

# **CONVERTIBLE LOAN TERM SHEET TEMPLATE**

*This Convertible Loan Term Sheet Template is a template realized on the initiative of ESIL2. This document should be considered as a starting point for negotiations and should be adapted to the specific needs of the intended deal. It is therefore a generalized document and cannot contain all elements that are of importance in specific situations. The formulation will not be relevant or optimal in certain cases. Each investor and entrepreneur remains fully responsible for the structuring of the transaction. Neither ESIL2, nor their consortium partners can be held accountable for any issues, faults, or deficiencies in the structuring of specific dossiers that would result from the usage of this Convertible Loan Term Sheet template.*



**In collaboration with:**



# CONVERTIBLE LOAN TERM SHEET

This Convertible Loan term sheet (“**Term Sheet**”) summarizes the principal terms of the convertible loan agreement (the “**Loan**”) to be entered into between the Company and the Lenders (each as defined below) (the “**Financing**”).

This Term Sheet is for discussion purposes only, and with the exception of the provisions on “Confidentiality”, “Costs” and “Applicable law and jurisdiction” none of the terms of this Term Sheet shall be binding.

<u>TERM SHEET</u>	
PARTIES	
1. Company	[●], a [●] company duly incorporated and validly existing under the laws of [COUNTRY], having its office at [ADDRESS] and registered with the [NAME REGISTRATION OFFICE] under number [●] ;
2. Lenders	1) [NAME], born in [CITY], on [DATE], with national number [●] and domiciled at [ADDRESS] (“ <b>Lender 1</b> ”); 2) [NAME], born in [CITY], on [DATE], with national number [●] and domiciled at [ADDRESS] (“ <b>Lender 2</b> ”) 3) [NAME], a company duly incorporated and validly existing under the laws of [COUNTRY], having its office at [ADDRESS] and registered with the [NAME REGISTRATION OFFICE] under number [●] (“ <b>Lender 3</b> ”  “ <b>Lender 1</b> ”, “ <b>Lender 2</b> ” and “ <b>Lender 3</b> ” collectively, the “ <b>Lenders</b> ” and, each of them individually, also “ <b>Lender</b> ”).
3. Closing Date	[TARGET DATE], or as soon as practicable possible following the signing of this Term Sheet.
4. Loan Amount:	At the Closing Date, subject to the conditions set forth in this Term Sheet and execution of a definitive convertible loan agreement (the “ <b>Convertible Loan Agreement</b> ”), the Company shall incur the Loan in an aggregate principal amount of [●] (the “ <b>Loan Amount</b> ”). The Lenders shall participate in the Loan Amount as follows:  [TO BE COMPLETED]
5. Transaction structure	The Loan Amount shall be paid in full by the Lenders to the Company on the Closing Date.  [OR] <sup>1</sup>

<sup>1</sup> Parties may agree that the Loan Amount will be paid in full on the Closing Date. Alternatively, they may agree that the Loan Amount will be made available to the Company in tranches.

In early-stage investments, investors generally seek to limit their risk as much as possible. Providing the Loan Amount in multiple instalments is one way to achieve this. Upon signing the loan, a first tranche is typically released. The release of subsequent tranches then depends on the achievement of milestones agreed upon by the parties.

The Loan Amount will be drawn in [three] instalments (Lenders will lend their *pro rata* of the relevant Tranche), as follows:

- A first tranche of EUR [●] at Closing Date upon the satisfaction of customary conditions, including, among others, the conditions described in "Conditions to Closing" below (the "**First Tranche**").
- A second tranche of EUR [●] (the "**Second Tranche**") will be released once the Company achieves the development milestones in Exhibit 1 ("**Second Development Milestones**") by [●] ("**Second Tranche Long Stop Date**"), as determined by the Board. This is subject to (i) written consent from Lenders holding at least [66.66]% of the outstanding loan principal ("**Requisite Lenders**"), granted at their discretion, and (ii) fulfillment of standard closing conditions, including confirmation that no material adverse effect has occurred or is expected regarding the Company's business, assets, liabilities, financial condition, property, prospects, or operations, which may only be established or waived by the Requisite Lenders.
- A third tranche (the "**Third Tranche**") for the remaining amount will be released when the Company achieves the milestones in Exhibit 1 (the "**Third Development Milestones**"), no later than [●] ("**Third Tranche Long Stop Date**"), as determined by the Board. This is subject to (i) written consent from the Requisite Lenders, at their discretion, and (ii) satisfaction of other standard closing conditions, including confirmation that no material adverse effect has occurred or is expected, unless waived by the Requisite Lenders.

If the Second or Third Development Milestones are not met by their respective Long Stop Dates, the Requisite Lenders may choose to waive these milestones as conditions for drawing the Second or Third Tranche, in full or in part, with optional new or revised milestones. If a milestone is waived and the Board decides to draw the relevant tranche, all Lenders must provide their *pro rata* share under the waiver's conditions. Additionally, any participating Lender has the right to contribute *pro rata* to portions of the Loan Amount not provided by other Lenders at tranche closing.

The closing of the Second Tranche and the Third Tranche (each a "**Tranche Closing**"), will occur no less than ten (10) nor more than thirty (30) business days after the later to occur of (i) election by the Board to draw such Tranche and (ii) the written consent of the Requisite Lenders to lend such Tranche.

6. Interest	The outstanding Loan Amount shall generate a simple, [non-compounding] <sup>2</sup> gross interest at a rate per annum equal to [8%] <sup>3</sup> (the “Interest”). The Interest will be calculated on the basis of a 365-day year and shall be calculated as of Closing Date until either the date of repayment in accordance or the date of conversion on the basis of the number of days actually lapsed. The Interest shall accrue on a daily basis.
7. Use of proceeds	Proceeds from the Financing contemplated by this Term Sheet will be used by the Company exclusively for the development and operations of the Company, with a focus on [●], in accordance with the business plan and the budget to be agreed prior to Closing (the “Business Plan and Budget”).
8. Maturity	The Loan Amount (together with the Interest) is due and payable at the earlier of (i) [twelve (12)] months from Closing or (ii) an Exit OR on [DATE] (the “Maturity Date”) unless converted in accordance with the principal terms below. The Maturity Date can be extended upon proposal by the Company with the written consent of the Requisite Lenders.
9. Event of Default	<p>If an Event of Default (as defined below) happens and continues, the Lenders, with approval from the Requisite Lenders, may notify the Company to: (i) cancel any undrawn portion of the Second or Third Tranche, stopping future drawdowns; (ii) demand immediate repayment of all outstanding loan amounts, interest, and related sums; (iii) exercise their rights under the Convertible Loan Agreement and the law; and/or (iv) convert unpaid principal and interest into shares.</p> <p>“Event of Default” means (a) non-payment by the Company of any amounts due under the Loan which is not cured within ten (10) business days following notice thereof by the Lenders, (b) a material default by the Company under the Convertible Loan Agreement which is not cured within [twenty (20)] business days following notice thereof by the Lenders, (c) the Company is not able to pay its obligations and liabilities in the ordinary course, (d) the Company defaults or is in breach of payment terms on any liability or obligation (other than those being contested in good faith) with a value in excess of EUR [●], or (e) the Company is declared bankrupt or any bankruptcy proceedings are lodged against the Company, suspension of payments of the Company, dissolution, liquidation or winding up of the Company or any analogous procedure affecting the rights of the Lenders generally or any corporate action, legal proceedings or other procedure or step is taken in relation to any of the foregoing.</p>

<sup>2</sup> Parties can choose whether the outstanding Loan Amount will generate compounding or non-compounding interest.

<sup>3</sup> The market practice interest rate typically ranges from 5% to 8%. A lower rate is possible, provided it remains market-based. In some jurisdictions, interest-free loans or loans with non-market interest rates may have tax consequences. Interest rates of up to 10-12% can occur but are uncommon.

10. No prepayment	The Company is not entitled to prepay the Loan, in whole or in part, without the prior approval of the [Requisite] Lenders. <sup>4</sup>
11. [Automatic Conversion] <sup>5</sup>	<p>Upon the occurrence of a Qualified Financing (as defined below) prior to the Maturity Date, the Lenders shall be obliged 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 (on a fully diluted basis) applied in the Qualified Financing minus a [●]% discount<sup>6</sup> (the “<b>Qualified Financing Conversion Price</b>”).</p> <p>The number of shares of the Company to be issued to the Lenders shall be equal to:</p> $\frac{[the\ Loan\ Amount\ and\ Interest]}{[the\ Qualified\ Financing\ Conversion\ Price]}$ <p>A “<b>Qualified Financing</b>” shall mean an equity investment (excluding any other 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 [external]<sup>7</sup> investors with no less than EUR [●] proceeds to the Company.]</p>
12. Voluntary Conversion upon a Non-Qualified Financing	<p>Upon the occurrence of a Non-Qualified Financing (as defined below) prior to the Maturity Date, the Lenders shall be entitled 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 (on a fully diluted basis) applied in the Non-Qualified Financing minus a [●]% discount<sup>8</sup> (the “<b>Non-Qualified Financing Conversion Price</b>”).</p> <p>The number of shares of the Company to be issued to the Lenders shall be equal to:</p> $\frac{[the\ Loan\ Amount\ and\ Interest]}{[the\ Non-Qualified\ Financing\ Conversion\ Price]}$ <p>A “<b>Non-Qualified Financing</b>” shall mean an equity investment (excluding any other loans or any other form of mezzanine financing or convertible debt instruments) which does not constitute a Qualified Financing.</p>

<sup>4</sup> To be discussed among parties whether the Lenders or the Requisite Lenders should approve a prepayment by the Company.

<sup>5</sup> Article 11 does not appear to be in the Business Angels’ favour, but it is common in a convertible loan agreement to provide for automatic conversion. We have therefore included this clause as a possible option. It is up to the parties to determine, on a deal-by-deal basis, whether automatic conversion is desirable.

<sup>6</sup> Market practice indicates discounts ranging from 10% to 30%.

<sup>7</sup> Parties can choose whether (a) current shareholder(s) can also invest.

<sup>8</sup> Market practice indicates discounts ranging from 10% to 30%.

<p>13. Voluntary Conversion upon the occurrence of an Exit</p>	<p>Upon the occurrence of an Exit (as defined below) prior to the Maturity Date, the Lenders shall immediately prior to such Exit have the right to convert into the most senior class of shares outstanding at the moment of the Exit, and such at the valuation applied in the Exit minus a [●]% discount<sup>9</sup> (the “<b>Exit Conversion Price</b>”).</p> <p>The number of shares of the Company to be issued to the Lenders shall be equal (the “<b>Exit Conversion Shares</b>”):</p> $\frac{[the\ Loan\ Amount\ and\ Interest]}{[the\ Exit\ Conversion\ Price]}$ <p>An “<b>Exit</b>” shall mean (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 or IP 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.</p> <p>In the event that a Lender elects not to exercise its right at the occurrence of an Exit, such right shall lapse and the Exit shall constitute an Early Repayment Event (as defined below).</p>
<p>14. Conversion upon the Maturity Date</p>	<p>In the event no Qualified Financing and no Exit has occurred prior to the Maturity Date, the Lenders shall have the 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 (on a fully diluted basis) of the shares in the Company.</p> <p>The number of shares of the Company to be issued to the Lenders shall be equal to:</p> $\frac{[the\ Loan\ Amount\ and\ Interest]}{[the\ Fair\ Market\ Value]}$ <p>The “<b>Fair Market Value</b>” 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. 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.</p> <p>In the event that a Lender elects not to exercise its right at the occurrence of the Maturity Date, such right shall lapse and the Loan shall be repaid by the Company.</p>
<p>15. Early repayment</p>	<p>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 Lenders.</p>

<sup>9</sup> Same as 7: discounts range from 10-30%.

	<p>An “<b>Early Repayment Event</b>” means in any event the occurrence of any of the following:</p> <p>(i) the Company ceases its business operations; or</p> <p>(ii) the Company fails to observe or perform any of its material obligations under the Convertible Loan 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</p> <p>(iii) manifestly wrongful, deceptive or fraudulent management of the Company; or</p> <p>(iv) any of the following occurs in respect of the Company:</p> <p>(a) an order for its winding-up, administration, dissolution or reorganization (by way of voluntary arrangement or otherwise) is made;</p> <p>(b) an Exit whereby a Lender did not exercise its exit conversion right; or</p> <p>(c) any liquidator, judicial custodian, or similar officer is appointed in respect of it.</p>
16. Covenants	For as long as any Loan Amount remains outstanding, the Company shall not, without the Lenders’ prior approval, make any distribution to its shareholders, nor dispose of its assets other than in the ordinary course of business.
17. Information rights	The Company will provide the Lenders with financial and operating information about the Company, such as monthly reporting on financial/business KPIs and annual impact report, audited accounts and an agreed annual budget, as well as other information reasonably requested by the Lenders without unreasonably burdening management.
18. Confidentiality	This Term Sheet, as well as the discussions with regard to this Term Sheet, are strictly confidential and will be treated as such by the parties. Unless with the prior approval of all other parties, the parties shall not communicate the Term Sheet and related discussions, fully or partially, in written, orally or in any other way to a third party, other than to its advisors.
19. Transfer restrictions	No party may transfer or assign any of its rights or obligations under this Term Sheet or the Convertible Loan Agreement to any third party without the prior, written and explicit consent of the other parties, which consent cannot unreasonably be withheld.
20. Convertible Loan Agreement	The Financing shall be made pursuant to a Convertible Loan Agreement to be prepared by the Company and acceptable to the Lenders.

21. Cost – Legal fees	Each party will bear its own costs in relation to the Term Sheet [and the convertible loan agreement], [it being understood that the Company will reimburse the Lenders for external legal advisors for up to EUR [AMOUNT] (VAT excluded).]
22. Conditions to Closing	<p>Any obligation on the part of the Lenders is subject to the following conditions precedent:</p> <ol style="list-style-type: none"> <li>1. Completion of legal documentation, in a form satisfactory to the Company and the prospective Lenders.</li> <li>2. Obtaining the required corporate approvals by the Lenders and the Company.</li> <li>3. Approval by the shareholders' meeting of the Company of the Convertible Loan Agreement and the issuance by the Company of new shares conditional upon conversion of the loans pursuant to the terms of the Convertible Loan Agreement.</li> <li>4. Board to prepare initial business plan and [twelve (12)] month budget and approval of Business Plan and Budget by the Lenders.</li> <li>5. A copy of the shareholders' agreement of the Company.</li> <li>6. A copy of the deed of incorporation and the (coordinated) articles of association of the Company.</li> <li>7. Satisfactory searches in the National central solvency register in relation to the Company.</li> </ol>
23. Governing Law and Jurisdiction	<p>This Term Sheet and all other agreements entered into on the basis of this Term Sheet shall be subject to [COUNTRY] law.</p> <p>Disputes will be settled amicably as much as possible. If the parties fail to reach an amicable settlement, a mediator will be appointed no later than two months after the dispute has arisen. If no mediator is appointed within two months or if the mediation does not lead to an agreement within two months of appointment, the disputes will be definitively settled by means of arbitration via an independent arbitration procedure (shareholders' lawyers led by an independent lawyer to be appointed by them, the costs of which will be shared among all).<sup>10</sup></p> <p>The aforementioned does not affect the Parties' right to claim temporary measures from the President of the Enterprise Court where the registered office of the Company is located or any other competent court .</p>

<sup>10</sup> As an alternative to arbitration, the Parties may identify the court having exclusive jurisdiction to decide any dispute relating to this Term Sheet.

Parties agree that (i) electronic signatures which qualify as an advanced or a qualified e-signature under the eIDAS Regulation (Regulation (EU) N°910/2014) or (ii) scan copies of duly signed counterpart signature pages to this Term Sheet transmitted by email in .pdf format, will have the same probative value as a wet ink original paper document bearing a manually signed signature.

**The Company**

Party	Signature
<p>Name:</p> <p>Title:</p>	
<p>Name:</p> <p>Title:</p>	

**The Lenders**

Party	Signature
<p><b>[TO BE COMPLETED]</b></p> <p>Name:</p> <p>Title:</p> <p>Name:</p> <p>Title:</p>	
<p><b>[TO BE COMPLETED]</b></p>	

Party	Signature
Name:  Title:  Name:  Title:	

**EXHIBIT 1 – DEVELOPMENT MILESTONES**