***THIS DRAFT CONVERTIBLE LOAN AGREEMENT DOES NOT CONSTITUTE OR CONTAIN INVESTMENT, LEGAL, ACCOUNTING, REGULATORY, TAXATION OR OTHER ADVICE. PARTIES USING THIS DOCUMENT SHOULD ALWAYS CAREFULLY CONSIDER SEEKING ADVICE FROM QUALIFIED ADVISORS TO ASSESS THE IMPLICATIONS OF ITS USE.***

Simple Standardized Start-up Loan Agreement

This convertible loan agreement (the **Agreement**) is concluded on [*date*] between:

|  |  |  |
| --- | --- | --- |
|  |  | **Option 1 – Investor is a Belgian legal entity**  [***name of investor***], a [*form of legal entity*], having its seat at [*address*], and registered with the register of legal entities (RLE [*place*]) under number [*company number*];  **Option 2 – Investor is a foreign legal entity**  [***name of investor***], a [*form of legal entity*], having its seat at [*address*], and registered with [*name of registry*] under number [*company number*];  **Option 3 – Investor is an individual**  [***name of individual***], having its domicile at [*address*]; |
|  | hereinafter referred to as the **Investor**; | |
|  |  |  |
|  |  | [***name of start-up***], a limited liability company (‘*besloten vennootschap / société à responsabilité limitée*’), having its seat at [*address*], and registered with the register of legal entities (RLE [*place*]) under number [*company number*]; |
|  | hereinafter referred to as the **Company.** | |
| 3. |  | **Option to include the existing shareholders as a Party – see also note under Clause 4**  [***existing shareholders details***]  hereinafter referred to as the **Existing Shareholders**. |
|  | The Investor, the Company [and the Existing Shareholders] are hereinafter individually also referred to as a **Party** and jointly as the **Parties**. | |

**Whereas,**

1. The Company is a Belgian limited liability company (‘*besloten vennootschap / société à responsabilité limitée*’) that is active in [*short form description of the business*].
2. The Company is looking to attract financing to be able to execute its growth strategy.
3. The Investor has agreed to grant such financing by way of a convertible loan under the Simple Standardized Start-up Loan documentation (**Triple S Loan**) of which the terms and conditions are set out in this Agreement.

**It is agreed as follows,**

1. Loan
   1. Loan amount

The Investor has agreed to grant the Company a loan in a total principal amount of EUR [*amount*] (the **Loan Amount**).

The Loan Amount is made available to the Company on the date of this Agreement by way of a wire transfer (with value date on the date of this Agreement) to the following bank account of the Company with [*name of bank*] Bank: [*IBAN Number*] – [*BIC*].

* 1. Interest

The outstanding Loan Amount shall generate a simple, non-compounding gross interest at a rate *per annum* equal to [●]% (the **Interest**). The Interest will be calculated on the basis of a 365-day year and shall be calculated as of the date of the Agreement (including) until either (x) the date of repayment in accordance with Clause 2.1 or 2.3 (not included) (the **Repayment Date**) or (y) the date of conversion in accordance with Clause 2.2 (not included) (the **Conversion Date**) on the basis of the number of days actually lapsed. The Interest shall accrue on a daily basis.

The accrued Interest, calculated in accordance with the principles of Clause 1.2.1 (and as the case may be Clause 2.4.2), shall be (x) due and payable at the Repayment Date or (y) due at the Conversion Date (the **Interest Amount**).

[***Drafting note*** – C*hoices for interest modalities have been included in the Negotiation Matrix set out in Schedule 1*]

1. Repayment and Conversion
   1. Principle – repayment at the Maturity Date

The Loan Amount, together with the Interest Amount shall be repaid to the Investor on [*date*] (the **Maturity Date**), unless converted in accordance with Clause ‎2.2.

* 1. Conversion
     1. Conversion obligation upon a Qualified Financing

Upon the occurrence of a Qualified Financing prior to the Maturity Date, the Investor shall be obliged (the **Investor QF Conversion Obligation**) to convert into shares of the Company that bear the same rights and obligations as the most senior class of shares issued in such Qualified Financing, and such at the pre-money equity valuation per such share applied in the Qualified Financing minus a [●]% discount (the **Qualified Financing Conversion Price**).

The number of shares of the Company to be issued to the Investor upon exercise of the Investor QF Conversion Obligation shall be equal to (the **Qualified Financing Conversion Shares**):

|  |
| --- |
| [*the Loan Amount and Interest Amount*] |
| [*the Qualified Financing Conversion Price*] |

For the purposes of this Agreement a **Qualified Financing** shall mean an equity investment (excluding any other Triple S Loans or any other form of mezzanine financing or convertible debt instruments) with a corresponding issuance of shares in the Company by one or more investors and/or existing shareholders with no less than EUR [*amount to be based on the business plan of the Company*] proceeds to the Company.

* + 1. Conversion right upon the occurrence of an Exit
       1. Upon the occurrence of an Exit prior to the Maturity Date, the Investor shall immediately prior to such Exit have the right (the **Investor Exit Conversion Right**) to convert into the most senior class of shares outstanding at the moment of the Exit, and such at the pre-money valuation per such share applied in the last Qualified Financing and if no such Qualified Financing has take place prior to Exit, at the price per such share applied in the Exit minus a [●]% discount (the **Exit Conversion Price**).

The number of shares of the Company to be issued to the Investor upon exercise of the Investor Exit Conversion Right shall be equal to (the **Exit Conversion Shares**):

|  |
| --- |
| [*the Loan Amount and Interest Amount*] |
| [*the Exit Conversion Price*] |

For the purposes of this Agreement an **Exit** shall mean [***Drafting note*** – in the event that the shareholders’ agreement of the Company contains a definition of ‘Exit’, such definition should be included here. If it does not contain a definition of Exit, the following definition could be included: (i) a transfer or sale of more than 50% of the shares of the Company in one transaction or a series of related transactions, (ii) the sale of all or substantially all assets of the Company in one transaction or a series of related transactions or (iii) an initial public offering of the Company on a regulated market or an equivalent market.]

* + - 1. In the context of the Exit taking the form of a sale of shares, the Investor undertakes to sell its Exit Conversion Shares in the framework of the Exit at the price offered in the context of the Exit for the most senior class of shares outstanding at the moment of the Exit, without prejudice to any other applicable terms in the shareholders’ agreement of the Company.
      2. In the event that the Investor elects not to exercise the Investor Exit Conversion Right at the occurrence of an Exit, such Investor Exit Conversion Right shall lapse and the Exit shall constitute an Early Repayment Event.
    1. Conversion right upon Maturity Date
       1. In the event no Qualified Financing and no Exit has occurred prior to the Maturity Date, the Investor shall have the right (the **Investor Maturity Conversion Right**) to convert into shares of the Company that bear the same rights and obligations as the most senior class of shares issued, and such at the Fair Market Value of the shares in the Company (the **Maturity Conversion Price**).

The number of shares of the Company to be issued to the Investor upon exercise of the Investor Maturity Conversion Right shall be equal to (the **Maturity Conversion Shares**):

|  |
| --- |
| [*the Loan Amount and Interest Amount*] |
| [*the Fair Market Value*] |

For the purposes of this Agreement **Fair Market Value** shall mean the fair market value of the shares in the Company as agreed by the Parties or, in case of disagreement between Parties, which will be determined by a third party expert, member of the Belgian Institute for Auditors (‘*Instituut van Bedrijfsrevisoren / Institut des réviseurs d’entreprises’*), appointed by the Parties or, in case of a disagreement between the Parties, by order of the president of the commercial court of the seat of the Company. The Parties will be bound by the conclusion and valuation of the so designated expert. The costs of the independent expert are paid by the Company.

* + 1. In the event that the Investor elects not to exercise the Investor Maturity Conversion Right at the occurrence of the Maturity Date, such Investor Maturity Conversion Right shall lapse and the Loan shall be repaid in accordance with Article ‎2.1.
    2. Conversion procedure
       1. Upon the occurrence of a Qualified Financing or an Exit (the **Conversion Event**), and without prejudice to any statutory or legal requirements, the board of directors of the Company shall inform the Investor thereof at the latest fifteen (15) business days prior to such Conversion Event or on shorter notice if the dynamics of such Conversion Event require so, setting out a least (x) the details of the Conversion process and (y) depending on the nature of the Conversion, the Qualified Financing Conversion Price or the Exit Conversion Price (the **Conversion Event Notification**). In the event of an Exit, the Investor shall notify the board of directors of the Company of its intention to exercise the Investor Exit Conversion Right within five (5) business days following receipt of the Conversion Event Notification, in each case without prejudice to any statutory or legal requirements.
       2. Upon the Maturity Date, the Investor shall notify the board of directors of the Company of its intention to exercise the Investor Maturity Conversion Right at the latest one (1) month prior to the Maturity Date.
       3. The conversion shall take the form of a contribution in kind (‘*inbreng in natura / l’apport en nature*’) into the assets (‘*eigen vermogen / capitaux propres*’) of the receivable of the Investor outstanding on the Company in the context of this Agreement, i.e. for an amount equal to the Loan Amount and the Interest Amount against the issuance of the Qualified Financing Conversion Shares or the Exit Conversion Shares or the Maturity Conversion Shares (as applicable) (the **Conversion**).
       4. The Investor agrees and undertakes, and procures with respect to its representatives, to take any such actions and sign any documents that are required in view of implementing the Conversion upon simple request by the Company, such as but not limited to granting a notarial proxy for subscribing to the issuance of the Qualified Financing Conversion Shares or Exit Conversion Shares or the Maturity Conversion Shares, respectively in accordance with the Clause 2.2.1 or Clause 2.2.2.
       5. Upon Conversion the Investor undertakes to adhere to the shareholders’ agreement of the Company, whereby the same rights and obligations shall apply to such Investor as conferred upon the most senior class of shares issued in the framework of the Qualified Financing *c.q.* the type of shares issued to the Investor in the framework of the Exit (if applicable).
  1. Early repayment

Upon the occurrence of an Early Repayment Event prior to the Maturity Date, the Loan Amount including any accrued Interest, shall – as far as permitted by applicable (insolvency) law – become immediately due and payable upon simple request by the Investor.

For the purposes of this Agreement an **Early Repayment Event** means the occurrence of any of the following:

* + - 1. the Company ceases its business operations; or
      2. the Company fails to observe or perform any of its material obligations under this Agreement, and in case of a failure capable of being remedied, the failure is not remedied by the Company within ten (10) business days after the Company becomes aware of the failure; or
      3. manifestly wrongful, deceptive or fraudulent management of the Company; or
      4. any of the following occurs in respect of the Company:
         1. an order for its winding-up, administration, dissolution or reorganization (by way of voluntary arrangement or otherwise) is made;
         2. an Exit whereby the Investor did not exercise its Investor Exit Conversion Right; or
         3. any liquidator, judicial custodian, or similar officer is appointed in respect of it.
  1. Payments and default interest

All repayments must be made by wire transfer on the day on which they are due and payable (the relevant due date serving as the currency date), in immediately available funds to the Investor on the following bank account: [*name of bank*] Bank: [*IBAN Number*] – [*BIC*], or such other bank account as notified by the Investor to the Company in accordance with Clause 6.2.

If the Company fails to pay any amount in principal or interest in accordance with this Agreement (before as well as after a judgment), the interest rate set out in Clause 1.2.1 will be automatically increased by [2]% from the time of default (or, in the case of a sum due as interest, as soon as permitted by article 1154 of the (old) Belgian Civil Code) up to the time of actual payment.

1. Taxes

The Company shall, to the extent applicable, retain all taxes due or payable on any Interest payment under this Agreement, including any withholding taxes or any other taxes mandatorily imposed by any tax authority having applicable jurisdiction. All taxes due or payable in connection with such Interest payments shall be borne exclusively by the Investor.

1. Shareholder consent and subsequent (Triple S) loans

[***Drafting note*** – it is recommended to the start-ups that wish to make use of the Triple S Loans to include arrangements thereon in the shareholders’ agreement prior to entering into Triple S Loans. Please find included below a standardized wording thereto:

“*The Shareholders acknowledge and agree that the Company intends to enter into Triple S Loan agreements, of which the standard version is attached to this Agreement as Schedule [●], with investors for funding purposes up to a maximum amount of EUR [amount], with a discount range between [x]% and [y]% upon conversion and such as up until the moment of* *a Qualified Financing. Thereto, the Shareholders undertake to exercise their voting rights at the general meeting of the Company in such a way that in the event of a conversion of such Triple S Loans pursuant to the terms set out in the respective agreement(s), the conversion will be effected in accordance with the statutory provisions and the provisions of the Shareholders' Agreement in this respect, on time and in accordance with the provisions of such Triple S Loan agreements*.

*In addition, the Shareholders acknowledge and agree that the Company shall, in aggregate, not engage in more than EUR [amount] in mezzanine financing or (the issuance of) convertible debt instruments (including the aforementioned Triple S Loans) prior to a Qualified Financing.”*

If no such provision is / can be included in the shareholders agreement of the Company, the Agreement should be counter-signed by the current shareholders of the Company, or at least by shareholders who will at the time of conversion hold at least 75% of each class of shares.]

[**Option 1 Existing Shareholders are a party to this Agreement** – The Existing Shareholders agree to the Company entering into this Agreement and shall exercise their voting right in favour of the conversion in accordance with the terms of this Agreement. The Existing Shareholders agree to take any such actions and sign any documents that are required in view of implementing the Conversion upon simple request by the Company, such as but not limited to granting a notarial proxy.

[**Option 2 Existing Shareholders are not a Party to this Agreement** - The Parties acknowledge that the shareholders of the Company have agreed to the entering into of Triple S Loan agreements and as such to exercise their voting right in favour of the conversion in accordance with the terms of this Agreement.

1. Information rights of the Investor

On an annual basis, at the occasion of the preparation of the ordinary general meeting, with respect to the most recent financial year of the Company that has ended, the Company will provide the Investor with (i) an overview in amount of the Triple S Loan agreements or any other convertible loans granted during such financial year, (ii) the annual account of the last financial year and (iii) a summary overview of the activities of the Company.

Upon the occurrence of an equity financing round not qualifying as a Qualified Financing, the Company shall inform the Investor of such financing round upon the date of the occurrence thereof.

1. Miscellaneous
   1. Costs

Each Party shall bear its own costs and expenses in relation to the negotiation, preparation and execution of this Agreement, including the fees and disbursements of their respective legal, accountancy and other advisors.

The legal fees with respect to a Conversion, except for any own advisors engaged by the Investor, shall be borne by the Company.

* 1. Subordination

The Investor hereby acknowledges and agrees that the Triple S Loan set out in this Agreement shall in any event be subordinated to any current or future debt contracted with financial institutions by the Company or any affiliated companies.

* 1. Notices

Any notice in connection with this Agreement must be in writing in English and shall be validly given with respect to each Party if delivered:

* + - 1. by e-mail to the e-mail addresses set out hereinafter; or
      2. by hand or registered mail to the addresses set out hereinafter;

or to such other addressee, e-mail address or postal address as a Party may notify to the other Parties in accordance with this Clause 6.2.

If to the Company:

Address: [*address*]

F.a.o.: [*name of contact person*]

E-mail: [*e-mail of contact person*]

If to the Investor:

Address: [*address*]

F.a.o.: [*name of contact person*]

E-mail: [*e-mail of contact person*]

Any notice shall be effective upon receipt and shall be deemed to have been received:

* + - 1. if sent by e-mail, upon receipt by the sender of a non-automated confirmation of receipt by the recipient; and
      2. if delivered by hand or registered mail, at the time of delivery.
  1. Entire agreement – Amendments – Waivers

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, both written and oral, between Parties with respect to the subject matter hereof.

No amendment of this Agreement shall be effective unless it is made in writing, duly signed by all Parties.

No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

* 1. Acknowledgement

The Parties acknowledge that the terms and conditions of this Agreement are the result of commercial discussions between the Company and the Investor, the latter to be considered as a professional investment party, aimed at striking a reasonable balance between their respective interests.

* 1. Assignment

No Party may transfer or assign any of its rights or obligations under this Agreement to any third party without the prior, written and explicit consent of the other Parties, which consent cannot unreasonably be withheld.

* 1. Confidentiality

Each Party undertakes not to disclose the existence or subject matter and contents of this Agreement, in whole or in part, without the prior, written and explicit approval of the other Parties. As an exception hereto, a disclosure is permitted (i) in case of a legal proceeding initiated by one Party against the other to the extent that such disclosure is necessary in the context of such proceeding, (ii) to the advisor or other stakeholders of a Party, on a need-to-know basis, in the framework of a Qualified Financing or Exit or (iii) in case of and to the extent that such disclosure is strictly necessary in order to allow any Party to comply with any legal obligation to provide information to the public authorities. In this last case, the Parties shall reach an agreement on the content of the information to be disclosed to the extent reasonably possible.

Without prejudice to Clause 6.7.1, the Investor shall keep any and all information received with respect to the Company, including but not limited to information shared with respect to a Qualified Financing or Exit, confidential and shall not disclose, in whole or in part, or use any such information for any other purposes than evaluating the Company from its perspective as an investor, without the prior, written and explicit approval of the Company.

* 1. [*Option 1* Electronic signature

The Parties agree that this Agreement shall be executed electronically in accordance with the provisions of book 8 of the new Belgian Civil Code, through the service provider [*name of digital signing platform*].]

* 1. [*Option 2* Counterparts

This Agreement may be executed in counterparts, in the number of originals stated hereinafter on the signature page and, when taken together, the counterparts executed by all Parties constitute one and the same instrument and shall be effective when counterparts shall have been signed by each of the Parties and delivered to the other Party.]

* 1. Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Belgium. The courts of [*competent commercial court of the seat of the Company*] shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to non-contractual obligations arising out of or in connection with this Agreement) which the Parties are unable to settle amicably.

*[next page is the signature page]*

[***Option 1 e-signature*** - Done electronically on [*date*]. Each of the Parties acknowledges receipt of its own original copy.]

[***Option 2 physical signing*** - Done on [*date*] in two (2) original copies. Each of the Parties acknowledges receipt of its own original copy.]

|  |  |  |
| --- | --- | --- |
| For and on behalf of the **Investor** | | |
| Name: |  | Name: |
| Capacity |  | Capacity: |

|  |  |  |
| --- | --- | --- |
| For and on behalf of the **Company** | | |
| Name: |  | Name: |
| Capacity |  | Capacity: |

|  |  |  |
| --- | --- | --- |
| For and on behalf of the **Existing Shareholders** | | |
| Name: |  | Name: |
| Capacity |  | Capacity: |

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