**This sample convertible loan agreement sets out typical provisions (including descriptions) of a convertible loan agreement used for investments in an Austrian GmbH. Please note that the transaction structures of such investments vary (sometimes heavily) on a case by case basis. Thus, the transaction structure and provisions as outlined in this sample convertible loan agreement must be adapted to the needs of each individual case. The persons involved in the preparation of this sample convertible loan agreement do not assume any liability for the content and correctness of this sample convertible loan agreement and shall not be responsible for loss which may arise from reliance on information contained herein. This sample convertible loan agreement does not constitute or contain investment, legal, accounting, regulatory, taxation or other advice.**

***Introduction***

1. *A convertible loan is a loan that can be converted into shares of the company under certain conditions. The lender does not acquire the position of a shareholder by concluding the convertible loan agreement. Under certain predefined conditions, however, the lender is entitled or obliged to convert the outstanding loan amount into shares of the company. The lender thus becomes a new shareholder of the company or – in case the lender is already an existing shareholder of the company – increases his/her shareholding in the company as he/she receives additional shares.*
2. *In principle, a convertible loan is repayable and thus usually (with few exceptions) qualifies as debt investment that only turns into equity upon conversion. Alternatively, it is possible that the investor grants the company a non-repayable cash contribution instead of a loan. In return, the investor receives shares in the company upon occurrence of predefined events (similar to the conversion events). Compared with a convertible loan, a so-called SAFE (Simple Agreement on Future Equity) does not grant the investor any repayment claim and is therefore immediately qualified as equity.*
3. *Concluding a convertible loan agreement can serve various purposes. For example, a convertible loan agreement may be entered into when the company needs short-term financing. In such case, the lender is often an existing shareholder of the company, who grants a convertible loan to "his/her" company. Apart from that, companies may conclude a convertible loan agreement for medium-term financing. In this case, the lender is typically not a shareholder of the company yet, and concluding a convertible loan agreement helps keep the company's cap table clean until the next (or first) equity financing round takes place. In this case, the lender may receive the right to nominate a member of a (corporate) advisory board or is granted certain information rights (see comments in section "other optional provisions"). Depending on the purpose of the convertible loan agreement, its provisions can vary significantly.*
4. *Convertible loan agreements can set forth the right or the obligation to convert the convertible loan into shares of the company upon certain predefined trigger events or upon maturity. Depending on the terms, the conversion right grants the lender or the company the right to demand a conversion into shares in the company, whereas in the case of a conversion obligation, the parties are obliged to convert the outstanding loan into shares.* ***This sample agreement sets forth a Conversion Right upon a Financing Round, which can be exercised by the lender (section 4) and a Conversion Obligation in the event of an Exit (section 5) and upon Maturity (section 6).***
5. *Usually (and as set forth in this sample agreement), the conversion of the loan is executed by way of an ordinary share capital increase (ordentliche Kapitalerhöhung) in which the lender is admitted to subscribe for this capital increase to the extent agreed. In return, the lender waives repayment of the entire outstanding loan amount (and accrued interest) subject to registration of the capital increase with the commercial register (Firmenbuch). In this case, all shareholders holding a share of the company at the time of the conversion have to be obliged to come to a resolution on the ordinary share capital increase, to waive their statutory subscription rights and to let the lender subscribe for the share capital increase to the extent agreed.*

*Alternatively, the conversion may be executed by transferring existing shares from existing shareholders (on a pro rata basis) to the lender. In such case, the existing shareholders must be obliged to actually assign shares to the lender by concluding a separate sale and transfer agreement ("SPA", which requires a notarial deed) with the lender.*

1. *Agreements on the (future) transfer of shares of a GmbH generally require a notarial deed. This also applies to the subscription of shares in the course of a capital increase. There is no case law by the Supreme Court (OGH) (to date) on the question of whether convertible loan agreements require a notarial deed, too. For reasons of legal security, we highly recommend concluding convertible loan agreements as notarial deeds (even though common practice often dispenses with the requirement of a notarial deed). Otherwise, especially convertible loan agreements that set forth a conversion obligation may turn out to be unenforceable.*
2. *As already pointed out, the shareholders' participation is required for the issuance of new shares to the lender to the extent agreed. Basically, there are two ways to ensure the existing shareholders' obligation to participate: (i) all shareholders enter into the convertible loan agreement which sets forth their obligation to take all legal steps required for the issuance of shares to the lender in the course of the conversion (see section 7.1) as contracting parties or (ii) in case the convertible loan agreement is concluded by the lender and the company only, all shareholders submit binding and irrevocable declarations of commitment in advance, containing their obligation to implement and effect the issuance of the respective shares delivered to the lender in the event of a conversion. In any case, shareholders' approval of the conclusion of the convertible loan agreement alone is not sufficient.*

**CONVERTIBLE LOAN AGREEMENT**

This convertible loan agreement (the "**Agreement**") is entered into by and between:

1. **[*Name of individual*]**, born on [●], resident at [●] / **[*Name of legal entity*]**, with its seat in [●] and its business address at [●], registered with the [*name of the corporate register*] of [*court or institution of registration*] under registration number [●] ("[***Definition***]");
2. **[*Name of individual*]**, born on [●], resident at [●] / **[*Name of legal entity*]**, with its seat in [●] and its business address at [●], registered with the [*name of the corporate register*] of [*court or institution of registration*] under registration number [●] ("[***Definition***]");

the parties listed under 1. and 2. are collectively referred to as the "**Shareholders**";

1. **[*Name of individual*]**, born on [●], resident at [●] / **[*Name of legal entity*]**, with its seat in [●] and its business address at [●], registered with the [*name of the corporate register*] of [*court or institution of registration*] under registration number [●] (the "**Lender**");

and

1. **[●] GmbH**, with its seat in [●] and its business address at [●], registered with the commercial register of [*court of registration*] under registration number [●] (the "**Company**");

the Shareholders, the Lender and the Company are individually referred to as a "**Party**" and collectively as the "**Parties**".

*Parties to this sample convertible loan agreement are one lender, the company, and each of the existing shareholders. Shareholders of the company may be both natural persons or entities. The same applies to the lender(s).*

*The conclusion of a convertible loan agreement with two or more lenders is possible, too. In such case, the provisions will need to be adapted accordingly.*

**PREAMBLE**

*The preamble should provide a brief but precise overview of the company and the transaction contemplated by the agreement.*

1. The Company is an Austrian limited liability company (*Gesellschaft mit beschränkter Haftung*) with a current share capital in the nominal amount of EUR [●], which is paid up in cash in the amount of EUR [●].

*This provision states that the company is already founded and duly existing.*

1. The Lender has agreed to grant to the Company a loan in the total amount of up to EUR [●] which shall be convertible into shares of the Company subject to the terms and conditions of this Agreement.

*This provision describes the essential content of this agreement, namely the intention of the lender to grant the company a loan in the amount of EUR X which shall be convertible into shares of the company.*

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

1. **Loan**
	1. The Lender grants a loan to the Company in the total amount of EUR [●] (the "**Loan**").

*This provision sets out the principal amount of the loan granted by the lender to the company.*

* 1. The Loan shall be payable by the Lender in cash and due for payment within [●] Business Days (whereby "**Business Day**" shall mean a day on which banks in Austria are open for business) following the date of this Agreement or such later date as the Parties may agree to in writing to the Company's account at [*Bank*], IBAN: [●], BIC: [●], free of any deductions and/or withholdings, including, without limitation, banking fees.

*This provision sets out the payment mechanism of the loan. Usually (as set forth in this sample agreement) the lender is obliged to pay the entire loan amount at once to the company's account within a certain period. However, it may also be agreed that the loan is paid in several tranches. In such case, it needs to be clearly defined when and under which conditions each tranche is payable (e.g. upon request by the company or achievement of milestones).*

* 1. The Lender herewith declares and the Company herewith agrees that the Loan including any and all interest accrued thereon shall constitute an unconditional, unsecured obligation of the Company and shall in case of insolvency of the Company be subordinated to any other debt of the Company. The subordination shall also apply prior to an insolvency of the Company, but only if and to the extent payments on the Loan and interest accrued thereon would result in an over-indebtedness or illiquidity of the Company (in terms of Austrian insolvency laws). The Lender further declares that no insolvency proceedings need to be initiated because of the Loan or any interest accrued thereon.

*This provision sets out that the loan is qualified subordinated (qualifiziert nachrangiges Darlehen). Subordination means that the lender is subordinated in rank to any other creditor of the company. In the event of an insolvency of the company, the lender will only receive repayment of its loan amount after all other creditors have received their payments. Qualified subordination also means that the company shall not be required to pay back any loan amount, if such repayment would result in an over-indebtedness (Überschuldung) or illiquidity (Zahlungsunfähigkeit) of the company.*

*This qualified subordination of the loan is necessary because otherwise there may be a risk that the issuance of loans constitute a banking transaction (konzessionspflichtiges Einlagengeschäft), in particular when several loans are issued to several investors at similar conditions.*

*Furthermore, the raising of loans, in particular in the early phase of a company, could very quickly lead to an arithmetical over-indebtedness of the company (rechnerische Überschuldung) and consequently to the obligation to file for insolvency proceedings according to § 69 of the Austrian Insolvency Act (IO) if the management is unable to provide a positive prognosis for the company's continued existence (positive Fortbestehensprognose). A violation of such obligation can lead to a personal liability of the managing director. The existence of such an arithmetical over-indebtedness can be avoided by agreeing on a subordination clause.*

1. **Interest**
	1. Interest on the outstanding portion of the principal amount of the Loan shall amount to a rate per annum equal to [●]%. Interest will be calculated on the basis of a 365-day year and shall be paid in euro.

*In most cases, the convertible loan is granted subject to interest. Accrued interest will usually be converted into shares together with the principal amount, which means that the conversion amount and therefore the shares issued to the lender increase. However, sometimes it is agreed that interest shall be repaid upon request by the lender and/or the company irrespective of the conversion of the loan.*

* 1. Interest payment shall be due on the Maturity Date (as defined in section 3.1).

*In order to avoid burdening the company's liquidity with ongoing interest payments, the parties usually agree that the entire amount of interest will be paid on the maturity date. Interest payments during the year are very rarely found in convertible loan agreements.*

* 1. The Company shall not pay interest on the accrued interest (*keine Zinseszinsen*).

*Usually, interest on accrued interest is excluded in convertible loan agreements.*

1. **Repayment**
	1. The portion of the principal amount of the Loan that has not been repaid together with all accrued and unpaid interest thereon shall be due and payable on [●] (the "**Maturity Date**").

*This provision sets out that the outstanding loan has to be repaid at the end of the agreed term if the conversion has not taken place (because the predefined conditions were not met). It is possible but very rare for the parties to agree that the loan does not have to be repaid at all.*

* 1. Subject to the prior written consent of the Lender, the Company has the right but not the obligation to repay the Loan at any given time prior to the Maturity Date, in whole or in part, without penalty or premium, but with the unpaid interest that has accrued as per the date of repayment on the amount of principal repaid.

*Usually, the company is not entitled to repay the loan at any given time prior to the maturity date without the prior consent of the lender. If the company shall be entitled to repay the loan at any given time prior to the maturity date without the consent of the lender, the repayment generally entails the payment of a penalty or premium.*

* 1. All payments due and payable by the Company to the Lender under this Agreement shall be made in euro. Payments will be made to a bank account as indicated by the Lender in writing.

*This provision sets out that repayments by the company must be made in euro and the lender must provide the company with its bank account details in writing.*

1. **Conversion Right upon a Financing Round**
	1. Under this Agreement, "**Financing Round**" shall mean the next issuance of shares of the Company in which the Company receives equity proceeds from new investments (not including the conversion of the Loan or other loans) by the shareholders of the Company and/or new investors (the "**FR Investors**").

*This provision defines a "financing round" as a conversion triggering event. "Financing Round" (as set forth in this sample agreement) is defined as the contribution of "real" equity proceeds to the company by an investor (external investor or existing shareholder) against issuance of shares (by capital increase or share transfer). Equity-like or mezzanine investments (like convertible loans) are usually not included under the term "financing round" and therefore do not trigger the conversion of the loan.*

*Alternatively, the triggering event may be defined as a "qualified financing round", which means that the conversion of the loan only takes place if the financing round reaches a certain minimum investment amount (which presumably makes the subscription price underlying the conversion more reliable). In such case, section 4.2 would usually provide for a conversion obligation instead of the conversion right of the investor.*

* 1. If, prior to the Maturity Date and provided that (i) the Loan (including interest) has not been repaid in full in accordance with this Agreement and (ii) no repayment has been requested by the Lender due to an Event of Default, a binding investment agreement or a similar agreement regarding a Financing Round is signed (the "**FR Signing Date**"), the Lender shall have the right to irrevocably waive the repayment of the entire unpaid portion of the principal amount of the Loan ("**Outstanding Principal Amount**") and all accrued and unpaid interest due as of the FR Signing Date (the "**FR Accrued Interest**") against issuance of shares in the Company issued in the course of the Financing Round (the "**FR Conversion Shares**") at an issue price of EUR 1 per each EUR 1 (the "**Conversion Issue Price**") of the subscribed nominal amount of FR Conversion Shares.

*This provision sets out the lender's right to convert the entire outstanding loan (including or excluding interest, see comments in section 2) into shares of the company in the event that the company signs a binding investment agreement or a similar agreement regarding a financing round. The lender has to exercise his/her conversion right according to section 4.3. As already mentioned in the comments to section 4.1, alternatively, a conversion obligation may be agreed upon instead of the conversion right of the lender, in particular in case section 4.1 provides for a "qualified financing round" as a triggering event for the conversion.*

*The conversion of the loan into shares is executed by way of an ordinary share capital increase (ordentliche Kapitalerhöhung) in which the lender is admitted to subscribe for the newly issued shares to the extent stipulated in section 4.4. In return, the lender waives repayment of the entire outstanding loan amount (and accrued interest) subject to registration of the capital increase with the commercial register (Firmenbuch).*

*The "Conversion Issue Price" corresponds to the nominal amount (Nominalbetrag) of the shares issued to the lender and needs to be paid in at the time of subscription of the shares (see comments in section 7.2 below).*

*Alternatively, the conversion into shares may be executed by transferring existing shares from existing shareholders to the lender (see comments in section "Introduction").*

* 1. At the latest four weeks prior to the FR Signing Date, the Company shall inform the Lender in writing about such date no later than four weeks prior to the FR Signing Date. The exercise of the conversion right of the Lender shall require a written document signed by the Lender (the "**Exercise Notice**") which shall be delivered to the Company and the (other) Shareholders no later than two weeks prior to the FR Signing Date. The Exercise Notice is deemed to be delivered timely if it has been dispatched within the aforementioned period. If the Lender fails to deliver the Exercise Notice within the aforementioned period, its conversion right shall be deemed not exercised. For the avoidance of doubt, if the Lender does not exercise its conversion right pursuant to this section 4, any other conversion rights pursuant to this Agreement shall not be forfeited.

*This provision sets forth the company's obligation to inform the lender in writing about a financing round signing date in order to give the lender time to decide whether or not he/she wants to exercise his/her conversion right set forth in section 4.2.*

*The lender has to exercise the conversion right by delivering an exercise notice to the company and the (other) shareholders expressing his/her will to exercise his/her conversion right. After delivery of the lender's exercise notice, the shareholders must come to a resolution on the capital increase, taking into account the lender's conversion right.*

*In case of a conversion obligation instead of a conversion right of the lender, this section 4.3 needs to be replaced by a provision that only provides for the obligation of the company to inform the lender about the upcoming financing round.*

* 1. The nominal amount of FR Conversion Shares to be issued to the Lender in the course of the Financing Round at the Conversion Issue Price shall be determined as follows:
* Outstanding Principal Amount,
* plus FR Accrued Interest,
* divided by the subscription price (nominal amount + contribution/premium) to be paid by the FR Investor(s) for each EUR 1 of the nominal amount of shares subscribed in the course of the Financing Round less a discount of [*●*]% (the "**Discount**").

*This provision sets forth the calculation of the nominal amount of shares (FR Shares) to be issued to the lender upon conversion. In principal, the conversion is based on the valuation of the company underlying the financing round. The amount to be converted is usually comprised of the outstanding principal amount and accrued interest at the time of the financing round. Such total amount divided by the subscription price (share price) to be paid by the investors in the financing round determines the nominal amount of shares (FR Shares) to be issued to the lender. Thus, the higher the valuation of the financing round, the higher the share price and the lower the nominal amount of shares (FR Shares) to be issued to the lender.*

*Usually (and as set forth in this sample agreement), it is agreed that the lender receives a discount on the share price to be paid by the investors in the financing round to offset the lender's potentially increased risk.*

*Sometimes convertible loan agreements also provide for a maximum valuation ("cap") and/or minimum valuation ("floor") for the conversion of the loan, which means that the conversion takes place (i) based on the minimum valuation if the financing round valuation is below the floor and (ii) based on the maximum valuation if the financing round valuation is above the cap.*

*From a tax perspective, it should be noted that there may be a certain risk that the conversion, which due to a discount or cap is based on a value that is below the market valuation (higher valuation of the financing round), may lead to an exchange tax (Tauschbesteuerung) for the lender.*

* 1. The FR Conversion Shares delivered to the Lender shall have the same rights, obligations, preferences and privileges as the shares delivered to the FR Investor(s) in the course of the Financing Round.

*It is very important and highly recommended to agree on the essential rights and obligations (e.g. information rights, approval rights, liquidation preferences, anti-dilution rights, transfer restrictions, tag-along rights, drag-along rights) which shall be associated with shares delivered to the lender in the course of the conversion.*

*In case a financing round serves as the triggering event for the conversion, it is usually agreed (as set forth in this sample agreement) that the shares issued to the lender shall have the same rights, preferences and privileges as the shares delivered to the other investors in the course of the financing round.*

*Alternatively, it is possible to attach a term sheet, which sets out the essential parameters of the future legal relationship between the shareholders after conversion. Obviously, it is within the lender's interest that those rights which are granted to him/her upon conclusion of the convertible loan agreement are not limited in the course of the conversion. On the other hand, it should be noted that rights granted to the lender may also impact negotiations with future investors as they might ask for the same conditions.*

1. **Mandatory Conversion in the event of an Exit**
	1. An "**Exit Event**" under this Agreement shall mean the execution of a binding agreement regarding any of the following events:

*This provision sets forth the definition of an exit event:*

* + - 1. a transfer or sale of more than 50% of the share capital of the Company in one transaction or a series of related transactions; or

*Usually, a transfer or sale of more than 50% of the share capital of the company in one transaction/a series of related transactions to one or more buyer(s) is defined as an exit (exit by way of a "share deal"). However, the percentage limits may vary.*

* + - 1. the sale, lease, license or other transfer or disposal of all or substantially all assets of the Company in one transaction or a series of related transactions ("**Asset Sale**"); or

*A transfer or sale or license of all or almost all of the company's most important assets is also defined as an exit (exit by way of an "asset deal" or "licence deal").*

* + - 1. an initial public offering of the Company on any recognized stock exchange or regulated market in an OECD member state after conversion of the Company into an Austrian joint stock company (*Aktiengesellschaft*) ("**IPO**").

*The conversion of the company into an Austrian AG followed by the IPO of the AG is also defined as an exit.*

* 1. Upon the occurrence of an Exit Event prior to the Maturity Date, provided that (i) the Loan (including interest) has not been repaid in full in accordance with this Agreement and (ii) no repayment has been requested by the Lender due to an Event of Default, the Lender shall have the right and the obligation to irrevocably waive the repayment of the then Outstanding Principal Amount and all accrued and unpaid interest due as of the date of signing a binding agreement regarding an Exit Event (the "**Exit Accrued Interest**") against issuance of shares in the Company (the "**Exit Conversion Shares**") at the Conversion Issue Price prior to the closing of the Exit Event.

*This provision sets out the lender's obligation to convert the entire outstanding loan (including or excluding interest, see comments in section 2) into shares of the company in case of the occurrence of an exit event. Usually (as set forth in this sample agreement) in case of an exit event, a conversion obligation of the lender is agreed. Alternatively, a conversion right may be agreed, whereby it needs to be taken into account that the lender's refusal to convert its loan in the course of the exit may prevent the exit or at least make it more difficult.*

*The conversion of the loan into shares is executed by way of an ordinary share capital increase (ordentliche Kapitalerhöhung) in which the lender is admitted to subscribe to the newly issued shares to the extent stipulated in section 5.4. The ordinary share capital increase has to be executed prior to the closing of the exit event. In return, the lender is obliged to irrevocably waive repayment of the entire outstanding loan amount (and accrued interest) subject to registration of the capital increase with the commercial register (Firmenbuch).*

*The "Conversion Issue Price" corresponds to the nominal amount (Nominalbetrag) of the shares issued to the lender and needs to be paid in at the time of subscription of the shares (see comments in section 7.2 below).*

*Alternatively, the conversion into shares may be executed by transferring existing shares from existing shareholders to the lender (see comments in section "Introduction").*

* 1. The Company shall inform the Lender in writing of the execution of a binding agreement regarding an Exit Event.

*This provision sets forth the company's obligation to inform the lender in writing of the occurrence of an exit event.*

*In practice, lenders of a convertible loan will usually be informed about an intended exit before a binding agreement regarding such exit is signed, so that the conversion can already be taken into account when preparing the whole exit process. However, due to the conversion obligation of the lender in the case of an exit, such exit may also be concluded (signed) without informing the lender in advance, e.g. by defining the conversion as closing condition for the exit, which then takes place after signing (before closing).*

* 1. The nominal amount of Exit Conversion Shares to be issued to the Lender in the course of the Exit Event at the Conversion Issue Price shall be determined as follows:
* Outstanding Principal Amount,
* plus Exit Accrued Interest,
* divided by the purchase price to be paid by any acquirer(s) for each EUR 1 of the nominal amount of acquired shares in the Company in the course of the Exit Event less the Discount.

(in case of an Asset Sale or IPO the foregoing formula shall be applied *mutatis mutandis* based on the valuation underlying the Asset Sale or IPO).

*This provision sets forth the calculation of the nominal amount of shares (Exit Conversion Shares) to be issued to the lender upon conversion in an exit event. The description of section 4.4 above also applies to this section 5.4, provided that the conversion is based on the valuation of the company underlying the exit event instead of the financing round.*

*In case the financing round conversion (section 4.4) provides for a discount, a maximum valuation ("cap") and/or a minimum valuation ("floor"), the same is usually set forth for a conversion in case of an exit event (for details please see the description of section 4.4).*

* 1. The Exit Conversion Shares delivered to the Lender at the Conversion Issue Price shall have the same rights, obligations, preferences and privileges as the highest class of shares outstanding on the date a binding agreement regarding an Exit Event is signed.

*It is very important and highly recommended to agree on the essential rights and obligations (e.g. information rights, approval rights, liquidation preferences, anti-dilution rights, transfer restrictions, tag-along rights, drag-along rights) that shall be associated with the shares delivered to the lender in the course of the conversion.*

*In case an exit serves as the triggering event for the conversion, it is usually agreed (as set forth in this sample agreement) that the lender receives shares corresponding to the highest class of shares outstanding immediately before the exit event. In case the lender is already a shareholder of the company, it is sometimes agreed that he/she shall receive shares corresponding to the class of shares he/she already holds in the company at the time of the execution of the convertible loan agreement. However, in the case of a 100% exit, only some of the rights and obligations, in particular the liquidation preference and tag-along and drag-along rights, apply.*

1. **Mandatory Conversion as of the Maturity Date**
	1. If, at the time of the Maturity Date, (i) the Loan (including interest) has not been repaid in full in accordance with this Agreement, (ii) no repayment has been requested by the Lender due to an Event of Default and (iii) no conversion according to sections 4 or 5 has occurred, the Lender shall have the right and the obligation to irrevocably waive the repayment of the then Outstanding Principal Amount and all accrued and unpaid interest due as of the Maturity Date (the "**MD Accrued Interest**") against issuance of shares in the Company (the "**MD Conversion Shares**") at the Conversion Issue Price on or around the Maturity Date.

*This provision sets out the lender's obligation to convert the entire outstanding loan (including or excluding interest, see comments in section 2) into shares of the company at the maturity date.*

*The conversion of the loan into shares is executed by way of an ordinary share capital increase (ordentliche Kapitalerhöhung) in which the lender is admitted to subscribe to the newly issued shares to the extent stipulated in section 6.2. In return, the lender is obliged to irrevocably waive repayment of the entire outstanding loan amount (and accrued interest) subject to registration of the capital increase with the commercial register (Firmenbuch).*

*The "Conversion Issue Price" corresponds to the nominal amount (Nominalbetrag) of the shares issued to the lender and needs to be paid in at the time of subscription of the shares (see comments in section 7.2 below).*

*Alternatively, it may be agreed that at the maturity date, it is upon the sole discretion of the company to either repay the loan or request the conversion or that the lender shall have the choice to request either the repayment or the conversion of the loan.*

* 1. The nominal amount of MD Conversion Shares to be issued to the Lender on or around the Maturity Date at the Conversion Issue Price shall be determined as follows:
* Outstanding Principal Amount,
* plus MD Accrued Interest,
* divided by a share price of EUR [●] per each EUR 1 of the newly subscribed nominal amount of the MD Conversion Shares. Such share price is based on the current outstanding share capital of the Company in the amount of EUR [●] and a pre-money valuation of the Company of EUR [●].

*This provision sets forth the calculation of the nominal amount of shares (MD Conversion Shares) to be issued to the lender upon conversion at the maturity date. The descriptions of section 4.4 and 5.4 above also apply to this section 6.2 with the difference that in case of a conversion at the maturity date, no reference valuation exists upon which to base the conversion.*

*Therefore, the parties are forced to find other ways to determine the valuation (share price) underlying the conversion on the maturity date. One possibility (as set forth in this sample agreement) is to determine a fixed conversion valuation (share price) directly in the convertible loan agreement. However, such valuation forecasts (especially over a period of several years) are extremely difficult, and therefore the parties often agree that conversion valuation shall be the valuation of the last financing round prior to or the valuation at the time of the execution of the convertible loan agreement. Another way would be to let an independent expert determine the valuation of the company at the time of the maturity date, in case the parties are not able to reach a mutual agreement on the underlying valuation at that time.*

* 1. The MD Conversion Shares delivered to the Lender at the Conversion Issue Price shall have the same rights, obligations, preferences and privileges as the highest class of shares outstanding on the Maturity Date.

*It is very important and highly recommended to agree on the essential rights and obligations (e.g. information rights, approval rights, liquidation preferences, anti-dilution rights, transfer restrictions, tag-along rights, drag-along rights) that shall be associated with the shares delivered to the lender in the course of the conversion.*

*In case of a conversion on the maturity date, it is usually agreed (as set forth in this sample agreement) that the lender receives shares corresponding to the highest class of shares outstanding on the maturity date. Alternatively, a term sheet can be attached to the convertible loan agreement, which sets out the essential parameters of the future legal relationship between the shareholders after conversion. In case the lender is already a shareholder of the company, it may also be agreed that he/she shall receive shares corresponding to the class of shares he/she already holds in the company at the time of the execution of the convertible loan agreement.*

1. **General Provisions regarding a Conversion**
	1. All Parties to this Agreement hereby separately and irrevocably agree to give all declarations, sign all documents, pass all resolutions and undertake all acts that might become necessary to implement and effect the issuance of the respective shares delivered to the Lender in the event of a conversion (the "**Conversion Shares**"). In particular, the Shareholders will, without any further consideration, waive their statutory subscription rights (*Bezugsrechte*) and/or come to a resolution on the exclusion of statutory subscription rights (*Bezugsrechtsausschluss*) (if necessary) with respect to the respective Conversion Shares.

*This provision sets forth the obligations of the company and the (existing) shareholders to take all legal steps required for the issuance of shares to the lender in the course of the conversion. It is important that all shareholders holding a share in the company at the time of the conversion be bound by this provision because otherwise they would be able to prevent the issuance of shares and thus the entire conversion (e.g. by exercising subscription rights).*

* 1. The Conversion Issue Price for the Conversion Shares has to be paid by the Lender upon subscription of the Conversion Shares and shall be due and payable within 10 Business Days from the date on which the shareholders' resolution regarding the issuance of the Conversion Shares is passed.

*The "Conversion Issue Price" corresponds to the nominal amount of the shares subscribed for by the lender in the course of the conversion. According to mandatory Austrian corporate law, the nominal amounts need to be paid in at the time of subscription of the shares and must not be credited against the loan. Such additional payment therefore leads to a minimal increase of the share price (because the lender needs to pay the respective nominal amount in addition to the loan amount already granted to the company). In case the conversion is executed by way of transfer of existing shares from existing shareholders to the lender, such payment of nominal amounts can be avoided (unless the nominal amounts are paid to the selling shareholders subject to the terms and conditions of the SPA).*

* 1. The Parties agree to enter into a new shareholders' agreement or amend any existing shareholders' agreement, the articles of the Company or any other agreement, to the extent required or useful in connection with the issuance of Conversion Shares, immediately upon or in connection with any conversion pursuant to sections 4 to 6, in particular the Parties shall ensure that the Lender receives the rights, obligations, preferences and privileges mentioned in sections 4.5, 5.5 and 6.3.

*With the conversion of the loan, the lender becomes a new shareholder of the company or – if he/she is already a shareholder – increases his/her shareholding in the company. Thus, the rights and preferences but also the obligations associated therewith need to be determined in the articles of association and/or an existing or new shareholders' agreement and all shareholders need to be obliged to enter into such agreement. If the lender is not an existing shareholder of the company, an obligation of the lender to accede to any shareholder's agreement existing at the time of the conversion needs to be included in the convertible loan agreement.*

*For a detailed description of the rights and obligations that shall be associated with the shares issued to the lender in the course of the conversion, see comments in sections 4.5, 5.5 and 6.3.*

* 1. Except as set forth in this Agreement, the Loan shall not be otherwise convertible into shares of the Company.

*This clause sets forth that only the provisions of this convertible loan agreement shall apply for the conversion of the loan.*

* 1. Any waiver of the principal amount of the Loan in connection with a conversion shall be effective as of the date of registration of the respective capital increase with the commercial register.

*Since the Conversion Shares only come into existence upon registration of the capital increase with the commercial register, the effectiveness of the waiver of the loan needs to be linked to such registration.*

*From a tax perspective, it should be noted that there is a certain risk that the waiver of the loan may lead to taxable operating income at the level of the company if the loan does not represent a valuable claim (nicht werthaltige Forderung) at the time of the conversion. This might be the case in particular if the company is in crisis at the time of the conversion and would therefore not be able to repay the loan at all. Accordingly, attention should be paid to this issue especially in the case of a conversion on the maturity date in which the company does not receive additional funding (as is the case in a conversion upon a financing round).*

* 1. If at any time prior to the Maturity Date, any of the outstanding shares of the Company are changed into, or exchanged for, a different number or kind of shares or securities of the Company through reorganization (e.g. a merger) or if the Company is transformed into an Austrian joint stock company (*Aktiengesellschaft*), an appropriate adjustment shall be made to this Agreement, if necessary, in the number, kind or conversion price of shares into which the Loan is convertible.

*This is a general clause which shall ensure that the provisions of the convertible loan agreement (in particular the provisions on the conversion of the loan) shall remain applicable even after a possible reorganization or transformation of the company.*

1. **Event of Default**
	1. An "**Event of Default**" under this Agreement shall mean the occurrence of any of the following:
		* 1. the failure of the Company to perform its obligations under this Agreement and the failure of the Company to remedy such default within 20 Business Days of written notice of the default by the Lender; or
			2. the opening of insolvency proceedings regarding the assets of the Company or the rejection of an application for the opening of insolvency proceedings due to a lack of assets covering the costs for such proceedings.
	2. Upon the occurrence of an Event of Default prior to the Maturity Date, the entire unpaid portion of the principal amount of the Loan and all accrued but unpaid interest shall – as far as legally permissible – become immediately due and payable upon request by the Lender.

*In case of a breach of contract or an insolvency of the company (or other predefined events of default), the lender shall have the right to request the immediate repayment of the loan. Also, in the event of default, the repayment restrictions, in particular the qualified subordination of the loan (see section 1.3), need to be considered.*

1. **Shareholders' Resolution**

For the avoidance of doubt, the Shareholders, as all shareholders of the Company, agree to pass a resolution in writing and herewith unanimously approve the execution of this Agreement by the Company.

*In this written shareholders' resolution, the shareholders approve the execution of the convertible loan agreement by the company. In case not all shareholders of the company are parties to the convertible loan agreement, a separate written shareholders' resolution is required.*

1. **Miscellaneous**
	1. This Agreement may be amended and any provision hereof waived only with the written consent of all Parties.
	2. Unless otherwise provided in this Agreement, each Party undertakes to consider as strictly confidential and not to disclose to any third party, the contents of this Agreement or any document it relates to unless made (i) with the prior written consent of the other Parties, (ii) as required by applicable mandatory laws or regulations, or (iii) by a Party to its directors, managers, employees, professional advisers or its affiliates. Information will not be regarded as confidential, however, (A) if it is already available to the recipient party on a non-confidential basis, or (B) if it becomes generally available to the public other than as a result of a disclosure by or on behalf of the recipient party in violation of the terms of this section 10.2.
	3. All notices and other communications under this Agreement shall be in writing in the English language and shall be given or made by delivery in person, by courier service, by e-mail or by registered mail to the respective Parties at the addresses set out in the Parties' section (or at such other address for a Party as shall be specified in a notice given in accordance with this section 10.3). Except as otherwise provided in this Agreement, each such notice shall be deemed given and received (i) at the time delivered by hand, if personally delivered or when receipt acknowledged, (ii) (no later than) five Business Days after being deposited in the mail, postage prepaid, if mailed, (iii) after receipt of a reading confirmation or an e-mail acknowledging receipt, if e-mailed, and (iv) the next Business Day following timely delivery to the courier, if sent by overnight courier guaranteeing next-day delivery.
	4. If any term or provision of this Agreement shall be invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions thereof shall not be affected or impaired thereby, and any invalidity, illegality or unenforceability in any jurisdiction shall not affect the validity, legality or enforceability of any such term or provision in any other jurisdiction. The invalid, illegal or unenforceable provision shall be deemed to be replaced by such valid provision as most closely corresponds to the economic purpose and substantive effect of the invalid, illegal or unenforceable provision. The same applies *mutatis mutandis* with regard to supplementary interpretation of this Agreement.
	5. This Agreement embodies the entire agreement and understanding between the Parties with respect to the subject matter thereof and supersedes all prior agreements and understandings between them with respect to the subject matter.
	6. Each Party shall bear its own costs and expenses (including advisor fees incurred by the relevant Party) incurred in connection with negotiating, preparing and implementing this Agreement, provided that the costs of the notary public, if any, in connection with the execution of this Agreement shall be borne by the Company.
	7. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of Austria, with the exception of (i) the UN Sales Convention and (ii) the conflict of law rules of Austrian private international law.
	8. Each Party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement or the transactions contained in or contemplated by this Agreement, exclusively before the [*competent court to be included*].

[*Rest of page intentionally left blank. Signature page follows.*]

***Other optional provisions:***

*Reps & Warranties:*

*In cases involving high loan amounts (above EUR 100,000 per lender), lenders sometimes require certain representations and warranties from the existing shareholders and/or the company (e.g. regarding ownership of shares, due incorporation of the company, ownership of intellectual property, business licenses). If so, it is important to clearly determine the scope and effective date (time of granting the loan or time of conversion) of the representations and warranties and the indemnification procedures in case of a breach.*

*Information Rights:*

*Due to the fact that the lenders of a convertible loan do not hold a share in the company until conversion (except if they already are shareholders), they do not have any information and/or inspection rights regarding the company. Thus, lenders of a convertible loan sometimes require that they be provided with certain financial documents on a regular basis (e.g. the annual financial statement, quarterly/monthly financial reports, etc).*

*Advisory Board:*

*In case the lender of a convertible loan is an external lender (and not a shareholder already), the lender does not have any voting rights in the company until conversion. Therefore, lenders of a convertible loan sometimes require the establishment of a corporate advisory board with the lenders as members having several approval, consent or veto rights with respect to certain business and/or corporate measures. Establishing a corporate advisory board is subject to the shareholders' meetings resolution.*

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(*Place*) (*Date*)

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| **The Company** |
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| **The Lender** |
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**The Shareholders**

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