
  1. Automatic Conversion upon Qualified Financing. Upon completion by the Company of a Qualified Financing before the Maturity Date, the Outstanding Amount will automatically convert into that number of fully paid and non­assessable Qualified Financing [Conversion][[12]](#footnote-12) Shares as is equal to the quotient of (i) the Outstanding Amount as of the date immediately before the initial closing of such Qualified Financing, divided by (ii) the Qualified Financing Price.
  2. Optional Conversion or Repayment upon a Liquidity Event.
     1. If the Company completes a Liquidity Event before the conversion or repayment of this Note, the Holder may elect, in its sole discretion, by written notice delivered to the Company ("**Liquidity Conversion Notice**") to convert the Outstanding Amount in full into such number of fully paid and non-assessable [Common] Shares equal to the quotient of (i) the Outstanding Amount as of the date immediately before the completion of the Liquidity Event, divided by (ii) the Liquidity Conversion Price. The conversion of the Outstanding Amount under this Section 4(c)(i) will occur immediately before and contingent upon the completion of the Liquidity Event.
     2. If the Holder does not deliver a Liquidity Conversion Notice to the Company at least [five] [business] days before the Anticipated Closing Date (as defined below) of the Liquidity Event, the Note will become due and payable contingent upon and immediately before, or concurrent with, the completion of the Liquidity Event, for an amount equal to [the Outstanding Amount] [(x) [●%[[13]](#footnote-13) of] the outstanding Principal Amount plus (y) all accrued and unpaid interest and any other amounts then owing under this Note as of the date of the Liquidity Event].
  3. Optional Conversion. At any time before conversion or repayment in full of this Note under Section 4(b) or 4(c), whether prior to, on or after the Maturity Date, the Holder may elect, in its sole discretion, by written notice delivered to the Company ("**Optional Conversion Notice**") to convert the Outstanding Amount in full into such number of fully paid and non-assessable [Common] Shares equal to the quotient of (i) the Outstanding Amount as of the date of receipt by the Company of the Optional Conversion Notice, divided by (ii) the Optional Conversion Price.
  4. Notice of Transactions. The Company will give the Holder written notice of any proposed Qualified Financing or Liquidity Event at least [10] [business] days before the anticipated closing of such transaction (the "**Anticipated Closing Date**"), which notice will set forth the Anticipated Closing Date of the transaction, together with copies of all documents to be signed and delivered by all other investors and/or non-founder shareholders of the Company in the transaction (the "**Transaction Agreements**").
  5. Conversion Documents. Upon any conversion of this Note, the Holder will sign and deliver to the Company, as a condition to such conversion, all documents reasonably requested by the Company to effect the conversion, including a purchase agreement and shareholder agreements with customary representations and warranties, transfer restrictions (including a lock‑up agreement in connection with an initial public offering) and other customary terms and conditions, and, in the case of a conversion under Section 4(b) or Section 4(c)(i), the Transaction Agreements (collectively, "**Conversion Documents**"). The Company will not give effect to the conversion of this Note, and all rights and privileges of the Holder under this Note (other than the right to complete the conversion) will automatically be suspended, until such time as the Holder has signed and delivered all Conversion Documents. In connection with a conversion upon a Qualified Financing, (i) the Holder will receive the same rights, preferences, privileges and obligations as any other investor in the Qualified Financing subscribing for substantially the same number of shares as the Holder, provided that the Holder will not be entitled to receive any additional customary rights and benefits granted to lead investors in the Qualified Financing to the extent such rights and benefits are consistent with market practice, and (ii) if the Holder is a government agency or government organization, the Holder will be entitled to receive additional customary benefits solely to the extent the benefits are required by the regulations or policies to which the Holder is subject.
  6. Mechanics and Effect of Conversion. No fractional shares in the capital of the Company will be issued upon conversion of this Note. In lieu of any fractional share to which the Holder would otherwise be entitled, the Company will pay to the Holder in cash the unconverted Outstanding Amount that would otherwise be converted into a fractional share. At its expense, the Company will, within [five] business days after conversion of this Note, issue and deliver a certificate or certificates for the number of shares to which the Holder is entitled upon conversion (the "**Certificates**"), together with any other securities and property to which the Holder is entitled upon conversion under the terms of this Note, including a cheque payable to the Holder for any cash amounts payable as described in this Note, to (i) the Holder, at the Holder's principal office, or (ii) the Holder's custodian as directed by the Holder before conversion. The Holder will provide the registration and delivery instructions for the Certificates to the Company before any conversion. Concurrently with conversion of this Note and the delivery of the Certificates, the Holder will (i) surrender this Note to the Company at its principal office or at such location as directed by the Company; (ii) deliver the documents required by Section 4(f); and (iii) sign and deliver to the Company a full release and discharge of the Note in a form provided by the Company and acceptable to the Holder, acting reasonably. Upon completion of the conversion, the Company will be released from all of its obligations and liabilities under this Note.

1. **Payment; Prepayment[[14]](#footnote-14)**.
   1. All payments made under this Note will be made in lawful money of [Canada] at such place as the Holder may from time to time designate in writing to the Company.
   2. Prepayment of any portion of the Outstanding Amount may not be made by the Company without the written consent of the Holder. [The Notes will rank *pari passu* in right of payment with respect to each other, and all payment to each of the Holders under the Notes will be made [pro rata among the Holders based upon the aggregate outstanding principal amount of the Notes immediately before any such payment] [in accordance with the [Purchase Agreement].]
2. **[Security[[15]](#footnote-15)**. As continuing security for the due and timely payment by the Company of the Principal Amount, interest and all other amounts owing under this Note, the Company grants a security interest in favour of the Holder under the terms of a general security agreement (the "**Security Agreement**") granted by the Company in favour of the Holder. [In accordance with the [Purchase Agreement], the Holders will agree that the security interests granted by the Company in favour of the Holders to secure the Notes will rank *pari passu*.The Holder acknowledges that any demand for payment under this Note and the Security Agreement may only be made or given as permitted under the [Purchase Agreement].]
3. **[Subordination.** The Holder will concurrently with the issue of this Note enter into a subordination agreement with the Company's [senior/secured] lenders in the form reasonably required by such lenders.]
4. **Representations and Warranties[[16]](#footnote-16)**.
   1. Company Representations and Warranties. The Company represents and warrants to the Holder as set out in Schedule A to this Note as of the Issue Date, which representations and warranties will continue while this Note remains outstanding. The Company acknowledges that the Holder is acquiring this Note in reliance upon such representations and warranties.
   2. Holder Representations, Warranties and Acknowledgements. The Holder represents and warrants to the Company as set out in Schedule B to this Note as of the Issue Date, which representations and warranties will continue while this Note remains outstanding. The Holder acknowledges that the Company is signing and issuing this Note in reliance upon such representations, warranties and acknowledgements.
5. **Covenants of the Company**. The Company will observe the covenants in favour of the Holder set out in Schedule C to this Note while this Note remains outstanding.
6. **Events of Default**. All amounts owing under this Note, including the outstanding Principal Amount and all accrued and unpaid interest thereon, will, at the option of the Holder, become immediately due and payable upon the occurrence of any of the following events (each, an "**Event of Default**"):
   1. the Company fails to pay when due any amount payable under this Note;
   2. the Company defaults in the observance or performance of any representation, warranty, or covenant contained in the Purchase Agreement or this Note (other than a payment covenant referred to in Section 10(a)) which results in a Material Adverse Effect (as defined below) and, provided that such default is capable of being remedied, the Company fails to remedy the default within [20] [business] days following the Company's receipt of written notice of the default from any of the Holders;
   3. the Company defaults in payment of any principal, interest or other fee or charge on any other indebtedness of the Company (other than the Notes) in excess of $● when the same becomes due, after giving effect to any applicable cure or grace periods;
   4. the Company makes an assignment for the benefit of its creditors, acknowledges its insolvency in any manner whatsoever, or commits an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or any similar law of any jurisdiction;
   5. the Company institutes any proceeding or takes any corporate action or signs any agreement or notice of intention to authorize its participation in or commencement of any proceeding (i) seeking to adjudicate it as bankrupt or insolvent, or (ii) seeking liquidation, dissolution, winding up, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws (including, without limitation, any application under the *Companies' Creditors Arrangement Act* (Canada), *Bankruptcy and Insolvency Act* (Canada) or any reorganization, arrangement or compromise of debt under the laws of its jurisdiction of incorporation);
   6. any proceeding is commenced against or affecting the Company that is not (A) contested actively and diligently in good faith by appropriate and timely proceedings; and (B) in any event stayed within [30] days of commencement:
      1. seeking to adjudicate it as bankrupt or insolvent;
      2. seeking liquidation, dissolution, winding up, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws (including, without limitation, any reorganization, arrangement or compromise of debt under the laws of its jurisdiction of incorporation); or
      3. seeking appointment of a receiver, manager, receiver and manager, receiver-manager, trustee, agent, custodian or other similar official for it or for any part of its properties and assets;
   7. the holder of any security interest, hypothec, charge, encumbrance, lien or claim against any of the Company's assets does anything to enforce or realize on such security interest, hypothec, charge, encumbrance, lien or claim, or takes possession of any part of the Company's property;
   8. any execution, distress or other process of any court becomes enforceable against any of the property of the Company, or a distress or like process is levied upon any of such property; or
   9. the Company ceases to carry on all or a substantial part of its business.

For the purposes of this Note, "**Material Adverse Effect**"means any fact, change, circumstance, condition (financial or otherwise), event or development that, when considered individually or in aggregate, has resulted in or [would/could] reasonably be expected to result in a material and adverse effect on (x) the business, assets, liabilities, financial condition, operations, or prospects of the Company or (y) the ability of the Company to (A) pay or perform its obligations under the Notes or (B) avoid an Event of Default or an event which, with the giving of notice or the passage of time or both, would constitute an Event of Default.

1. **No Rights as Shareholder**. This Note does not by itself entitle the Holder to any voting or other rights as a shareholder of the Company. In the absence of conversion of this Note, no provisions of, and no enumeration of the rights or privileges of the Holder in, this Note will cause the Holder to be a shareholder of the Company for any purpose.
2. **Transfer; Successors and Assigns**. The terms and conditions of this Note will inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Notwithstanding the foregoing, the Holder may not assign, pledge, or otherwise transfer this Note without the prior written consent of the Company, [except for an assignment or transfer [in whole (and not in part)] to an Affiliate (as defined below)]. Subject to the preceding sentence, this Note may be assigned or transferred only upon surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly signed written instrument of transfer in form reasonably satisfactory to the Company. Thereupon, a replacement promissory note for the same principal amount will be issued to, and registered in the name of, the transferee, and the transferee will (as a condition to such assignment) acknowledge and agree to the transfer and to all of the terms and conditions of this Note and the [Purchase Agreement], in each case in form and substance reasonably satisfactory to the Company. Principal, interest and other amounts owing under this Note are payable only to the registered holder of this Note. [For the purposes of this Note, "**Affiliate**" means, with respect to the Holder, any other person or entity who, directly or indirectly, controls, is controlled by, or is under common control with the Holder, including without limitation any general partner, managing member, officer or director of the Holder or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, the Holder.]
3. **Notices**. All notices and other communications given or made under this Note will be in writing and will be deemed effectively given upon the earlier of (a) actual receipt for personal delivery to the party to be notified; (b) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day; or (c) [three] business days after deposit with an internationally recognized overnight courier, freight prepaid, specifying next or second business day delivery, with written verification of receipt. All communications will be sent to the Holder at its address as set forth [in the Purchase Agreement][on the signature page to this Note], or to such email address, facsimile number or address as subsequently modified by written notice given in accordance with this Section 13. If notice is given to the Company, it will be sent to the Company's registered office.
4. **Governing Law**. This Note will be governed by, and construed in accordance with, the laws of the Province of ● and applicable federal laws of Canada, without giving effect to principles of conflicts of law.
5. **Amendments and Waivers**. Any term of this Note may be amended and the observance of any term of this Note may be waived (either generally or in a particular instance and either retroactively or prospectively) only [with the written consent of the Company and the Holder[s] [holding Notes representing at least ●% of the aggregate outstanding principal amount of the Notes ("**Majority Holders**"),provided that (i) the balance of the Principal Amount of this Note and the rate of interest in Section 2 may not be amended, waived or modified without the consent of the Holder, (ii) the consent of the Holder to such amendment or waiver must be solicited (even if not obtained), and (iii) such amendment, waiver or modification, by its express facial terms, applies to all holders of Notes in the same fashion[[17]](#footnote-17)]] [in accordance with the [Purchase Agreement]][[18]](#footnote-18). [Any amendment or waiver effected in accordance with this Section 15 will be binding on the Holder, each future holder of the Note and any Conversion Shares, and the Company. The Company will give prompt written notice to the Holder of any amendment or waiver effected under this Section 15 without the Holder's consent.]
6. **Costs; Waiver.** The Company will pay on demand all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) which the Holder incurs in connection with enforcement of this Note or the protection or preservation of the Holder's rights hereunder. The Company hereby waives demand, presentment, protest or notice of any kind.
7. **Extensions**. Any agreement with the Holder for the extension of the time of payment of the moneys hereby secured or any part thereof made at, before or after maturity, and before the execution of a discharge or release of this Note, need not be registered in any office of public record but will be effective and binding upon the Company when signed by the Company and delivered to the Holder.
8. **Maximum Interest Rate**. If any provision of, or any document entered into in connection with, this Note would oblige the Company to make any payment of interest or other amount payable to the Holder in an amount or calculated at a rate which would be prohibited by any applicable law or would result in the receipt by the Holder of interest at a criminal or prohibited rate (as these terms are construed under the *Criminal Code* (Canada) or any other applicable law), then notwithstanding such provision, the amount or rate will be deemed to have been adjusted with the same effect as if adjusted at the original date of this Note to the maximum amount or rate of interest, as the case may be, as to not be prohibited by any applicable law or result in the receipt by the Holder of interest at a criminal or prohibited rate, the adjustment to be effected to the extent necessary by reducing the amount or rate of interest under Section 2 with any remaining excess that has been paid being credited towards prepayment of the Principal Amount. If any overpayment remains after such crediting, it will be returned forthwith to the Company upon demand.
9. **Conflict or Inconsistency**. If there is a conflict or inconsistency between the terms of this Note and the [Purchase Agreement], the relevant provision or provisions of the [Purchase Agreement] will be paramount and will prevail to the extent of any such conflict or inconsistency.
10. **Severability**. Each of the provisions contained in this Note is distinct and severable and a declaration of invalidity, illegality or unenforceability of any provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision of this Note.
11. **Counterparts; Electronic Signature**. This Note may be signed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts signed or delivered via facsimile, electronically (including pdf or electronic signature) or other transmission method will be deemed to have been duly and validly delivered and be valid and effective for all purposes.[[19]](#footnote-19)
12. **Loss of Note**. Upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Note or any Note exchanged for it, and indemnity reasonably satisfactory to the Company (in case of loss, theft or destruction) or surrender and cancellation of the Note (in the case of mutilation), the Company will make and deliver in lieu of such Note a new Note of like tenor.

*[Signature Page Follows]*

The Company has signed this [Secured] Convertible Promissory Note as of the Issue Date set forth above.

|  |  |
| --- | --- |
| **COMPANY:**  **●** | |
| By: |  |
| Name: **●** Title: **●** | |

**AGREED TO AND ACCEPTED:**

**HOLDER:**

|  |  |
| --- | --- |
| **●** | |
| By: |  |
| Name: **●** Title: **●** | |

[Address:

Email: ]

**Schedule A**

**Company Representations and Warranties[[20]](#footnote-20)**

1. Due Incorporation, Qualification, etc. The Company is a corporation duly organized and validly existing under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to carry on its business as now conducted. The Company is duly qualified to transact business in each jurisdiction in which the failure to so qualify, individually or in the aggregate, would have a Material Adverse Effect.
2. Authority. The signing and delivery by the Company of this Note and the performance by the Company of its obligations under this Note have been duly authorized by all necessary corporate action on the part of the Company and will not breach or conflict with, or constitute a default under, the Company's articles or by-laws, any law applicable to the Company, or any agreement to which the Company is a party or any of its assets or property is subject.
3. Enforceability. This Note has been, or will be, duly signed and delivered by the Company and constitutes, or will constitute when signed and delivered by the Company, a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other applicable laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.
4. Prospectus Exemption. [The Company is a "private issuer", as defined under the *Securities* *Act* (Ontario) and under National Instrument 45-106 *Prospectus Exemptions*.] Subject to the accuracy of the Holder's representations and warranties in this Note, the offer, sale and issuance of this Note and the issuance of the Conversion Shares to the Holder upon the due conversion of this Note will constitute transactions exempt from the prospectus requirements of applicable Canadian securities laws.
5. No Approvals Required. No approval, consent or authorization of, and no notice to or filing is required to be made by the Company with any governmental authority in connection with the signing, delivery or performance by the Company of its obligations under this Note, other than notices or filings made before the Issue Date or made within the required time period after the Issue Date.
6. Compliance with Laws. The Company is in compliance in all material respects with all applicable laws of each jurisdiction in which it carries on business.
7. Litigation. There is no private or governmental action, suit, proceeding, claim, arbitration or investigation pending before any agency, court or tribunal, foreign or domestic, or, to the knowledge of the Company, threatened against the Company or any of its properties. There is no judgment, decree or order against the Company that could prevent, enjoin, or materially alter or delay any of the transactions contemplated by this Note, or that could reasonably be expected to have a Material Adverse Effect.
8. Ownership of Assets. The Company has all title and ownership of, or rights to, all patents, trademarks, service marks, trade names, domain names, copyrights, trade secrets, information, and other intellectual property and proprietary rights necessary to conduct its business as now conducted.
9. Taxes. The Company is in compliance with all applicable tax, governmental pension or employment insurance laws and has collected, withheld, remitted and paid in a timely manner any amounts required thereunder including in respect to any applicable goods and service, excise, payroll or income taxes applicable to the Company or its business and operations.
10. No Default. No Event of Default has occurred and is continuing.
11. Full Disclosure. The Company has provided the Holder with all information requested by the Holder in connection with this Note and there are no facts known to the Company but which have not been disclosed to the Holder that would reasonably be expected to materially adversely affect the Company's ability to observe and perform its obligations under this Note. No document delivered by the Company to the Holder in connection with this Note contains any untrue statement of a material fact nor omits to state a material fact necessary in order to make the statements contained therein not misleading.

**Schedule B**

**Holder Representations, Warranties and Acknowledgements**

1. Authorization and Enforceability*.* The Holder has full power and authority to enter into this Note and to perform its obligations under this Note. This Note has been, or will be, duly signed and delivered by the Holder and constitutes, or will constitute when signed and delivered by the Holder, a legal, valid and binding obligation of the Holder, enforceable against the Holder in accordance with its terms, except as limited by bankruptcy, insolvency or other applicable laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.
2. Purchase Entirely for Own Account*.* The Holder acknowledges that this Note is made with the Holder in reliance upon the Holder's representation to the Company, which the Holder hereby confirms by signing this Note, that this Note, the Conversion Shares, and any securities issuable upon conversion of the Conversion Shares (collectively, the "**Securities**") will be acquired for investment for the 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 that the Holder has no present intention of selling, granting any participation in, or otherwise distributing this Note, the Conversion Shares or the Securities.
3. Accredited Investor. The Holder is an "accredited investor" as defined in National Instrument 45-106 *Prospectus Exemptions* (or, if the Holder is a resident of Ontario, as defined in section 73.3(1) of the *Securities Act* (Ontario)). The Holder agrees to furnish any additional information requested by the Company to assure compliance with the applicable securities laws in connection with the purchase and sale of this Note and to execute, deliver and file or assist the Company in filing such reports, undertakings and other documents with respect to the issue of the Securities as may be required under applicable securities laws.
4. Disclosure of Information*.* The Holder has had the opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Note and to obtain any additional information or documents relative to the Company, its business and investment in the Company as the Holder deems necessary, provided that the foregoing does not limit or modify the representations and warranties of the Company in this Note or the right of the Holder to rely thereon.
5. Investment Experience*.* The Holder has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the investment, is able to incur a complete loss of the investment without impairing the Holder's financial condition, and is able to bear the economic risk of the investment for an indefinite period of time. If the Holder is not an individual, the Holder also represents it has not been organized solely for the purpose of acquiring the Securities.
6. Restricted Securities*.* The Holder understands that the Securities will be subject to resale and other transfer restrictions under applicable securities laws. The Securities have not been qualified by a prospectus or registered under the securities laws of any jurisdiction and, as a result, the Holder must hold the Securities indefinitely unless they are so qualified or registered or an exemption from such registration and qualification requirements is available. The Holder acknowledges that the Company has no obligation to register or qualify the Securities for resale.
7. Foreign Investors. If the Holder is not a resident of Canada, the Holder hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with the purchase of this Note and its conversion into Conversion Shares, including (a) the legal requirements within its jurisdiction for the purchase of this Note and the Conversion Shares, (b) any foreign exchange restrictions applicable to such purchase, (c) any governmental or other consents that may need to be obtained, and (d) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, repayment, sale, or transfer of this Note or the Conversion Shares.
8. Consent to Disclosure of Personal Information*.* The Holder acknowledges and consents to the Company disclosing to applicable securities regulatory authorities, only as required by applicable securities laws, any personal information provided by the Holder to the Company required to be disclosed.

**Schedule C**

**Covenants of the Company[[21]](#footnote-21)**

1. **Covenants**. So long as this Note remains outstanding, the Company agrees as follows:
   1. Payment of Principal and Interest. The Company will duly and punctually pay or cause to be paid to the Holder the principal of, interest on and all other moneys which may from time to time be owing under this Note on the dates, at the place and in the manner specified in this Note.
   2. To Pay Costs. The Company will promptly pay all reasonable costs, charges and expenses (including reasonable legal fees on a solicitor and own client basis) of the Holder incidental to, or which in any way relate to, the enforcement of this Note. All such costs, charges and expenses will be payable on demand and will bear interest at the rate set forth in Section 2, calculated monthly in arrears from the date any such cost, charge or expense is incurred by the Holder.
   3. To Maintain Corporate Existence. The Company will maintain its corporate existence, will carry on and conduct its business in a proper and efficient manner and in accordance with all applicable law, and, except with the prior written consent of the [Majority] Holder[s], will not change the nature or type of its business. The Company will keep proper books of account with correct entries of all material transactions in relation to its business.
   4. Notice of Default. The Company will promptly notify the Holder in writing if it becomes aware that it is in breach of any of its representations, warranties, covenants or obligations under this Note or there arises or exists any Events of Default (whether capable of cure or otherwise) or any facts or state of affairs which could, upon notice or the lapse of time, reasonably give rise to an Event of Default.
   5. Performance of Obligations. The Company will perform its obligations under all material agreements to which the Company is a party or any of its assets or property is subject. The Company will keep all of its loans and borrowings, including those evidenced by this Note, current and in good standing and observe and keep all covenants and perform all obligations contained therein.
   6. Pay Taxes. The Company will pay all taxes levied, assessed or imposed upon it or its property as and when the same become due and payable, save and except where it contests in good faith the validity thereof by proper legal proceedings and for which reasonable provision for payment has been made.
   7. Payments on Shares. Without the prior written consent of the [Majority] Holder[s], the Company will not declare or pay any dividends or make any other distribution on any of its issued shares, nor purchase or redeem any of its issued shares.
   8. Compliance with Laws. The Company will comply with the requirements of all applicable laws, rules, regulations of any governmental authority, the non-compliance with which could reasonably be expected to result in a Material Adverse Effect.
   9. Further Assurances. The Company will, at its expense at the request of the Holder, sign and deliver to the Holder such further assurances and documents as the Holder may require to protect the Holder's interests under this Note.

1. The Note is a "security" under Canadian securities laws. To issue the Note without delivering a prospectus to investors, the Company will need to use an exemption. Common exemptions are "private issuer", accredited investor, "employees", and family, friends and business associates. There are many others. This legend applies to "restricted period" exemptions for non-reporting issuers under s. 2.5 of National Instrument 45-102 *Resale of Securities*. Additional legends may be appropriate or required if the investor resides in a jurisdiction other than Canada. This would be required for the use of the "accredited investor" exemption or issuance to a foreign investor under Ontario Securities Commission Rule 72-503. If the Company is a "private issuer, this legend is not required, but it is common practice to include it anyway. [↑](#footnote-ref-1)
2. This Note contemplates one advance of principal by the investor. If the parties wish to allow for multiple advances, the Note can be revised to include a grid which sets out the date and amount of each advance. In such a case, the interest provision in Section 2 should be considered to ensure that interest only accrues on the advances actually made and from the date of advance. [↑](#footnote-ref-2)
3. Carefully consider the tax implications of these terms and conditions with your tax adviser, which will vary based on the particular circumstances of the Company and the Holders. Particular attention should be given by the Company where there are Holders who are not residents of Canada because participation by non-residents may, among other things, (i) adversely affect the Company's advantageous status as a Canadian-controlled private corporation; and (ii) trigger tax withholding obligations on the Company upon conversion of the Notes. The terms of the Notes should be revised in accordance with the tax advice received. [↑](#footnote-ref-3)
4. A convertible note financing round may include multiple investors investing on substantially the same terms in one or more closings, and often under the same purchase agreement. For simplicity, this Note assumes that the note purchase agreement would contain the applicable intercreditor terms, which would generally include terms as to repayment of the Notes and the manner in which the Notes will be enforced by the holders. Some investors may prefer to have a standalone intercreditor agreement, in which case the Note should be revised to reference that agreement. If there is a senior secured lender in place, that lender will likely want an intercreditor agreement and/or a subordination or postponement agreement to protect its interests. [↑](#footnote-ref-4)
5. In this Note, a note purchase agreement (which could be similar to the Model Share Purchase Agreement) would be entered into between the Company and the investor to provide for the purchase of the Note. As a result, certain provisions (including representations, warranties and covenants of the Company and the investor and use of proceeds) may be included in the purchase agreement rather than the Note. In addition, if the Note is secured, there may be additional positive or negative covenants included in the Note, the general security agreement or the hypothec. The parties should review all of the related documents together to ensure that all desired representations, warranties, covenants and other terms are adequately addressed. [↑](#footnote-ref-5)
6. The three conversion features in this Note (automatic conversion on a qualified financing, optional conversion on a sale of the company or other liquidity event, and optional conversion at any time) are commonly seen in venture capital financings. The parties may negotiate to include all or only certain of these conversion features or other variations. [↑](#footnote-ref-6)
7. Consideration should be given to the events that would trigger conversion or repayment. A change of control or sale of all or substantially all assets are common triggers. A liquidation or dissolution of the Company should also be included if it would not otherwise result in the acceleration of the Note as an event of default. [↑](#footnote-ref-7)
8. This definition contemplates that a conversion upon a Liquidity Event will be based on a valuation cap. The parties may wish to set an alternative conversion price, such as a fixed price per share or based on the most recent price at which those shares were issued before conversion. [↑](#footnote-ref-8)
9. As with the conversion price on a liquidity event, the parties may wish to set an alternative conversion price to a valuation cap. [↑](#footnote-ref-9)
10. Under this Note, interest accrues until maturity or conversion. The parties should consider the tax consequences of interest at the time of accrual, payment and conversion (including whether interest will be included as income for the investor or deductible to the Company) and any withholding obligations that may apply. [↑](#footnote-ref-10)
11. The optional language in this section allows for an investor to receive a discount on the qualified financing price or a conversion price based on a capped valuation of the Company. The parties may negotiate to include either or both concepts. [↑](#footnote-ref-11)
12. This provides for the Note to be converted into the same class or series as is issued in the qualified financing. If the noteholder were to receive the same shares as new investors and there is a discount or valuation cap applied to the conversion price, the noteholder would receive shares with an original issue price that is higher than the conversion price of their Note, which may entitle them to a greater liquidation preference or dividend entitlement in relation to the amount they invested under the Note. Because of this, the parties may agree that the Note will convert into a separate series of the same class of shares with an original issue price equal to the conversion price of their Note, which are included as "Qualified Financing Conversion Shares" in this Note. [↑](#footnote-ref-12)
13. This percentage can be in a range from 1x to 2x (100-200%) the principal amount. [↑](#footnote-ref-13)
14. Investors located outside of Canada may be concerned about tax required to be withheld on payments made to the investor under the Note. In such a case, the investor may request that a "make-whole" provision be included in the Note to require the Company to pay an additional amount to the investor so that they receive the amount they would have received if there had been no withholding. Companies should seek legal advice on the risks associated with this type of provision. [↑](#footnote-ref-14)
15. An investor may require the indebtedness under the Note to be secured. This template assumes that the terms of that security will be contained in a separate general security agreement or in a separate hypothec (see below). Alternatively, the security provisions could be set out in a schedule to the Note. If there will be multiple Notes, the intercreditor arrangements respecting enforcement of the security should be set out in the purchase agreement or standalone intercreditor agreement. To the extent the registered office/domicile of the Company is located in the Province of Quebec or the assets of the Company are used or located in the Province of Quebec, the following provision should be inserted and replace or supplement the current draft of Section 6: "As continuing security for the due and timely payment by the Company of the Principal Amount, interest and all other amounts owing under this Note, the Company grants a hypothec in favour of the Holder under the terms of a hypothec (the "**Hypothec**") granted by the Company in favour of the Holder. [Pursuant to the [Purchase Agreement], the Holders will agree that the hypothecs granted by the Company in favour of the Holders to secure the Notes will rank pari passu. The Holder acknowledges that any demand for payment under this Note and the Hypothec may only be made or given as permitted under the [Purchase Agreement]." [↑](#footnote-ref-15)
16. These representations and warranties could alternatively be in a note purchase agreement. See note 4. [↑](#footnote-ref-16)
17. This proviso is intended to protect a noteholder from adverse amendments to economic terms, or amendments that affect the noteholder differently from other noteholders, without their consent. [↑](#footnote-ref-17)
18. Where there are multiple noteholders, the parties will generally provide for amendments to be made only with approval of a specified threshold of the noteholders. These amendment terms can be included in the Note, the purchase agreement or standalone intercreditor agreement, as desired. The optional language included in this section addresses these alternatives. [↑](#footnote-ref-18)
19. Before executing this Note, parties should consider whether an electronic or facsimile signature will be sufficient or if an original signature should be delivered. Negotiable instruments, which would include many promissory notes, are generally excluded from the application of electronic commerce legislation in Canada. [↑](#footnote-ref-19)
20. The representations in this Schedule are not comprehensive. Investors should consider whether more robust representations and warranties (such as those included in the CVCA Model Share Purchase Agreement) are appropriate for a particular transaction. [↑](#footnote-ref-20)
21. Additional covenants may be desirable if the Note is secured, including covenants as to granting of security interests or hypothecs and protecting and dealing with secured assets. Those covenants may be addressed in this Schedule or, if applicable, the general security agreement or the hypothec. [↑](#footnote-ref-21)