

CONVERTIBLE NOTE 02 AGREEMENT

DATED

2022

PARTIES

1 **COST-BRY PTY LTD TRADING AS BIOMEBANK** (ACN 630 632 610) (**Company**)

Address: Level 1, 2 Ann Nelson Drive, Thebarton SA 5031

Attention: CEO, Thomas Mitchell

Email: tmitchell@biomebank.com

Copy to registry@biomebank.com

2 **THE PERSON OR ENTITY IDENTIFIED BELOW** (**Holder**)

Name: [insert]

Address: [insert]

Attention: [insert]

Email: [insert]

No. of Notes held: [insert]

Total Face Value paid: AU\$[insert]

BACKGROUND

- A. The Holder holds the Notes in the Company, being convertible notes issued under a Convertible Note Agreement dated 11 October 2021 (**Existing Agreement**).
- B. The Company and the Holder agree that the Existing Agreement is amended and restated by the terms of this Agreement which, from the Effective Date, will govern the Notes in place of the Existing Agreement.

THE PARTIES AGREE

1 Definitions

In this Agreement unless the context otherwise requires:

AU\$ means the lawful currency of Australia.

Board means the board of the Company.

Business Day means a day on which banks are open for business in Adelaide, South Australia, excluding any Saturday, Sunday or public holiday.

Conversion Date means the date a Conversion Event occurs.

Conversion Discount means:

- (a) 40% if Notes are converted between [1 May 2022 and 30 May 2024];
- (b) 30% if Notes are converted between [1 May 2024 and 29 May 2025]; and

- (c) 25% if Notes are converted on the Business Day immediately preceding the Repayment Date.

Conversion Event means the first to occur of:

- (a) 5.00pm on the Business Day immediately preceding the Repayment Date;
- (b) a Qualifying Equity Placement which occurs at least 18 months after the Issue Date;
- (c) a Qualifying Equity Placement which occurs within 18 months after the Issue Date (**Early Qualifying Placement**) and the Company (at the discretion of the Board) gives notice in writing to the Holder requiring the conversion of its Notes on the date of completion of the Early Qualifying Placement; and
- (d) an Exit Event.

Conversion Price means the price per Share at which a Note is converted into Shares calculated as follows:

$$\frac{\text{Conversion Market Capitalisation}}{\text{Fully Diluted Shares Outstanding}}$$

Where:

“Conversion Market Capitalisation” means the lower of:

- (i) AU\$60,000,000; and
- (ii) Market Capitalisation x (1 – Conversion Discount).

“Fully Diluted Shares Outstanding” means the number of Shares on issue plus all Shares issuable on exercise of outstanding securities issued by the Company, including all employee share options (but excluding all Shares issuable on conversion of convertible securities).

“Market Capitalisation” means:

- (i) on conversion due to a Qualifying Equity Placement or an Exit Event, other than conversion under paragraph (c)(i) of the definition of Conversion Event on the date that is 18 months after the Issue Date, the valuation implied by the terms of the Conversion Event; and
- (ii) on conversion under paragraph (c)(i) of the definition of Conversion Event on the date that is 18 months after the Issue Date, the fully diluted market capitalisation of the Company as at the date that is 18 months after the Issue Date as determined by an independent expert valuation obtained by the Board; and
- (iii) on conversion at the Business Day immediately preceding the Repayment Date, the fully diluted market capitalisation of the Company as at the Repayment Date as determined by an independent expert valuation obtained by the Board.

For the purposes of paragraphs (ii) and (iii) above, the valuation may be obtained up to 3 months prior to the relevant date at the Board’s discretion.

Conversion Shares means the Shares into which the Notes may be converted in accordance with clause 5 of this Agreement.

Effective Date means 31 August 2022.

Exit Event means:

- (a) **(IPO)** all conditions (other than conditions relating to conversion of convertible securities) for admission of the Company (or of a special purpose vehicle which directly or indirectly owns the assets and the business of the Company) to, and quotation of its securities for an initial public offering on, the official list of ASX Limited or any other recognised stock exchange have been satisfied or waived;
- (b) **(asset sale)** a definitive binding agreement for the sale to a third party purchaser of all (or substantially all) of the assets and business undertaking of the Company becomes unconditional (not including any such sale as part of a corporate reorganisation of the Company); and
- (c) **(share sale)** a definitive binding agreement for the sale by the Company's shareholders (in one transaction or a series of connected transactions) to a third party purchaser of all of the issued Shares becomes unconditional (not including any such sale as part of a corporate reorganisation of the Company).

Face Value means AU\$1 per Note.

Interest Rate means:

- (a) from the date of issue of the Notes until the day prior to the Effective Date, 10% per annum; and
- (b) from the Effective Date, 8% per annum.

Notes means the number of unsecured convertible notes that the Holder holds on the date of this Agreement, as set out under "Parties" on page 1 in respect of the Holder.

Qualifying Equity Placement means the completion of the issue of new Shares (or preference shares in the Company) for an aggregate price of at least AU\$30,000,000 in one or a series of related transactions.

Repayment Date means 31 August 2025 (or such other date as agreed in writing between the parties).

Shareholder Deed means the Shareholder Deed dated 19 July 2021 between the Company and each of THRF, Lumen, Bryant and Forster (each as defined in the Shareholder Deed), as amended or replaced from time to time.

Shares means fully paid ordinary shares in the Company.

Transaction Documents means all governing documents in place in respect of the Company as at the Conversion Date and all documents required by the Company to complete an Exit Event or a Qualifying Equity Placement, and includes the Company's constitution (as amended or replaced from time to time), the Shareholder Deed and any new, amended or replacement shareholders agreement negotiated as part of an Exit Event or a Qualifying Equity Placement.

2 Notes

The Holder is the holder of the Notes. The Notes:

- (a) have the rights set out in this Agreement only;
- (b) bear interest in accordance with clause 3;

- (c) are redeemable in accordance with clause 4;
- (d) are convertible into Conversion Shares in accordance with clause 5;
- (e) are not transferrable, other than with the prior written consent of the Company;
- (f) confer no right to participate in an issue of new securities by the Company (other than on conversion in accordance with this Agreement);
- (g) rank:
 - (i) equally with each other unsecured convertible note on issue in the Company and without any preference among themselves; and
 - (ii) above the equity securities on issue in the capital of the Company on a winding up of the Company, or in relation to any arrangement between the Company and its creditors;
- (h) confer a right to receive the same notices of general meetings as holders of Shares receive from time to time (but not to attend or participate in or vote at any such meeting); and
- (i) do not confer or otherwise provide any right or entitlement to attend or vote at any general meeting of the Company or to receive any dividend or distribution or any other rights in respect of the Company, other than as expressly set out in this Agreement.

3 Interest

- (a) The Company will pay interest on the Notes at the Interest Rate.
- (b) Interest is payable on the earlier of the Conversion Date and the Repayment Date.
- (c) Interest runs from and including the Issue Date up to but excluding the Conversion Date or the Repayment Date (as applicable), and accrues semi-annually in arrears on a simple basis, without compounding.

4 Repayment

- (a) Unless the Company and the Holder agree otherwise in writing, the Face Value and accrued interest of all unconverted Notes will be paid by the Company to the Holder on the Repayment Date.
- (b) Any repayment of unconverted Notes and accrued interest must be made in immediately available funds, without any set-off, charge or deduction (and if the relevant date is not a Business Day, payment will be made on the next succeeding Business Day and the extension of time will be included in the calculation of interest payable).

5 Conversion

- (a) Unless the Company and the Holder agree otherwise in writing, on the occurrence of a Conversion Event:
 - (i) all unconverted Notes and accrued interest automatically convert to Shares (**Conversion Shares**) at the Conversion Price;
 - (ii) the Holder is deemed to have subscribed for the Conversion Shares, without the necessity for any separate application by the Holder for those Shares; and

- (iii) the Holder is deemed to have agreed to and is bound by the Transaction Documents.
- (b) The Conversion Shares will be issued by the Company to the Holder with effect on the Conversion Date, and will be calculated using on the following formula:

$$\text{Number of Conversion Shares} = \text{FV} / \text{CP}$$

Where:

FV = Face Value of the total number of Notes held by the Holder together with any accrued interest.

CP = Conversion Price.

- (c) If the total number of Conversion Shares to be issued to the Holder in accordance with the formula in this clause is not a whole number, the relevant fraction shall be rounded up to the nearest whole number of Shares.
- (d) As soon as practicable following the conversion of the Notes, and in any event within 7 Business Days thereafter, but subject to the Holder having executed all Transaction Documents as requested by the Board, the Company will:
 - (i) provide the Holder with a signed certificate for the Conversion Shares; and
 - (ii) register the Holder as the holder of the Conversion Shares in the Company's register of members.
- (e) If a Conversion Event occurs that is referred to in paragraphs (a) (share sale, including Conversion Shares) or (c) (IPO) of the definition of Exit Event, then the Board may, in its discretion, determine that instead of the conversion of the Notes (and accrued interest) to Shares, the Holder will receive repayment of its Notes (and accrued interest) together with an additional payment so as to amount to a single aggregate payment calculated as follows:

$$\text{Amount to be paid (AU\$)} = \frac{\text{Face Value of Notes} + \text{Accrued Interest}}{(1 - \text{Conversion Discount})}$$

Where the Conversion Discount is expressed as a simple fraction rather than a percentage (for example, 0.25 rather than 25%).

6 Transaction documents

- (a) The Holder must accede to or execute, or otherwise accept the terms of, any Transaction Document as requested by the Board in a timely fashion and a failure to do so will constitute a breach of this Agreement.
- (b) Under no circumstances will any Transaction Document require the Holder (or any other holder of convertible notes in the Company) to give any warranty to third parties involved in a Qualifying Equity Placement or an Exit Event.
- (c) The Holder unconditionally and irrevocably appoints the Chair for the time being of the Board as its lawful attorney to prepare, complete, execute and deliver all and any Transaction Documents to which the Holder is a party, and all other reasonably necessary or related documents for the purpose of effecting or giving effect to the conversion of the Notes in accordance with clause 5.

7 Conversion Shares

- (a) The Conversion Shares will be governed by the terms of the Transaction Documents.
- (b) The Conversion Shares will rank equally in all respects with all Shares, including as to voting and dividends.

8 Covenants by the Company

The Company hereby covenants and agrees with the Holder that it will:

- (a) execute and do all such assurances and things as will be reasonably required to give effect to this Agreement and conferring the full benefit of this Agreement upon the Holder;
- (b) ensure that while the Notes are outstanding the voting and other rights attached to the ordinary shares in the capital of the Company will not be altered in a manner which is in the reasonable opinion of the Company materially prejudicial to the Holder;
- (c) duly and punctually observe, fulfil, perform and comply with all the covenants, terms, conditions and obligations imposed upon it under this Agreement.
- (d) not without the prior consent in writing of the Holder:
 - (i) declare or pay any dividend before the Notes have been repaid or redeemed (as the case may be) in accordance with this Agreement; or
 - (ii) reduce or attempt to reduce its capital.

9 Representations by the Company

The Company represents and warrants that each of the following statements are true and accurate at the date of this Agreement and will be true and accurate on the Issue Date:

- (a) it is validly existing under the laws of Australia;
- (b) it has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
- (c) it has taken all necessary action to authorise its entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement; and
- (d) its obligations under this Agreement are valid and binding and enforceable against it in accordance with their terms.

10 ESOP

- (a) Following the Issue Date, the Company will implement (if it has not already done so) an employee share option plan for the Company's employees (**ESOP**).
- (b) The Board may make issues under the ESOP which amount to in total aggregate between 5% to 10% (as determined by the Board) of the fully diluted capital of the Company from time to time following the issue of the Notes.

11 Ceasing of Holder rights and Company obligations

The rights of the Holder and the obligations of the Company under this Agreement shall cease at such time as the Face Value of the Notes together with accrued interest has been repaid in full, or converted to Conversion Shares, in each case in accordance with this Agreement.

12 GST

- (a) Unless otherwise expressly stated in this Agreement, all consideration to be provided under or in connection with this Agreement is exclusive of GST (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)).
- (b) If a party makes a supply under or in connection with this Agreement in respect of which GST is payable, the party providing the consideration for the supply must pay to the supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**). Subject to the earlier receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.

13 Notices

- (a) Notice to be given under or pursuant to this Agreement must be in writing and will be deemed duly given or made if delivered or sent by to the details for each party set out under "Parties" on page 1 of this Agreement.
- (b) A party may change its address and contact details for the purpose of this Agreement by giving notice of such changes to the other party.
- (c) Any notice, demand or other communication shall be deemed, in the absence of proof to the contrary, to have been received by the person to whom it was sent:
 - (i) in the case of hand delivery, upon such delivery;
 - (ii) in the case of mail, on the 5th Business Day after posting; and
 - (iii) in the case of email transmission, 24 hours after the time of despatch.

14 Miscellaneous

- (a) The Notes were issued to the Holder in accordance with and subject to section 708 of the Corporations Act. The Holder warrants and confirms that they are a sophisticated investor for the purposes of section 708(8) of the Corporations Act.
- (b) Each party will pay its own costs in connection with this Agreement and all transactions contemplated by this Agreement.
- (c) This Agreement shall be governed by and construed in accordance with the laws of South Australia. Each party submits to the non-exclusive jurisdiction of the Courts of South Australia.
- (d) The terms of this Agreement may be varied with the consent of the Board and holders of not less than 75% of the total aggregate Face Value of all outstanding Notes issued on or about 11 October 2021 if the Board reasonably determines that any such variation is not unduly prejudicial to the rights of any non-consenting holder.

- (e) This Agreement is the entire agreement between the parties as to its subject matter. It supersedes all prior agreements, representations, conduct and understandings including the Existing Agreement.
- (f) No amendment of, nor addition to, this Agreement is binding unless it is in writing and executed by the parties to this Agreement.
- (g) The parties will do all things and execute all documents required to permit or facilitate the performance of the transactions contemplated by this Agreement.
- (h) This Agreement may be executed in counterparts, which when taken together are one instrument.
- (i) The Holder must not assign any of its rights or obligations under this Agreement without the prior written consent of the Company.
- (j) If a clause or a part of a clause of this Agreement is found to be invalid or unenforceable (whether in respect of a party or generally), it will be severed from this Agreement and this Agreement will otherwise continue in force.

15 Interpretation

In this Agreement, unless a contrary intention appears:

- (a) a reference to this Agreement or any other document is a reference to this Agreement or other document as amended, varied, novated, supplemented or replaced from time to time;
- (b) words or expressions importing the singular include the plural and vice versa, and denoting individuals include corporations, firms, unincorporated bodies, authorities and instrumentalities;
- (c) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement;
- (d) the words **including**, **for example** and **such as** (and any other forms of those words) are to be construed without limitation; and
- (e) a heading and a cross reference to a heading is for convenience only and does not affect interpretation.

EXECUTED as an agreement.

EXECUTED by **COST-BRY PTY LTD**)
 in accordance with section 127 of the)
Corporations Act 2001 by:)

 Director

 Director/Secretary

 Print Name

 Print Name

EXECUTED by **[insert]**, by its authorised officers in)
 accordance with its constituent documents:)
)

 Signature of Authorised Person

 Signature of Authorised Person

 Office Held

 Office Held

 Print Name

 Print Name