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**CONVERTIBLE LOAN AGREEMENT**

**between**

**[COMPANY]**

**and**

**[A PEAK CAPITAL FUND]**

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The Undersigned:

1. **[A PEAK CAPITAL FUND]**, a private company with limited liability, incorporated under the laws of the Netherlands, having its registered seat in Amsterdam and its principal place of business in (1072BG) Amsterdam on Eerste Jacob van Campenstraat 46-I, registered at the Trade Register of the Chamber of Commerce in the Netherlands under number [number] ("**Peak Capital**");

and

2. **[COMPANY]**, a [private company with limited liability], incorporated under the laws of [the Netherlands], having its registered seat in [city] and its principal place of business in ([postal code]) [city] on [address], registered at the [Trade Register of the Chamber of Commerce in the Netherlands] under number [number] (the "**Company**");

the parties (1) and (2) hereinafter collectively also referred to as **Parties** and individually as a **Party**, and Party (1) hereinafter referred to as **Lender**.

Whereas:

- A. The Lender is active as venture capital investor in early stage companies;
- B. The Company is active in the field of [activities];
- C. The Company wishes to borrow from the Lender and the Lender wishes to lend to the Company an amount of EUR 100,000 (the **Principal Amount**) in the form of a convertible loan (the **Loan**) under the terms and conditions of this convertible loan agreement (the **Agreement**);

Have agreed as follows:

**1 Definitions**

**1.1** In this Agreement, unless defined elsewhere, the capitalized expressions printed in bold hereunder in column 1 shall have the meaning indicated behind the relevant expression in column 2 below.

<b>Acquisition:</b>	a merger, share exchange, consolidation, acquisition of all or substantially all of the assets or shares, reorganization or liquidation of the Company that results in the shareholders of the Company immediately prior to such transaction owning less than 50% of the voting shares in the capital of the Company (or its successor or parent corporation) immediately after the transaction or, in the case of a sale of
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	assets or liquidation, the Company owning after the transaction less than substantially all of the assets owned by the Company prior to the transaction (other than an issuance of equity securities for the primary purpose of raising capital);
<b>Acquisition Agreements:</b>	the agreements referred to in clause 7.2;
<b>Acquisition Conversion Price:</b>	the quotient obtained by dividing (i) the Acquisition Pre-Money Valuation by (ii) the number of the Company's Fully Diluted Shares.
<b>Acquisition Pre-Money Valuation:</b>	the valuation resulting from an Acquisition multiplied by (100% minus the Discount Rate);
<b>Agreement:</b>	this convertible loan agreement between the Lender and the Company;
<b>Company Bank Account:</b>	IBAN: [bank account number];
<b>Company Shares:</b>	shares in the capital of the Company;
<b>Conversion Shares:</b>	shares issuable upon conversion of the Loan;
<b>Conversion Time:</b>	the moment of conversion as referred to in clause 8.1 (b);
<b>Default Rate:</b>	an interest at a rate of ten per cent (10%) compounded annually at the final date of the financial year (365-day basis);
<b>Discount Rate:</b>	a discount rate of twenty per cent (20%);
<b>Event of Default:</b>	The Company: <ul style="list-style-type: none"> <li>(i) fails to pay when due any principal or interest payment on the due date hereunder, and such payment shall not have been made within five (5) days of the Company's receipt of the Lender's</li> </ul>

	<p>written notice to the Company of such failure to pay;</p> <p>(ii) materially breaches any other covenant contained in this Agreement and such failure continues for 15 days after the Company receives written notice of such material breach from the Lender; or</p> <p>(iii) voluntarily files for bankruptcy or is declared bankrupt;</p>
<b>Fully Diluted Shares:</b>	the number of shares of the Company outstanding determined by the sum of i) the number of any outstanding class of shares of the Company and ii) the number of any class of shares of the Company issuable upon conversion of all outstanding securities convertible into shares and the exercise of all share options and warrants outstanding immediately before any conversion, and including any shares reserved for issuance, at the time of such conversion, under the Company's stock option plans or arrangements (including any virtual shares under any applicable employee incentive plan) (but excluding (i) the Loan and shares issuable upon conversion of the Loan and (ii) any shares of equity securities issued in the Qualified Financing);
<b>Interest Rate:</b>	an interest at a rate of five per cent (5.0%) per annum compounded annually (365-day basis). To be calculated as of the Loan Date;
<b>Loan:</b>	the convertible loan as provided as per this Agreement;
<b>Loan Date:</b>	three (3) business days after the date of execution of this Agreement;
<b>Maturity Date:</b>	the second (2 <sup>nd</sup> ) anniversary of the Loan Date, at which the outstanding Principal Amount plus all accrued and unpaid interest thereon shall be due and payable by the Company;
<b>Principal Amount:</b>	EUR 100,000;
<b>Qualified Financing:</b>	a financing after the Loan Date with at least EUR 500,000 of newly invested capital, with either (i) a combination of debt and equity, or (ii) solely equity (excluding the Loan). In case of multiple financing rounds, the Qualified Financing shall be

	deemed to be achieved at the moment the threshold of EUR 500,000 is reached in the accumulation of such financing rounds;
<b>Qualified Financing Agreements:</b>	the agreements referred to in clause 6.2;
<b>Qualified Financing Conversion Price:</b>	the quotient obtained by dividing (i) the Qualified Financing Pre-Money Valuation by (ii) the number of the Company's Fully Diluted Shares.
<b>Qualified Financing Pre-Money Valuation:</b>	the valuation resulting from a new issuance of shares on or before the Maturity Date at the pre-money equity valuation resulting from a Qualified Financing multiplied by (100% minus the Discount Rate);
<b>Repayment:</b>	The actual repayment in full of the outstanding principal amount plus accrued and unpaid interest under the Loan; and
<b>Voluntary Pre-Money Valuation:</b>	the pre-money equity valuation as agreed upon in good faith between the Company and the Lender.
<b>Voluntary Conversion Price:</b>	the quotient obtained by dividing (i) the Voluntary Pre-Money Valuation by (ii) the number of the Company's Fully Diluted Shares.

**1.2** In the Preamble and clauses of this Agreement expressions are capitalized and printed in bold for the purpose of convenience and ease of reading. If the description of such an expression deviates from the definition provided in clause 1.1, the definition provided in clause 1.1 prevails.

## **2 Loan**

**2.1** Subject to and in accordance with the terms and provisions of this Agreement, the Lender shall provide to the Company on the Loan Date the Principal Amount of the Loan.

**2.2** Lender shall provide the Loan by transferring the Principal Amount to the Company Bank Account on the Loan Date.

- 2.3** The Company shall use the Loan for the execution of the business plan of the Company, Parties sufficiently known. In no event shall the Loan be used without the prior written consent of the Lender to settle any indebtedness owed to the Company's shareholders, directors or other third parties at the Loan Date, including but not limited to shareholder loans or other loans taken out by the Company or its subsidiaries.

### **3 Interest**

Interest shall accrue on the outstanding Principal Amount. All accrued interest shall be due and payable in full upon maturity, conversion or prepayment of the Loan, as provided herein. All cash payments received by the Lender in respect of the Loan shall be applied first to accrued interest and thereafter to the repayment of the outstanding Principal Amount.

### **4 Maturity Date**

- 4.1** The outstanding Principal Amount plus all accrued and unpaid interest thereon shall be due and payable on the Maturity Date.
- 4.2** The Company may not pre-pay the Loan and any interest accrued thereon in whole or in part without the Lender's prior written consent.
- 4.3** At the Maturity Date, the Lender at its discretion may either elect to:
- (a)** demand Repayment;
  - (b)** extend the Maturity Date, with interest accruing thereafter at the Default Rate, while maintaining the right to convert as referred to in clauses 5 and 6; or
  - (c)** convert the outstanding Principal Amount plus accrued and unpaid interest thereon as referred to in clause 5.

### **5 Voluntary Conversion**

- 5.1** Upon or at any time after the Maturity Date, in lieu of Repayment, the Lender may, at its option and sole discretion, elect to convert the outstanding Principal Amount plus accrued and unpaid interest thereon under this Agreement into a number of the most senior class of shares then in use equal to the quotient obtained by dividing (i) the outstanding Principal Amount plus any accrued and unpaid interest under the Loan by (ii) the Voluntary Conversion Price.

**5.2** If the Company and the Lender cannot reach agreement on the Voluntary Pre-Money Valuation, the right of the Lender to demand such voluntary conversion as per clause 5.1 shall lapse.

**5.3** In the event that a Principal Amount and accrued interest thereon is not paid in full on the Maturity Date and the Lender has not exercised its conversion right as per clause 5.1., the Loan will continue to accrue interest at the Default Rate.

## **6 Qualified Financing Conversion**

**6.1** In the event of, and simultaneously with the initial closing of, a Qualified Financing, the outstanding Principal Amount and accrued interest thereon shall automatically convert into shares of the same series of shares provided under the Qualified Financing (holding the same rights related to such series of shares) equal to the quotient obtained by dividing (i) the outstanding Principal Amount plus any accrued and unpaid interest under the Loan by (ii) the Qualified Financing Conversion Price.

**6.2** In conjunction with such conversion, the Lender shall become party to and shall execute all applicable definitive agreements relating to such Qualified Financing (the **Qualified Financing Agreements**).

## **7 Acquisition Conversion**

**7.1** Immediately prior to the closing of an Acquisition that occurs prior to the satisfaction in full by the Company of all outstanding Principal Amount and accrued interest under the Loan (including through the conversion of such amounts into shares of the Company), the Lender may elect to either:

**(a)** convert the outstanding Principal Amount plus accrued and unpaid interest thereon under this Agreement into a number of the most senior class of shares then in use equal to the quotient obtained by dividing (i) the outstanding Principal Amount plus any accrued and unpaid interest under the Loan by (ii) the Acquisition Conversion Price.

**(b)** accelerate the Maturity Date to the date of the closing of the Acquisition and thereupon the Company shall be obligated to pay such Lender an amount equal to the outstanding Principal Amount and accrued interest in full satisfaction of its obligations hereunder.

**7.2** In conjunction with such conversion as per clause 7.1 (a) above in connection with an Acquisition, the Lender shall execute all documentation required to be executed by other shareholders of the Company in connection with the Acquisition (the **Acquisition Agreements**).

## **8 Effect of conversion**

**8.1** Upon conversion of the Loan into shares in the capital of the Company in accordance with the terms hereof, and, if and as applicable, upon receipt by the Company of signature pages to the Qualified Financing Agreements or the Acquisition Agreements executed by the Lender, the Company shall promptly issue and deliver to the Lender:

- (a)** a written and certified confirmation for the amount of Conversion Shares issuable upon such conversion of the Loan; and
- (b)** a capitalization table that reflects the number of the Fully Diluted Shares as of the Conversion Time certified as accurate and complete by a member of the board of the Company. Such conversion shall be deemed to have been made in the case of:
  - (i)** conversion pursuant to clause 5, as of the close of business on the Maturity Date or such earlier or later date as mutually agreeable to the Company and the Lender;
  - (ii)** a Qualified Financing, simultaneously with the completion of the initial closing of the Qualified Financing; and
  - (iii)** an Acquisition, immediately prior to the closing of such Acquisition,

(in each case, the **Conversion Time**).

**8.2** No fractional Conversion Shares shall be issued in connection with any conversion of the Loan, and any fractional shall be rounded up or down to the nearest whole share in lieu of any such fraction (and any fraction representing one-half of a share shall be rounded up). The issuance of Conversion Shares to the Lender upon conversion of the Loan in accordance with its terms shall constitute satisfaction in full of the obligations of the Company under such Loan.

**8.3** The Company shall ensure that prior to the conversion of the Loan and interest in Conversion Shares, a deed of adherence to the Company's shareholders agreement, as amended from time to time, shall be executed by the Company, each shareholder of the Company and the Lender, whereby the Lender will adhere to rights and obligations of a shareholder, investor and holder of shares of the most senior class then in issue.



## **9 Default**

From the date of an Event of Default, the Loan shall bear interest at the Default Rate, until paid in full or converted.

Upon the occurrence of any Event of Default under (i) or (ii) and at any time thereafter during the continuance of such Event of Default, the Lender may by written notice to the Company, declare the Principal and any accrued interest thereon payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of default (*ingebrekestelling*) of any kind.

Upon the occurrence of any Event of Default under (iii), the Principal and any accrued interest thereon payable by the Company hereunder shall become immediately due and payable without presentment, demand, protest or any other notice of default (*ingebrekestelling*) of any kind.

## **10 Representations and warranties**

**10.1** The Company hereby represents and warrants to the Lender as follows:

- (a)** the Company is a company duly incorporated and in good standing under the laws of [the Netherlands];
- (b)** the Company is not in violation of or in default under its articles of association or any material judgment, order, writ, decree, statute, rule, or regulation that is applicable to the Company or any material instrument, or contract to which the Company is a party;
- (c)** the Company's fully diluted share capital is included in the capitalization table as included in Annex A;
- (d)** all corporate actions on the part of the Company, its directors and shareholders necessary for the authorization, sale, issuance and delivery of this Loan and the exclusion of pre-emptive rights upon Conversion have been taken as per the resolutions in Annex B;
- (e)** the Company's balance sheet as included in Annex C includes all debts of the Company as of the date of this Agreement;
- (f)** the Company will take all corporate action necessary to ensure the Conversion Shares issued upon conversion of this Loan will, upon issuance, be duly authorized, validly issued and fully paid in accordance with the articles of association of the Company;

- (g)** this Agreement, when executed and delivered by the Company, shall constitute a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies;
- (h)** the execution and delivery of this Agreement does not violate any material judgment, order, decree, statute, rule, or regulation applicable to the company or violate any individual's mortgage, indenture, agreement, instrument, or contract to which the company is a party; and
- (i)** the Company has provided to the Lender any information which is material to a lender granting a (convertible) loan to the Company, and that this information is true, accurate and not misleading.

## **11 Covenants**

**11.1** As long as the Company has any outstanding obligations vis-a-vis the Lender pursuant to this Agreement, the Company shall not directly or indirectly take any of the following actions without the prior written consent of the Lender:

- (a)** pay or declare any dividend or make any distribution on Shares or redeem any Shares;
- (b)** grant a right of pledge on, sell or otherwise transfer or encumber a material part of the assets of the Company; or
- (c)** enter into a legal merger, de-merger, dissolution or liquidation, full cessation or cessation of an essential part of the business of the Company or the transfer thereof abroad.

**11.2** As long as the Company has any outstanding obligations vis-a-vis the Lender pursuant to this Agreement:

- (a)** the Company shall as soon as these are available, and in any event within 6 months following the end of the financial year, provide the Lender with a copy of its financial statements, including a balance sheet, profit- and loss account and explanatory notes in respect of said financial year;

- (b)** the Company shall inform the Lender immediately once an (i) amendment of its articles of association or (ii) an issuance of Shares has been effectuated; and
- (c)** the Company shall upon request of the Lender provide the Lender with all information the Lender reasonably requires from time to time, including a monthly KPI and financial report in a form to be agreed upon between the Company and the Lender.

The Lender agrees to customary confidentiality provisions for any such information.

## **12 Confidentiality**

All Parties shall treat as confidential all information regarding this Agreement.

## **13 Subordination**

The Lender hereby subordinate any right to receive any payment with respect to this Agreement, together with accrued interest or compensation, to the prior payment or provision for payment in full of all claims of all present and future creditors of the Company arising out of any matter occurring prior to the Maturity Date, except for claims which are the subject of subordination agreements which rank on the same priority as or are junior to the claims of the Lender under this Agreement.

## **14 Miscellaneous**

- 14.1** A Party may not assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other Parties.
- 14.2** Any and all variations, amendments, modifications, supplements, deletions or replacements to this Agreement can only be validly made and shall only come into force only when agreed upon in writing and duly signed by all Parties hereto.
- 14.3** In the event that any of the provisions contained herein shall be deemed invalid or unenforceable, then the remaining provisions shall be construed as if such invalid or unenforceable provisions were not contained herein and such invalid and unenforceable provision shall then be deemed to have been replaced by a provision which as closely as possible meets the intention of the Parties when inserting the original provision.
- 14.4** Each party shall be responsible for its own costs and expenses incurred in connection with the transactions contemplated hereby.

**15 Governing law and jurisdiction**

**15.1** This Agreement is governed exclusively by and construed in accordance with the laws of The Netherlands.

**15.2** Any dispute arising out of - or in connection with - this Agreement and/or any agreement arising out of this Agreement, shall be finally settled by the competent court of Amsterdam, The Netherlands.

*signature page to follow*

Convertible Loan Agreement  
Peak Capital - Fundathon  
[date]

Thus agreed and signed at [city] on [date]

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[A Peak Capital Fund]  
It's director:

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[A Peak Capital Fund]  
It's director:

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[Company]  
It's director:

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[Company]  
It's director:

Convertible Loan Agreement  
Peak Capital - Fundathon  
[date]

**Annex A: Capitalization table of the Company**

Convertible Loan Agreement  
Peak Capital - Fundathon  
[date]

## **Annex B: Shareholders' and Board Resolutions**

Convertible Loan Agreement  
Peak Capital - Fundathon  
[date]

**Annex C: Company's Balance Sheet as per [date]**