
CONVERTIBLE LOAN AGREEMENT

by and between

SOM INNOVATION BIOTECH, S.A.

and

[LENDER]

Barcelona, [date]

**Baker
McKenzie.**

Baker McKenzie Madrid, S.L.P.
C/ José Ortega y Gasset, 29
28006 Madrid
Spain
www.bakermckenzie.com

CONVERTIBLE LOAN AGREEMENT

This Agreement is made in Barcelona, on [date]

BY AND AMONG

On the one part,

- (1) **SOM Innovation Biotech, S.A.**, a company duly incorporated and existing under the laws of the Kingdom of Spain, having its registered office at calle Baldiri Reixac, 4, 08028 Barcelona, with Tax Identification Number A-65243016 and registered with the Commercial Registry of Barcelona under Volume 46,564, Page 200 and Sheet B-392808 (the "**Company**").

The Company is duly represented hereby by Mr. Raúl Insa Boronat, of legal age, with National Identity Card number 74084450-R, by virtue of power of attorney.

On the other part,

- (2) [**LENDER**], a company duly incorporated and existing under the laws of [place], having its registered office at [registered office address], with Tax Identification Number [tax ID number] and registered with [registration details] (the "**Lender**").

The Lender is duly represented hereby by Ms./Mr. [complete name and surnames], of legal age, with National Identity Card/Passport number [number], by virtue of [details of the document evidencing the representative's authority].]

OR¹

[Ms./Mr. [complete name and surnames], of legal age, with National Identity Card/Passport number [number], having its domicile in [address] and acting on [his/her] own name and behalf (the "**Lender**")]

The Company and the Lender shall be hereinafter jointly referred to as the "**Parties**" and each of them individually as a "**Party**".

RECITALS

- A. The Company is a Spanish-based biotechnology company whose main activities refer to the research, development, protection and exploitation of new indications or uses of drugs, including new chemical products and structures.
- B. The Company's share capital amounts to EUR 522,137.77 and is represented by 52,213,777 shares, each of the same class and series, with a par value of EUR 0.01 and numbered correlatively from 1 to 52,213,777, both inclusive (the "**Shares**").
- C. The Company is interested in attracting additional funds in order to accelerate its development

¹ **Note:** One or the other.

and, thus, maximize its potential growth. In this regard, the Company is analyzing the possibility of conducting an initial public offering of its shares in conjunction with their admission to trading on a stock exchange (the "IPO").

- D. The Lender is willing to provide funding to the Company by means of the execution of a convertible loan agreement, that shall allow the Lender to acquire Company's shares under the terms and conditions set out in this Agreement.

Based upon the foregoing, the Parties have agreed to enter into this convertible loan agreement (the "Agreement") pursuant to the following:

CLAUSES

1. THE LOAN

1.1 Granting and purpose

Subject to the terms of this Agreement, the Lender hereby grants the Company, who accepts, a convertible loan in the amount of EUR [•] (the "**Principal**"), which shall necessarily convert into Company's shares as set out in this Agreement (the "**Loan**").

The Lender shall apply the Principal towards funding the Company's operations and growth, including any expenses arising from the preparation towards the IPO.

1.2 Disbursement

The Principal shall be paid by the Lender to the Company in cash, no later than 5 Business Days following the date hereof (the "**Disbursement Date**"). Payment of the Principal shall be made by way of direct transfer of immediately available funds, net of any charges or commissions, to the Company's bank account at CaixaBank, S.A., with IBAN number ES62.2100.397.8902.0022.5355 and BIC/SWIFT CAIXAESCCXXX (the "**Company's Account**").

Subject to the receipt of the Principal in the Company's Account at the Disbursement Date, the Company shall discharge and serve the Lender in writing with full payment statement (*carta de pago*) for the payment of the Principal.

1.3 Necessarily convertible loan

The Loan is agreed as necessary and compulsorily convertible in new shares of the Company, to be subscribed and disbursed by the Lender by means of a capital increase for compensation of credits of the Company (*aumento de capital por compensación de créditos*) in accordance with the provisions of this Agreement (the "**Capital Increase**").

The Parties hereby acknowledge and agree to waive any right to request a cash repayment of the Loan, as it shall always be repaid by means of the Capital Increase.

1.4 Profit participation loan

The Parties agree that the Loan shall qualify as a profit participating loan (*préstamo participativo*), as regulated under Section 20.1 of Royal Decree-Law 7/1996, of 7 June 1996, on Urgent Measures on Tax issues and on the Promotion and Freedom of Economic Activities (*Real Decreto-Ley 7/1996, de 7 de junio, sobre medidas urgentes de carácter fiscal y de fomento y liberalización de la actividad económica*). Consequently:

- (a) the Loan will be considered as Company's net equity for the purposes of corporate thin capitalization rules; and
- (b) in the event of liquidation of (or an insolvency proceeding on) the Company, the Loan will rank below the senior secured creditors and the senior unsecured creditors of the Company, *pari passu* with the Company's junior creditors and, in any case, ahead of the Company's share capital.

The Parties agree that, should any of the clauses of this Agreement prevent it from qualifying as a profit participation loan (*préstamo participativo*) in the sense of the aforementioned Royal Decree-Law, such clauses (and if needed, the whole Agreement) shall be reinterpreted in a manner that it meets the requirements set out in the aforementioned Royal Decree-Law, to the extent that such reinterpretation does not contravene the Parties' original intention.

2. INTEREST

2.1 Fixed Interest

The applicable fixed interest to the Principal shall be an annually accrued fixed rate of 8% (the "**Fixed Interest**"), which shall be calculated based on a 360 days year and shall be due and payable on the Maturity Date (as defined in clause 3 below).

The Fixed Interest shall be added to the Principal and considered for the purposes of capitalizing the Loan, excluding any withholding tax to be applied to the Fixed Interest.

2.2 Variable Interest

In the event that the Company's net income for any financial year before the Maturity Date exceeds EUR 2,000,000, the Principal shall accrue an additional variable interest of 2% (the "**Variable Interest**"), which shall be calculated based on a 360 days' year and shall be due and payable on the Maturity Date. For the avoidance of doubt, the Variable Interest will amount to 0% in the event that the net income does not exceed EUR 2,000,000.

The Variable Interest shall be added to the Principal and the Fixed Interest, and considered for the purposes of capitalizing the Loan, excluding any withholding tax to be applied to the Variable Interest.

For the purposes of this clause, "**net income**" shall mean the annual surplus shown in the profit-and-loss statement of the Company (before deduction of the estimated applicable taxes) according to the audited financial statements of the Company.

The Fixed Interest and the Variable Interest shall be hereinafter jointly referred to as the "**Interest**". The sum of Principal and Interest shall be hereinafter jointly referred to as the "**Loan Amount**".

3. MATURITY DATE

The Loan shall be repaid in a single act by means of its conversion into share capital of the Company (in accordance with the provisions of clause 4 below) upon the earlier of:

- (a) 31st December 2022 (the "**Maturity Date**"); or
- (b) the occurrence of a Liquidity Event (as this term is defined in clause 4.2 below) as provided and in accordance with clause 4.3 below.

4. CONVERSION OF THE LOAN

4.1 Conversion at Maturity Date

If the Maturity Date is reached without the prior occurrence of a Liquidity Event (as defined in clause 4.2 below), and the Loan has not been converted earlier by mutual agreement of the Parties, the Loan Amount shall be fully capitalized through the subscription of shares of the Company of the most senior class and series of shares existing in the Company at the time of conversion (the "**Conversion at Maturity**").

The Parties agree that the specific number of shares of the Company which shall be subscribed by the Lender upon Conversion at Maturity shall be determined on the basis of the price per share resulting from applying a 20% discount over a fixed pre-money valuation of the Company of EUR 100,000,000². If the conversion formula results in any fractional share, said calculation shall be rounded down to the nearest whole share.

This pre-money valuation has been determined by taking into account the last capital increase approved by the Company, as increased by the public subsidies (cash revenues) granted to the Company.

4.2 Conversion at Liquidity Event

For the purposes of this Agreement, a "**Liquidity Event**" shall mean one of the following events taking place before the Maturity Date:

- (a) the IPO;
- (b) the sale or transfer to a third party of all the shares or assets in the Company; or
- (c) a *bona fide* equity financing negotiated at arm's length for capital raising purposes that includes the sale of shares of the Company in one transaction or series of related transactions to any venture capital, institutional or other investor(s) (an "**Investment Round**") which result in gross proceeds to the Company of at least EUR 20,000,000³.

The Loan shall be automatically and fully capitalized prior to the execution of the Liquidity Event, through the subscription of shares of the Company of the most senior class and series of shares existing in the Company at the time of conversion (the "**Conversion at Liquidity Event**"). For such purposes, the Company hereby undertakes to promptly notify the Lender upon the envisaged execution of a Liquidity Event (the "**Conversion Notice**").

The Parties agree that the specific number of shares of the Company which shall be subscribed by the Lender upon Conversion at Liquidity Event shall be determined on the basis of the price per share resulting from applying a 20% discount over the pre-money valuation of the Company taken at the relevant Liquidity Event.

As an exception to the above, in the event that an Investment Round is executed within the context and ahead of the IPO on the basis of a price per share involving more than a 20% discount over the pre-money valuation expected at such IPO (the "**Crossover Investment**"), the Parties agree that the specific number of shares of the Company which shall be subscribed by the Lender upon Conversion at the IPO shall be determined on the basis of the price per share resulting from applying an additional 5% discount over the valuation of the Company taken for the Crossover Investment.

If the conversion formula upon Conversion at Liquidity Event results in any fractional share, said calculation shall be rounded down to the nearest whole share.

² **Note:** To be determined.

³ **Note:** To be determined.

4.3 Capitalization mechanism

The Loan shall, without exception, be capitalized through the conversion of the Loan Amount (excluding any withholding tax to be applied to the Interest) into Company's shares by means of the Capital Increase. In this regard, either upon the Conversion at Maturity or the Conversion at Liquidity Event, the Loan shall automatically become due and payable (*líquido, vencido y exigible*).

The Company's management body shall meet within five Business Days after the Maturity Date or the date when the Conversion Notice is provided to the Lender, as the case may be, in order to approve the director's report required for the Capital Increase by Section 301.2 of the Spanish Corporate Act (*Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*), which shall also include the mandatory certificate by the Company's auditor.

The Shareholders' Meeting of the Company shall approve the Capital Increase within ten Business Days since the date when the director's report has been made available to the Company's shareholders.

The Lender hereby irrevocably accepts the capitalization of the Loan pursuant to the provisions of this Agreement, and therefore the capitalization shall be made automatically and simultaneously (*en unidad de acto*) with the Capital Increase. Notwithstanding the above, the Lender hereby undertakes to carry out whichever acts are necessary or convenient for the execution of the Capital Increase, including but not limited to signing, granting and subscribing as many public deeds or private documents as necessary to declare the maturity of the Loan as set out in this Agreement.

Once the corporate resolutions for the Capital Increase have been adopted and documented, the Company shall proceed to file the relevant public deed/s for registration with the Commercial Registry.

5. REPRESENTATIONS AND WARRANTIES

5.1 Essential nature

The Parties acknowledge and agree that this Loan is granted on the basis of the representations and warranties represented by each Party under clauses 5.2 (the "**Company's Warranties**") and 5.3 (the "**Lender's Warranties**") below. For the purposes of this clause, the Company's Warranties and the Lender's Warranties shall be jointly referred to as the "**Warranties**".

The Warranties jointly constitute an essential element of this Agreement, and have been decisive for its execution and the consent given by the Company and the Lender, as the case may be. For this purpose, each Party expressly states that each of the relevant Company's Warranties or Lender's Warranties, as the case may be, is correct and truthful in all its extremes, without the omitted facts, acts or circumstances that could affect its accuracy, veracity or reliability.

5.2 Company's Warranties

The Company represents and warrants to the Lender that each of the statements set out in this clause 5.2 is true, complete, accurate and not misleading as of the date of this Agreement.

- (a) The Company has full legal capacity and authority to execute and perform this Agreement and carry out the transactions contemplated hereby, and this Agreement constitutes valid and binding obligations of the Company, enforceable in accordance with its terms and conditions. The signatory of this Agreement by the Company has been duly authorized and is able to bind the Company in relation to this Agreement.

- (b) The execution of this Agreement by the Company, and compliance with its terms, shall not breach or constitute a default under the Company's bylaws or any other agreement, authorisation, corporate resolution, instrument or law to which the Company is a party or by which the Company is bound, or any order, judgement, decree or other restriction applicable to the Company.
- (c) The Company is not subject to any situation of insolvency and has not been declared insolvent (*en concurso*) or subject to or bound by any analogous procedure. So far as the Company is aware, no action or request is pending to declare the Company insolvent (or subject to or bound by any analogous procedure) or to make it subject to any proceeding contemplated by any insolvency (or analogous) law.

5.3 Lender's Warranties

The Lender represents and warrants to the Company that each of the statements set out in this clause 5.3 is true, complete, accurate and not misleading as of the date of this Agreement.

- (a) The Lender has full legal capacity and authority to execute and perform this Agreement and carry out the transactions contemplated hereby, and this Agreement constitutes valid and binding obligations of the Lender, enforceable in accordance with its terms and conditions. The signatories of this Agreement by the Lender have been duly authorized and are able to bind the Lender in relation to this Agreement.
- (b) The execution of this Agreement by the Lender, and compliance with its terms, shall not breach or constitute a default under the Lender's bylaws (if applicable) or any other agreement, authorisation, corporate resolution, instrument or law to which the Lender is a party or by which the Lender is bound, or any order, judgement, decree or other restriction applicable to the Lender.
- (c) The Lender is not subject to any situation of insolvency and has not been declared insolvent (*en concurso*) or subject to or bound by any analogous procedure. So far as the Lender is aware, no action or request is pending to declare the Lender insolvent (or subject to or bound by any analogous procedure) or to make it subject to any proceeding contemplated by any insolvency (or analogous) law.
- (d) The Lender has and will continue to have all necessary funds and financial capacity required to comply with its obligations under this Agreement including, in particular, the payment of the Principal on the Disbursement Date.
- (e) The Lender complies with all the applicable laws and regulations regarding the prevention of money laundering and terrorist financing.
- (f) The Lender has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the Loan with the Company's management, and it has dedicated the reasonable external and internal resources to carry out a diligent analysis of the Company's business with experienced personal to understand and evaluate the information received from the Company.

6. ASSIGNMENT

Neither Party may assign its contractual position under this Agreement nor assign, transfer, subcontract, delegate, charge or otherwise deal in any other manner with this Agreement or any of its rights or obligations without the prior written consent of the other Party.

7. CONFIDENTIALITY

The Parties agree to keep confidential and not to disclose to any third party the existence and the terms of this Agreement and any document referred to herein, as well as any information exchanged by or on behalf of the Parties during the negotiation and pursuant to the terms and conditions of this Agreement, except to the extent required to comply with any applicable law or request issued by a court of competent jurisdiction or any governmental or regulatory authority (including any rules or regulations of any stock exchange to which a Party or the members of its group are subject) or to the extent required to complete any actions, perform any obligations or enforce any rights set forth in this Agreement.

Nothing in this Agreement shall prevent any Party from disclosing information regarded as confidential under the above paragraph to those of its employees, agents, representatives, consultants or advisers who need to know such information to enable them to advise on this Agreement and its implementation.

Any Party making a permitted disclosure under the above paragraph shall inform the recipient of the confidential nature of the information before disclosure and shall procure that such recipient complies with the obligations set out in this clause 7 in relation to any such information. In these cases, the disclosing Party shall, at all times, be held responsible for any breach of the obligations stated in this clause by its recipients.

The provisions of this clause 7 shall continue to apply after termination of this Agreement.

8. NOTICES

8.1 Giving notices

Save as otherwise provided in this Agreement or under any applicable mandatory law, all notices between the Parties in relation to this Agreement shall be in writing (including email) and in English language, signed by a duly authorized representative and sent to the relevant Party for the attention of the contact and to the address details specified in clause 8.2, by any means evidencing reception, which for the purposes of this Agreement shall include registered mail, burofax, overnight courier, email, notarial delivery and delivery by hand.

Save as otherwise provided in this Agreement, any notice shall take effect upon receipt and shall be deemed to have been received:

- (a) if delivered by registered mail or burofax, on the delivery date recorded by the postal office. In the event that the notice is rejected or cannot be delivered due to the absence of the addressee, the relevant delivery date will be the date when the notice delivery was first attempted, as recorded by the relevant postal office;
- (b) if delivered by overnight courier, on the delivery date recorded by the courier company. In the event that the notice is rejected or cannot be delivered due to the absence of the addressee, the relevant delivery date will be the date when the notice delivery was first attempted, as recorded by the relevant courier company;
- (c) if delivered by email, on the delivery date indicated in the electronic confirmation of delivery;
- (d) if delivered by notarial means, on the delivery date indicated by the relevant Notary Public or evidenced in the relevant notarial deed. In the event that the notice is rejected or cannot be delivered due to the absence of the addressee, the relevant delivery date will be the date when the notice delivery was first attempted, as evidenced in the relevant notarial deed; and
- (e) if delivered by hand, on the date of signature of a delivery receipt.

If deemed receipt under the previous paragraphs of this clause 8.1 would occur outside business hours (meaning 9.00 am to 7.00 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), receipt shall be deemed to occur at 9.00 am on the day when business next starts in the place of deemed receipt. For the purposes of this clause, all references to time are to local time in the place of deemed receipt.

8.2 Addressees

For the purposes of receiving notices, the Parties designate the following addresses, email addresses and contact names:

- (a) **The Company:**⁴
 - (i) address: [•]
 - (ii) for the attention of: [•]
 - (iii) email address: [•]
- (b) **The Lender:**
 - (i) address: [•]
 - (ii) for the attention of: [•]
 - (iii) email address: [•]

8.3 Change of address

Any Party may change its details for service of notices as specified in clause 8.2 above, provided that the relevant change is notified at least ten calendar days prior to the date on which the change is to have effect for the purposes of this Agreement.

9. GENERAL

9.1 Costs and expenses

Save as otherwise provided in this Agreement, each Party shall pay the costs and expenses incurred by it in connection with the preparation, negotiation, entering into and completion of this Agreement and the transactions herein envisaged.

9.2 Partial invalidity

If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby, and the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision and has the same or as similar as possible an effect on the transactions hereby contemplated as the original provision. If such modification is not possible, the relevant provision shall be deemed deleted and such deletion shall not affect the validity and enforceability of the remaining provisions of this Agreement.

9.3 Variation, waiver and consent

No variation of any provision of this Agreement shall be effective unless it is in writing and

⁴ *Note: Pending.*

signed by each of the Parties.

No waiver of any right or remedy under this Agreement or by law in respect of a breach or default hereunder shall be effective unless it is in writing and signed by the Party waiving compliance and any such waiver shall not be deemed a waiver of any subsequent breach or default.

Unless expressly agreed, no variation or waiver of any provision of this Agreement shall constitute a general variation or waiver of any provision of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement that have already accrued up to the date of variation or waiver, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied or waived.

A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

Any consent granted under this Agreement shall be effective only if given in writing and signed by the consenting Party and then only in the instance and for the purpose for which it was given.

9.4 Entire agreement

This Agreement together with any agreements or documents referred to in this Agreement or executed in connection with this Agreement constitute the entire agreement between the Parties with respect to their subject matter and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, understandings, negotiations and discussions between the Parties, whether written or oral, relating to their subject matter.

Nothing in this clause, nor in this Agreement generally, shall prevent any Party from benefiting from or enforcing any right or remedy available to it under the law for any matters not expressly considered herein. Nothing in this clause, nor in this Agreement generally, shall limit or exclude any liability for fraud.

9.5 Successors

This Agreement (and the documents referred to in it) are made for the benefit of the Parties and their successors and permitted assigns, and the rights and obligations of the Parties under this Agreement shall continue for the benefit of, and shall be binding on, their respective successors and permitted assigns.

9.6 Rights cumulative

The rights, remedies and powers of the Parties under this Agreement are cumulative and do not exclude any other rights, remedies or powers under the applicable law.

9.7 Time of the essence

Time shall be of the essence of this Agreement both with regard to any dates, times and periods mentioned and with regard to any dates, times and periods which may be substituted for them in accordance with this Agreement or by agreement in writing between the Parties, and there shall not be any grace or courtesy periods unless specifically agreed in writing by the Parties. Failure to comply with any such dates, times or periods shall be considered a breach of this Agreement without any prior interpellation or intimation being required.

For the purposes of this Agreement, "**Business Day**" means a day (other than a Saturday or

Sunday) on which banks are open for general business in Barcelona.

9.8 Counterparts

This Agreement may be signed in counterparts and all counterparts taken together constitute one and the same document. This Agreement will not be effective until each Party has executed at least one counterpart and delivered it to the other Party, either physically or by e-mail exchange

10. GOVERNING LAW AND JURISDICTION

10.1 Governing law

This Agreement shall be governed by and construed in accordance with the common laws of the Kingdom of Spain.

10.2 Jurisdiction

The Parties waive any other venue to which they may be entitled and submit to the exclusive jurisdiction of the courts of the city of Barcelona for any dispute that may arise, directly or indirectly, from this Agreement, particularly regarding its existence, validity, force, interpretation, fulfillment or termination.

IN WITNESS WHEREOF, the Parties execute this Agreement in counterparts and all counterparts taken together constitute one and the same document, on the date and place first above written.

SOM INNOVATION BIOTECH, S.A.

[LENDER]

By: Mr. Raúl Insa Boronat

By: [*signor's name*]