



Template convertible shareholder loan agreement

User notes

This is a simple convertible shareholder loan agreement intended to be used when a shareholder lends money to a company, generally as a form of *bridging finance* until an expected event takes place (e.g. the signing of a large commercial agreement or a capital raising round). The loan is to be drawn down on one date, is unsecured and is repayable and convertible (from the repayment date) at the company's discretion. Because the loan can be repaid or converted at the company's option, this convertible shareholder loan is effectively quasi-equity and is favourable to the company - depending on the interest rate and/or share conversion price. This loan agreement does not contain the lender-friendly provisions which would usually be included in loan agreements documenting loans from unrelated third parties.

Under New Zealand securities legislation, a company may not issue (or offer to issue) shares, options or other securities without providing detailed disclosure information to the new holders of those shares, options or other securities, unless the company is satisfied that an exclusion to the information disclosure requirements of the Financial Markets Conduct Act 2013 applies in relation to that offer or issue. Please see our *NZ securities law – tech company capital raising* guide under the capital raising section of the guides page of our website for an explanation of the relevant exclusions.

A company must ensure that an exclusion described in that guide applies before it offers to issue, or issues, shares.

using this template

The **User Notes** and the statements in the footer below (all marked in red) are included to assist in the preparation of this document. They are for reference only –you should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- ▲ the requested details need to be inserted
- ▲ there are different options for you to consider within a clause
- ▲ the whole clause is optional and you need to consider whether to include it, based on the company's circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and ensure that all square brackets have been deleted.

If you delete any clauses or schedules, remember to cross reference check the document.

CONVERTIBLE SHAREHOLDER LOAN AGREEMENT

DATE

PARTIES

- 1 **[User note: Use this description if the lender is a company.]** **[INSERT NAME OF COMPANY] LIMITED**, company number *[insert company number]* (Lender)

[User note: Use this description if the lender is an individual.] **[INSERT]** (Lender)

[User note: Use this description if the lender is a trust. Each trustee of the trust must be included as a party to and sign this agreement. Include here the name and address of each trustee of the trust.] **[INSERT]**, **[INSERT]** and **[INSERT]** as trustees of *[insert name of trust]* (together, the Lender)
- 2 **[User note: Use this description for the borrowing company.]** **[INSERT NAME OF COMPANY] LIMITED**, company number *[Insert company number]* (Company)

AGREEMENT

The Lender has agreed to provide to the Company a convertible loan on the terms set out in this Agreement.

SIGNED for and on behalf of **[INSERT**)
NAME OF COMPANY] LIMITED by:)

Signature of authorised signatory

Print full name of authorised signatory

[User note: Use the following signature block if the Lender is a company.]

SIGNED for and on behalf of **[INSERT**)
NAME OF COMPANY] LIMITED by:)

Signature of authorised signatory

Print full name of authorised signatory

[User note: Use the following signature block if the Lender is an individual.]

SIGNED by **[INSERT NAME OF**)
INDIVIDUAL]:)

Signature

[User note: Use the following signature block if the Lender is a trust. Each trustee of the trust must sign the agreement. Insert this signature block for each trustee.]

SIGNED by **[INSERT NAME OF**)
TRUSTEE] as trustee of the **[INSERT**)
NAME OF TRUST]:)

Signature of *[Insert name of trustee]*

TERMS OF THIS AGREEMENT

1 INTERPRETATION

1.1 **Definitions:** In this Agreement, unless the context requires otherwise:

Definition	Meaning
Agreement	this Agreement including any schedule attached to it.
Capital Raise	the issue by the Company of shares or other securities for capital raising purposes after the date of this Agreement, under which the Company raises not less than \$ <i>[insert]</i> .
Conversion	the conversion of an amount of the Loan into Shares under clause 4.
Conversion Date	the earlier of: <ul style="list-style-type: none"> ▲ the date of a Capital Raise; and ▲ the date that is [12] months after the date of this Agreement.
Conversion Notice	has the meaning given in clause 4.1.
Conversion Price	<ul style="list-style-type: none"> ▲ where no Capital Raise has occurred by the Conversion Date, <i>[insert price]</i> per Share; or ▲ where a Capital Raise has occurred by the Conversion Date, the lowest price per Share at which Shares or other securities in the Company were issued under the Capital Raise, less [20]%. <p><i>[User note: Consider carefully the rate at which the loan will convert. For example, if the loan is being made to provide bridging finance to the Company pending a capital raise, the shareholder may want the conversion price to be relatively low if the Company is not able to raise that capital.]</i></p>
Default Interest Rate	<i>[insert]</i> % per annum.
Drawdown Date	<i>[insert date]</i> or such other date as the parties agree.
Event of Default	has the meaning given in clause 8.1.
Interest Rate	<i>[insert]</i> % per annum.

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Loan	[\$ <i>insert amount of loan</i>] or the principal amount outstanding under that loan from time to time.
Purpose	[<i>insert purpose of Loan, i.e. what the Company is raising the loan for.</i>]
Repayment Date	[<i>insert date or description of date on which the Loan becomes repayable. E.g. the first anniversary of the date of this Agreement.</i>]
Shares	ordinary shares in the Company.

1.2 Interpretation:

- a A reference to:
 - i a **clause** or a **schedule** is to a clause in or a schedule to this Agreement;
 - ii a **person** includes a body corporate, an association of persons (whether corporate or not), a trust, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal personality;
 - iii **including** and similar words do not imply any limitation;
 - iv a **statute** includes references to that statute as amended or replaced from time to time;
 - v a **party** is a reference to a party to this Agreement, and includes that party's permitted successors and permitted assigns; and
 - vi **\$** or **dollars** are to New Zealand currency.
- b The **headings** in this Agreement are for convenience only and have no legal effect.
- c The **singular** includes the plural and vice versa.

2 CONDITIONS

This Agreement is conditional on:

- a the Company delivering to the Lender resolutions of the directors of the Company authorising the execution of this Agreement and the issue of Shares on conversion of the Loan in accordance with this Agreement; and

[User note: See “Simmonds Stewart Template resolutions authorising the execution of convertible instruments” for a directors’ resolution approving the execution of a convertible loan agreement and the issue of shares under it.]

- b the Company being satisfied (acting reasonably) that an exclusion to the information disclosure requirements of the Financial Markets Conduct Act 2013 applies in relation to the issue of the Conversion Shares.

[User note: Please see “NZ securities law – tech company capital raising” guide for an explanation of the relevant exclusions. A company must ensure that one of the exclusions described in that guide applies before it takes the loan.]

3 THE LOAN

- 3.1 **Loan:** The Lender must make the Loan available to the Company in one drawing only on the terms set out in this Agreement.
- 3.2 **Drawdown:** The Lender must pay the full amount of the Loan to the Company on the Drawdown Date in cleared funds into the nominated account of the Company.
- 3.3 **Purpose:** The Company must use all amounts drawn down only for the Purpose or for any other purpose approved by the Lender.

4 CONVERSION

- 4.1 **Conversion by notice:** At any time on or after the Repayment Date, the Company may by notice in writing to the Lender convert the Loan to Shares in the Company (**Conversion Notice**). Within seven days after the date of that notice, the Company must:
 - a convert the Loan, together with all interest accrued on it, into Shares by applying such amount to subscribe for Shares at the Conversion Price; and
 - b issue to the Lender those Shares.
- 4.2 **Issue of Shares:** Shares issued on Conversion will be credited as fully paid and rank pari passu with all other ordinary shares of the Company then in issue.
- 4.3 **Fractional entitlements:** The number of Shares to be issued to the Lender will be rounded up to the nearest whole number in the event of a fractional entitlement.
- 4.4 **Adjustment:** If there is any bonus issue, consolidation or subdivision of any Shares or any reduction or cancellation of share capital (or any similar reorganisation of the capital of the Company), the Conversion Price will be adjusted by the Company, if necessary, to ensure that the economic effect of the Conversion remains the same.

5 INTEREST

The Company must pay interest on the Loan at the Interest Rate, accruing and compounding monthly and payable on the date of repayment of the Loan (except that if the Loan is not repaid in full on the Repayment Date, all interest outstanding at any time will then be payable by the Company on demand in accordance with clause 6.1).

6 REPAYMENT AND PREPAYMENT

- 6.1 **Repayment of Loan:** The Company will repay the Loan, together with all interest accrued on it, within five Business Days after receipt of a written demand from the Lender provided that the Lender must not give any written demand:
- a before the Repayment Date; or
 - b after receipt of a Conversion Notice.
- 6.2 **Prepayment:** At any time after the Drawdown Date, the Company may prepay all or any part of the Loan, together with all interest accrued on it up to the date of payment.
- 6.3 **Default interest:** If the Company does not pay any sum payable by it under this Agreement as and when due (and in the manner provided in this Agreement) it must pay interest at the Default Interest Rate on that unpaid sum (instead of interest under clause 5) from the due date to the date of actual payment, both before and after judgment. Default interest will accrue daily and will be calculated on the basis of a year of 365 days and the actual number of days elapsed. Default interest will be due and payable immediately on demand.

7 COMPANY'S UNDERTAKINGS

While the Loan remains outstanding, the Company:

- a will notify the Lender promptly in writing upon the occurrence of an Event of Default and provide a statement of steps being taken to remedy the Event of Default; and
- b will not, unless approved in writing by the Lender:
 - i make any material change to the business carried on by it at the date of this Agreement;
 - ii enter into any any transaction involving the sale, transfer or other disposal of:
 - ▲ any material proportion of the Company's assets; or
 - ▲ any shares or other interest in any subsidiary (as defined in the Companies Act 1993) of the Company; or
 - iii pay any dividend or make any other distributions in respect of its shares.

8 EVENTS OF DEFAULT

- 8.1 **Default:** An **Event of Default** will have occurred if any of the following occurs:
- a a breach of any term of this Agreement by the Company;
 - b if:

- i an order is made, resolution passed or legal proceedings issued (other than a proceeding which, in the reasonable opinion of the Lender, is vexatious or frivolous), or corporate action is taken, notice given or other step taken for the dissolution of the Company;
 - ii a liquidator, receiver, manager, statutory manager, inspector, trustee or other similar person is appointed in respect of the Company or some or all of its assets; or
 - iii any distress, attachment, or execution is levied, issued, enforced or obtained on or against all or substantially all of the Company's assets; or
- c any security over the assets of the Company is enforced.

8.2 **Acceleration:** Despite any other provision of this Agreement, at the time of or at any time after the occurrence of any Event of Default, the Lender, without limiting any other rights it might have, may by notice to the Company declare all or any part of the Loan, together with all interest accrued on it, immediately due and payable, in which case those amounts will become immediately due and payable.

9 WARRANTIES

9.1 **Mutual warranties:** Each party represents and warrants to the other that the following is true as at the date of this Agreement:

- a if it is a Company, it is duly incorporated and validly existing under the laws of New Zealand;
- b it has the power, and, if it is a company, has taken all necessary action (including the passing of all resolutions and obtaining any necessary consents) to enter into, execute and deliver, and exercise its rights, and perform its obligations, under this Agreement; and
- c it has validly executed and delivered this Agreement and its obligations under this Agreement are legal, valid and binding and this Agreement is enforceable against it in accordance with its terms.

10 INDEPENDENT TRUSTEES

The liability of any independent trustee under this Agreement is not an unlimited or personal liability and instead is limited to the funds from time to time belonging to the trust on behalf of which he has entered into this Agreement, in the proper course of the administration of that trust. In this clause, an **independent trustee** is any party who has signed this agreement in his capacity as the trustee of a trust and who is not a beneficiary of the trust nor has any right to, or interest in, any of the assets of the trust except in his capacity as trustee of that trust.

11 GENERAL

11.1 **Confidentiality:** Each party must keep this Agreement and information it receives about the Company and its business in connection with this Agreement (**Confidential Information**) confidential, and must not use or disclose that Confidential Information without the prior written consent of the other party except to the extent that:

- a disclosure is required by law;
- b the relevant information is already in the public domain;
- c it is reasonably required to obtain professional advice; or
- d it is reasonably necessary in connection with any proposed:
 - ▲ financing of that party;
 - ▲ sale of that party's interest in the Company; or
 - ▲ sale of all or part of the business of, or the shares in, that party,

and the party receiving the Confidential Information has entered into confidentiality undertakings substantially the same as those set out in this clause.

11.2 **Notices:** All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in the Schedule (or at such other address as notified from time to time by the party changing its address).

11.3 **Time of service:** Any notice given under this Agreement will be deemed to be validly given:

- a in the case of delivery, when received;
- b in the case of posting, on the second day following the date of posting; or
- c if emailed, one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the addressee's email address is wrong or that the message cannot be delivered,

provided that any notice received after 5 pm on a Business Day or on any day that is not a Business Day will be deemed to have been received on the next Business Day.

11.4 **Entire agreement:** This Agreement contains all of the terms, representations and warranties made between the parties relating to the matters dealt with in this Agreement and supersedes and cancels all prior discussions and agreements covering the subject matter of this Agreement. The parties have not relied on any representation, warranty or agreement relating to the matters dealt with in this Agreement that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect from the date of this Agreement.

Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986.

- 11.5 **Further assurances:** The parties must each sign all further documents, pass all resolutions and do all further things as may be necessary or desirable to give effect to this Agreement.
- 11.6 **Amendment:** This Agreement may only be amended by agreement of the parties in writing.
- 11.7 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by that party of that or any other right or remedy available to it.
- 11.8 **No assignment:** No party may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties.
- 11.9 **Costs:** Except as otherwise provided in this Agreement, the parties will meet their own costs relating to the negotiation, preparation and implementation of this Agreement.
- 11.10 **Partial invalidity:** If any provision of this Agreement becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 11.11 **Signature:** This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same Agreement. A party may enter into this Agreement by signing and sending (including by email) a counterpart copy to each other party.
- 11.12 **Governing law and jurisdiction:** This Agreement will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

SCHEDULE**Details for notices**

Company	
Contact Name:	
Company:	
Address (Physical Address & PO Box):	
Email address:	

Lender	
Contact Name:	
Company:	
Address (Physical Address & PO Box):	
Email address:	