

*This document does not constitute legal advice and is not meant to serve as a recommended form suitable for each and every early stage capital investment by institutional investors in a Swiss startup. 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 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

[COMPANY]

made by and among

[INVESTORS]

and

[FOUNDERS]

and

[OTHER SHAREHOLDERS]

and

[COMPANY]

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## STATEMENT

### Purpose

The purpose of this model documentation for sizeable venture capital investment rounds with institutional investors (**Model Documentation**) is to facilitate and increase the efficiency of negotiations for the legal documentation of such investments in Switzerland by establishing a widely recognized market standard for such transactions (for small startup investments by business angels and similar startup investors, see SECA's model documentation "light" at [link](#)).

### Documents

The Model Documentation 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 incorporate the collective experience of Swiss private equity practice and ensure broad acceptance in the industry the SECA Legal & Tax Chapter invited a standing working group (Working Group) of recognized practitioners from leading Swiss law firms active in the field to develop a commonly acceptable set of Model Documentation and keep it updated:

- **Raphael Annasohn**, Bär & Karrer AG
- **Alexander Blaeser**, Baker McKenzie Switzerland AG
- **Marcel Jakob**, Schellenberg Wittmer AG
- **Beat Kühni**, Lenz & Staehelin
- **Margrit Marti**, Homburger AG
- **Daniel P. Oehri**, Wenger Vieli AG

whereby some of the founding members of the Working Group (Founding Members) continue to assist, and act as sounding board to, the Working Group:

- **Martin Frey**, Baker McKenzie Switzerland AG
- **Michael Trippel**, Bär & Karrer AG
- **Oliver Triebold**, Schellenberg Wittmer AG
- **Ulysses von Salis**, Niederer Kraft Frey AG
- **Christian Wenger**, Wenger Vieli AG

SECA expresses its thanks to its Legal & Tax Chapter, the Working Group and the Founding Members for their joint contributions and efforts to establish, further develop and keep

updated the Model Documentation on a pro bono basis for the benefit of the Swiss venture capital and private equity market as a whole.

### Scope

The Model Documentation has been developed particularly with a view for it to be suitable for national and international, including Anglo-American professional / institutional investors. Amongst other relevant assumptions underlying the Model Documentation, it assumes that:

- the investment is made as an early stage investment (typically as from CHF 5 million),
- the circle of involved parties consists of founders, (passive or active) shareholders and more than one active (financial) investor, and
- the startup company is incorporated in Switzerland and organized in the form of a stock corporation (*Aktiengesellschaft, société anonyme*).

Further assumptions and qualifications may be specified in the footnotes of the annotated version of the Model Documentation. In addition, important commercial terms (such as representations and warranties in the Investment Agreement, control-related veto rights on shareholder and board level, and anti-dilution, registration and non-competition related protections in the Shareholders Agreement) have either been included in the Model Documentation as an example only or have been deliberately left blank. Wording in square brackets calls for particular attention as to the suitability of the proposed wording given the particulars of any given user case, whereas underlined wording offers alternative wording proposals.

### Caution

It is upon each party to ensure if and to what extent the Model Documentation is suitable to the trans-action 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, there is more than one valid answer. Accordingly, consult your legal, tax and other advisors to ensure that the Model Documentation 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 are valid and enforceable. Neither SECA nor any member of its Legal & Tax Chapter, the Working Group or the Founding Members gives any opinion or assurances as to the suitability, adequacy, validity and/or enforceability of the Model Documentation and its provisions. In using or working with the Model Documentation, 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, the Working Group and the Founding Members.

The Working Group will continue to monitor any relevant legal and market developments and assess the need or desirability of further adjustments or changes to the Model Documentation on a continuing basis, including on the basis of any comments or improvements proposed by market participants and practitioners, which you are invited and encouraged to submit to SECA or the Working Group ([info@seca.ch](mailto:info@seca.ch)).

### 5th Edition

This 5<sup>th</sup> edition of the Model Documentation incorporates a number of changes to reflect current market trends as well as changes required to take into account the amended Swiss company law which entered into force as of January 1, 2023.

Furthermore, in an effort to reduce unnecessary complexity in styling and numberings, the Model Documentation adopted the DEG Standard Styles framework (for more information see Standard Styles for Legal Agreements – DEG at [link](#)).

Zurich, June 2025

# INVESTMENT AGREEMENT

dated as of *[date]*

and entered into by and among

## Investors

*[name Investor 1]*, *[address]*

("Cash Investor 1")

*[name Investor n]*, *[address]*

("Cash Investor n")

(Cash Investor 1-n, collectively "Cash Investors"  
and individually a "Cash Investor")

*[name Convertible Loan Investor 1]*, *[address]*

("Convertible Loan Investor 1")

*[name Convertible Loan Investor n]*, *[address]*

("Convertible Loan Investor n")

(Convertible Loan Investors 1-n, collectively "Convertible Loan Investors"  
and individually a "Convertible Loan Investor")<sup>1,2</sup>

(Cash Investors and Convertible Loan Investors, collectively "Investors"  
and individually an "Investor")

## Founders

*[name Founder 1]*, *[address]*

("Founder 1")

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<sup>1</sup> **[Note:** Not needed if no convertible loans are converted as part of this Financing Round. If CLA holders are existing shareholders, inclusion as "Founders" or "Other Shareholders" and "Existing Shareholders" and resulting implications to be checked.]

<sup>2</sup> **[Note:** The Model Documentation assumes that some rights shall exclusively be granted to the Cash Investors: (i) consent right regarding matters outside the ordinary course of business under Section 6; (ii) right to waive CPs under Section 7.2; (iii) right to require closing deliverables to be in form and substance satisfactory to Cash Investors under Section 7.3 (iv) right to terminate and rescind the Agreement and the Shareholders Agreement under Section 8; (v) consent right regarding assignment or transfer of rights or obligations under Section 12.4; and (vi) right to reimbursement of transaction costs under Section 12.5(b). Please amend if different approach shall be taken in any specific case.]

[*name Founder n*], [*address*]

("Founder n")

(Founder 1-n, collectively "**Founders**"  
and individually a "**Founder**")

#### **Other Shareholders**

[*name Other Shareholder 1*], [*address*]

("Other Shareholder 1")

[*name Other Shareholder n*], [*address*]

("Other Shareholder n")

(Other Shareholder 1-n, collectively "**Other Shareholders**"  
and individually an "**Other Shareholder**")

(Founders and Other Shareholders, collectively "**Existing Shareholders**"  
and individually an "**Existing Shareholder**")

and

#### **Company**

[*name Company*], [*address*]

("Company")

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

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## PREAMBLE

- (A) The Company is organized in the form of a Swiss stock corporation (*Aktiengesellschaft*; *société anonyme*) registered with the register of commerce of the Canton of [canton] ("**Commercial Register**") under the number CHE-°[number] and having its registered office at [address], Switzerland.
- (B) The Company's core business consists of [description of core business] ("**Business**").<sup>3</sup>
- (C) The Company intends to increase its share capital in a financing round ("**Financing Round**") by way of issuance of [(i)] [number] Preferred Shares in the Company with a nominal value of CHF [amount] per Preferred Share, each to be fully paid-in in cash[ and (ii) [number] Preferred Shares in the Company with a nominal value of CHF [amount] per Preferred Share, each to be fully paid-in by way of setting-off each relevant Investor's Convertible Loan Receivable against the Company under the relevant Convertible Loan Agreement in an amount equal to the Conversion Amount with the Company's claim for payment of the aggregate issue price of the Preferred Shares subscribed by the relevant Convertible Loan Investor in an amount equal to the Conversion Amount],<sup>4,5,6</sup> thereby increasing the issued share capital of the Company by an aggregate nominal amount of CHF [amount] from CHF [amount] to CHF [amount], ("**Capital Increase**").<sup>7</sup>
- (D) The Parties intend to enter, inter alia, into a shareholders agreement substantially in the form attached hereto as **Annex (D)** ("**Shareholders Agreement**") on or immediately prior to the Closing Date.
- (E) The Parties wish to determine in this Agreement their respective rights and obligations in relation to the Investors' investment in the Company, the Financing Round and the Capital Increase.

Based on the foregoing, the Parties agree as follows:

<sup>3</sup> [Note: The Model Documentation presumes that the Company's core business needs no adjustments or modifications prior to completion of the Capital Increase. If the Investors request that the core business of the Company be modified or complemented as a condition precedent (CP) to Closing, the wording of this introductory paragraph (B) (and/or the definition of the term "Business", which latter definition is being used for specific other purposes) should be modified accordingly (together with consequential adjustments, as appropriate, throughout the Model Documentation).]

<sup>4</sup> [Note: If newly issued Shares are paid-up by way of conversion of CLA claims, the Articles must disclose (i) the amount of converted CLA claims, (ii) the name of the CLA holder, and (iii) the number of Shares issued against the converted CLA claims. The Articles must be filed with the competent commercial register and become publicly available.]

<sup>5</sup> [Note: Wording to be amended if the CLA holders are meant to pay the nominal amount for the newly issued Shares in cash and to contribute the difference between (i) the aggregate outstanding amount of principal [and accrued interest] under the CLAs and (ii) the nominal value into the equity of Company.]

<sup>6</sup> [Note: Please check that all outstanding amounts under CLAs are converted and/or waived as part of the Financing Round]

<sup>7</sup> [Note: This Agreement is based on the assumption that the Company issues preferred shares for the first time. If the Company has already issued preferred shares in previous financing rounds (e.g. a seed round), the definition of Preferred Shares and the rights of the different classes of Preferred Shares may need to be adjusted throughout this Agreement (together with consequential changes throughout the Model Documentation, in particular with respect to corporate approvals (special meeting of preferred shareholders).]

## 1. Definitions

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

## 2. Current Equity Structure of the Company

As at the date of this Agreement, 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**"). The Company has [no]/[number of] treasury shares (*eigene Aktien; actions propres*). The current ownership structure of the Company on a fully diluted basis is set out in the cap table set forth in **Annex 2**. [Annex 2 also provides a complete overview of all Convertible Loan Agreements, including all Convertible Loan Receivables and Conversion Amounts, which will be converted into newly issued Preferred Shares as part of this Financing Round.]

## 3. 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:

- 3.1 the [Cash] 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] in [one ordinary share capital increase]<sup>8</sup> for purposes of enabling the Company to [expand its Business in accordance with the Business Plan];

(a) [the Convertible Loan Investors will fully convert their Convertible Loan Receivables under their Convertible Loan Agreements in the relevant Conversion Amounts;] and<sup>9,10</sup>

(b) each of the Existing Shareholders and the Company hereby undertakes to the Investors to generally use their powers and take all actions and execute all documents required to effect the transactions contemplated by this Agreement and to consummate the Capital Increase in accordance with the terms and conditions hereof.

<sup>8</sup> **[Note:** Investors may request that the Capital Increase be split up into two or more tranches, the subscription of which is subject to the Company reaching certain specified milestones. If so, the wording of this Section would have to be amended (together with consequential adjustments, as appropriate, throughout the Model Documentation).]

<sup>9</sup> **[Note:** Required in case of conversion of such equity related instruments as a result of the Financing Round. In case of equity related instruments which are not converted/exercised as part of the Financing Round wording to cover the future issuance of shares might be needed (similar to the Consent Declaration pursuant to Annex 2 of the SECA CLA Model Documentation – Convertible Agreement (long-form), see also Footnote 21.)]

<sup>10</sup> **[Note:** Wording to be amended if the CLA holders are meant to pay the nominal amount for the newly issued shares in cash and to contribute the difference between (i) the aggregate outstanding amount of principal [and accrued interest] under the CLAs and (ii) the nominal value into the equity of Company.]

### 3.1 Capital Increase / Extraordinary General Meeting of Shareholders

#### 3.1.1 Undertakings of Existing Shareholders

Each of the Existing Shareholders and, in respect of sub-paragraph 3.1.1(a) below, 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 3.1.3; and
- (c) *[specify additional actions/resolutions as appropriate]*.

#### 3.1.2 Waiver of Subscription Rights

Each of the Existing Shareholders hereby unconditionally and irrevocably waives all of its subscription rights (*Bezugsrechte; droits de souscription préférentiels*) in connection with the Capital Increase and hereby agrees that the Company allocates the appropriate number of Preferred Shares in the Capital Increase exclusively to the Investors in accordance with this Agreement and the cap table set forth in **Annex 5**.

#### 3.1.3 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 replace the Existing Articles by, and adopt, the Articles substantially in the form attached hereto as **Annex 3.1.3**;
- (b) to increase the nominal statutory share capital of the Company by the aggregate amount of CHF [amount] from CHF [amount] to CHF [amount] through the issuance of [(i)] [number] new Preferred Shares, each at the issue price of CHF [amount] ("**Issue Price**"), which constitutes a premium (*Agio;agio*) for each Preferred Share of CHF [amount], to the [Cash] Investors in accordance with, and at the [Cash Investor] Subscription Amounts set forth in, Section 4 and (ii) [number] new Preferred Shares, each at the [issue price of CHF [amount]/Issue Price], which constitutes a premium (*Agio;agio*) for each Preferred Share of CHF [amount][ and a discount to the Issue Price of [number] percent] ("**Discounted Issue Price**", to the Convertible Loan Investors in accordance with, and at the Convertible Loan Investor Subscription Amounts set forth in, Section 4];<sup>11</sup>
- (c) [to create a conditional share capital (*bedingtes Kapital; capital-actions conditionnelle*) in the amount of CHF [amount] ("**Conditional Share Capital**")];

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<sup>11</sup> [Note: See Footnote 5.]

- (d) [to create a capital band (*Kapitalband; marge de fluctuation*) in the amount of CHF [amount] (upper limit of CHF [amount equal to the sum of the nominal share capital upon Full Consummation plus the amount of the capital band]) authorizing the Board to issue up to [number] Preferred Shares ("**Capital Band**")];<sup>12</sup>
- (e) to elect the following persons as New Director[s]:
  - (i) [name], nominated by [Investor 1];
  - (ii) [name], nominated by [Investor n]; and
  - (iii) [name], nominated by [the Founders];
- (f) [to elect [name] as the new Company auditors]; and
- (g) [additional actions/resolutions as appropriate].

### 3.2 Constitutional Meeting of Newly Elected Board

Each Party 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 Chairperson (*Verwaltungsratspräsident; président du conseil d'administration*);
- (b) to grant [each New Director] collective signing power by two (*Kollektivunterschrift zu Zweien; signature collective à deux*); and
- (c) to replace the Existing Board Regulations by, and adopt, the Board Regulations, substantially in the form attached hereto as **Annex 3.2(c)**.

## 4. Subscription of Preferred Shares

### 4.1 Undertaking to Subscribe

- (a) Subject to the terms and conditions of this Agreement (including, without limitation, Section 7.2 and Section 12.1), the Investors shall subscribe for Preferred Shares as follows:
  - (i) [Cash] Investor 1 shall subscribe for [number] Preferred Shares, each at the Issue Price, for an aggregate subscription amount of CHF [amount] ("**[Cash] Investor 1 Subscription Amount**") [and]
  - (ii) [Cash] Investor n shall subscribe for [number] Preferred Shares, each at the Issue Price, for an aggregate subscription amount of CHF [amount] ("**[Cash] Investor n Subscription Amount**")

<sup>12</sup> [Note: To be added if optional subsequent closing with Additional Investors is included. See below Section 9.]

- (iii) [Convertible Loan Investor 1 shall subscribe for [number] Preferred Shares,<sup>13</sup> each at the [Discounted] Issue Price, for an aggregate subscription amount in an amount equal to its Conversion Amount, i.e. CHF [amount] ("**Convertible Loan Investor 1 Subscription Amount**")]; and
- (iv) Convertible Loan Investor n shall subscribe for [number] Preferred Shares, each at the [Discounted] Issue Price, for an aggregate subscription amount in an amount equal to its Conversion Amount, i.e. CHF [amount] ("**Convertible Loan Investor n Subscription Amount**").]
- (b) For this purpose, [(i)] each [Cash] Investor hereby undertakes, subject to the conditions precedent set forth in Section 7.2 being satisfied or waived by each of the [Cash] Investors[, and (ii) each Convertible Loan Investor hereby undertakes, subject to (1) the Cash Investor Subscription Amounts in [the full amount of CHF [amount] / an amount of at least CHF [amount]] being paid by the Cash Investors as set forth in Section 4.2 and (2) the conditions precedent set forth in Section 7.2 being satisfied or waived by each of the [Cash] Investors], to execute and deliver to the Company its Subscription Form on or prior to the Closing Date.

## 4.2 Cash Contribution

No later than 5 Business Days before the Closing Date, each [Cash] Investor shall pay its [Cash] Subscription Amount [from a Swiss bank]<sup>14</sup> to the following blocked capital account of the Company (*Kapitaleinzahlungssperrkonto; compte de capital bloqué*):

Bank: [name], [place]

In favour of: [Company name]

Account no.: [number]

IBAN no.: [number]

Clearing no.: [number]

Reference: Share Capital Increase of [Company name]

## 4.3 [Conversion of Convertible Loan Receivables]<sup>15</sup>

[Subject to (i) the Cash Investor Subscription Amounts in [the full amount]/[an amount of at least CHF [amount]] being paid by the Cash Investors as set forth in Section 4.2 and (ii) the conditions precedent set forth in Section 7.2 being satisfied or duly waived ], each Convertible Loan Investor hereby, with effect as of immediately prior to the Board resolution on the

<sup>13</sup> [Note: Rounded down to the nearest full share number.]

<sup>14</sup> [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.]

<sup>15</sup> [Note: See Footnote 5.]

ascertainment and the execution of the Capital Increase being taken pursuant to Section 7.3(a)(x):

- (a) declares to convert (set-off) its Convertible Loan Receivable in an amount equal to the relevant Conversion Amount (i.e. an amount equal to its Convertible Loan Investor Subscription Amount) against the Company's claim for payment of such Convertible Loan Investor Subscription Amount (to which set-off the Company and each Convertible Loan Investor hereby agrees), thereby waiving any additional formal requirements for such a conversion as stipulated in its Convertible Loan Agreement; and
- (b) confirms to have no other rights or claims under its Convertible Loan Agreement following the conversion of its Convertible Loan Receivable in accordance with this Agreement, and in the event any such rights or claims should nonetheless exist, with full and final effect hereby waives any such rights or claims (including any rights or claims which may arise under its Convertible Loan Agreement in connection with or triggered by the transactions contemplated by this Agreement).]

## **5. Ownership Structure After Capital Increase**

After Full Consummation, the ownership structure of the Company on a fully diluted basis shall be as specified in the cap table set forth in **Annex 5**.

## **6. Conduct of Business Until Closing**

- (a) The Company shall, and each of the Existing Shareholders hereby undertakes to procure that the Company will, until Full Consummation, operate its business in the ordinary course in accordance with past practice, except as explicitly provided by this Agreement or with the prior written consent [(or consent by e-mail)] of [each [Cash ]Investor]/[[Cash ]Investors representing more than [50]% of the Subscription Amount]<sup>16</sup> (such consent not to be unreasonably withheld or delayed).
- (b) [In particular, the Company hereby covenants to each of the [Cash] Investors not to, and each of the Existing Shareholders hereby undertakes to the [Cash] Investors to procure that the Company will not:<sup>17</sup>
  - (i) [specify as appropriate]<sup>18</sup>

<sup>16</sup> [Note: The Model Documentation does not contain a lead investor concept. In case the Parties agreed to such concept, the Model Documentation would have to be amended accordingly.]

<sup>17</sup> [Note: Appropriate limitations and restrictions between signing and Closing should aim to avoid that material actions (or omissions) occur that alter or adversely affect the Company or its capital structure, assets or business operations in any material way. Absent particular CPs to Closing that need more time to be fulfilled, it is anticipated that there will usually be only a few business days between signing and Closing so that any reasonably agreed limitations and restrictions on the Company during the relatively short period of time between signing and Closing should usually not unduly restrict the Company's ability to operate as a going-concern and in the further pursuit of its ordinary course of business.]

<sup>18</sup> [Note: The list of qualified actions (or omissions) in respect of the Company's capital structure, assets or business operation between signing and Closing that require the prior written consent of the Investors should be determined and drafted giving due regard to the specifics of any given case, but usually will include: (1) changes to its issued and outstanding share capital, (2) material investments or di-vestments outside the ordinary course of business, (3)

in each case of paragraphs (i) to ([specify]) above, except with the prior written consent [(or consent by e-mail)] of [each [Cash] Investor]/[[Cash] Investors representing more than [50]% of the Subscription Amount] (such consent not to be unreasonably withheld or delayed).]

## **7. Closing**

### **7.1 Place and Date of Closing**

The Closing shall take place on [date]<sup>19</sup> at the offices of [insert name of law firm / notary], or such other date or place as the [Cash] Investors representing more than [50]% of the Subscription Amount] and the Company may agree ("Closing Date").

### **7.2 Conditions Precedent to Closing**

The Closing shall be subject to the prior fulfilment (or waiver by [each [Cash] Investor])<sup>20</sup> of each of the following conditions precedent:<sup>21</sup>

- (a) [the absence of any judgment, order, injunction or decree of any court, administrative or governmental body or arbitration tribunal which prohibits the entry into, execution, consummation and/or the performance by any Party of the obligations and/or transactions contemplated by this Agreement;]
- (b) [the absence of any breach by any Party (other than the relevant [Cash] Investor) of any material provision of this Agreement including the payment obligations set out in Section 4.2 [and Section 4.3] and/or the representations and warranties given by any other Party under Section 10;]
- (c) [the absence of a Material Adverse Change with respect to the Company;]
- (d) [the compliance by all Existing Shareholders and the Company with Section 6;] and
- (e) [specify additional conditions precedent as appropriate].

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no mergers, de-mergers, share splits, or other corporate reorganisation or restructuring, (4) the incurrence of financial indebtedness, (5) the execution, amendment or termination of any material agreements or agreements outside the ordinary course of business, (6) the hiring or dismissal of Management/Key Employees/employees or the amendment of any employment related terms (except if and to the extent contemplated by the Investment Agreement), (7) maintenance (or purchase) of appropriate insurance coverage, (8) IP rights matters, (9) authorizations and permits, (10) compliance & regulatory matters, (11) social security & pension fund matters, (12) tax matters, (13) litigation, arbitration & other administrative proceedings, etc.]

<sup>19</sup> [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 Agreement has occurred, except where the fulfilment of particular CPs to Closing needs more time.]

<sup>20</sup> [Note: Might be adapted in case of a lead investor concept; see Footnote 16.]

<sup>21</sup> [Note: The list of CPs to Closing as reflected in Section 7.2 is merely indicative and is to be determined and drafted giving due regard to the specifics of any given case. In case of equity related instruments providing for the issuance of new shares of the Company after the completion of the Capital Increase new shareholders/Investors might need to sign a Consent Declaration similar to the one pursuant to Annex 2 of the SECA CLA Model Documentation - Convertible Agreement (long-form).]



### 7.3 Closing Actions and Deliveries

- (a) At Closing, the relevant Party shall procure that (i) the following documents shall be delivered, in each case duly executed and in form and substance satisfactory to the Company and each of the [Cash] Investors, and (ii) the following actions shall be performed:<sup>22</sup>
- (i) each Party shall duly execute (or deliver a duly executed) Shareholders Agreement substantially in the form attached hereto as **Annex (D)**;
  - (ii) [the Company shall deliver duly executed employment agreements with [all members of the Management]/[Key Employees] substantially in the form attached hereto as **Annex 7.3(a)(ii)**;
  - (iii) [the Company shall deliver the resignation letter[s] from each resigning existing Director;]<sup>23</sup>
  - (iv) each relevant Party shall deliver the acceptance declarations of the New Directors (*Wahlannahmeerklärungen; déclaration d'acceptation*) nominated by it, together with duly legalized specimen signature sheets (*Unterschriftenmuster; specimen de signature*);
  - (v) [the Company shall deliver the acceptance declarations of [name] as the new Company auditors;]
  - (vi) each Existing Shareholder shall deliver its proxy for the Extraordinary General Meeting authorizing the Proxy Holder to vote on and approve all resolutions set forth in Section 3.1.1(a);
  - (vii) the Company shall deliver confirmation from [specify name of Company's bank] evidencing that all [Cash Investor] Subscription Amounts payable in cash have been paid in cash and fully credited to the Company's blocked account specified in Section 4.2;
  - (viii) each Investor shall deliver a duly signed original of its Subscription Form in accordance with Section 4.1;
  - (ix) upon delivery of the foregoing documents, the Extraordinary General Meeting shall be held in the presence of a notary approving: (1) the increase of the share capital [(including waivers of subscription rights)],<sup>24</sup> (2) the creation of Preferred Shares as set forth herein, [(3) the creation of the Conditional Share

<sup>22</sup> **[Note:** The list of closing actions and deliveries reflected in Section 7.3 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 fax copies of such documents shall be delivered).]

<sup>23</sup> **[Note:** Resignation letters may be necessary in case the Parties have agreed that specified incumbent Directors must resign to facilitate the agreed upon new Board composition as of the Closing Date.]

<sup>24</sup> **[Note:** An auditors' report will be required in the context of the Capital Increase if statutory subscription rights (*Bezugsrechte; droits de souscriptions préférentiels*) of shareholders are excluded or there are conversions of Convertible [Loans/Notes]. As the Existing Shareholders waive their statutory subscription rights in Section 3.1.2 it is not necessary to exclude these.]

Capital,][ (4) the creation of the Capital Band,] (5) the adoption of the Articles, and (6) the election of the New Directors [and [name] as the new Company auditors];

- (x) the Board shall execute the circular resolutions regarding (1) the adoption of the Board Regulations, and (2) the registration of the Investors as owners with voting rights of the relevant number of Preferred Shares subscribed by the respective Investors in the Company's share register and the register of beneficial owners upon Full Consummation;
  - (xi) [the Company shall deliver the auditors' report (*Prüfungsbestätigung; confirmation des réviseurs*) confirming the completeness and accuracy of the Board's capital increase report;]<sup>25</sup>
  - (xii) the Board shall issue its report regarding the capital increase (*Kapitalerhöhungsbericht; rapport d'augmentation*) and take the resolution on the ascertainment and the execution of the Capital Increase (*Feststellungsbeschluss; constatations relatives à l'augmentation du capital*) in the presence of a notary;
  - (xiii) the Board shall execute the circular resolution regarding (1) the constitution of the newly composed Board, (2) the election of the Chairperson, and (3) the granting of collective signing power by two (*Konstituierungsbeschluss; résolution de constitution*), all in accordance with this Agreement;
  - (xiv) the Board shall deliver a duly signed application to the Commercial Register regarding (1) the increase of the share capital to reflect the Capital Increase, (2) the creation of Preferred Shares (*Vorzugsaktien; actions privilégiées*) as a new class of shares, [(3) the creation of conditional share capital in the amount of CHF [amount],] [(4) the creation of the Capital Band], (5) the adoption of the Articles and (6) the election of the New Directors [and [name] as the new Company auditors] ("**Application**");
  - (xv) each Investor shall, if applicable, deliver its notification letter to the Company stating the full name(s) and address(es) of the ultimate beneficial owner(s) within the meaning of Art. 697j CO; and
  - (xvi) [*specify additional deliveries/actions as appropriate*].<sup>26</sup>
- (b) In addition to the above, the Company and each of the Existing Shareholders undertakes to each [Cash] Investor to execute or perform such other documents,

<sup>25</sup> [Note: An auditors' report will not be required in the context of a regular capital increase which is exclusively made in cash unless statutory subscription rights (*Bezugsrechte; droits de souscriptions préférentiels*) of shareholders are excluded. The Auditors' report will be required in case CLAs are converted.]

<sup>26</sup> [Note: Potential capital contribution reserves created need to be accounted for on a separate account in the Company's books, to be separately disclosed in its financial statements and to be declared for Swiss withholding tax purposes. Therefore, form 170 to be filed with the Swiss Federal Tax Administration may be an example of an additional delivery. Consult your tax advisor on this topic.]

instruments, certificates or acts as may be reasonably requested by each [Cash] Investor and/or the Company in order to complete, perfect and consummate the transactions contemplated by this Agreement, including the Capital Increase and the issuance of the respective number of Preferred Shares to the Investors as set forth in this Agreement.

#### 7.4 Application to Register of Commerce

The Company shall file the Application with the Commercial Register immediately after performance of the actions and delivery of the documents specified in Section 7.3.<sup>27</sup>

#### 7.5 Issuance of New Shares and Registration in Share Register

The Company shall deliver to each Investor [and Existing Shareholder] a copy of the updated share register of the Company evidencing each Investor and Existing Shareholder as legal [and beneficial] owner of the appropriate number of Preferred Shares or Existing Shares immediately upon receipt of the certified extract and/or express confirmation of the Commercial Register evidencing the registration of the Capital Increase, the adoption of the Articles, the election of the New Directors and their respective signing powers.

### 8. [Termination and Rescission]<sup>28</sup>

- (a) [In case (1) the Board has not adopted the resolution on the ascertainment and execution of the Capital Increase (*Feststellungsbeschluss; constatations relatives à l'augmentation du capital*) in accordance with Section 7.3(a)(x) until the earlier to occur of (i) [30] Business Days after the Closing Date and (ii) [specific date], or (2) the Application together with all supporting documents related to the Capital Increase has not been filed with the Commercial Register within [six] months from the date of the Extraordinary General Meeting pursuant to Section 7.3(a)(x), then [each [Cash] Investor who did not cause such delay by a breach of any of its material obligations

<sup>27</sup> [Note: Pursuant to compulsory Swiss corporate law, the Application together with all supporting documents related to the ordinary Capital Increase must be filed with the register of commerce within six months from the date of the Extraordinary General Meeting pursuant to Section 7.3(a)(ix). If this deadline is missed, the relevant resolution of the Extraordinary General Meeting forfeits.]

<sup>28</sup> [Note: Compulsory Swiss corporate law limits Anglo-Saxon style termination/redemption rights in the context of a contemplated capital increase in case such capital increase is not (or not fully) consummated by a specified long-stop date. The termination rights set forth in this Section thus allow compliant Investors to terminate the Investment Agreement (and related agreements) only up to the time when the Board has ascertained in its resolution referred to in Section 7.3(a)(x) by way of public deed that the relevant new shares (Preferred Shares) have been duly subscribed and paid for (*Feststellungsbeschluss; constatations relatives à l'augmentation du capital*).

After that point in time, a "termination" or "rescission" of the contemplated capital increase may no longer be permissible under compulsory Swiss corporate law, so that the sole remaining legal remedy that would achieve a similar economic result to a "termination" or "rescission" would be a formal capital reduction. Such formal capital reduction and economically similar alternative remedies (such as restitution obligations of the Existing Shareholders towards the Investors) are not reflected in the Model Documentation.

However, in practice and absent particular circumstances in any given case, certainty of the full and successful consummation of the capital increase in accordance with the terms of the Investment Agreement should rarely be an issue (assuming all CPs to Closing are being fulfilled or waived), as the Parties usually will take comfort from appropriate preparations undertaken by and among their counsels (including the agreed-upon sequence of events and mechanics of the pre-closing and Closing and the pre-clearance of all relevant corporate legal documents with the relevant register of commerce).]

under this Agreement)/[[Cash] Investors representing the majority of the Subscription Amounts who did not cause such delay by a breach of any of their material obligations under this Agreement, acting jointly], shall have the right (but not the obligation) to terminate and rescind this Agreement, the Shareholders Agreement and any documents, instruments or deeds executed by any of the Investors (including the Subscription Forms) with immediate effect by written notice to all other Parties.

- (b) In case notice of termination and rescission is made in accordance with the preceding paragraph (a):
  - (i) each of the Parties acknowledges and agrees that this Agreement, the Shareholders Agreement and any documents, instruments or deeds executed by any of the Investors, including the Subscription Forms) shall be deemed terminated and rescinded and shall be without any further effect;
  - (ii) each of the Existing Shareholders and the Company hereby undertakes to each Investor to procure that the Board takes all such actions which are required in order to unwind the transactions contemplated by this Agreement and to revert as soon as possible all Closing actions which have already been taken or effected by the Parties, including, for the avoidance of doubt, that the Application to the Commercial Register for the Capital Increase (if already filed) is withdrawn and that the respective [Cash Investor] Subscription Amount paid by each [Cash] Investor for new Preferred Shares hereunder to the blocked bank account of the Company is immediately repaid to such [Cash] Investor in cash.<sup>29</sup>
- (c) Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that the right of termination and rescission pursuant to this Section 8 shall be without prejudice to any other rights or remedies that the Investor(s) may have including for breach of contract under this Agreement, the Shareholders Agreement and/or applicable laws.]

## 9. **[Subsequent Closing With Additional Investors]**<sup>30</sup>

- (a) [For a period of [number] Business Days after the Closing Date, the Company may allocate and issue up to [number] additional Preferred Shares (the "**Additional Shares**") to one or several bona fide third party investor(s) who are not subject to Sanctions [and have been approved by the Board] (the "**Additional Investors**")<sup>31</sup> who subscribe for such Additional Shares at the Issue Price [or a higher issue price] for

<sup>29</sup> [Note: In practice, the bank might require certain documentation and/or confirmations by the Board in order to repay the Subscription Amounts. The detailed requirements will depend on the particularities of the specific case.]

<sup>30</sup> [Note: A subsequent closing is optional and subject to negotiation. Depending on the Company's needs, the Parties may agree that the Company may seek and add new investors for a limited period after the Closing. In addition, Investors may request that the Additional Investors fulfil certain requirements, commit to a certain minimum ticket size or that adding Additional Investors is subject to consent by a certain majority of the Investors. If so, corresponding adjustments need to be made to this provision.]

<sup>31</sup> [Note: Limitations with respect to Additional Investors to be considered (e.g. no competing businesses).]

each Preferred Share and otherwise at the same terms and conditions [applicable to Cash Investors] as set forth in this Agreement and in the Shareholders Agreement.

- (b) The Additional Shares shall be issued by way of one or several subsequent capital increases out of the Capital Band (each an "**Additional Capital Increase**"). Each Additional Capital Increase shall take place on a date (each a "**Subsequent Closing Date**") and place to be determined by the Company.
- (c) Each Additional Investor shall by no later than the relevant Subsequent Closing Date accede to this Agreement and the Shareholders Agreement as a [Cash] Investor with the same obligations, rights and privileges as the [Cash] Investors with effect as of the relevant Subsequent Closing Date, including without limitation, as set forth in Section 10 and Section 11 of the Shareholders Agreement, by executing and delivering an accession declaration to the Company (the "**Accession Declaration**").<sup>32</sup> The Parties hereby consent in advance to the accession of the Additional Investors to this Agreement and to the Shareholders' Agreement.
- (d) Each Investor and each Existing Shareholder hereby unconditionally and irrevocably waives all of its subscription rights (*Bezugsrechte; droits de souscription préférentiels*) in connection with any Additional Capital Increase and hereby agrees that the Company allocates the relevant number of Preferred Shares in each Additional Capital Increase exclusively to the Additional Investors in accordance with this Section 9.]
- (e) No later than five Business Days before the relevant Subsequent Closing Date, each relevant Additional Investor shall pay the aggregate subscription amount payable in cash for all of its Additional Shares allocated pursuant to Section 9(a) to the blocked capital account of the Company (*Kapitaleinzahlungssperrkonto; compte de capital bloqué*) as notified by the Company.
- (f) At each Subsequent Closing Date, the relevant Party shall procure that the following documents shall be delivered, in each case duly executed and in form and substance satisfactory to the Company, and the following actions shall be performed:
  - (i) each Additional Investor shall deliver a duly signed Accession Declaration;
  - (ii) the Company shall deliver confirmation from the Company's bank evidencing that all relevant subscription amounts have been paid in cash and fully credited to the Company's blocked account;
  - (iii) each Additional Investor shall deliver a duly signed original of its Subscription Form;

<sup>32</sup> **[Note:** Appropriateness of accession with same obligations, rights and privileges to be assessed on a case-by-case basis. Upon accession, an Additional Investor will be deemed an Investor. Any changes to this concept may be addressed in the Accession Declaration, subject to approvals required under this Agreement and the Shareholders' Agreement.]

- (iv) upon delivery of the foregoing documents, the Board shall execute the circular resolutions approving: (1) the increase of the share capital out of the Capital Band, and (2) the registration of the relevant Additional Investors as owners with voting rights of the relevant number of Additional Shares subscribed by the respective Additional Investors in the Company's share register and the register of beneficial owners upon registration of the Additional Capital Increase with the Commercial Register;
  - (v) the Board shall issue its report regarding the capital increase (*Kapitalerhöhungsbericht; rapport d'augmentation*) and take the resolution on the ascertainment and the execution of the Additional Capital Increase (*Feststellungsbeschluss; constatations relatives à l'augmentation du capital*) in the presence of a notary;
  - (vi) the Board shall deliver a duly signed application to the Commercial Register regarding the increase of the share capital to reflect the Additional Capital Increase; and
  - (vii) each Additional Investor shall delivery its notification letter to the Company stating the full name(s) and address(es) of the ultimate beneficial owner(s) within the meaning of Art. 697j CO (if applicable).
- (g) Sections 7.4 and 7.5 shall apply by analogy to each Additional Capital Increase.]

## 10. Representations and Warranties

### 10.1 Representations and Warranties of [the Company,] [the Existing Shareholders and] [the Founders]<sup>33</sup>

Subject to the limitations set forth in this Section 10 (including **Annex 10.1**) and Section 11:<sup>34</sup>

<sup>33</sup> **[Note:** The Model Documentation presumes that reps & warranties are given as follows: by the Company only on its status (incorporation, existence etc.), by (passive) Existing Shareholders only on their capacity and ownership and by (active) Founders on all reps & warranties.

Depending on the dynamics of a capital round and the involvement and/or knowledge of and amongst shareholders in respect of the Company and its business operations, it may be appropriate to allocate the agreed reps & warranties differently so that some reps & warranties are given by all Existing Shareholders whereas others are given solely by all or selected "active" Existing Shareholders (such as Founders or members of the Management or Key Employees).

In practice, Investors sometimes request that the Company also makes all or selected reps & warranties beyond its status. Besides the limited economic upside any reps & warranties from the Company could offer to Investors generally (indeed, in case of a misrepresentation or breach of warranty by the Company, each Investor would in effect, and pro rata to its participation in the Company, find itself indirectly "paying" any damages expressed in the agreement to be payable by the Company), reps & warranties given by a privately held company for the benefit of its future shareholders in the context of a share issuance (other than reps & warranties in respect of the company's corporate existence, authority, capacity and title in newly issued shares) may be in breach of compulsory Swiss corporate laws pursuant to some views expressed in Swiss legal doctrine. The Model Documentation is therefore drafted under the assumption that the Company will not be required to give any operative reps & warranties.]

<sup>34</sup> **[Note:** 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. Usually, negotiations focus heavily on the specific scope/wording of any given rep or warranty, relevant materiality thresholds (if any) and "outside the ordinary course of business" and/or "actual" vs "best knowledge" qualifiers.]

- (a) [the Company hereby [, severally (but not jointly),] represents and warrants to each of the Investors that the representations and warranties set forth in Section [2] of **Annex 10.1;**]
- (b) [each of the Existing Shareholders hereby [, severally (but not jointly)]<sup>35</sup> [and solely in respect of itself (and not in respect of any other Existing Shareholder,] represents and warrants to each of the Investors that the representations and warranties set forth in Section [1] of **Annex 10.1;**] and
- (c) [each of the Founders hereby [, jointly and severally]/[severally (but not jointly)]<sup>36</sup> [and in each case where a representation and warranty refers to a Founder or an Existing Shareholder, only in respect of itself (and not in respect of any [other Existing Shareholder] [or other Founder,] represents and warrants to each of the Investors that the representations and warranties set forth in **Annex 10.1;**]

in each case are true and accurate, both as of the date of this Agreement and the Closing Date,<sup>37</sup> except for those representations and warranties which are explicitly made as of a specific date, which shall be true and accurate only as of such specific date.

## 10.2 Representations and Warranties of Each Investor<sup>38</sup>

Subject to the limitations set forth in this Section 10 (including **Annex 10.2**) and Section 11, each of the Investors hereby severally (and not jointly) and solely in respect of itself (and not in respect of any other Investor) represents and warrants to the Existing Shareholders and the Company that the representations and warranties set forth in **Annex 10.2**<sup>39</sup> are true and accurate, both as of the date of this Agreement and the Closing Date, except [(i)] for those representations and warranties which are explicitly made as of a specific date, which shall be true and accurate only as of such specific date[ and (ii) for the representations and warranties by the Additional Investors, which shall be true and accurate both as of the date of their Accession Declaration and the Subsequent Closing Date].

<sup>35</sup> **[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 (including whether the scope of reps & warranties to be given by the Existing Shareholders is meant to be differentiated depending on whether an Existing Shareholder qualifies as "active" or "passive"; see Footnotes 33 and 34).]

<sup>36</sup> **[Note:** With respect of joint and several liability of Founders, the same considerations as set forth in Footnote 35 apply. In addition, the scope of reps & warranties to be given by Founders should be carefully considered and negotiated giving due regard to the specifics of any given case.]

<sup>37</sup> **[Note:** This Section presumes that the representations & warranties will be given for the Additional Investors also as per the date of this Agreement and the Closing Date to avoid misalignment of remedies between the Investors and the Additional Investors.]

<sup>38</sup> **[Note:** If CLA holders participate in the Financing Round, the terms of the CLAs may not allow to request such CLA holders to provide reps & warranties at conversion. If so, corresponding adjustments would have to be made in this clause and throughout the Model Documentation.]

<sup>39</sup> **[Note:** Investors may not be willing, or depending on their investment policies and guidelines not be in a position, to make any representations and warranties other than in respect of their existence, capacity and authority, sufficiency of funds, no conflict and binding nature of their obligations.]



### 10.3 Exclusive Representations and Warranties

- (a) 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. In particular, and without limiting the generality of the foregoing, the Parties acknowledge that no Party is making any representations as to budgets, business plans, forward-looking statements, the future development or success of the Company and its business or other projections of a financial, technical or business nature relating to the business of the Company[, other than the representations and warranties set forth in Section [5] of **Annex 10.1**].
- (b) Without prejudice to the foregoing, [the Company and each of the [Existing Shareholders] [and Founders] hereby acknowledge[s] that each Investor has entered into this Agreement and will settle the Subscription Amount in reliance on each of the representations and warranties set forth in this Section 10 (including **Annex 10.1**).

## 11. Remedies

### 11.1 Notice of Breach (*Rügefrist; avis de violation*)

- (a) An Investor shall deliver to the Company (which shall receive such notice for and on behalf of, and promptly forward a copy of such notice to the each Existing Shareholder[ and Founder]) a notice in writing describing the underlying facts of a claim for misrepresentation or breach of warranty in reasonable detail 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.
- (b) Failure to provide notice of claim consistent with this Section 11.1 shall not relieve [[the Company,] [an Existing Shareholders][ or the Founders], as applicable (the "**Indemnifying Party**") of any liability it may have under Section 10 (and **Annex 10.1**) and Section 11.1; *provided*, however, that an Indemnifying Party 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 11.1. The Parties explicitly waive the application of article 201 CO.

### 11.2 Time Limitations on Claims

- (a) The representations and warranties given by the Indemnifying Parties as set forth in Section 10 and **Annex 10.1** 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/Verwirkung; prescription/péremption*):<sup>40</sup>

<sup>40</sup> **[Note:** The proposed time limitations for representations & warranties as proposed in this Section are merely indicative and should be determined and negotiated giving due regard to the specifics of any given case.]



- (i) with respect to representations and warranties made in **Annex 10.1** paragraph[s] [*specify relevant paragraphs re capacity and title of Existing Shareholders and status of the Company*] (the "**Fundamental Representations**"), as of the [tenth] anniversary of the Closing Date;
- (ii) with respect to the representations and warranties made in **Annex 10.1** paragraph[s] [*specify relevant paragraphs re Taxes (if any)*], as of the earlier of: (1) six months after the later of (i) the fifth anniversary of the Closing Date or (ii) the date on which the relevant [Taxes] have been finally assessed (*veranlagt; imposé*) and such assessment has become legally binding (*rechtskräftig; exécutoire*), or (2) the date on which the statute of limitations for the relevant [Taxes] has expired;
- (iii) with respect to representations and warranties made in **Annex 10.1** paragraph[s] [*specify relevant paragraphs re social security and pensions (if any)*], as of the [fifth] anniversary of the Closing Date; and
- (iv) with respect to all other representations and warranties made in **Annex 10.1**, as of the expiry of a period of [18] months from the Closing Date[;]

*provided*, however, that all claims for misrepresentation or breach of warranty [other than with respect to the representations and warranties referred to under sub-paragraph (i) of this Section 11.2] shall be time-barred, forfeited and precluded from being made (*Verjährung/Verwirkung; prescription/péremption*) at the date of closing of the next Approved Financing (sunset)].<sup>41</sup>

- (b) It is understood and agreed that any notice of claim for misrepresentation or breach of warranty shall be delivered to the Company (which shall receive such notice for and on behalf of, and promptly forward a copy of such notice to, each Indemnifying Party) on or by the applicable date set forth in the preceding paragraphs [(i)-(iv)], 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/verwirkt; prescrit/déchu*) unless the relevant Investor initiates proceedings on the claim against the relevant Indemnifying Party in accordance with Section 13 within [one year] from the date of that Investor's notice of claim to the Company. The Parties explicitly waive the application of article 210 CO.

### 11.3 Remedies of the Investors<sup>42</sup>

- (a) With respect to a misrepresentation or a breach of warranty notified by an Investor to the Company in accordance with Section 11.1 and Section 11.2, the relevant

<sup>41</sup> [Note: Legacy reps & warranties that still apply beyond the consummation of a next financing round may prove difficult for new investors to accept. Whether a sunset of reps & warranties with effect as of the consummation of the next Approved Financing is appropriate will depend on the specifics of any given case and should hence be determined and negotiated giving due regard to the specifics of such case.]

<sup>42</sup> [Note: In case the Parties agreed not to differentiate the scope of the reps & warranties to be given amongst the Existing Shareholders or by the Founders depending on whether an Existing Shareholder qualifies as "active" (and,

Indemnifying Party shall have the right, within [30] calendar days after receipt of such notice of breach by the Company, to put the Company or, with the prior written consent [(or consent by e-mail)] of [all] Investors (such consent not to be unreasonably withheld or delayed in case the damage, loss, expense, or cost was incurred by that Investor and not by the Company), that Investor, at the relevant Indemnifying Party's own expense, in the position it would have been in had no such misrepresentation or breach of warranty occurred.

- (b) 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:
  - (i) have the right to claim that the relevant Indemnifying Party (other than the Company) pay in cash, and such relevant Indemnifying Party shall be, subject to the limitations of liability set forth in Section 11.4, liable to that Investor to pay in cash, damages to the Company (or, if the damage, loss, expense, or cost is incurred by that Investor and that Investor so elects in accordance with the foregoing paragraph, 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[, but shall exclude lost profits];<sup>43</sup> and
  - (ii) if and to the extent such payment by the relevant Indemnifying Party pursuant to the immediately preceding paragraph (i) does not cover such damage, loss, expense or cost in full or if the relevant Indemnifying Party is the Company, shall have the right to claim that such uncovered damage, loss expense or cost shall be, subject to the limitations of liability set forth in Section 11.4, compensated by way of a compensatory capital increase of the Company's share capital ("**Compensatory Capital Increase**").
- (c) Such Compensatory Capital Increase shall be resolved and completed by the Parties as soon as reasonably practicable. Each affected Investor shall have the right (but not the obligation), to the exclusion of the statutory subscription rights (*Bezugsrechte*; *droits de souscription préférentiels*) of any other Party (who hereby unconditionally

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thus, knowledgeable) or "passive" (see Footnotes 33 and 34), the remedies for the Investors (and the limitations of liability of the Existing Shareholders and Founders pursuant to Section 11.4), would have to be amended accordingly (together with consequential adjustments, as appropriate, throughout the Model Documentation).

Similarly, if the Parties wished to enlarge available remedies for the Investors (e.g. to include call options of the Investors or put options of the Founders/Existing Shareholders in respect of Existing Shares held by all or selected Founders/Existing Shareholders to account for the fact that such Founders/Existing Shareholders may not otherwise be in the financial position to satisfy their liability under Sections 10 and 11 towards the Investors in case of a misrepresentation or breach of warranty), the wording of this Section (and Section 11.4) would have to be amended accordingly (together with consequential adjustments, as appropriate, throughout the Model Documentation).]

<sup>43</sup> [Note: As an alternative, the Parties may include a right to demand delivery of, or a right to deliver shares, instead of a cash payment as compensation for the damage.]

and irrevocably waives its subscription rights to that extent), to participate in the Compensatory Capital Increase; *provided* that an Investor shall be excluded from the Compensatory Capital Increase, if it fails to confirm its participation in the Compensatory Capital Increase within 30 days upon receipt of the respective invitation.

- (d) As part of the Compensatory Capital Increase, that Investor shall have the right to subscribe to the number of Preferred Shares at nominal value per Preferred Share payable:
- (i) if the relevant Indemnifying Party is [an Existing Shareholder] [or a Founder], by such Indemnifying Party up to the liability cap in accordance with Section 11.4; and
  - (ii) in excess of such limitation or if the relevant Indemnifying Party is the Company, by such affected Investor;

so that such Investor shall receive such participation in the Company's share capital as if such affected Investors had invested its respective Subscription Amount<sup>44</sup> (by payment in cash [or by conversion, as applicable]) together with the aggregate nominal values (if any) paid by such Investor in the Compensatory Capital Increase at the Reduced Valuation. The "**Reduced Valuation**" shall be equal to the [most recent] pre-money valuation [of the Company as determined by the Board and applied in a bona fide allocation or conversion of equity securities issued by the Company]/[applied for the purpose of the Capital Increase] less an amount equal to the lower of: (x) the aggregate total of all damages, losses, expenses and costs resulting from such misrepresentation or a breach of warranty that have not already been compensated in cash pursuant to paragraph 11.3(b)(i) of this Section 11.3 and (y) the liability cap in accordance with Section 11.4 (no double dip).

- (e) Each Party hereby undertakes to each affected Investor to do, or cause to be done, everything necessary to implement the Compensatory Capital Increase. Without prejudice to the generality of the foregoing, each Party hereby undertakes in particular to (i) exercise its voting rights as shareholder, (ii) procure that the Directors nominated by it will, subject only to their fiduciary duties, exercise their powers and voting rights as Directors and (iii) take all such actions and execute all such documents (including waivers or their statutory subscription rights (*Bezugsrechte; droits de souscription préférentiels*)), in each case as is required to effect the Compensatory Capital Increase.

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<sup>44</sup> [Note: See Footnote 5.]

## 11.4 [Limitations on Liability]<sup>45</sup>

### 11.4.1 [Threshold and De Minimis]

[Except for claims for misrepresentation or breach of warranty of a Fundamental Representation, for which no limitations of liability under this Section 11.4.1 shall apply, the relevant Indemnifying Party shall not be liable to the Investor for claims asserted by the Investor against such Indemnifying Party for misrepresentations or breaches of warranties under this Agreement [until]/[unless] the amount of liability against such Indemnifying Parties, on an aggregate basis, exceeds CHF *[specify amount]* (**["Threshold"]**/**["Deductible Amount"]**), whereupon such Indemnifying Parties' liability to the Investor shall be equal to the claimed amount [including the amount up to the Threshold]/[exceeding the Deductible Amount]; *provided*, however, that, for claims to be counted against the **[Threshold]**/**[Deductible Amount]**, each such claim must, on a stand-alone basis [(whereby several claims based on substantially the same set of facts or origin shall be deemed to be one claim)], exceed the amount of CHF *[specify amount]* (**"De Minimis Amount"**). When determining the De Minimis Amount and **[Threshold]**/**[Deductible Amount]**, the liability or claim in respect of the Company as a whole (and not the pro rata share thereof in respect of an affected Investor) shall be relevant.]

### 11.4.2 [Liability Cap]

[Notwithstanding anything contained in this Agreement to the contrary, it is acknowledged and agreed that the liability of an Indemnifying Party towards each Investor for misrepresentations or breaches of warranties under this Agreement shall not exceed, in the aggregate an amount equal to the sum of: (i) **[100]** percent of that Investor's Subscription Amount for misrepresentations or breaches of Fundamental Representations, (ii) *[percentage]* percent of that Investor's Subscription Amount for all misrepresentations and breaches of warranties other than Fundamental Representations, and (iii) reasonable costs and fees incurred by such Investor in connection with the examination of a possible misrepresentation or breach of warranty and any proceedings brought against the relevant Indemnifying Party in connection with any misrepresentation or breach of warranty.]

### 11.4.3 [Disclosed Matters]<sup>46</sup>

- (a) [The liability of the Indemnifying Parties towards each Investor for misrepresentations or breaches of warranties other than Fundamental Representations under this

<sup>45</sup> [Note: The wording of this Section 11.4 is merely indicative and introduces (i) differentiated liability caps depending on which specific rep or warranty has been breached and (ii) minimum amounts that damage claims of an Investor would have to exceed in the aggregate (so-called "thresholds") and individually ("de-minimis" threshold for bringing a claim and/or counting it toward the aggregate amount of all claims) to trigger the liability of Indemnifying Parties under the Investment Agreement. In addition, it may be appropriate to introduce differentiated individual liability caps for each or selected Existing Shareholder/Founders. In any case, any limitation of liability (including the potential additional limitations referred to in foregoing bullet points) should be carefully considered, negotiated and drafted giving due regard to the specifics of any given case.]

<sup>46</sup> [Note: The Model Documentation reflects a fair disclosure concept for information fairly disclosed to the Investors in the Agreement, the Data Room or in a Disclosure Letter. The disclosure and limitation of liability concept deemed suitable for a specific financing round should be carefully considered, negotiated and drafted giving due regard to the specifics of any given case.]

Agreement shall be excluded if and to the extent that any matter, fact or circumstance that would otherwise give rise to a misrepresentation or breach of warranty: (i) has been specifically disclosed in **Annex 10.1** by specific reference to the relevant Section of **Annex 10.1** to which such fact, matter, circumstance or disclosure relates or (ii) has been Fairly Disclosed in the Data Room [or in the Disclosure Letter attached hereto as **Annex 11.4.3**] (collectively, the "**Disclosed Matters**").]

- (b) [Subject only to Disclosed Matters, no fact, matter or circumstance, and no disclosures made (including, without limitation, during due diligence and/or during the negotiations of the definitive agreements), shall operate, or be deemed to operate, as an exclusion, reduction or limitation of any liability of the Indemnifying Parties towards each Investor for misrepresentations or breaches of warranties under this Agreement and no other information of which an Investor has or is deemed to have knowledge shall in any way limit claims of an Investor under this Agreement.] The Parties explicitly exclude and waive to the fullest extent legally permissible article 200 CO, if and to the extent applicable.

#### 11.4.4 [Other Limitations]

[The Indemnifying Parties' liability for misrepresentation or breach of warranty under this Agreement shall be excluded or reduced, as the case may be, 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 [or, using commercially reasonable best efforts, could recover or could have recovered, as the case may be,] from any third person, including an insurer, 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 [audited] financial statements of the Company as of *[date before the signing date]* with respect to the facts, matters or circumstances resulting in a misrepresentation or breach of warranty;
- (d) such liability is attributable to any act, omission, transaction or arrangement of the Investors after the date of this Agreement;
- (e) any tax payable by the Company is reduced as a result of a matter giving rise to a claim for misrepresentation or breach of warranty;
- (f) such claim arises or is increased as a result of any legislation, regulation, rule of law or practice not in force at the date of this Agreement, or as a result of the withdrawal after Closing of any authorization, license or permit previously made by any relevant Authority, or as a result of any change made or introduced on or after the date of this Agreement in any legislation, regulation, rule of law or practice of any relevant

Authority, whether or not such change or withdrawal purports to be effective retrospectively in whole or part.]

#### **11.5 Remedies of Existing Shareholders and the Company**

The provisions of Sections 11.1, 11.2 and 11.4 shall apply by analogy to any claim by an Existing Shareholder, a Founder or the Company that an Investor is liable for any misrepresentation or breach of warranty under Section 11.2 and **Annex 10.2**; *provided*, however, that the sole remedy aside from specific performance shall be payment of damages, losses, costs and expenses by such Investor to the specific exclusion of a compensatory capital increase in respect of such Investor.

#### **11.6 Remedies Exclusive**

The remedies in this Section 11 for any misrepresentation or breach of warranty under this Agreement shall be *in lieu* of, and not in addition to, the remedies provided for under statutory law. All other remedies including, without limitation, the right to rescind this Agreement shall, subject to the right of termination and rescission in accordance with Section 8, not apply and are expressly excluded and waived.

### **12. Miscellaneous**

#### **12.1 Nature of Parties' Rights and Obligations**

- (a) Except as specifically provided otherwise in this Agreement, the rights and obligations of the Parties hereunder shall be several (and not joint). Each of the Investors may exercise and enforce its rights hereunder individually in accordance with this Agreement, and the non-performance by the Company or another Party ("**Defaulting Party**") shall neither relieve the Company nor any other Party from performing its obligations under this Agreement, nor shall the Company (*provided* it is not the Defaulting Party) or any other Party be liable for the non-performance by the Defaulting Party.
- (b) 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.

#### **12.2 Confidentiality**

- (a) The terms and conditions of this Agreement, and any information exchanged among the Parties (including their respective representatives or advisors) in whatever form during the due diligence and/or the negotiations regarding the Financing Round, including:
  - (i) the investments made or to be made by each Investor and the terms thereof;

- (ii) information regarding the business, operations, customers, suppliers, trade secrets, financial, technical or other affairs of the Company or an Investor; and
- (iii) any reports, summaries, analyses or other documents prepared by a Party, which contain or are based, in whole or in part, on such information;

(collectively "**Confidential Information**"), shall be kept strictly confidential by each Party and neither disclosed to any other Person nor used for any purpose other than:

- (iv) the exercise of rights under, the performance of, or as permitted under, this Agreement
- (v) for the benefit of the Company; or
- (vi) for such Party's assessment of the Company including any additional investment or an exit;

and shall not be otherwise exploited by or for the benefit of such Party, any of its Affiliates or any third party. The Parties shall ensure that their employees, directors, ad-visors and other representatives to whom Confidential Information is entrusted comply with these restrictions.

- (b) Confidential Information shall not include information: (i) which at the time of its disclosure by a Party was already lawfully in the possession of the receiving Party as evidenced by written records, *provided*, however, that such information was not furnished to the receiving Party by a source that it knew to be in breach of a confidentiality duty, (ii) which at the time of the disclosure was in the public domain, or (iii) the disclosure of which was previously authorized by an entitled Party in writing, or (iv) which was or is independently developed by a Party without reliance on Confidential Information.
- (c) The non-disclosure and non-use obligations hereunder shall not apply to any disclosure of Confidential Information:
  - (i) by a Party if and to the extent required by mandatory law or regulations (including for tax, audit or regulatory purposes), *provided* that the disclosing Party shall (A) promptly inform the Company and the Investors of such disclosure (to the extent legally permissible), and (B) use all reasonable efforts to arrange for the confidential treatment of the materials and information so disclosed, and
  - (ii) by an Investor sharing Confidential Information with its Affiliates and/or its or their auditors, legal and other advisors, or reporting regularly to its investors<sup>47</sup>

<sup>47</sup> [Note: Depending on the investment/fund structure of an Investor, it may be appropriate to limit the persons with whom Confidential Information may be shared (e.g. with respect to portfolio companies). Alternatively, it could be stated that Confidential Information may only be provided to certain persons with the prior written consent of the Company.]



on information pertaining to the Company and the investments made or to be made in the Company in accordance with its reporting obligations under its fund investment documents or to the extent required for legal, tax, audit or regulatory purposes; *provided*, however that such persons (A) need to know Confidential Information and (B) have been informed of the confidential nature of the Confidential Information and directed to comply with the confidentiality and non-use obligations hereunder.

- (d) Nothing herein shall restrict the Company from granting third parties customary due diligence access based on appropriate non-disclosure and non-use agreements, and each Party hereby consents to such disclosure, including information regarding itself and its shareholding.

### 12.3 Public Announcements

No announcements or press releases regarding the matters contemplated by this Agreement shall be made by any Party without the prior written consent of the Company, except that the Company may issue an announcement (in form approved in advance in writing by the Board) confirming completion of the Financing Round including the aggregate investment amount, without disclosing (i) the specific terms on which each Investor has invested in the Company, (ii) the amount invested by each Investor, or (iii) the identity of each Investor, without the prior written approval of each Investor with respect to itself.

### 12.4 Successors and Assigns<sup>48</sup>

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 neither the Company nor another Party [(other than an Investor)] shall be entitled to assign or transfer any of the rights or obligations hereunder to any other party except [(i) prior to the Closing Date, by an Investor to a fund, investment vehicle or other entity formed or incorporated in any jurisdiction which is owned, managed or advised by such Investor or by the same advisor as the Investor, or (ii) ]as from the Closing Date, in case of a Permitted Transfer (as such term is defined in the Shareholders Agreement), including to Affiliates in accordance with Section [13.2] of the Shareholders Agreement, or [(iii)] with the prior written consent [(or consent by e-mail)] of [each Party]/[a majority of [Cash] Investors representing more than [percentage]% of the aggregate total of all Subscription Amounts payable in cash].

### 12.5 Costs and Expenses, Taxes

- (a) Subject to the immediately following paragraph, it is agreed that 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 all transactions contemplated hereby.

<sup>48</sup> [Note: Depending on the investment/fund structure of an Investor, this Section may have to be amended (together with consequential changes throughout the Model Documentation) to appropriately capture the investment fund structure managed by such Investor.]



- (b) The Company shall bear all Swiss issuance and stamp taxes arising out of the Financing Round [and shall reimburse the [Cash] Investors for all [reasonable] legal fees and [reasonable] expenses incurred by the [Cash] Investors and their advisors in connection with [specify reimbursable scope of efforts] [up to an amount not exceeding CHF [amount]].<sup>49</sup> Such reimbursement shall be paid to the [Cash] Investors within ten calendar days after the Full Consummation of the Capital Increase].

## 12.6 Notices

- (a) Any formal notice to be given under this Agreement shall be deemed sufficient if (i) signed [(including by providing a scan of a handwritten signature or signature in simple electronic form using an electronic signature provider)] and (ii) sent by registered mail (*Einschreiben; recommandée*) (or via internationally recognized courier) [or electronic mail]<sup>50</sup> to the following addresses of the Parties:

If to [Cash] Investor 1: [contact details]

If to [Cash] Investor n: [contact details]

[If to Convertible Loan Investor 1 [contact details]]

[If to Convertible Loan Investor n [contact details]]

If to Founder 1: [contact details]

If to Founder n: [contact details]

If to Other Shareholder 1: [contact details]

If to Other Shareholder n: [contact details]

If to the Company: Attn. Chairperson of the Board  
[contact details]

[Alternative for notices to a larger number of Existing Shareholders:

If to Existing Shareholders: To the Company,  
Attn. [CEO / Chairperson]  
[contact details]

who shall forward copies of the notices and communications received promptly upon receipt to each Existing Shareholder]

- (b) To the extent this Agreement explicitly provides for delivery of a notice to the Company on behalf of an Existing Shareholder, each Existing Shareholder hereby appoints the Company as receiver of notices on its behalf. The Company shall

<sup>49</sup> [Note: Each person using the Model Documentation should satisfy itself of the potential (tax and other) consequences resulting from such cost allocation to the Company.]

<sup>50</sup> [Note: It should be carefully considered whether the dispatch of a notice by mere electronic mail is considered sufficient to qualify as formal legal notice for all purposes and intents of the Agreement.]

promptly upon receipt send complete copies of such notices to each Existing Shareholder.

- (c) For the purpose of meeting a time period or deadline by the sender, a notice shall be deemed made when dispatched by the sender. For the purpose of triggering the start of a period or deadline for the recipient, a notice shall be deemed made or received when it arrives at the recipient (*Zugang; réception*).
- (d) Each Party may change or amend the addresses given above or designate additional addresses for the purposes of this Section 12.6 by giving the other Parties written notice of the new address in the manner set forth in this Section 12.6.

## **12.7 Entire Agreement**

- (a) With the exception of the Shareholders Agreement [and the non-disclosure agreement dated *[date]* and the Convertible Loan Agreements], this Agreement including its Annexes constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes 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[, it being understood that *[(i)]* the confidentiality agreement dated *[date]* shall continue to apply to the extent that its provisions are more restrictive than those set out in Section 12.2 and *[(ii)]* the Convertible Loan Agreements shall continue to apply until the conversion of the Convertible Loan Receivables thereunder pursuant to Section 4.3 upon which the Convertible Loan Agreements shall automatically terminate and cease to be effective [without any residual obligation or liability of the Convertible Loan Investor and the Company thereunder]].
- (b) [The Parties confirm that in addition to this Agreement, there are no side agreements relating to the subject matter hereof between any of them [that have not been disclosed to the other Parties and the terms of which may affect any of the rights granted to any of the Parties hereunder.]

## **12.8 Severability**

If at any time any provision of this Agreement or any part thereof is or becomes invalid or unenforceable, then neither the validity nor the enforceability of the remaining provisions or the remaining part of the provision shall in any way be affected or impaired thereby. The Parties agree to replace the invalid or unenforceable provision or part thereof by a valid or enforceable provision which shall best reflect the Parties' original intention and shall to the extent possible achieve the same economic result.

## **12.9 Survival**

Notwithstanding any termination and rescission of this Agreement (and the Shareholders Agreement and any documents, instruments or deeds executed by any of the Investors including the Subscription Forms) pursuant to Section 8, it is acknowledged and agreed that

Sections [8, 12 and 13] shall survive any such termination and rescission and continue to be effective as if no such termination and rescission had occurred.

#### **12.10 Amendments**

- (a) This Agreement (including this Section 12.10) may be amended only in writing by an instrument signed by all Parties [(including signing in simple electronic form using an electronic signature provider (e.g. Skribble, [DocuSign or AdobeSign]), or] by providing a scan of a handwritten signature).
- (b) [Notwithstanding anything contained in this Agreement to the contrary, the Parties acknowledge and agree that this Agreement may be amended in writing by an instrument signed by (i) the Company, (ii) a qualified majority of shareholders of the Company representing [percentage]% of the issued share capital of the Company and (iii) [all [Cash] Investors]/[a qualified majority of [Cash] Investors representing [specify percentage]% of the aggregate total of all Subscription Amounts payable in cash] with binding effect on all other Parties; provided, however, that any such modification or amendment of any of the provisions of this Agreement shall neither affect any accrued rights of any other Party nor impose any greater liability or any more onerous obligation than those contained in this Agreement on the other Parties who do not sign such modification or amendment.]<sup>51</sup>

#### **12.11 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.

### **13. Governing Law and Dispute Resolution**

#### **13.1 Governing Law**

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

#### **13.2 Dispute Resolution**

- (a) [Any dispute, controversy or claim arising out of or in relation to this Agreement, including regarding the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules. The number of arbitrators shall be [one]/[three]/[one or three]. The seat of the arbitration shall be [Zurich]/[Geneva]. The arbitral proceedings shall be conducted in [English]]; *provided* that evidence may be

<sup>51</sup> [Note: Each Person using the Model Documentation shall satisfy itself by retention of its own counsel of its comfort in, and the limitations and restrictions under applicable Swiss laws to, the validity, legality, binding effect and enforceability of the rights and obligations of the respective holder of Shares towards any other holder of Shares and/or the Company.]

submitted to the arbitral tribunal in [German]/[French]/[Italian] without translation into English.]<sup>52</sup>

- (b) [All disputes arising out of or in connection with this Agreement, including disputes regarding its conclusion, validity, binding effect, amendment, breach, termination or rescission, shall be subject to the exclusive jurisdiction of the courts of the Canton of *[canton of domicile of the Company]*, the venue being *[city]*.]<sup>53</sup>

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***Signatures on the next page***

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<sup>52</sup> **[Note:** In line with the current model arbitration clause provided by the Swiss Arbitration Centre. For the most current version and customized arbitration clauses see <https://www.swissarbitration.org/centre/arbitration/arbitration-clauses/>.]

<sup>53</sup> **[Note:** Alternative to arbitration.]

This Agreement is made on the date written on the cover Page.

**[Investor 1]:**

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Name:

Function:

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Name:

Function:

**[Investor n]:**

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Name:

Function:

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Name:

Function:

**[Founder 1]:**

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Name:

Function:

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Name:

Function:

**[Founder n]:**

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Name:

Function:

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Name:

Function:

**[Other Shareholder 1]:**

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Name:

Function:

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Name:

Function:

**[Other Shareholder n]:**

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Name:

Function:

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Name:

Function:

**Company:**

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Name:

Function:

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Name:

Function:

**Shareholders Agreement**

Attached.

## Defined Terms

["**Accession Declaration**" shall have the meaning set forth in Section 9(c).]

"**Accounting Rules**" shall mean the accounting rules and principles consistently applied in the past by the Company in accordance with [the International Financial Reporting Standards (IFRS)]/[US GAAP]/ [Swiss GAAP FER]/[the CO].

["**Additional Capital Increase**" shall have the meaning set forth in Section 9(b).]

["**Additional Investors**" shall have the meaning set forth in Section 9(a).]

["**Additional Shares**" shall have the meaning set forth in Section 9(a).]

"**Affiliate**" shall mean any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified and includes, in case of an Investor, funds, investment vehicles or other entities formed or incorporated in any jurisdiction which are owned, managed or advised by such Investor or by the same advisor as the Investor.

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

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

"**Application**" shall have the meaning set forth in Section 7.3(a)(xiv).

"**Approved Financing**" shall have the meaning set forth in the Shareholders Agreement.

"**Articles**" shall mean the articles of incorporation (*Statuten; statuts*) of the Company to be adopted at Closing substantially in the form attached to this Agreement as **Annex 3.1.3** and as amended from time to time in accordance with [this Agreement and] the Shareholders Agreement.

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

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

"**Authorizations**" shall mean all authorizations, permits, licenses, 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 Directors and its 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 (*Verwaltungsrat; conseil d'administration*), 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*) of the Company substantially in the form attached to this Agreement as **Annex 3.1.3(c)** and as amended from time to time in accordance with [this Agreement and] the Shareholders Agreement.

**"Business"** shall have the meaning set forth in Preamble (B).

**"Business Day"** shall mean any day other than Saturday or Sunday on which banks are open for business at the seat of the Company.

**"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, as concluded at the date of this Agreement, in any jurisdiction relevant for the business operations of the Company.

**"Business Plan"** shall mean the business plan from time to time adopted by the Board, setting out [specify].]

**"Capital Band"** shall have the meaning set forth in Section 3.1.3(d).]

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

**"Cash Investor 1-[n] Subscription Amount"** shall have the meaning set forth in Section 4.1(a)(i) through 4.1(a)(ii).]

**"CEO"** shall mean the Chief Executive Officer of the Company appointed from time to time in accordance with this Agreement and the Board Regulations.

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

**"Closing"** shall mean the closing of the Capital Increase as set forth in Section 7.

**"Closing Date"** shall have the meaning set forth in Section 7.1.

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

**"Commercial Register"** shall have the meaning set forth in Preamble (A).

**"Company"** shall have the meaning set forth on the cover Page.

**"Compensatory Capital Increase"** shall have the meaning set forth in Section 11.3.

**"Conditional Share Capital"** shall have the meaning set forth in Section 3.1.3(c).

**"Confidential Information"** shall have the meaning set forth in Section 12.2.

**"Conversion Amount"** shall mean, with respect to each Convertible Loan Investor, the principal amount outstanding under its Convertible Loan Agreement plus all interest accrued thereon until *[date]* (from which date, subject to termination of the Convertible Loan Agreement as set out in Section 12.7, no further interest shall accrue on any of the Convertible Loan Receivables), i.e. such aggregate amount as set forth **Annex 2.**]

**"Convertible Loan Agreement"** shall mean, with respect to each Convertible Loan Investor, the convertible loan agreement listed in **Annex 2** and disclosed as part of the Disclosed Matters.]

**"Convertible Loan Investor 1-n"** shall have the meaning set forth on the cover Page.]

**"Convertible Loan Investor 1-n Subscription Amount"** shall have the meaning set forth in Section 4.1(a)(i) through (iv).]

**"Convertible Loan Receivable"** shall mean, with respect to each Convertible Loan Investor, the claim of such Convertible Loan Investor against the Company under the relevant Convertible Loan Agreement for repayment of the principal amount and payment of interest thereunder.]

**"Current Business Plan"** shall mean the business plan of the Company attached hereto as Schedule 5 to **Annex 10.1.**]

**"Data Room"** shall mean the information made available by the Company to the Investors in the electronic data room operated by *[operator]* from *[date]* to *[date]* (a USB stick containing the index as well as the contents of the data room is attached hereto as Annex 1.a.)

**"Deductible Amount"** shall have the meaning set forth in Section 11.4.1]

**"Defaulting Party"** shall have the meaning set forth in Section 12.1.

**"De Minimis Amount"** shall have the meaning set forth in Section 11.4.1.

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

**"Disclosed Matters"** shall have the meaning set forth in Section 11.4.3.

**"Disclosure Letter"** shall mean the disclosure letter dated *[date]* attached hereto as Annex 11.4.3.]

**"Discounted Issues Price"** shall have the meaning set forth in Section 3.1.3(b)]

**"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.

**["Environmental Law"** shall mean any national, supranational or local laws, legislation or orders in Switzerland or in any country where the Company has any business interests and that are applicable to the Business and which concern or relate to compensation in respect to damage to the environment (including, without limitation, laws relating to hygiene, emissions, discharges or threatened releases of Hazardous Substances into the environment, or to the production, processing, distribution, management, use, treatment, storage, burial, disposal, transport or handling of Hazardous Substances).]

**["Environmental Permit"** shall mean any Authorization which is necessary under Environmental Law for the operation of the Business at the date of this Agreement.]

**"Existing Articles"** shall mean the existing articles of incorporation (*Statuten; statuts*) of the Company as in effect and in force at the date of this Agreement.

**"Existing Board Regulations"** shall mean the existing organizational regulations (*Organisationsreglement; règlement d'organisation*) of the Company as in effect and in force at the date of this Agreement.

**"Existing Shareholder(s)"** shall have the meaning set forth on the cover Page.

**"Existing Shares"** shall have the meaning set forth in Section 2.

**"Extraordinary General Meeting"** shall have the meaning set forth in Section 3.1.1.

**"Fairly Disclosed"** shall mean the non-misleading disclosure of a matter, fact or circumstance to the Investors in the [Data Room] [or the Disclosure Letter] in a manner which allowed each Investor to identify and assess the impact of such fact, matter or circumstance on the relevant representation and warranty in **Annex 10.1** and on the business operations, prospects or valuation of the Company by reading and taking prima facie knowledge of such fact, manner or circumstance as described in the [Data Room] [or the Disclosure Letter] on a stand-alone basis and without need for any other or further explanation or information from an Indemnifying Party [or the Company].

**"Financial Statements"** shall have the meaning set forth in Section 3 of **Annex 10.1**.

**"Financing Round"** shall have the meaning set forth in Preamble (C).

**"Founder(s)"** shall have the meaning set forth on the cover Page.

**"Full Consummation"** shall mean that the Capital Increase has been registered in the Commercial Register and the Preferred Shares have been issued in accordance with Section 7.5.

**"Fundamental Representations"** shall have the meaning set forth in Section 11.2(a)(i).

**"Hazardous Substances"** shall mean any wastes, pollutants, contaminants or other substances (including, without limitation, electromagnetic fields, radioactive substances, liquids, solids, gases, noise, heat and vibration) which are materially harmful to human health or other life or the environment by virtue of their toxic, explosive, radioactive, corrosive, noisy, caustic or noxious properties.

**"Indemnifying Party"** shall have the meaning set forth in Section 11.1.

**"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(s)"** shall have the meaning set forth on the cover Page.

**"Issue Price"** shall have the meaning set forth in Section 3.1.1(b).

**"IT Systems"** shall mean the hardware, software, firmware, middleware, equipment, electronics, platforms, servers, workstations, routers, hubs, switches, interfaces, data, databases, data communication lines, network and telecommunications equipment, websites and internet-related information technology infrastructure, wide area network and other data communications or information technology equipment, owned or purported to be owned or leased by, licensed to, or otherwise accessed by the Company.

**"Key Employee"** shall mean each member of the Management and [*specify additional key employees, as appropriate*].

**"Management"** shall mean the [CEO, CFO, CIO] and [*specify additional key members of management, as appropriate*] of the Company.

**"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 by this Agreement.<sup>54</sup>

**"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.<sup>55</sup>

- (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*];

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<sup>54</sup> [Note: As an alternative to this generic standard, the Parties may wish to specify materiality thresholds as from which a change shall be considered a Material Adverse Change.]

<sup>55</sup> [Note: Generic standard list, which needs to be tailored to the transaction.]

- (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 transfer, licensing, ownership or use of Business IP by the Company or that impose a non-competition or non-solicitation obligation on the Company;]
- (e) [that can be terminated by the counterparty within less than [*three*] months from Closing or cannot be terminated by the Company with effect of earlier than [*twelve*] months from Closing;]
- (f) [that can be, or are, terminated, modified, or under which adverse consequences are triggered, upon a change of control or due to the Financing Round;]
- (g) [that can entail liquidated damages or contractual penalties of more than CHF [*amount*] per month or CHF [*amount*] in total;]
- (h) [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
- (i) [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;]
- (j) [that relate to real estate or the lease of Premises]; or
- (k) [that materially restrict the freedom of the Company to operate its Business (e.g. due to exclusivity arrangements).]

**"New Director"** shall mean each of the persons, who are elected as new members of the Board upon nomination in accordance with Section 3.1.3(e).

**"Other Shareholder(s)"** shall have the meaning set forth on the cover Page.

**"Page"** shall mean a page of this Agreement.

**"Party"** and **"Parties"** shall have the meaning set forth on the cover Page.

**"Person(s)"** shall mean any individual person, any corporation, company, association, foundation or other incorporated legal entity, any general or limited partnership or other non-incorporated organization doing business, or any governmental or quasi-governmental authority.

**"Preamble"** shall mean a preamble of this Agreement.

**"Preferred Shares"** shall mean preferred shares (*Vorzugsaktien; actions privilégiées*) in the Company with a nominal value of CHF [*amount*] per preferred share, each to be fully paid in in cash pursuant to the terms of this Agreement and having the preferences set forth in the Articles and the Shareholders Agreement.

**"Premises"** shall mean any premises occupied and required by the Company to conduct its Business.

**"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 relevant Existing Shareholder as issuer of the proxy in the Extraordinary General Meeting.

**"Sanctions"** shall mean any sanctions imposed, administered or enforced and officially published (in the relevant jurisdiction) from time to time by a Sanctions Authority.]

**"Sanctions Authority"** shall mean the [United States Government (including the OFAC and the U.S. Department of State), the European Union (taken as a whole), the UK Government (including the Foreign & Commonwealth Office) and the Swiss Government (including the Swiss State Secretariat for Economic Affairs SECO)].<sup>56</sup>

**"Schedule"** shall mean any schedule to Annex 10.1.

**"Section"** shall mean a section of this Agreement.

**"Share"** shall mean any shares from time to time issued by the Company.

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

**"Subscription Amount"** shall mean the aggregate subscription amount payable [(in cash and/or by way of conversion, as applicable)] by the respective Investor for all of its Preferred Shares in accordance with Section 4.1(a)(i) to [4.1(a)(ii)/(iv)].

**"Subscription Form"** shall mean the subscription forms to be executed by the Investors [and/or each Additional Investor] in accordance with the terms of this Agreement in form and substance [substantially in the form as set forth in **Annex 1.b**, satisfactory to the Company and as required by Swiss corporate law].

**"Subsequent Closing Date"** shall have the meaning set forth in Section 9(b).]

**"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

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<sup>56</sup> [Note: Relevance and scope to be analyzed on a case-by-case basis.]

security contributions, pension plan contributions, contributions for unemployment, accident, sickness and similar mandatory or voluntary insurances. Taxation shall be understood accordingly.

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

**"Tax Returns"** shall have the meaning set forth in Section 7 of **Annex 10.1**.

**["Threshold"** shall have the meaning set forth in Section 11.4.1.]

**Data Room**

[USB stick] attached.



## Subscription Form<sup>57</sup>

The shareholders' meeting of [●] (CHE-[●]) with registered office in [●], Switzerland ("**Company**") will resolve on its next meeting (or at a later date) to increase the share capital from by [●] to [●] by issuing [*number*] fully paid-in [registered shares] with a nominal value of [●] each.

The undersigned

[*Investor name*], [*Investor address*]

hereby subscribes irrevocably and unconditionally and in full knowledge of the articles of association of the Company and with reference to the aforementioned resolutions for

[*number*]

newly issued [registered shares] of the Company  
with a nominal value of [●] each  
at a subscription price of [●] each [(rounded)  
at an aggregate subscription amount of [●].

The undersigned unconditionally and irrevocably undertakes to pay<sup>58</sup>  
the aggregate subscription amount (net; costs and expenses to be borne by the sender)  
by no later than [*date*] to the following blocked bank account:

### [**Bank account details**]

[If this subscription form is not available in original (but only as a scan of a handwritten signature or signed in simple electronic form using an electronic signature provider) on the day of the proposed capital increase, the undersigned authorizes [●] to sign this subscription form on its/his/her behalf based on the scan of the handwritten signature or the simple electronic signature.]<sup>59</sup>

[This subscription form is valid until [*date*].]

This subscription form is governed by Swiss law.

[*Signature Block*]

<sup>57</sup> [Note: Any user of the Model Documentation should satisfy itself through retention of counsel that the subscription forms correctly reflect for each Investor the specifics of the relevant financing round and is aligned with the notary and the competent commercial register.]

<sup>58</sup> [Note: Subscription Form needs to be amended in case of a conversion of Convertible Loans.]

<sup>59</sup> [Note: Counsel to check with the relevant notary whether the notary accepts the power of attorney in the subscription from.]

**Current Cap Table of the Company [Fully Diluted]**

Including outstanding equity-related instruments (such as but not limited to convertible loans, convertible notes and warrants convertible/to be exercised as part of the Financing Round

Attached.

**Articles**

Attached.

**Board Regulations**

Attached.

**Cap Table after Full Consummation [Fully Diluted]**

Attached.

**[Form of Employment Agreements]**

[Attached.]

## Representations and Warranties of [the Company,] [the Existing Shareholders and] [the Founders]<sup>60</sup>

### 1. Capacity and Title of Existing Shareholders[, the Founders and the Company]

#### 1.1. Authority and Ownership

Each Existing Shareholder[, Founder and the Company] has the unrestricted right and authority, including required corporate approval(s), to enter into this Agreement and to perform all obligations under or in connection with this Agreement. This Agreement constitutes a valid, legal and binding obligation of the Existing Shareholders[, the Founders and the Company] enforceable against the Existing Shareholders[, the Founders and the Company] in accordance with its terms. The Existing Shareholders[, the Founders and the Company] are neither over-indebted (*überschuldet; surendetté*), nor insolvent (*insolvent; insolvable*) nor unable to pay their debts as they fall due (*illiquid; non liquide*). The Existing Shareholders [and the Founders] are the sole legal [and beneficial] owners of the Existing Shares, free and clear of any Encumbrance.

#### 1.2. Execution and Performance, No Consents

The execution and performance of this Agreement by the Existing Shareholders [and the Founders] (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 any of the Existing Shareholders [or any of the Founders] is a party or by which any of the Existing Shareholders [or any of the Founders] is bound, and (ii) does not require any notice, con-sent, waiver or approval by any Authority or any other person. There are no proceedings or investigations whatsoever pending or threatened in writing (or by e-mail) against any of the Existing Shareholders [and the Founders] that could compromise the transactions contemplated by this Agreement.

### 2. Status of the Company

#### 2.1. Incorporation, Share Capital and Authority

- (a) The Company is a corporation duly incorporated and validly existing under the laws of Switzerland. The Company has a share capital of CHF [amount], divided into [number] fully paid up registered shares with a nominal value of CHF [amount] each. The Existing Shares have been validly issued, are fully paid up and constitute the entire issued share capital of the Company. [No share certificates have been issued by the Company since its incorporation.] [In particular, in the context of the incorporation of the Company and/or subsequent capital increases, there have not

<sup>60</sup> [Note: As a general matter, 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.]

been any undisclosed (intended) acquisitions of assets ((*beabsichtigte Sachübernahmen; reprises de biens (envisagées)*)).] [Other than the share or other incentive scheme disclosed in Schedule 11((e)) to this **Annex 10.1** and the equity related instruments disclosed in **Annex 2**, n]/[N]o 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 Preferred Shares, if issued in accordance with this Agreement, will be validly issued and fully paid-up. The Company has full corporate power and authority to own its property and Assets and to carry on its Business.

- (b) The legal and economic ownership in the Company as of Closing (subject to the Full Consummation of the Capital Increase) [on a fully diluted basis, i.e. including, without limitation, any shares, participation certificates, participation interest, phantom shares, options, war-rants, calls, and any other equity or equity-linked securities (incl. treasury shares) or any rights relating thereto which are issued or issuable by the Company under the Articles (including un-der any capital band (including the Capital Band) or from contingent capital) as applicable as of Closing (subject to the Full Consummation of the Capital Increase) or under any contract, any stock option or phantom share plan or other incentive scheme, or any other document or instrument as of Closing,] will be as set forth in **Annex 5**, which is complete, true and correct.

## 2.2. No Dissolution, Bankruptcy or Insolvency

No measures have been taken for the dissolution and liquidation or declaration of bankruptcy of the Company and no events have occurred which would justify any such measures to be taken, in particular (i) no order has been made, petition presented, resolution passed or meeting convened for the winding up, dissolution or liquidation of the Company and there are no proceedings under applicable insolvency, bankruptcy, composition, moratorium, reorganization, or similar laws and no events have occurred which would require the initiation of any such proceedings; and (ii) no receiver, liquidator, administrator, commissioner or similar official has been appointed in respect of the Company and no step has been taken for or with a view to the appointment of such a person. The Company is neither over-indebted (*überschuldet; surendettée*), nor insolvent (insolvent; insolvable) nor unable to pay its debts as they fall due (*illiquid; non liquide*).

## 2.3. Corporate Books and Registers

The corporate books, registers, accounts, ledgers, records and supporting documents of the Company are up to date [in all material respects] and contain complete and accurate records of all matters since its incorporation, which were required to be dealt with in such documents.

## 2.4. Execution and Performance, No Consents

The execution and performance of this Agreement by the Company (i) will not result in a breach of, or default under any term or provision of the constitutional documents, any applicable law, any agreement, license, Authorization or other instrument or of any order, judgement or decree of any Authority to which the Company is a party or by which the



Company is bound, and (ii) does not require any notice, consent, waiver or approval by any Authority or any other person.

### 3. Financial Statements

The [un]audited statutory financial statements of the Company for the last [three] completed business year[s] [and [the unaudited interim financial statements of the Company as of [date]], each as attached in Schedule 3 to this **Annex 10.1** (collectively, "**Financial Statements**") were prepared in accordance with the Accounting Rules. The Financial Statements (i) are correct and complete and give an accurate view of the financial position of the Company [in all respects]/[in accordance with the Accounting Rules] at the respective accounts date and the results of the operations [and cash flows] of the Company for the financial periods then ending, and (ii) completely and correctly reflect all of the Company's assets and liabilities [in all respects]/[in accordance with the Accounting Rules] at the respective accounts date. There are no (contingent) liabilities of the Company which would have to be reflected in its financial statements pursuant to the Accounting Rules, other than those stated in the Financial Statements.

### 4. Assets (other than Intellectual Property)

The Company has good and valid title to, or with respect to Assets held by the Company under a lease, rental or other leasing agreement, the valid right to use all Assets that are material for the Business and necessary for the carrying on of the Business, free and clear from any assignment or Encumbrance. The Company is under no obligation to sell any of its Assets other than in the normal course of business. All existing use of the Premises with respect to the Business is permitted under all relevant planning and other legislation and[, to the Existing Shareholders' Best Knowledge,] there are no restrictions to the continued use of the Premises, and no restrictions regarding the use of the Premises have been threatened in writing (or by e-mail) which would prevent the carrying on of the Business in any respect. All Assets which are [owned or used by the Company in connection with]/[material for] the Business are in good operating condition and working order, taking into account ordinary wear and tear, and have been regularly and properly maintained.

### 5. [Current Business Plan]

[The Current Business Plan as attached hereto as Schedule 5 to this **Annex 10.1** is up-to-date and has been prepared by the Management with the care of a duly acting business person. All statements of opinion, forecasts, projections and budgets contained in the Current Business Plan have been properly prepared based on assumptions which are fair and reasonable in the circumstances. No material facts have been omitted from the Current Business Plan which would render the information contained in it misleading. The Current Business Plan contains all information necessary to enable the Investors to make an informed assessment of the Assets, liabilities, financial position, profits, losses and prospects of the Company. There are no essential facts and/or circumstances upon which the assumptions in the Current Business Plan are based that are not, or no longer, existing.]

## 6. Ordinary Course of Business, No Material Adverse Change

Since *[date of last Financial Statement]*,

- (a) the Company has been carrying out its Business in the ordinary course and consistent with past practice;
- (b) neither the Existing Shareholders with respect to the Company nor the Company have taken or implemented any of the decisions or actions listed in annex [6] to the Shareholders Agreement; and
- (c) no Material Adverse Change has occurred.

## 7. 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 ("**Tax Returns**") have been submitted by the Company within applicable time limits and were accurate and complete *[in all material respects]*.
- (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). The signing of this Agreement and the consummation of the transactions contemplated herein do not result in any Taxes levied from the Company, except for the Taxes incurred by and to be borne by the Company under Section 12.5.
- (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. The Company is not subject to any blocking periods. 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 are in dispute in any respect.
- (d) The Company has not entered into any transaction that, for Tax purposes, qualifies as a hidden dividend distribution (*verdeckte Gewinnausschüttung*), and the Company has *[always]* conducted its Business in compliance with the arm's-length principle.
- (e) The Company complies, and has always fully complied, with the terms and conditions of any tax ruling obtained.

- (f) The Company has not received any payment or credit of Taxes to which it was not entitled nor received any Tax assessment in which its Tax liability was understated. The Company is not liable to pay, reimburse or indemnify any person (including a Tax Authority or body) in respect of a Tax liability of any other Person.
- (g) 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 [other than those provided for in the Financial Statements and accrued thereafter in the ordinary course of business].

## **8. Authorizations**

All necessary Authorizations[, including Environmental Permits,] for the operation of the Business as well as for carrying on the 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 [in all [material] respects]. No investigation, inquiry or proceeding with respect to the Business (as well as the Business as conducted by the Company at the date of this Agreement and in the past) is pending or has been threatened in writing (or by e-mail) which is likely to result in the suspension, cancellation, modification or revocation of any of such Authorizations.

## **9. Compliance**

- (a) The Company carried on [in the past 36 months] and is carrying on its Business in accordance with all applicable laws (including, in particular, antitrust and competition laws, anti-bribery laws, [sanction regimes/Sanctions], and Environmental Laws), regulations, ordinances, collective labor agreements and constitutional documents.
- (b) No investigation or enquiry is pending or threatened in writing (or by e-mail) 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.

## **10. Agreements**

### **10.1. With Respect to All Agreements**

The Company is not party to or bound by any contract, agreement, arrangement or obligation, which:

- (a) has not been entered into at arm's length terms;
- (b) has not been entered into in the ordinary course of the Company's Business;

- (c) has been entered into with (i) any Existing Shareholder, (ii) any person related to or connected with an Existing Shareholder or (iii) any Affiliate of an Existing Shareholder, except for the [employment] agreements listed in Schedule 10.10.1((c)) to this **Annex 10.1**; or
- (d) restricts the Company in its freedom to carry on [or, to Existing Shareholder(s)' Best Knowledge, its ability to expand] its Business in any material respects.

#### 10.2. With Respect to Material Agreements

- (a) Each of the Material Agreements is listed in Schedule 10.10.2((a)) to this **Annex 10.1**, has been disclosed to the Investors in full, is valid and in full force and effect. The Company is not in default in any material respect in the performance, observance, or fulfilment of, nor has the Company otherwise not complied with, any of its obligations contained in any Material Agreement. The Company has not taken any steps with the effect to amend or terminate any of the Material Agreements.
- (b) No counterparty to any Material Agreement has the right to terminate the relevant Material Agreement or alter its obligations in any material respect as a result of the transactions contemplated by this Agreement.
- (c) The Company is acting in compliance with and not in default under or in breach of any Material Agreement.
- (d) The Company has not received from any party to any Material Agreement a written notice to the effect of (i) terminating, suspending or materially reducing or threatening to terminate, suspend or materially reduce, the relevant Material Agreement and/or its Business with the Company or (ii) making a complaint regarding the performance of the Company under the relevant Material Agreement.

### 11. Employees

- (a) Schedule 11((a)) to this **Annex 10.1** contains a true, accurate and up-to-date list of all employees of the Company indicating name, date of birth, date of entry, position, signature authority, termination period, work permit (if needed), accumulated overtime, outstanding holidays and total compensation payable (whether in kind or in cash), including current base salary, bonus, incentives, severance payments, rights to pension promises and other material benefits, as at the date of this Agreement.
- (b) All employment agreements between the Company and its employees are in writing, contain all terms and conditions applicable to the respective employment relationship 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.
- (c) 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.

- (d) 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 Statements as per the respective accounts date. Since such accounts date, overtime claims and outstanding holiday entitlements accrued only in the ordinary course of business.
- (e) 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 in Schedule 11((e)) to this **Annex 10.1**,] 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, consultant or director as a consequence of the transactions contemplated by this Agreement.
- (f) None of the Key Employees of the Company listed in Schedule 11((f)) to this **Annex 10.1** has, at the date of this Agreement, given, or has been given, notice of termination of her/his employment or has indicated an intention to terminate her/his employment.

## 12. Intellectual Property

- (a) All Business IP [is listed in Schedule 12((a)) to this **Annex 10.1** and] 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);
  - (i) valid and[, to Existing Shareholder(s)' Best Knowledge,] not being infringed or challenged or opposed by any person and there is no reason to anticipate such infringement, challenge or opposition;
  - (ii) not subject to any Encumbrance or any license in favor of another person;
  - (iii) 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
  - (iv) 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 Best Knowledge of the Existing Shareholder(s), t]/[T]he Business does not infringe, and has not in the past infringed, any Intellectual Property of any third party (or would not do so if the same was valid).
- (c) The Company has taken all best practice precautions and measures to protect and maintain the confidentiality of its trade secrets and know-how.
- (d) The Company does not currently use, or has used, any open-source software in a manner that would or could (i) require the disclosure or distribution in source code or other form of any of the Business IP, (ii) require the licensing of the Business IP for the purpose of making derivative works, (iii) impose any restriction on the consideration to be charged for the distribution of the Business IP, (iv) impose any limitation, restriction, or condition on the right of the Company with respect to the use or distribution of the Business IP, or (v) create, or purport to create, obligations for the Company with respect to any Business IP, or grant, or purport to grant, to any third party, any rights with respect to any Business IP. With respect to any open-source software that is, or has been, used by the Company, the Company is and has been in compliance with all applicable license and other requirements with respect thereto and the Company has the right to use the relevant open-source software as currently used.

### **13. IT Systems**

- (a) The IT Systems currently used by the Company constitute all technology and systems infrastructure reasonably necessary to carry on the conduct of the Business as currently conducted.
- (b) The Company's IT Systems:
  - (i) are in good working condition and function in all material respects in accordance with all applicable documentation and specifications (subject to normal wear and tear), and operate and perform as is reasonably necessary to conduct the Company's Business;
  - (ii) are free from any material defect, bug, virus or programming, design or documentation error or other software routines or hardware components that permit unauthorized access or the unauthorized disablement or erasure of such;
  - (iii) have not experienced any unauthorized intrusions or breaches of security, failures, breakdowns affecting the Company's IT Systems that have caused any material failures, breakdowns, outages, or unavailability of any of the IT Systems or the loss of data in the last 36 months; and
  - (iv) include appropriate measures regarding security, disaster recovery and continuity of the IT Systems.

#### **14. Data Protection**

- (a) The Company complies in all material respects with applicable privacy, data protection, and data retention legislation and regulations in all relevant jurisdictions, including the European General Data Protection Regulation (GDPR) and the Swiss Data Protection Act (*Datenschutzgesetz*).
- (b) The Company maintains and has maintained reasonable physical, technical, and organisational security measures and policies designed to protect all personal data owned, stored, used, maintained, or controlled by or on behalf of the Company from and against unlawful, accidental, or unauthorized access, destruction, loss, use, modification, or disclosure.
- (c) To the Best Knowledge, there has been no occurrence of (i) unlawful, accidental or unauthorized destruction, loss, use, modification, or disclosure of, or access to personal data owned, stored, used, maintained, or controlled by or on behalf of the Company such that applicable data protection legislation and regulations require or required the Company to notify government authorities, affected individuals, or other parties of such occurrence, or (ii) unauthorized access to or disclosure of the Company's Confidential Information or trade secrets.

#### **15. [Real Property]**

[The Company does not own any real property. The Company has good and valid title as lessee to all Premises and such Premises are accurately and comprehensively listed in Schedule 17 to this **Annex 10.1**. The Company has made no changes to leased real property which will require material payments by the Company at termination of the lease to restore the leased real property to their original conditions.]

#### **16. 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. All premiums have been paid when due by the Company. The Company has complied with the terms and conditions of such insurance policies; in particular, there has been no breach of any of the insurance policies that would entitle insurers to decline to pay all or any part of any claim made under such policies. There are no pending claims under such insurance policies. The Company has not received any notice from any insurer to the effect that the insurance premiums will be substantially increased, or that an existing insurance policy will be terminated or not renewed. No product liability, professional liability or similar claim has been made against the Company since its incorporation.

#### **17. Litigation / Proceedings**

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

**18. [Environment]**

[The Company has not caused pollution of the environment so as to give rise to a duty of environmental remediation or to liability for compensation or otherwise. All Assets used by the Company comply and have in the past complied with all applicable Environmental Laws.]

**19. 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.



## Representations and Warranties of Each Investor

### 1. Capacity of Investor

#### 1.1. Authority

In its capacity as Investor it has the unrestricted right and authority to enter into this Agreement and to perform all undertakings under or in connection with this Agreement. This Agreement constitutes valid, legal and binding obligations of the Investors, enforceable against it in accordance with its terms. It is neither over-indebted (*überschuldet; surendetté*) nor insolvent (insolvent; insolvable) or unable to pay its debts as they fall due (*illiquid; non liquide*) and there are no circumstances that indicate any over-indebtedness or insolvency or illiquidity of it in the foreseeable future.

#### 1.2. Execution and Performance by Investor

The execution and the performance of this Agreement by the Investor have been authorized by all necessary corporate action of such Investor and execution and the performance will not:

- (a) result in a breach of any provision of the constitutional documents, such as the articles of incorporation or board regulations, of such Investor; or
- (b) result in a breach, or default under, any term or provision of any agreement, license or other instrument or of any order, judgment or decree of any court, governmental agency or regulatory body to which such Investor is a party or by which such Investor is bound.

#### 1.3. No Consents Required

In its capacity as Investor, it does not require any notice, consent, waiver, approval or clearance by any governmental agency or regulatory body of any nature other than mentioned in this Agreement for it to enter into this Agreement and to consummate the transactions contemplated by this Agreement. There are no proceedings or investigations whatsoever pending or threatened in writing against such Investor that could compromise the consummation of the transactions contemplated by this Agreement.

### 2. Own Account

The Preferred Shares to be acquired by it will be acquired for investment for such Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that such Investor has no present intention of selling, granting any participation in or otherwise distributing the same.

### **3. Disclosure**

It has conducted and completed its own independent due diligence with respect to the transactions contemplated by this Agreement. Based on such information as it has deemed appropriate, such Investor has independently made its own analysis and decision to enter into the transactions contemplated by this Agreement. Except for the representations, warranties and undertakings of the Company expressly set forth in this Agreement, it is relying exclusively on its own sources of information, investment analysis and due diligence (including professional advice it deems appropriate) with respect to the transactions contemplated by this Agreement, the Preferred Shares and the current business, condition (financial and other-wise), management, operations, properties and business prospects of the Company.

### **4. Compliance**

It has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Preferred Shares or any use of this Agreement, including:

- (a) the legal requirements within its jurisdiction for the purchase of the Preferred Shares;
- (b) any foreign exchange restrictions applicable to such purchases;
- (c) any governmental or other consents that may need to be obtained; and
- (d) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale, or transfer of the Preferred Shares. Its subscription, payment for, and continued beneficial ownership of the Preferred Shares will not violate any applicable securities or other laws of such Investor's jurisdiction.

**[Disclosure Letter]**

Attached.