CONVERTIBLE LOAN AGREEMENT

by and between

***Investor***

Address

(the "**Lender**")

and

XXXX

(The "**Borrower**")

(together the "**Parties**", each of them a "**Party**")

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Recitals

1. The Borrower is a company registered with the commercial register of XXXX, having a share capital of CHF XXXX divided into XXXX, ordinary shares with a nominal value of CHF XXXX, each and XXXX, preference shares with a nominal value of CHF XXXX each.
2. The Borrower wishes to raise a total amount of CHF xxx’xxx to finance its expansion in the form of a convertible loan.
3. The convertible loan will be convertible at the next Fund Raising or upon occurrence of a Liquidity Event.
4. The Lender is willing to participate to this round of financing by subscribing to a convertible loan for an amount of CHF xxx’xxx on the terms and conditions set out below.
5. This Agreement sets forth the rights and obligations of the Parties with regard to the convertible loan.

**NOW, THEREFORE**, the Parties agree, based on the above premises, which form an integral part hereof, as follows:

# Definitions and Interpretations

## Definitions

1. Capitalised terms in this Agreement shall have the following meanings:

 **Agreement**: shall mean this convertible loan agreement including all of its annexes;

 **Business Day**: shall mean any day on which banks are open for the transaction of normal commercial business in Lausanne;

 **CHF**: shall mean Swiss Francs, being the lawful currency of Switzerland;

 **Commercial Register**: shall mean the commercial register of XXXX,;

 **Convertible Loan**: shall mean the convertible loan being the subject matter of this Agreement;

1. **Fund raising**: shall mean an additional capital increase of the share-capital of the Borrower including or not agio;
2. **Liquidity** **Event**: means the sale of all or substantially all the Shares of the Borrower in a cash-based transaction and/or against delivery of shares;
3. **Maturity Date**:shall mean XXXX.
4. **Preference Shares:** shall mean the preference shares outstanding at the date of this Agreement each having a nominal value of XXXX of the Borrower.
5. **Principal Amount:** shall mean the amount of the Convertible Loan effectively disbursed in favour of the Borrower by the Lender;
6. **Shares**: shall mean the shares of the Borrower, including the Preference Shares;
7. **Shareholder Agreement**: shall mean the shareholder agreement in force between all the shareholders of the Borrower at any time;
8. **Taxes**: shall mean all tax liabilities whether actual or deferred in respect of income taxes, VAT, any turnover or cost related taxes, withholding taxes, capital taxes, stamp duties, payroll taxes, social security taxes and property taxes or any other taxes, duties or equivalent charges, including interest, penalties or fines related thereto.

## B. Interpretations

1. In this Agreement:
2. the Table of Contents and Section headings are inserted for convenience only and shall not affect the construction of this Agreement;
3. words denoting the singular shall include the plural and vice versa;
4. words denoting one gender shall include each gender and all genders;
5. references to persons shall be deemed to include references to natural persons, to firms, to partnerships, to bodies corporate, to associations, and to trusts (in each case whether or not having separate legal personality);
6. references in this Agreement to "Sections" and "Annexes" are references to sections of this Agreement and annexes to this Agreement;
7. words and phrases defined for the purposes of or in connection with any statutory provision shall, where the context so requires, be construed as having the same respective meanings in this Agreement; and
8. references in the Agreement to "includes", "including" and "included" will be construed without limitation unless inconsistent with the context.

# II. CONVERTIBLE LOAN

## A. Amount and Nature

1. Subject to the terms and conditions set forth in this Agreement, the Lender hereby grants to the Borrower a Convertible Loan in the amount of CHF xxx’xxx (xxxxxxx thousand CHFs).

# III. DISBURSEMENT

1. The entire amount of the Convertible Loan will be disbursed within 5 Business Days after signing of this Agreement by transfer to the following account:

XXXX

1. The Borrower will confirm receipt of the entire Convertible Loan amount within two Business Days following such receipt.

# IV. INTEREST

1. The Convertible Loan shall not bear interest.

# V. REPAYMENT

1. The Convertible Loan shall be converted in accordance with Article VII and shall not be repaid, save with the prior written approval of the Lender.

# SUBORDINATION

1. If and to the extent required to eliminate a net equity shortfall in the sense of Article 725 para. 2 of the Swiss Code of Obligations (or any equivalent or successor legal provision), the Lender hereby irrevocably and unconditionally declares to the Borrower that the Principal Amount shall be subordinated to all current and future claims of creditors. During such term the Principal Amount shall be deferred, and it shall be understood and agreed that none of the claims under the Principal Amount may neither fully nor partially be repaid, set-off, novated or otherwise be fulfilled and no new security interest may be created in relation to such claims. The claims of the Lender being subject to the subordination shall be listed separately in the financial statements of the Borrower.

If the Borrower is declared bankrupt by a court or if the Borrower makes a general assignment, arrangement or composition with or for the benefit of its creditors, the Lender herewith waives its claims under the Principal Amount to the extent required to cover from the liquidation proceeds the claims of the other creditors and the claims arising in connection with the liquidation procedure.

The Lender acknowledges and agrees that nothing in this Agreement shall be construed as to restrict the board of directors of the Borrower to notify the competent courts in case of an equity shortfall in the sense of Article 725 para. 2 of the Swiss Code of Obligations (or any equivalent or successor legal provision).

The subordination pursuant to this Agreement shall automatically be terminated in respect of the Principal Amount if any of the following events occur:

* + 1. the Lender ultimately waives his claims; or
		2. the subordinated claims of the Lender are converted into shares of the Borrower, regardless of an equity shortfall in the sense of Article 725 para. 2 of the Swiss Code of Obligations (or any equivalent or successor legal provision).

# CONVERSION

## A. Conversion Rights and Price

1. Upon any Fund Raising, the Lender shall have the option, that is the right but not the obligation, to convert, simultaneously with completion of the Fund Raising, the Principal Amount outstanding into newly issued Shares of the Borrower, at a price per Share which shall be the lower of (i) the Fund Raising price minus a 20% discount, or (ii) the price as determined on the basis of a pre-money valuation of CHF XXXX, of the Borrower. The Shares issued shall be of the class issued in the context of such Fund Raising. The Lender shall exercise such option with 15 days of receiving notice of any Fund Raising to be carried out by the Borrower.
2. Upon any Liquidity Event, the Lender shall have the option, that is the right but not the obligation, to convert, immediately prior such Liquidity Event, the Principal Amount outstanding into Preference Shares of the Borrower at an issuance price per Share determined on the basis of a pre-money valuation of CHF XXXX of the Borrower.
3. If no other conversion has taken place by the Maturity Date, the Principal Amount outstanding shall automatically be converted into Preference Shares of the Borrower at an issuance price per Share determined on the basis of a pre-money valuation of CHF XXXX of the Borrower.
	1. **Further Conditions**
4. The Lender waives unconditionally its pre-emption rights in case the Borrower issues shares for a stock option plan in favour of its employees, provided that the shares issued shall not exceed 10% of the share capital of the Borrower until the Maturity Date.
5. Upon conversion, the shares acquired by the Lender through conversion shall be subject to the Shareholder Agreement then in force of the Company. The Lender shall become a party and will join the current Shareholders Agreement in place at the time of conversion as investors with rights equivalent to investors of the same class at the date of conversion (subject always to any customary deviation due to treatment of lead investors and the like).

## C. Execution of Conversion Rights

1. The increase of the share capital of the Borrower by conversion of the Convertible Loan shall be executed by the Parties simultaneously with the implementation of the Fund Raising, respectively a Liquidity Event, or, in case of conversion upon reaching the Maturity Date, as promptly as feasible following the Maturity Date.
2. The Parties shall, after the execution of the conversion rights, execute, or cause to be executed, any other action not mentioned in this Agreement as may reasonably be required to implement and perfect the transaction contemplated by this Agreement.
3. Subject to the conditions set forth herein, the Lender acknowledges and agrees that the conversion is irrevocable and hereby undertakes to take all such actions as may be reasonably necessary or appropriate in order to satisfy or carry out the provisions of this Agreement, in particular to subscribe for the respective number of shares and to pay the relevant subscription price by setting off the relevant claims under this Agreement.
4. In case of fractions, the resulting number of shares shall be rounded down to the next full number; the difference shall not be compensated.

# Additional Subscription Rights

1. Upon any conversion as set forth in this Agreement, the Lender shall have the obligation to invest an additional cash amount equal to CHF xxx’xxx to acquire additional Shares of the same class as obtained upon conversion, and at an issuance price per Share determined on the basis of a pre-money valuation of CHF XXXX of the Borrower. This right is not transferable, assignable or tradeable without the prior written consent of the Borrower. Any Shares acquired by the Lender through exercise of the additional subscription rights set forth in this section shall be subject to the shareholders' agreement then in force of the Company

# UNDERTAKINGS of the borrower

1. The Borrower undertakes the following from the date of this Agreement for so long as any amount is or may be outstanding under this Agreement:
2. The Borrower agrees to deliver to the Lender promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending and which might, if adversely determined, have a material adverse effect on the financial condition of the Borrower or any affiliate of the Borrower;
3. The Lender may terminate this Agreement with immediate effect by giving written notice to the Borrower if:
* the Borrower has become insolvent or if its results or assets have been considerably impaired outside the projected course of business; or
* any action or proceeding has been instituted with respect to the Borrower to seek the bankruptcy, deferral of bankruptcy, moratorium, liquidation or arrangement for the benefit of the creditors; or
* the Borrower changes its legal or economic structure, i.e. by liquidations, sale of a substantial part of its assets, material change of its purpose or its business, absorption of or by another company by merger, or restructuring.

# WARRANTIES

1. The Borrower hereby warrants that, to its best knowledge, there is no litigation, arbitration or administrative proceedings which is, at the date of this Agreement, current, threatened or pending and which might, if adversely determined, have a material adverse effect on the financial condition of the Borrower or any affiliate of the Borrower.

# TAXES AND COSTS

1. Each Party shall bear its own costs and expenses in relation to the negotiation, preparation, execution and performance of this Agreement.
2. Any and all Taxes and other public charges imposed on one of the Parties in connection with this Agreement and the transactions contemplated hereby are to be borne by the Party on which such Tax or public charge is imposed, except that any stamp duty assessed in connection with the conversion and the à fonds perdu contribution, if any, and all fees and charges of notaries, Commercial Register etc. incurred in connection therewith shall be borne by the Borrower.

# CONFIDENTIALITY

1. Each Party shall keep confidential and shall not make a public announcement or other disclosure in respect of the fact of discussions and negotiations the terms of this Agreement and any and all information received in connection with the transaction contemplated by this Agreement without the prior written consent of all other Parties. Each Party shall ensure that its Affiliates and its and their officers, employees and advisors to comply with this Section.
2. The obligations set out in the preceding paragraph shall not apply to any information (a) which is publicly available or becomes publicly available by reason other than a breach of this confidentiality undertaking or (b) the disclosure of which is required by applicable laws, reporting requirements, rules and regulations, any court order or any best practice deriving therefrom or (c) is already known to the receiving Party at the date of receipt of the information or (d) is independently developed by the receiving party and not derived from information supplied by the disclosing party, or (e) the disclosure is required for the consummation of the transactions contemplated with this Agreement, including any disclosure by the Borrower to third parties in the context of any Liquidity Event or Fund Raising (subject always to such third parties havng entered into customary non-disclosure undertakings).
3. This Section shall remain in full force for an indefinite period of time.

# Miscellaneous

## A. Entering into Force, Amendments

1. This Agreement shall enter into force upon signature by all Parties to it.
2. This Agreement may only be modified by an instrument in writing signed by all Parties. The written form may be dispensed only in writing.

## B. Counterparts

1. This Agreement may be executed in two or more, each of which shall be deemed to be an original, and which together shall constitute one and the same Agreement.

## C. Notice

1. Any notice, request, consent or instruction deemed by any Party to be necessary or desirable to be given to the other Party, shall be validly given, made or served, if in writing and sent by mail, courier or fax (in the latter case, a copy also to be sent by mail) to the addresses set forth in the introductory paragraph of this Agreement.
2. Each Party may at any time change its address by giving notice to the other Party in the manner described above.

## D. Assignment

1. Neither Party may assign this Agreement nor any rights hereunder without the prior written consent of the other Party.

## E. No Waiver

1. The waiver of any breach of this Agreement by any Party hereto shall not be construed as a waiver of any other prior or subsequent breach.

## F. Invalid Provisions

1. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons or circumstances other than those as which it is held invalid or unenforceable, shall not be affected thereby and each other provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. Any gap resulting from such invalidity shall be filled by a provision consistent with the spirit and purpose of this Agreement.

# Governing Law and Jurisdiction

## A. Governing Law

1. This Agreement shall be governed by the substantive laws of Switzerland.

## B. Jurisdiction

1. The Parties irrevocably agree to submit to the exclusive jurisdiction of the courts of canton Vaud, Switzerland, as regards any claim arising under or in connection with this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date written below:

***Investor***

Place, Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised person

**XXXX**

Place, Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

XXXX