

This document does not constitute legal advice and is not meant to serve as a recommended form suitable for each and every seed and/or early stage capital investment by business angels and similar start-up investors in a Swiss start-up company. It is intended for use as a starting point for drafting and negotiation only. All parties involved should carefully consider departing from its terms where necessary to reflect the business terms underlying the seed/early stage capital investment and should always satisfy themselves with their advisors and counsel of the commercial and legal implications of its use.

INVESTMENT AGREEMENT

dated as of [date]

relating to

[the COMPANY]

made by and among

[INVESTORS]

and

[EXISTING SHAREHOLDERS]

and

[the COMPANY]

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STATEMENT

Purpose

The purpose of this model documentation "light" for start-up investments (**Model Documentation "light"**) is to facilitate and increase the efficiency of both negotiations for as well as the documentation of start-up investments in Switzerland by business angels and similar start-up investors alike. The Model Documentation "light" is subject to Swiss law. While the Model Documentation "light" is based on SECA's regular model documentation for venture capital investments by institutional investors (see www.seca.ch/templates/templates/vc-model-documentation.aspx) and is fully compatible with the latter for larger follow-on investments with institutional investors, it does not take into account or reflect international documentation standards and concepts commonly expected by institutional investors for larger investments. Rather, the Model Documentation "light" aims at establishing a short and pragmatic yet robust model documentation primarily for smaller start-up investments by non-institutional investors that entails less complexity and requires less sophistication than SECA's regular model documentation – thereby complementing rather than substituting SECA's existing regular VC/PE model documentation.

Documents

The Model Documentation "light" comprises the following documents:

- Term Sheet
- Investment Agreement
- Shareholders Agreement

and certain important ancillary documents, such as Articles of Incorporation (*Statuten; statuts*), Board Regulations (*Organisationsreglement; règlement d'organisation*) and Cap Table.

Working Group

In order to reflect customary standards and practices in the Swiss day-to-day start-up financing practice and ensure market acceptance, the SECA Legal & Tax Chapter established an *ad hoc* working Group (**Working Group**) to develop a commonly acceptable set of model documentation. For that purpose, the SECA Legal & Tax Chapter invited two practitioners particularly active in this market segment:

- Beat Speck, attorney-at-law, civil law notary and partner at Wenger & Vieli AG in Zug/Zurich, and
- Ion Eglin, attorney-at-law, civil law notary and partner at Bratschi AG in Zug/Zurich

while SECA's Legal & Tax Chapter was represented by one of its members,

- Beat Kühni, attorney-at-law and partner at Lenz & Staehelin, Zurich/Geneva.

SECA expresses its thanks to both its Legal & Tax Chapter as well as the Working Group for their joint contributions and efforts to establish the Model Documentation "light" on a *pro bono* basis for the benefit of the Swiss start-up financing market as a whole.

Scope

The Working Group first had to agree on a number of assumptions. The Model Documentation "light" is oriented towards seed / early stage financing rounds in the range of CHF 0.5m to CHF 2.5m. Amongst other assumptions and qualifications (see Footnotes throughout the Model Documentation "light"), it assumes that:

- typical investors in such seed / early stage financing rounds are business angels or similar non-institutional investors,

- the circle of involved parties consists of founders, (passive or active) shareholders and non-institutional investors such as business angels, family offices or similar investors,
- the company is incorporated in Switzerland and organized in the form of a stock corporation (*Aktiengesellschaft, société anonyme*),
- certain key investor rights (such as preferences on exit proceeds) are not meant to be replicated in the constitutive corporate documents of the company (*i.e.*, the investors will be satisfied with purely contractual preferences and no different classes of shares shall be created in the articles of incorporation of the company) at this early stage of the company,
- further financing rounds will take place, whereby the Model Documentation "light" will be replaced by a more sophisticated version such as SECA's existing, regular model documentation for institutional investors,
- IPO as one of the preferred exit scenarios for the investors shall not be dealt with at this early stage of the company, and
- transaction costs for the implementation of the investment and post-investment administrative running costs for the company shall generally be kept to a reasonable minimum.

In addition, important commercial terms (such as representations and warranties in the Investment Agreement, control rights on shareholder and board level and non-competition related protections in the Shareholders Agreement) have been included in the Model Documentation "light" as an example only or have been deliberately left blank. Given the principle compatibility of the Model Documentation "light" with SECA's existing regular/full VC/PE model documentation (see www.seca.ch/templates/templates/vc-model-documentation.aspx), users are encouraged to compare provisions dealing with particularly important or sensitive matters with SECA's existing regular VC/PE model documentation that may offer more comprehensive provisions.

Caution

It is upon each party to ensure if and to what extent the Model Documentation "light" is suitable to the transaction at hand. Each transaction has its own particularities and requires a deliberate and careful balance of interests. And for many of the legal issues addressed by the Model Documentation "light", there is more than one valid answer. Accordingly, consult your legal, tax and other advisors to ensure that the Model Documentation "light" fits, and is appropriately adapted to, your specific purpose and reconfirm whether and to what extent the rights and obligations contemplated in the Model Documentation "light" are valid and enforceable. Neither SECA nor any member of its Legal & Tax Chapter or the Working Group gives any opinion or assurances as to the suitability, adequacy, validity and/or enforceability of the Model Documentation "light" and its provisions. In using or working with the Model Documentation "light", each user will be deemed to have waived, to the maximum extent legally permissible, any right or claim against, and to have accepted the exclusion of any responsibility or liability of, SECA, any member of its Legal & Tax Chapter and the Working Group.

We intend to develop the Model Documentation "light" further over time based on "real life" experiences with it but also on your comments and proposed improvements – which you are invited and encouraged to submit to us (info@seca.ch), any member of the Legal & Tax Chapter or the Working Group.

Zurich, June 2018

INVESTMENT AGREEMENT

dated as of [date]

and entered into by and among

1. Investors

1.1 [name Investor 1], [address], [e-mail] ("Investor 1")

1.2 [name Investor 2], [address], [e-mail] ("Investor n")

(Investor 1 and Investor n collectively "Investors"
and individually an "Investor")

2. Existing Shareholders¹

2.1 [name Existing Shareholder 1], [address], [e-mail] ("Existing Shareholder 1")

2.2 [name Existing Shareholder n], [address], [e-mail] ("Existing Shareholder n")

(Existing Shareholder 1 and Existing Shareholder n, collectively "Existing Shareholders"
and individually an "Existing Shareholder")

and

3. Company

[name Company], [address], [e-mail] ("Company")

(Investors, Existing Shareholders and Company, collectively "Parties"
and individually a "Party")

¹

[Note: Under certain circumstances (such as, for example, if different classes of shares exist or are to be implemented or if different commercial and/or legal terms are being agreed for example for founders as opposed to other shareholders) additional definitions may have to be implemented to replicate each relevant sub-group (e.g., "Founding Shareholders" vs. "Other Shareholders", "Common Shareholders" vs. "Existing Shareholders", etc.).]

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Preamble

- A. The Company is organized in the form of a Swiss stock corporation (*Aktiengesellschaft; société anonyme*) registered with the commercial register of the Canton of [seat of Company] under the number [commercial register number] having its registered office at [address], Switzerland. The Company's core business consists of [description of core business] ("**Business**").
- B. The Company has an issued statutory share capital in the nominal amount of CHF [amount], divided into [number] common shares (*Stammaktien; actions ordinaires*) with a nominal value of CHF [amount] per share, each fully paid-in ("**Existing Shares**").
- C. The Company intends to increase its share capital in a [first] round of financing by way of issuance of [number] Investor Shares in the Company with a nominal value of CHF [amount] per Investor Share, each to be fully paid-in in cash, thereby increasing the issued share capital of the Company by a nominal amount of CHF [amount] from CHF [amount] to CHF [amount], ("**Capital Increase**").
- D. Concurrently with this Agreement, the Parties have entered into a shareholders agreement dated [date] ("**Shareholders Agreement**") attached hereto as **Annex D** to govern their respective rights and obligations as shareholders of the Company and provide for the rules governing the operation of the Company.
- E. The Parties execute this Agreement to govern their respective rights and obligations in relation to the subscription by the Investors of new Investor Shares and the issuance of such new Investor Shares to the Investors.

Based on the foregoing, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Agreement, capitalized terms shall have the meanings set forth in **Annex 1**.

2. INCREASE OF SHARE CAPITAL

In order to give effect to the Capital Increase and on the terms and subject to the conditions of this Agreement the Investors will provide for cash equity funding to the Company in the amount of CHF [amount] at a pre-money valuation of the Company (fully diluted) of CHF [amount].

2.1 Capital Increase / Extraordinary General Meeting of Shareholders

2.1.1 Undertakings of Existing Shareholders

Each of the Existing Shareholders and the Company hereby undertakes to the Investors to:

- (a) procure that an extraordinary general meeting of shareholders of the Company ("**Extraordinary General Meeting**") is convened in a timely manner and takes place on the Closing Date;
- (b) approve, or procure that the Proxy Holder approves, the resolutions to be taken by the Extraordinary General Meeting in accordance with Section 2.1.3; and

- (c) execute or perform such other documents, instruments, certificates or acts as may be reasonably requested by each Investor and/or the Company in order to complete, perfect and consummate the transactions contemplated by this Agreement and to consummate the Capital Increase in accordance with the terms and conditions hereof.

2.1.2 Waiver of Preferential Subscription Rights

Each of the Existing Shareholders hereby (i) unconditionally and irrevocably waives all of its preferential subscription rights (*Bezugsrechte; droits de souscription préférentiels*) in connection with the Capital Increase and (ii) agrees that the Company allocates the relevant number of Investor Shares in the Capital Increase to the Investors in accordance with this Agreement and the cap table set forth in **Annex 4**.

2.1.3 Resolutions to be passed by the Extraordinary General Meeting

The following resolutions shall be passed at the Extraordinary General Meeting on the Closing Date:

- (a) to adopt the Articles, in the form as attached hereto as **Annex 2**.
- (b) to increase the nominal statutory share capital of the Company by the aggregate amount of CHF [amount] from CHF [amount] to CHF [amount] to enable the Capital Increase through the issuance of [number] new Investor Shares, each at the issue price of CHF [amount] ("**Issue Price**"), which constitutes a premium (*Agio; agio*) for each Investor Share of CHF [amount], to the Investors in accordance with, and at the Subscription Amounts set forth in, Section 3;
- (c) to elect the following persons as New Director[s]:
 - [name], nominated by [Investor 1];
 - [name], nominated by [Investor n]; and
 - [name], nominated by [the Existing Shareholders].
- (d) [additional actions/resolutions as appropriate].

2.2 Constitutional Meeting of Newly Elected Board

Each of the Shareholders undertakes to procure that each Director nominated by it will convene for the constitutional meeting of the newly composed Board to be held on the Closing Date immediately following the Extraordinary General Meeting and will approve the following resolutions:

- (a) to elect [name] as initial Chairman (*Verwaltungsratspräsident; président du conseil d'administration*);
- (b) to grant each New Director collective signing power by two (*Kollektivunterschrift zu Zweien; signature collective à deux*);
- (c) to adopt the Board Regulations, in the form as attached hereto as **Annex 3**; and

- (d) to approve the registration of the Investors as shareholders with voting rights of the relevant number of Investor Shares subscribed by the respective Investors in the Company's share register.

3. SUBSCRIPTION OF INVESTOR SHARES

3.1 Undertaking to Subscribe

Subject to the terms and conditions of this Agreement (including Section 5.2 and 5.3), the respective Investor undertakes to subscribe for Investor Shares as follows:

- (a) Investor 1 shall subscribe for *[number]* Investor Shares, each at the Issue Price, for an aggregate subscription amount of CHF *[amount]* ("**Investor 1 Subscription Amount**"); and
- (b) Investor n shall subscribe for *[number]* Investor Shares, each at the Issue Price, for an aggregate subscription amount of CHF *[amount]* ("**Investor n Subscription Amount**").

For this purpose, each Investor hereby undertakes to execute and deliver to the Company its Subscription Form on or prior to the Closing Date.

3.2 Cash Contribution

No later than 5 Business Days before the Closing Date, each Investor shall pay its Subscription Amount [from a Swiss bank]² to the following blocked capital account of the Company (*Kapitaleinzahlungssperrkonto; compte de capital bloqué*):

Bank:	<i>[name], [place]</i>
In favor of:	<i>[Company name]</i>
Account No:	<i>[number]</i>
IBAN No:	<i>[number]</i>
Clearing No:	<i>[number]</i>
Reference:	Share Capital Increase of <i>[Company name]</i>

4. OWNERSHIP STRUCTURE AFTER THE CAPITAL INCREASE

After completion of the Capital Increase, the ownership structure of the Company shall be as specified in the cap table set forth in **Annex 4**.

² **[Note:** AML/KYC compliance by the Swiss bank with which the blocked capital account of the Company is held may delay the Closing Date unless such compliance will be duly completed in advance.]

5. CLOSING^{3,4}

5.1 Place and Date of Closing

The Closing shall take place on [date] at the offices of [insert name of law firm/notary], or such other date or place as the Parties mutually agree ("**Closing Date**").

5.2 Closing Deliveries⁵

At Closing, the relevant Party shall deliver the following documents, duly executed and in form and substance satisfactory to the Company and each of the Investors:

- (a) [resignation letter[s] from each resigning existing Director];
- (b) acceptance declarations of the New Directors (*Wahlannahmeerklärungen; déclaration d'acceptation*), together with duly legalized specimen signature sheets (*Unterschriftmuster; specimen de signature*);
- (c) [acceptance declarations of [name] as the new Company auditors, if any;]
- (d) proxies from each Existing Shareholder for the Extraordinary General Meeting authorizing the Proxy Holder to vote on and approve all resolutions set forth in Section 2.1;
- (e) notification letter from each Investor stating the full name(s) and address(es) of the ultimate beneficial owner(s) within the meaning of Art. 697j CO;
- (f) a duly signed Application to the Register of Commerce;
- (g) confirmation from [specify name of Company's bank] evidencing that all Subscription Amounts have been paid in cash and fully credited to the Company's blocked account specified in Section 3.2;
- (h) circular resolution of the Board regarding the constitution of the newly composed Board (*Konstituierungsbeschluss; résolution de constitution*) including the election of the Chairman and the granting of collective signing power by two; and
- (i) circular resolutions or minutes evidencing the Board resolution regarding the adoption of the Board Regulations and the registration of the Investors as holders of the relevant number of Investor Shares in the Company's share register upon Full Consummation.

³ **[Note:** It is presumed that the Closing Date to be specified in this Section will usually be only a few business days after the signing of the Investment and Subscription Agreement has occurred, except where the fulfillment of particular CPs to Closing needs more time. The Model Documentation "light" does not provide for limitations on the conduct of business by the Company between signing and closing and presumes the absence of CPs to Closing. If such conduct between signing and closing is to be limited and/or if CPs to closing are negotiated (such as the delivery or execution of documents prior to Closing or the confirmation of the absence of breaches or adverse changes etc.), corresponding adjustments to the Model Documentation "light" must be made.]

⁴ **[Note:** The Model Documentation "light" does not provide for explicit termination rights and/or the rescission from the contemplated Capital Increase. If these are meant to be addressed, Section 8 of the regular SECA Model Documentation template of the Investment Agreement may be consulted.]

⁵ **[Note:** The list of closing deliveries reflected in Section 5.2 is merely indicative and is to be determined and drafted giving due regard to the specifics of any given case (including as to whether originals or electronic scans of such documents shall be delivered).]

5.3 Closing Actions

Upon the delivery of the documents listed in Section 5.2, the following actions shall be performed:

- (a) The Extraordinary General Meeting shall be held in the presence of a public notary approving: (i) the increase of the share capital [(including waivers of preferential subscription rights)], (ii) [the creation of conditional share capital in the amount of CHF [amount],] (iii) the adoption of the Articles, and (iv) the election of the New Directors [and [name] as the new Company auditors].
- (b) Each Investor shall deliver a duly signed original of its Subscription Form in accordance with Section 3.1.
- (c) The Board shall issue the report of the Board regarding the capital increase (*Kapitalerhöhungsbericht; rapport d'augmentation*) and take the resolutions on the ascertainment and the execution of the Capital Increase (*Feststellungsbeschluss; constatations relatives à l'augmentation du capital*) in the presence of a public notary.

5.4 Application to Commercial Register

The Company shall file the Application with the Commercial Register immediately after delivery of the closing deliverables and completion of the closing actions in accordance with Section 5.2 and 5.3.

5.5 Registration in Share Register

Immediately following Full Consummation, the Company shall deliver to the each Investor and Existing Shareholder a copy of the updated share register evidencing each Investor and Existing Shareholder as the owner of the appropriate number of Investor Shares or Existing Shares.

6. REPRESENTATIONS AND WARRANTIES

Subject to the limitations set forth in this Section 6 (including **Annex 5**) and Section 7, each of the Existing Shareholders hereby represents and warrants to each of the Investors that the representations and warranties set forth in **Annex 5** are true and accurate in all material respects both as of the date of this Agreement and the Closing Date, except for those representations and warranties which are explicitly made as of a specific date.

The Parties acknowledge that none of the Parties has made, and none of the Parties has relied upon, any representation or warranty, express or implied, pertaining to the subject matter of this Agreement other than as expressly provided in this Agreement. Without prejudice to the foregoing, each of the Existing Shareholders hereby acknowledges that each Investor has entered into this Agreement and will pay the Subscription Amount in reliance on each of the representations and warranties set forth in this Section 6 (including **Annex 5**).

7. REMEDIES

7.1 Time Limitations

7.1.1 Notice of Breach (*Rügefrist; avis de violation*)

An Investor shall deliver to the Company (which shall receive such notice for and on behalf of and promptly forward such notice to the Existing Shareholders) a notice in writing describing the underlying facts of a claim for misrepresentation or breach of warranty to the extent then known within [60] calendar days after that Investor has obtained reasonable knowledge of the circumstances which are likely to give rise to a claim for misrepresentation or breach of warranty under this Agreement. Failure to provide notice of claim consistent with this Section 7.1.1 shall not relieve an Existing Shareholder of any liability it may have under Section 6; *provided*, however, that an Existing Shareholder shall not be liable for any damage, loss, expense, or cost to the extent the same is attributable to, or caused or aggravated by, or could not be remedied due to, that Investor's failure to timely provide notice in accordance with this Section 7.1.1. The Parties explicitly waive the application of Articles 201 and 210 CO.

7.1.2 Time Limitations on Claims

The representations and warranties given by the Existing Shareholders shall expire, and any claim of an Investor for misrepresentation or breach of warranty shall be time barred, forfeited and precluded from being made (*Verjährung; prescription*) as of the 2nd anniversary of the Closing Date or a second/subsequent equity financing round, whichever occurs earlier.

Any notice of claim for misrepresentation or breach of warranty delivered to the Company on or by the applicable date set forth in Section 7.1.1 and the preceding paragraph, in which case the resolution of such claim may be effected after such date; *provided*, however, that notwithstanding the foregoing, the Investor's claim shall be time-barred, forfeited and precluded from being made (*verjährt; prescrit*)⁶ unless the relevant Investor initiates proceedings on the claim against the Existing Shareholders in accordance with Section 9 within one year from the date of that Investor's notice of claim to the Company.

7.1.3 Remedies for the Investors⁷

With respect to a misrepresentation or a breach of warranty duly notified by an Investor to the Company, the Existing Shareholders shall have the right, within [30] calendar days after receipt of such notice of breach from the Company, to put the Company or, with the prior written consent of [all] Investors (such consent not to be unreasonably withheld if the damage, loss, expense, or cost is incurred by that Investor), that Investor, at the Existing Shareholders' own expense, in the position it would have been in had no such misrepresentation or breach of warranty occurred.

⁶ *[Note: The proposed time limitations for representations & warranties as proposed in this Section 7.1.2 are merely indicative and should be determined and negotiated giving due regard to the specifics of any given case.]*

⁷ *[Note: If the Parties wished to enlarge available remedies for the Investors (e.g. to provide for a compensatory capital increase for the benefit of the Investors or to include purchase rights of the Investors in respect of Existing Shares held by all or selected Existing Shareholders to account for the fact that such Existing Shareholders may not otherwise be in the financial position to satisfy their liability towards the Investors in case of a misrepresentation or breach of warranty), the wording of this Section 7.1.3 (and Section 7.2) would have to be amended accordingly (together with consequential adjustments, as appropriate, throughout the Agreement).]*

If and to the extent the remedy set forth in the preceding paragraph cannot be effected or is not effected within such period of time, then that Investor, subject to the exclusions and limitations set forth in this Agreement, shall have the right to claim that the Existing Shareholders pay, and each Existing Shareholder shall be, subject to Section 7.2, [jointly and severally]⁸ liable to that Investor to pay, damages to the Company (or, if the damage, loss, expense, or cost is incurred by that Investor and that Investor so elects, to that Investor) in the amount which is necessary to put the Company (or, subject to the foregoing requirements, that Investor) in the position it would have been in had no such misrepresentation or breach of warranty occurred. Such damages shall include all duly documented external costs and reasonable expenses of the Company (or, subject to the foregoing requirements, that Investor), including reasonable attorneys' fees.

7.2 [Limitations on Liability]

[Notwithstanding anything contained in this Agreement to the contrary, it is acknowledged and agreed that the liability of [the Existing Shareholders] towards each Investor for misrepresentations or breaches of warranties under this Agreement shall not exceed, in the aggregate, the sum of (i) the Investor's Subscription Amount, and (ii) reasonable costs and fees incurred by an Investor in connection with the examination of such misrepresentation or breach of warranty and any legal proceedings against Existing Shareholders.]

[[The Existing Shareholders'] liability for misrepresentation or breach of warranty under this Agreement shall be excluded or reduced, if and to the extent that:

- (a) the relevant Investor has failed to use commercially reasonable best efforts to mitigate its loss or damage in respect thereof;
- (b) the relevant Investor or the Company have actually recovered from any third person any sum in respect of any matter to which a claim made relates, after deduction of all duly documented costs and expenses incurred in making such recovery;
- (c) a specific provision, reserve or valuation allowance has been or is made or included in the Financial Statements with respect to the facts, matters or circumstances resulting in a misrepresentation or breach of warranty; or
- (d) such claim arises or is increased as a result of any legislation, regulation, rule of law or practice not in force at the date hereof, or as a result of the withdrawal or a change of such legislation, regulation, rule of law or practice after the date hereof.]

8. MISCELLANEOUS

8.1 Nature of Parties' Rights and Obligations

Except as specifically provided otherwise in this Agreement, the rights and obligations of the Parties hereunder shall be several (and not joint). The obligations of the Parties hereunder are contractual in nature and the Parties agree that they do not form, and this Agreement shall not be deemed to constitute, a simple partnership (*einfache Gesellschaft; société simple*) pursuant to Art. 530 *et seq.* CO.

⁸

[**Note:** Whether or not the concept of joint and several liability of and among the Existing Shareholders is appropriate, should be carefully considered and negotiated giving due regard to the specifics of any given case.]

8.2 Confidentiality

The existence as well as the terms and conditions of this Agreement, and any information exchanged among the Parties during the due diligence and the negotiation of the transactions contemplated by this Agreement (collectively "**Confidential Information**"), shall be kept strictly confidential by each Party. The Parties shall neither use in any form nor disclose to any third party any Confidential Information unless explicitly authorized by this Agreement. The non-disclosure obligation shall not apply to any disclosure of Confidential Information required by law or regulations. Nothing herein shall restrict the Company from granting third parties customary due diligence access for purposes of financial, commercial, strategic or similar transactions based on appropriate non-disclosure and non-use agreements. Any announcement or press release regarding the matters contemplated by this Agreement shall only be made by the Company with the prior written consent of the Board and each Investor.

8.3 Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns; *provided*, however, that no Party [(other than an Investor)] shall be entitled to assign or transfer any of the rights or obligations hereunder to any other party except with the prior written consent of each [Party / Investor].

8.4 Costs and Expenses, Taxes

Except as otherwise provided in the Investment Agreement, each Party shall bear its own costs and expenses arising out of or incurred, and any taxes imposed on it, in connection with this Agreement and the transactions contemplated by this Agreement. The Company shall bear all costs of [the joint legal counsel,]⁹ the notary and any issue taxes.

8.5 Notices

All notices and other communications made or to be made under this Agreement shall be given in writing but dispatched to the other Parties by e-mail (to the e-mail addresses set forth on the front page of this Agreement, as amended from time to time in accordance with the provisions of this Section 8.5).

8.6 Entire Agreement

Together with the Shareholders Agreement, this Agreement including its Annexes constitutes the entire agreement among the Parties with respect to the subject matter hereof and supercedes any agreement or understanding that may have been concluded with respect to the subject matter hereof between any of the Parties prior to the date of this Agreement.

8.7 Amendments

This Agreement including this Section 8.7 may be amended only in writing by an instrument signed by all Parties.

⁹ *[Note: Each person using the Model Documentation "light" should satisfy itself of the potential tax consequences resulting from such cost allocation to the Company.]*

8.8 Waiver of Rights

No waiver by a Party of a failure of any other Party to perform any provision of this Agreement shall operate or be construed as a waiver in respect of any other or further failure whether of a similar or different character.

9. GOVERNING LAW AND [JURISDICTION] / [ARBITRATION]

9.1 Governing Law

This Agreement shall in all respects be governed by and construed in accordance with Swiss law.

9.2 [Jurisdiction] / [Arbitration]

[The courts of *[place of domicile of the Company]* (Canton of *[canton of domicile of the Company]*, Switzerland) shall have exclusive jurisdiction for any and all disputes arising out of or in connection with this Agreement.] / [Any dispute, controversy or claim arising out of or in connection with this Agreement, including its conclusion, validity, binding effect, amendment, breach, termination or rescission shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be one. The seat of the arbitration shall be [Zurich / Geneva / Lugano] and the arbitral proceedings shall be conducted in [English]; *provided* that evidence may be submitted to the arbitral tribunal in [German / French / Italian] without translation into English.]

* * * * *

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have signed this Agreement on the date first written above

[Investor 1]

By: _____
Names: _____
Titles: _____

[Investor n]

By: _____
Names: _____
Titles: _____

[Existing Shareholder 1]

By: _____
Names: _____
Titles: _____

[Existing Shareholder n]

By: _____
Names: _____
Titles: _____

[Company]

By: _____
Names: _____
Titles: _____

List of Annexes

Annex D:	Shareholders Agreement
Annex 1:	Defined Terms
Annex 2:	Articles
Annex 3:	Board Regulations
Annex 4:	Cap Table (Ownership Structure after Capital Increase)
Annex 5:	Representations and Warranties
Annex 6:	Material Agreements

Shareholders Agreement

Attached.

Defined Terms

"**Accounting Rules**" shall mean the accounting rules and principles consistently applied in the past by the Company in accordance with [the CO].

"**Agreement**" shall mean this investment agreement dated as of [date] including its Annexes, as amended from time to time in accordance with its terms.

"**Annex**" shall mean any annex to this Agreement.

"**Application**" shall mean the application to be filed with the Register of Commerce of the Canton of [canton] regarding (i) the increase of the share capital of the Company to reflect the Capital Increase, (ii) the adoption of the Articles, (iii) the election of the New Directors and (iv) all other reportable changes.

"**Articles**" shall mean the articles of incorporation (*Statuten; statuts*) of the Company as at the Closing Date in the form of **Annex 2** and thereafter as amended from time to time in accordance with the terms of the Shareholders Agreement.

"**Assets**" shall mean all Company assets other than Intellectual Property.

"**Authority**" shall mean any court, arbitral tribunal, or governmental, administrative or regulatory authority or agency.

"**Authorizations**" shall mean all official authorizations, orders, permissions, product registrations, certifications, certificates, approvals, notices or consents (including all written amendments, supplements or replacements).

"**Benefit Plan**" shall mean all mandatory or voluntary social security, benefit, pension or welfare plan, arrangement scheme or fund relating to the Company and current or former employees of the Company.

"**Best Knowledge**" shall mean (i) the [actual] knowledge of the person(s) to which it relates and (ii) the knowledge that [the Company, its Directors and its senior management]/[specify names] would be expected to have[, in each case] acting diligently and upon reasonable investigation and/or upon consultation with its and their external advisors (attorney, accountant, etc.).

"**Board**" shall mean the board of directors of the Company, as appointed from time to time in accordance with the terms of this Agreement and the Shareholders Agreement.

"**Board Regulations**" shall mean the organizational regulations (*Organisationsreglement; règlement d'organisation*) as at the Closing Date in the form of **Annex 3** and thereafter as amended from time to time in accordance with the terms of the Shareholders Agreement.

"**Business**" shall have the meaning set forth in Preamble A.

"**Business Day**" shall mean any day other than Saturday or Sunday on which banks are open for business in [city/canton].

"**Business IP**" shall mean all Intellectual Property which is being used, and/or is required, in order to conduct the business operations of the Company in any jurisdiction relevant for the business operations of the Company.

"**Capital Increase**" shall have the meaning set forth in Preamble C.

"**Chairman**" shall mean the chairman of the Board (*Verwaltungsratspräsident; président du conseil d'administration*).

"**Claim**" shall mean any claim, legal action, proceeding, suit, litigation, prosecution, investigation, enquiry or arbitration, whether actual or threatened, whether as claimant, defendant or other party, whether domestic or foreign, whether civil, criminal or administrative.

"**Closing**" shall mean the closing of the Capital Increase as set forth in Section 5.

"**Closing Date**" shall have the meaning set forth in Section 5.1.

"**CO**" shall mean the Swiss Code of Obligations as of March 30, 1911, as amended from time to time.

"**Company**" shall mean [*specify*].

"**Confidential Information**" shall have the meaning set forth in Section 8.2.

"**Director**" shall mean a member of the Board appointed from time to time in accordance with the terms of this Agreement.

"**Encumbrance**" shall mean any claim, charge, pledge, mortgage, security, lien, option, equity, power of sale, hypothecation, usufruct, retention of title, right of pre-emption, right of first refusal or other third party rights or security interest of any kind or an agreement to create any of the foregoing, irrespective of whether such Encumbrance arises under any agreement, covenant, other instrument, the mere operation of statutory or other laws or by means of a judgment, order or decree of any court, judicial or administrative authority, and shall also mean any approval or consent required from a third person to the exercise or full vesting of a right or title.

"**Existing Shareholder(s)**" shall have the meaning set forth on the front page of this Agreement.

"**Existing Shares**" shall have the meaning set forth in Preamble B.

"**Extraordinary General Meeting**" shall have the meaning set forth in Section 2.1.1(a).

"**Financial Statements**" shall have the meaning set forth in Section 3 of **Annex 5**.

"**Full Consummation**" shall mean that the Investor Shares issued in connection with the Capital Increase have been registered in the commercial register in accordance with Section 5.4.

"**Intellectual Property**" shall mean any trademarks, service marks, trade names, domain names, logos, patents, inventions, trade secrets and other rights in know-how, design rights, utility models, copyrights, software, rights in databases and all other similar proprietary rights anywhere in the world, including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations.

"**Investor**" and "**Investors**" shall have the meaning set forth on the front page of this Agreement.

"Investor Shares" shall mean common shares (*Stammaktien; actions ordinaires*) with a nominal value of CHF [amount] per Investor Share, each to be fully paid in in cash pursuant to the terms of this Agreement and having the contractual preferences set forth in Shareholders Agreement, which contractual preferences shall be deemed and treated by all Parties hereto as if Investor Shares were issued as preference shares (*Vorzugsaktien; actions privilégiées*) and if the contractual preferences were corporate preferences for all purposes and intents of this Agreement and the Shareholders Agreement.

"Investor 1 Subscription Amount" shall have the meaning set forth in Section 3.1(a).

"Investor n Subscription Amount" shall have the meaning set forth in Section 3.1(b).

"Issue Price" shall have the meaning set forth in Section 2.1.3(b).

"Material Adverse Change" shall mean any adverse change relating to the structure, business, financial condition, prospects, assets and liabilities, or results of operations of or other material adverse effect on the Company that would cause, or is likely to cause, a reasonable investor to abstain from entering into and/or consummating the transactions contemplated under this Agreement.

"Material Agreements" shall mean all contracts, agreements, arrangements or obligations to which the Company is a party and which are of material importance to the Business, including, without limitation, any contracts, agreements, arrangements or obligations:¹⁰

- (a) with the top [ten] [customers/distributors/resellers] of the Company as determined based on annual net revenue for the business year ended on the [date of last Financial Statement];
- (b) with the top [ten] [suppliers/service providers/consultants] of the Company as determined based on annual net expenditures for the business year ended on the [date of last Financial Statement];
- (c) providing for the (contingent or non-contingent) payment by the Company in one or several installments of an amount in excess of CHF [amount] or the equivalent thereof;
- (d) [that regulate ownership or use of Business IP by the Company or that impose a non-competition or non-solicitation obligation on the Company;]
- (e) [with respect to any joint venture, consortium, partnership or other unincorporated association the Company is a party to or a member of (other than a recognized non-profit trade association), [provided that such entail any [material] (contingent or non-contingent) liabilities or obligations to make [material] contributions in kind or in cash]]; or
- (f) [regarding the financing of the Company or the provision of collateral by the Company for its own obligations, for the obligations of any Affiliate or the obligations of third parties, including any guarantees provided by the Company.]

"New Director" shall mean each of the persons, who are elected as new members of the Board upon nomination in accordance with Sections 2.1.3(c).

¹⁰ [Note: Generic standard list, which needs to be adjusted and tailored to the transaction.]

"Party" and **"Parties"** shall have the meaning set forth on the front page of this Agreement.

"Preamble" shall mean a preamble of this Agreement.

"Proxy Holder" shall mean the proxy holder whose name is entered in the proxy as the person who is appointed to represent and act for the issuer of the proxy.

"Section" shall mean a section of this Agreement.

"Shareholders Agreement" shall have the meaning set forth in Preamble D.

"Subscription Amount" shall mean the total of the subscription amounts payable by the respective Investor for all of its Investor Shares in accordance with Section 3.1.

"Subscription Form" shall mean the subscription forms to be executed by the Investors in accordance with the terms of this Agreement in form and substance satisfactory to the Company and as required by Swiss corporate law.

"Tax Authority" shall mean any Authority whatsoever competent to impose, collect or assess any Taxes, whether in Switzerland or elsewhere.

"Taxes" shall mean all actual or contingent direct or indirect tax, customs, social security or pension liabilities, duties, charges, levies, assessments, contributions or the like in any jurisdiction, including any interest, costs, expenses or penalties related thereto and regardless whether payable to an Authority, a Benefit Plan or any other person; including, without limitation, income taxes (personal and corporate), capital taxes, stamp duties, withholding taxes, value added taxes, taxes related to real estate or other property, payroll taxes, social security contributions, pension plan contributions, contributions for unemployment, accident, sickness and similar mandatory or voluntary insurances.

"Tax Returns" shall have the meaning set forth in Section 6 of **Annex 5**.

Articles

Attached.

Board Regulations

Attached.

Cap Table (Ownership Structure after Capital Increase)

Attached.

Representations and Warranties¹¹

1. Capacity and Title

1.1 Authority and Ownership

Both the Company and the relevant Existing Shareholder have each the unrestricted right and authority, including, but not limited to, required corporate approval(s), to enter into this Agreement and to perform all its obligations under or in connection with this Agreement. This Agreement constitutes valid, legal and binding obligations of both Company and the relevant Existing Shareholder, enforceable against it in accordance with its terms. The relevant Existing Shareholder is the sole legal [and beneficial] owner of the Existing Shares, free and clear of any Encumbrance.

1.2 No Dissolution, Bankruptcy or Insolvency

No measures have been taken for the dissolution and liquidation or declaration of bankruptcy of either the Company or the relevant Existing Shareholder and no events have occurred which would justify any such measures to be taken. Neither the Company nor the relevant Existing Shareholder is over-indebted (*überschuldet; surendetté*), insolvent (*insolvent; insolvable*) or unable to pay its debts when due (*illiquid; non liquide*).

1.3 Execution and Performance, No Consents

The execution and performance of this Agreement by both the Company and the relevant Existing Shareholder (i) will not result in a breach of, or default under any term or provision of the constitutional documents, applicable law, any agreement, license, Authorization or other instrument or of any order, judgment or decree of any Authority to which it or the relevant Existing Shareholders is a party or by which it or the relevant Existing Shareholder is bound, and (ii) does not require any notice, consent, waiver or approval by any Authority or any other person. There are no proceedings or investigations whatsoever pending or threatened in writing against the Company or the relevant Existing Shareholder that could compromise the transactions contemplated by this Agreement.

2. Status of the Company

2.1 Incorporation, Share Capital and Authority

The Company is a corporation duly incorporated and validly existing under the laws of Switzerland. The Company's share capital is structured as set forth in Preamble B. The Existing Shares have been validly issued, are fully paid up and constitute the entire issued share capital of the Company. No options, warrants, calls, rights, contracts, commitments or derivative instruments are outstanding that could require the Company to sell, transfer or issue any shares or other securities of the Company. The Company has full corporate power and author-

¹¹ *[Note: As a general matter, the scope and wording of representations & warranties should be determined giving due regard to the specifics of the relevant Company and its specific business, financial, technical, legal and tax risks. In addition, the Model Documentation "light" presumes that the Company does not have group companies. Accordingly, representations & warranties are only given for the Company (as defined) and not for any group companies. Consider adding representations & warranties for group companies, if applicable.]*

ity to own its property and assets and to carry on its business.

2.2 Corporate Books and Registers

The corporate books, registers, accounts, ledgers, records and supporting documents of the Company are up to date and contain complete and accurate records of all matters since its incorporation.

3. Financial Statements

The statutory financial statements of the Company for the last [*number*] completed business year[s] ([collectively,] "**Financial Statements**") are correct and complete and were prepared in accordance with the Accounting Rules.

4. Assets (other than Intellectual Property)

The Company has good and valid title to, or with respect to Assets held under a lease, rental or other leasing agreement, the valid right to use all Assets that are material for its business, free and clear from any assignment or Encumbrance. The Company is under no obligation to sell any Assets other than in the normal course of business. All Assets of the Company are, taking into account ordinary wear and tear, in good operating condition and working order and have been regularly and properly maintained.

5. Ordinary Course of Business, No Material Adverse Change

Since [*date of last Financial Statement*], the Company's business has been operated in the ordinary course of business, consistent with past practice and at arm's-length terms and no Material Adverse Change has occurred.

6. Taxes, Social Security and Pension

- (a) All notices, reports, accounts, computations, statements, assessments, registrations and any other necessary information which the Company was legally obliged to submit to any Tax Authority or Benefit Plan for the purposes of taxation and/or under applicable laws and regulations ("**Tax Returns**") have been submitted by the Company within applicable time limits and were accurate and complete.
- (b) As of [*date of last Financial Statements*], all Taxes for which the Company has been liable or is liable to account for (whether of Switzerland or elsewhere), have been duly and timely withheld, deducted and paid (where applicable) or, if not due as of such date, were fully provided for in the Financial Statements. Since [*date of last Financial Statements*], all Taxes which have become due (whether of Switzerland or elsewhere) have been duly and timely withheld, deducted and/or paid (as applicable).
- (c) No claim, action or proceeding regarding Taxes is pending or threatened by any Tax Authority. No Tax Return is currently under audit by any Tax Authority and no communication of any such audit has been received. The Company is not party to any agreement or any other legal form for the extension of time for the assessment of payment of Taxes. The Company does not have any outstanding obligations under any agreements entered into with any Tax Authority. All claims and elections which have been made by the Company in relation to Tax are valid and have been made within the statutory time limits, and none of these claims or elections is in dispute in any respect.

- (d) The Company has complied with all laws applicable to and governing documents of any Benefit Plan. On the basis of and compared to the funding requirements of applicable law, none of the Benefit Plans has an accumulated funding deficiency (*Unterdeckung*) and none of the Benefit Plans has any claim against the Company.

7. Authorizations

All necessary Authorizations for carrying on the Company's business as conducted in the past and as now carried on have been obtained, are in full force and effect and have been and are being complied with. No investigation, inquiry or proceeding with respect to the Company's business (as conducted in the past and as now carried) is pending or has been threatened in writing which is likely to result in the suspension, cancellation, modification or revocation of any of such Authorizations.

8. Compliance

The Company carried on and is carrying on its business in accordance with all applicable laws, regulations, ordinances, agreements and constitutional documents. No investigation or enquiry is pending or threatened in writing and no order, decree, decision or judgement has been issued by any Authority or self-regulatory body regarding any matter against the Company or any person for whose acts or omissions the Company may be liable in connection with the breach or alleged breach of any laws or regulations. The Company is under no obligation to remedy any unlawful situation in respect of any of its assets or activities.

9. Material Agreements

Annex 6 contains a complete and accurate list of all Material Agreements. Each Material Agreement is valid and in full force and effect, and has been disclosed in full to the Investors. The Company has neither received nor given notice of termination of any Material Agreement. The Company is not in default under or in breach of any Material Agreement, and no party to any Material Agreement has the right to terminate or modify its obligations as a result of the transactions contemplated by this Agreement.

10. Employees

- (a) All employment agreements between the Company and its employees are in writing and contain only customary terms and conditions. The Company does not retain, and has not retained in the past, any consultants or freelancers that could be requalified as employees under applicable laws.
- (b) The Company and each of its employees complied with all obligations imposed by all relevant laws, ordinances and collective labor agreements. All employees of the Company have the necessary working permits or are Swiss citizens.
- (c) As at the date of this Agreement, no material salary increases have been resolved but not yet implemented. Any claims of current or former employees of the Company, including any claims for compensation, bonus, overtime and holidays, are fully provided for in the Financial Statement as per the respective accounts date. Since such accounts date, overtime claims and outstanding holiday entitlements accrued only in the ordinary course of business.
- (d) The Company does not have in existence any share or other incentive scheme, whether settled in cash or in (phantom) securities of any kind and the Company has

no obligation, other than those disclosed, to pay any bonus or similar payments to any present or former employee or consultant. The Company has no obligation to make any severance, change-of-control or transaction bonus payment, or any payment of compensation for loss of office, employment or redundancy to any present or former employee or director as a consequence of the transactions contemplated by this Agreement.

- (e) None of the employees of the Company has given, or has been given, notice of termination of her/his employment or has indicated an intention to terminate her/his employment.

11. Intellectual Property

- (a) All Business IP is (or, where appropriate in the case of pending applications, will be):
 - (i) legally and beneficially owned by the Company or lawfully used in accordance with a license agreement (which is in full force and effect without default or breach by any party thereto);
 - (ii) valid and, to the Best Knowledge of the relevant Existing Shareholder, not being infringed or challenged or opposed by any person and there is no reason to anticipate such infringement, challenge or opposition;
 - (iii) not subject to any Encumbrance or any license in favor of another person;
 - (iv) in the case of rights in such Business IP which is registered or the subject of applications for registration, validly registered or applied for in the name of the Company, has been properly used to maintain its validity, and all registration or renewal fees which are due have been paid and all steps which are required for their registration, maintenance and protection have been taken; and
 - (v) in the case of Business IP related to software developed for use with the Company's products, legally and beneficially exclusively owned by the Company and the Company has the right to sell or distribute such software without restriction.
- (b) [To the relevant Existing Shareholder's Best Knowledge,] [T/t]he Business does not infringe, and has not in the past infringed, any Intellectual Property of any third party.
- (c) The Company has taken all best practice precautions and measures to protect and maintain the confidentiality of its trade secrets and know-how.

12. Insurance

The Company has, and has had since its inception, adequate insurance coverage relating to its Business which is customary in the Company's industry for a company of its size. All insurance policies of the Company are in full force and effect and there have been no material acts or circumstances which make any of these policies voidable. The Company has complied with the terms and conditions of such insurance policies and all premiums for such policies have been paid when due.

13. Litigation / Proceedings

There are no outstanding or unsatisfied judgments, orders, decrees, arbitral awards or other decisions, and there are no Claims pending or threatened in writing, against the Company (or any person for whose acts or defaults the Company may be liable) by or before any Authority. To the Best Knowledge of the relevant Existing Shareholder, no facts or circumstances exist which are reasonably likely to give rise to a Claim.

14. No Finder's Fees

No person is entitled to receive from the Company any option, broker's, finder's or transaction fee, commission or other form of remuneration in connection with this Agreement and the transactions contemplated thereby.

15. Disclosure

16. [To the Best Knowledge of the relevant Existing Shareholder,] [A/a]ll material information relating to the Company and its business have been disclosed to the Investors and such information is true, correct and complete.

Material Agreements

Attached.