

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.

SHAREHOLDERS 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

undated 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 transaction at hand. Each transaction has its own particularities and requires a deliberate and careful balance of interests. And for many of the legal issues addressed by the Model Documentation, 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).

5th Edition

This 5th 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

SHAREHOLDERS AGREEMENT

dated [date]

and entered into by and among

Investors

[name Investor 1], [address]

("Investor 1")

[name Investor n], [address]

("Investor n")

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

Founders

[name Founder 1], [address]

("Founder 1")

[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] 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].
- (C) The Parties have entered into an investment agreement dated [date] ("**Investment Agreement**") pursuant to which (i) the nominal share capital of the Company shall be increased ("**Capital Increase**") and (ii) the Investors agreed to subscribe for newly issued Preferred Shares.¹
- (D) As a condition precedent for the subscription of newly issued Preferred Shares by the Investors as contemplated by the Investment Agreement, the Parties agreed to execute this Agreement to govern their respective rights and obligations as shareholders of the Company and provide for the rules governing the operation of the Company.

Based on the foregoing, the Parties agree as follows:

1. Definitions

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

2. General Undertaking

- (a) The [Common Shareholders]/[Shareholders]² acknowledge their common intent to procure, and to generally cooperate with each other so as to ensure, that the Company will be managed and operated with a view to maximizing its value for the Shareholders and ultimately achieving an exit for the Shareholders from their investment in the Company.
- (b) Each Shareholder hereby undertakes to the other Shareholders to:
 - (i) generally exercise its powers and voting rights as a shareholder of the Company; and
 - (ii) procure that the Director(s) nominated by such Shareholder exercise their powers and voting rights on the Board to the extent legally permissible and compatible with the fiduciary duties of such Director(s);

¹ **[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 in Section 10.)

² **[Note:** Although most investors will invest in a company solely to ultimately exit from such investment, investors may not wish, or based on their investment policies/restrictions may not be in a position, to accept even a generic contractual undertaking (binding also upon them as opposed to being given by all other shareholders for the benefit of the investors) to exit from their investment.]

in a manner which is consistent with the terms of this Agreement, and to ensure that the provisions of this Agreement are given full effect at all times during the term of this Agreement.

3. Ownership Structure

3.1 Ownership Structure Following Completion³ of the Capital Increase

As at completion of the Capital Increase, the ownership structure of the Company [on a fully diluted basis]⁴ and the holdings of each Shareholder in the respective class of Shares⁵ shall be as set forth in **Annex 3.1 ("Cap Table")**.

3.2 Implementation of Different Classes of Shares⁶

As at completion of the Capital Increase, the share capital of the Company [on a fully diluted basis]⁷ shall be divided into two different classes of Shares: Common Shares and Preferred Shares. The respective rights attaching to each of the two different classes of Shares shall be as set forth in this Agreement [and, subject to the order of precedence set forth in the second paragraph of Section 4.1, the Articles].⁸

4. Articles and Board Regulations / Order of Precedence

4.1 Order of Precedence

- (a) The rights and obligations of the Shareholders in their capacity as shareholder of the Company, the organization of the Company, the organization of the Board and the rights and responsibilities of the Directors shall be governed by this Agreement, the Articles, the Board Regulations and other governing documents of the Company as amended from time to time in accordance with the relevant provisions contained therein.

³ **[Note:** The Investment Agreement may provide that (a) the Capital Increase will be split up into tranches whereby the obligation of the Investors to subscribe for certain follow-on tranches may be dependent upon the Company reaching certain agreed milestones to be set forth in the Investment Agreement (and presumably in the Business Plan) and/or (b) additional investors may join in a subsequent closing. If so, corresponding adjustments need to be made to this Section (together with consequential adjustments throughout the Model Documentation).]

⁴ **[Note:** To the extent the Company has implemented any form of employee participation plans or issued any options, warrants or convertible instruments as of the date of this Agreement (or envisages implementing such plans prior to full completion (or completion of the first tranche) of the Capital Increase, it is recommended that the dilutive effect of such plans on the shareholdings of the Shareholders be reflected in Annex 3.1, and that a specific section be added to this Shareholders Agreement addressing the employee participation plan (in particular the maximum amount of shares to be issued under such employee participation plan).]

⁵ **[Note:** It is presumed that there will be only two classes of Shares. To the extent the Parties agree on more than two classes of Shares, corresponding adjustments need to be made to this Section (together with consequential changes throughout the Model Documentation).]

⁶ **[Note:** The Model Documentation presumes that the Investors will wish to have their preferential rights as holders of Preferred Shares pursuant to the terms and conditions of this Shareholders Agreement (e.g. regarding Dividends, Liquidation, subscription preference and veto rights as a separate class of shareholders for certain important shareholder decisions; see also Footnote 37) implemented into the Articles to the extent legally permissible. If the Investors are satisfied with purely contractual preferences, corresponding adjustments may need to be made to this Section (together with consequential changes throughout the Model Documentation).]

⁷ **[Note:** See Footnote 4.]

⁸ **[Note:** See Footnote 6. In case the Investors are satisfied with purely contractual preferences, the square bracketed reference to the Articles is to be deleted.]

- (b) Unless expressly provided otherwise herein, the Articles, the Board Regulations and other governing documents of the Company shall, to the fullest extent permissible under applicable laws, include at all times any provisions required to give full effect to the terms and conditions of this Agreement, if and to the extent so requested by [an Investor]/[the Investors (acting jointly)].⁹
- (c) In the event of any conflict or discrepancies between the provisions of this Agreement and the Articles, the Board Regulations or any other governing documents of the Company, the provisions of this Agreement shall prevail to the extent such conflicts or discrepancies pertain to matters between and among the Shareholders.

4.2 Articles of Incorporation

As at completion of the Capital Increase, the Company's articles of incorporation shall be substantially in the form as attached hereto as **Annex 4.2 ("Articles")**.¹⁰

4.3 Board Regulations

As at completion of the Capital Increase, the Company's board regulations shall be substantially in the form as attached hereto as **Annex 4.3 ("Board Regulations")**.¹¹

5. Board of Directors

5.1 Representation on the Board and Initial Composition

The Board shall comprise a maximum of *[number]* Directors. Throughout the term of this Agreement:¹²

- (a) *[each of]* the Investors shall have the right to be represented on the Board by *[number]* Director[s] nominated by *[such Investor]/[the absolute majority of the voting rights*

⁹ **[Note:** Irrespective of whether the (contractual) preferential rights for the holders of Preferred Shares pursuant to the terms and conditions of this Agreement are partially implemented into the Articles at the time this Agreement and the Articles are negotiated (see Footnote 6), the Investor may wish to have the right to request such corporate implementation of otherwise purely contractual preferential rights at a later stage. If so, this Section will give the Investors the right to request such corporate implementation at a later stage (to the extent legally permissible) by way of an amendment of the Articles, Board Regulations or other constitutive, organizational or governing documents.]

¹⁰ **[Note:** If the investment contemplated to be made by the Investors pursuant to the Investment Agreement is split into several tranches and depends upon the Company reaching certain agreed milestones (see Footnote 3), such successive capital increases may necessitate corresponding amendments to the Articles, in which case this Section may need corresponding adjustments.]

¹¹ **[Note:** If a staggered investment through several tranches is contemplated by the Investment Agreement (see Footnotes 3 and 10), this may mean that the Board Regulations may need corresponding adjustments upon completion of the staggered capital increases to reflect staggered veto rights (as the case may be) of the Investor Directors, in which case this Section may need corresponding adjustments.]

¹² **[Note:** Careful consideration should be given to ensure that the composition of the Board reflects: (i) the relative shareholdings of the Parties involved, (ii) the required expertise and know-how to enable the Board to fulfil its supervisory functions and carry out its decision-making powers, and (iii) applicable standards for good corporate governance. Depending on the specific circumstances, this may require the appointment of suitable independent third-party directors. Similarly, financial investors may not find it desirable (or potentially not even permissible according to their internal investment policies/restrictions) to be formally represented on the Board, and/or Common Shareholders may find investors unsuitable as Board members. In any such circumstances, financial/strategic investors may instead be granted Board observer status (see Footnote 13), which may require corresponding adjustments to this Section (together with consequential changes throughout the Model Documentation).]

represented by the Investors][, if and as long as the aggregate shareholdings of [such Investor]/[all Investors] reach or exceed [number] percent of the Company's then issued and outstanding share capital] (each an "**Investor Director**")¹³;

- (b) the Common Shareholders shall have the right to be represented on the Board by [number] Director[s] nominated by [the absolute majority of the voting rights represented by] all Common Shareholders[, if and as long as the aggregate shareholdings of all Common Shareholders reach or exceed [number] percent of the Company's then issued and outstanding share capital] (each a "**Common Shareholder Director**"); and
- (c) [the [Board]/[Shareholders collectively by [the absolute majority] of voting rights represented by the Shareholders] shall from time to time nominate [number] independent Director[s]¹⁴ (each an "**Independent Director**").]

5.2 Election

The Directors shall be elected by the General Meeting of Shareholders in accordance with Section 5.1 for [one]/[two]-year terms. Each Shareholder hereby undertakes to the other Shareholders to cast its votes in the relevant General Meeting of Shareholders in favor of the person(s) nominated in accordance with Section 5.1.

5.3 Chairperson/[Vice-Chairperson]

- (a) The initial Chairperson shall be [name of chairperson]. Thereafter, the Chairperson shall be nominated by the [Board]/[Investor Directors (acting jointly)]/[absolute majority of shareholder votes] [from among the Independent Directors] for any subsequent terms and the so nominated Chairperson shall be elected, from time to time, by the Board. The Chairperson shall [have]/[not have] the casting vote.¹⁵
- (b) [The initial Vice-Chairperson shall be [name of vice-chairperson]. Thereafter, the Vice-Chairperson shall be [one of the Independent Directors] nominated by the [Board]/[Investor Directors (acting jointly)]/[absolute majority of shareholder votes] for any subsequent terms and the so nominated Vice-Chairperson shall be elected, from time to time, by the Board. If and to the extent the Chairperson is unavailable, has a conflict of interest, or is otherwise not able to act, the Vice-Chairperson shall assume the powers and duties of the Chairperson.]

¹³ **[Note:** Other Investors that are not formally represented on the Board may want the right to appoint a person to attend all meetings of the Board as an observer (potentially subject to exclusion from discussions about specific topics of a confidential nature at which the attendance of representatives of competing strategic investors may not be desirable). If so, Section 5.10 will govern the rights and duties of such Board observers.]

¹⁴ **[Note:** This Section presumes that the Board from time to time proposes suitable independent Directors (i.e. persons who are neither affiliated with, nor dependent upon, any of the Shareholders and/or the senior management of the Company; see also Footnote 12 and the Swiss Code of Best Practices). If the nominations for Independent Directors were meant to be made directly by the Shareholders (rather than upon recommendation of the Board), the Section would need corresponding adjustments.]

¹⁵ **[Note:** The Articles could provide for election of the Chairperson by the General Meeting of Shareholders. Further, the casting vote of the Chairperson for Board resolutions (if considered appropriate by the Parties in any given case) presumes that the Articles do not explicitly exclude such casting vote.]

5.4 Organization / Delegation

- (a) The organization and the responsibilities of the Board, the majority requirements for affirmative resolutions on Important Board Matters, the delegation of the management of the Company by the Board to the Management, and the reporting shall be set forth in the Board Regulations in full compliance with the terms and conditions set forth in this Agreement.
- (b) The Board Regulations will, to the fullest extent permitted by law and subject to the consent requirements for Important Board Matters, delegate the day-to-day management of the Company to the Management.

5.5 Signing Authority

The Board shall[, as a general rule,] not grant individual signing authorities (*Einzelzeichnungsberechtigung; signature individuelle*) to Directors and/or officers of the Company and [all Directors] shall be granted collective signing powers (*Kollektivzeichnungsberechtigung zu Zweien; signature collective à deux*).

5.6 Quorum of Attendance

- (a) Each Shareholder acknowledges and agrees that the Board shall only be deemed to be validly constituted and entitled to transact business, if:
 - (i) [each]/[at least [number]] Investor Director[s]; and
 - (ii) at least the majority of all Directors;are present (including by telephone, video or computer conference or other means of direct communication), and each Shareholder hereby undertakes to the other Shareholders to procure that the Director(s) nominated by it pursuant to Section 5.1 abstain from participating in Board meetings and from transacting business if the Board is not validly constituted in accordance with this Section 5.6.
- (b) Notwithstanding the foregoing:
 - (i) if the quorum of attendance set forth in the preceding paragraph is not met upon first invitation, the Board meeting shall be postponed and called again with at least [five] calendar days prior written invitation and such second meeting shall take place at the same place and time and on the same weekday two weeks after the meeting date specified in the first invitation unless otherwise agreed by all Directors. In such second meeting, the Board meeting shall be validly constituted if at least [number]/[the majority of all] Directors are present (including by telephone, video or computer conference or other means of direct communication) and the Board may pass resolutions on the agenda items that have already been put on the agenda distributed to the Directors together with the first invitation, subject to the approval requirements set forth in Section 6(b); and

- (ii) no quorum of attendance shall be required if the only agenda item of the Board meeting consists of declaratory resolutions requiring certification by a notary public. Such meeting shall be validly convened if at least one member of the Board is present.

5.7 Resolutions

Unless otherwise stated in Section 6, resolutions and other actions by the Board shall be taken by the simple majority of the votes of the Directors present.

5.8 [Board Compensation]¹⁶

- (a) [Unless otherwise resolved by the Board from time to time, each [Independent] Director shall receive a net amount of CHF [amount] per annum (net of social security contributions, if any, payable by the relevant Director) as remuneration for his/her function as a Director. [All other Directors shall not receive any remuneration.]
- (b) [Upon presentation of appropriate receipts, the Company shall reimburse each Director for all business expenses (including travel costs and hotel accommodation) reasonably incurred by such Director in connection with his/her function as a Director.]

5.9 [D&O Insurance]

[The Company [will procure/undertakes to apply commercially reasonable efforts to purchase]¹⁷ appropriate directors' and officers' insurance coverage.]

5.10 [Board Observer]

- (a) [Each Investor who is not represented on the Board by an Investor Director shall have the right to appoint a person to attend all meetings of the Board as an observer [, if and as long as the shareholdings of such Investor reaches or exceeds [number] percent of the Company's then issued and outstanding share capital] (each such observer a "**Board Observer**"). Each Board Observer shall, subject to applicable law and conflict of interests [and after having signed a separate non-compete and confidentiality agreement].¹⁸
 - (i) be entitled to participate, without voting rights, in all Board meetings;
 - (ii) receive the same information as Directors; and
 - (iii) be invited to Board meetings at the same time as Directors.

¹⁶ [Note: The Parties may wish to specify the compensation and reimbursement arrangements for Directors in the Shareholders Agreement (absent any contractual arrangements, it is within the reasonable discretion of the Board to determine its compensation and reimbursement for business expenses).]

¹⁷ [Note: To be verified with the Company whether an unqualified obligation is suitable (considering that depending on its maturity and status relevant coverage might be difficult and/or very costly to obtain).]

¹⁸ [Note: The Parties may wish to make such Board Observer status subject to each Board Observer executing a written agreement to this effect, as observers are not subject to the obligations (in particular fiduciary duty) of board members under Swiss statutory law.]

- (b) Any information obtained by a Board Observer in his/her capacity as Board Observer shall be subject to the same restrictions as set forth in Section 5.11 and Section 18.2.]

5.11 [Board Information and Sharing of Board Information]

- (a) [The Directors shall have access to information in respect of the Company as will be required from time to time to perform and discharge their duties as Directors.
- (b) The Parties agree that any confidential information, which has been or will be made available to Directors[or Board Observers] in their capacity as Directors[or Board Observers] ("**Board Information**"), must be treated confidential and that such Board Information may be used and shared by a Director[or Board Observers] with the Investor who nominated such Director[or Board Observer] and such shareholders' Affiliates only:
 - (i) in accordance with the reporting obligations pursuant to the fund documentation relevant for such Investor; or
 - (ii) as required by such Investor for (1) the assessment of the Company, (2) the exercise of shareholder rights (including but not limited to rights under this Agreement) and (3) the discussion of upcoming Board matters and decisions;
 - (iii) possible further investments into the Company by such Investor; or
 - (iv) an exit by such Investor.]¹⁹

6. Control / Important Shareholder and Board Matters^{20,21}

Each of the Shareholders acknowledges and agrees with the other Shareholders:

- (a) not to cast an affirmative vote in respect of any of the important shareholder matters specified in Part A of **Annex 6 ("Important Shareholder Matters")**²², unless any such Important Shareholder Matter will be approved by at least:

¹⁹ [Note: The Parties may consider to address the sharing of information by Directors/Board Observers in more detail, e.g. by agreeing that the Board will prepare comprehensive "investor reporting packages" which Directors/Board Observers are allowed to share with the shareholder who nominated such Director/Board Observers and their Affiliates, subject to such recipients agreeing to be bound by confidentiality undertakings similar to Section 18.2]

²⁰ [Note: The Parties may wish to carefully consider appropriate control rights of the Investors and amend the (purely indicative and exemplary) wording accordingly. Similarly, Investors may – depending on the relative weight of their shareholdings – insist that they be granted the right to positively impose certain important shareholder and/or board decisions (as opposed to rights to block unsuitable resolutions from being taken) by way of voting undertakings (*Stimmbindungsverpflichtungen; obligations relatives au droit de vote*). If so, this Section would need corresponding adjustments.]

²¹ [Note: If the Company has subsidiaries, the Parties may wish to expand the scope of important matters to capture corresponding matters at the level of such subsidiaries as well. If so, this Section (and Annex 6) will need corresponding adjustments together with consequential changes throughout the Model Documentation.]

²² [Note: The list of Important Shareholder Matters reflects the list of shareholder matters for which a qualified majority requirement applies pursuant to art. 704 para. 1 CO (see Footnote 23) except to the extent so indicated by [square bracketed] additional matters which the Parties may opt to include in (or delete from) the list.]

- (i) [66²/3%]²³ of shareholder votes [and the absolute majority of the share capital of the Company]²⁴ [represented at the relevant General Meeting of Shareholders]/[issued by the Company]; and
 - (ii) [66²/3%] of shareholder votes of the holders of Preferred Shares [represented at the relevant General Meeting of Shareholders]/[issued by the Company], whereby each Share shall entitle its holder to one vote irrespective of the class to which it belongs; and
- (b) [[Alternative 1:]²⁵ that any affirmative decision with respect to any of the important Board matters specified in Part B of **Annex 6 ("Important Board Matters")** shall require the consent of at least [percentage]% of [all elected Directors]/[the Directors present at the meeting].]²⁶
- (c) [[Alternative 2:] to procure that the Director(s) nominated by such Shareholder shall not, subject only to their fiduciary duties, cast an affirmative vote with respect to any of the important Board matters specified in Part B of **Annex 6 ("Important Board Matters")**, unless such Important Board Matter will be approved by:
- (i) the simple majority of the Directors present at the meeting; and
 - (ii) [each]/[at least [number]] Investor Director[s].]²⁷

²³ **[Note:** This is the minimum threshold set forth by compulsory Swiss law for most of the Important Shareholder Matters, pursuant to art. 704 para. 1 CO. Accordingly, no lower threshold is permissible for those matters.]

²⁴ **[Note:** This additional minimum threshold set forth in art. 704 para. 1 CO may not be necessary (and, accordingly, may be deleted) to the extent that no preferential voting rights (*Stimmrechtsprivilegien; droits de vote privilégié*) are attached to the different classes of shares. The Model Documentation presumes that no such preferential voting rights (as opposed to veto rights for Important Shareholder Matters) are attached to the Preferred Shares.]

²⁵ **[Note:** It has been discussed controversially in the Swiss legal doctrine whether double quorum requirements customarily used in venture capital and private equity related shareholders agreements and board regulations (i.e., to the effect that any affirmative decision with respect to any of the Important Board Matters shall require, besides the consent of the simple majority of the Board members present at the meeting, the consent of [each / at least [number]] Investor Director(s)] is compatible with compulsory Swiss corporate law. In light of a decision of the Commercial Court of Zurich (although widely criticized in the VC/PE industry in Switzerland as overly categorical and dogmatic and as such unfit to establish meaningful precedent) – that held that such de facto veto rights of Investor Directors are invalid and non-effective as a matter of Swiss corporate law (as opposed to contract law) – the corporate validity and effectiveness of such customary double quorum requirements may be questionable. While the Working Group disagrees with that precedent case and is of the firm view that suitable double quorum requirements should be held valid and effective (also) as a matter of Swiss corporate law in particular with regard to VC/PE investments, parties to venture capital and private equity related shareholders agreements may wish to avoid legal pitfalls of this nature in respect of most sensitive control related key terms and conditions in the Shareholders Agreement. Accordingly, the Model Documentation provides for two alternatives, each with its own distinct pros & cons profile and aiming at reducing or mitigating legal risks resulting from a potential invalidity or ineffectiveness of classical double quorum requirements.]

²⁶ **[Note:** Alternative 1 reflects a legal "safe harbour" approach but requires that the Investors (usually holding minority stakes in early stage investments) secure a sufficient and potentially over-proportional number of Board seats. As a legal "safe harbour", it is the recommended alternative as long as Investors retain a sufficient number of Board seats to avoid petrifying high approval quorum requirements becoming necessary to ensure co-control of Investor Directors (note: petrifying high approval requirements must be avoided as these, depending on the circumstances of a given case, also risk to be held invalid as a matter of compulsory Swiss corporate law).]

²⁷ **Note:** Alternative 2 reflects a purely contractual and indirect voting undertaking of Shareholders (i.e., to procure that Directors nominated by a Shareholder abstain from casting affirmative votes unless the specified majority requirements are being met). As such, it will not affect or set aside the corporate validity and binding effect of a corporate resolution taken in breach of the contractual voting undertaking. In addition, any such indirect voting undertaking may expose a Shareholder to increased risks of being subject to corporate responsibility as de facto corporate body of the Company and is subject to compulsory fiduciary duties of Directors. While the implementation

7. Information Rights

- (a) During the term of this Agreement, the Company shall provide each Investor with, and each Investor shall have access to, the following information[, if and as long as such Investor reaches or exceeds [number] percent of the Company's then issued and outstanding share capital]:²⁸
- (i) within [90] calendar days of the end of each financial year, audited financial statements prepared in accordance with the CO [and Swiss GAAP FER]/[IFRS];
 - (ii) within [30] calendar days of the end of each fiscal quarter, unaudited quarterly financial statements[, and a twelve-month rolling forecast];
 - (iii) within [20] calendar days of the end of each month, monthly management accounts (i.e., balance sheet, profit and loss statement, cash flow statement);
 - (iv) no later than [60] calendar days prior to the end of each financial year, the proposed budget for the next following financial year; and
 - (v) forthwith, any additional information reasonably requested by an Investor [or by its controlling company] in order to (1) account for the investment made in the Company or (2) meet the demands of any regulatory and/or governmental authorities, including, but not limited to, any information required in order to prepare a prospectus or filings to competition authorities.
- (b) In addition, each Investor shall have the opportunity at its discretion to discuss any issues relating to its investment and the Company at least on a monthly basis with the Company, and the Company shall allow (i) consultation with the Management on significant issues and (ii) access to the books, records and facilities of the Company at any time upon reasonable advance request to the [Board]/[Chairperson] [, if and as long as such Investor reaches or exceeds [number] percent of the Company's then issued and outstanding share capital].²⁹
- (c) [The Company hereby grants the Investors representing in aggregate at least [percentage]% of the Preferred Shares the right to appoint an independent auditor to inspect and audit the books and accounts of the Company. Such auditor shall have the right, upon reasonable advance notice and during regular business hours, to enter the premises of the Company or other location where records are maintained, to inspect, audit and to make copies of any book and record of account of the Company.

of this alternative will therefore require careful deliberation and consideration in any given case, alternative 2 has the advantage of being consistent with customary market practice, meeting Investor expectations as to their co-control rights and of not requiring over-proportionate Investor board representation.]

²⁸ [Note: The scope of, and access to, information will vary depending on the information needs of the particular investors. Corresponding adjustments to this Section may be necessary to reflect such needs.]

²⁹ [Note: The wording of Section 7 should be adjusted on a case-by-case basis to provide appropriate information and access rights for Investors and other Shareholders, as the case may be, consistent with the Company's information policy while safeguarding sensitive or proprietary information of the Company.]

Any information obtained during such audit shall be subject to the same restrictions as set forth in Section 5.11 and Section 18.2.]

- (d) [The costs of such audit and inspection shall be borne by [the relevant Investor(s), except (i) where the Company fails to provide the information in accordance with Section 7 or (ii) if such information is provided, the audit and inspection reveals that it is materially incorrect, in which case such costs shall be borne by the Company].]

8. [Business Plan, Company Policies and Compliance]

8.1 [Business Plan]³⁰

[The Business Plan agreed among the Parties is attached hereto as **Annex 8.1**]

8.2 [Company Policies]

*[to be specified if and as agreed and appropriate]*³¹

8.3 [Compliance and KYC]

[At any time during the term of this Agreement, the Company [and each of the Investors] may require from each Shareholder information and documentation allowing customary counterparty checks and identification of their beneficial owners in accordance with applicable anti-money laundering and/or other KYC (know-your-customer) laws and regulations and each Shareholder shall, upon request by the Company [or an Investor], deliver such information and documentation without delay.]

9. Funding / Financial Matters

9.1 No Commitment for Further Funding³²

Subject to the terms and conditions of the Investment Agreement³³, nothing in this Agreement shall be deemed to constitute a binding commitment on any of the Shareholders to provide for any financing or funding to the Company in whatever form or manner (including, without limitation, by way of equity financing, debt financing or any combination thereof).

³⁰ **[Note:** The Model Documentation presumes that the Investors will insist that a (typically three to five year rolling) Business Plan in form and substance satisfactory to the Investors is established. If so, the responsibilities for the preparation of, the approval process for, the annual updates to, and adjustments or amendments as necessary or appropriate from time to time to, the Business Plan may be specified in this Section (and in the Board Regulations).]

³¹ **[Note:** If appropriate given the circumstances and/or specifically relevant for Investors, ESG related undertakings and/or compliance undertakings (e.g., ABC, sanctions, export control, etc.) in relation to the Company and its subsidiaries shall be addressed in this Section, potentially also via reference to detailed policies or guidelines in an Annex.]

³² **[Note:** The Model Documentation presumes that no firm commitment for further funding (other than the Capital Increase, which may be split up into various tranches and may depend on the Company reaching certain agreed milestones) is agreed among the Parties. To the extent firm commitments for additional funding are agreed, corresponding adjustments may need to be made to this Section (together with consequential changes throughout the Model Documentation).]

³³ **[Note:** Consider including carve-out in case there are continuing separate financing undertakings by shareholders.]

9.2 [Raising of Additional Financing]

- (a) [In order to finance the Company and its operations in accordance with its Business Plan, the Company shall use its best efforts to raise sufficient [equity financing, debt financing or any combination thereof], in one or a series of additional financing rounds, if and as proposed by the Board with the approval requirements set forth in Section 6(b) ("**Approved Financing**").]³⁴
- (b) [Subject to Section 10.3, each Shareholder hereby consents to the granting of equal or higher ranking preferential rights in respect of newly issued Shares for the benefit of any other Shareholder [or new bona fide third party investor not subject to Sanctions], if and as may be required or deemed appropriate by the Board with the approval requirements set forth in Section 6(b) to arrange for and/or implement such Approved Financing.]³⁵

9.3 Distribution of Dividends³⁶

The Shareholders understand that in the interest of achieving the targets defined in the Business Plan, substantial investments will need to be made and that, accordingly, the payment of dividends (including interim dividends, the repayment of statutory capital reserves or the distribution of other distributable reserves) to the Shareholders may not be feasible and/or desirable [during the growth stage of the Company]/[until the end of the financial year [year]]/[for the foreseeable future].

9.4 Accounting Standards and Policies

- (a) The financial statements and accounts of the Company shall be prepared in accordance with the CO [and Swiss GAAP FER]/[IFRS] and accounting practices and financial reference periods consistent with those applied in the preparation of previous financial years, in each case unless:
 - (i) the Company notifies each Investor that there has been a change in the CO₁, Swiss GAAP FER]/[IFRS], or the accounting practices or financial reference periods; and
 - (ii) delivers to each Investor (1) a short description of any change necessary for those financial statements and accounts to reflect the CO₁, or Swiss GAAP FER]/[IFRS], and the accounting practices and financial reference periods as previously applied and (2) a comparison between (x) the financial position of the Company on the basis of the previously applied accounting practices and financial reference periods (i.e., without such change) and (y) the financial position of the Company on the basis of the newly applied accounting

³⁴ [Note: Consider specifying the definition of "Approved Financing" in more detail.]

³⁵ [Note: If this paragraph is included, the corresponding waivers should be aligned with the subscription preference in Section 10.3.1.]

³⁶ [Note: Investors may insist (for tax reasons or otherwise) that no dividends shall be paid during the growth stage of the Company and/or until the occurrence of an exit event or that dividends shall only be paid in case the Investors so request, in which case corresponding adjustments should be made to this Section and Section 6(a).]

practices and financial reference periods (i.e., with such change being applied).

- (b) Any change to the Company's accounting practices or financial reference periods requires the prior approval of the Board, not to be withheld to the extent such change is required by the CO[, or Swiss GAAP FER]/[IFRS] and otherwise in accordance with the approval requirements set forth in Section 6(b).

9.5 Auditors

As of the date of this Agreement, the Company's auditors shall be [name of auditors]. For any subsequent tenure, the Company's auditors shall be elected from time to time by the General Meeting of Shareholders.

9.6 [Related Party Transactions]

[[Unless otherwise provided in this Agreement or the Investment Agreement, all]/[All] agreements, transactions and dealings by and between the Company on the one hand and any of its Directors, officers, managers, representatives, employees, consultants or its Shareholders or any of its or their related Persons on the other hand shall reflect market conditions and be made at arm's length terms.]

10. Preferences³⁷

10.1 Dividend Preferences³⁸

10.1.1 Grant

- (a) If the General Meeting of Shareholders resolves to declare a dividend (including an interim dividend, the repayment of statutory capital reserves or the distribution of other distributable reserves) in cash, in kind or otherwise ("**Dividend**" or "**Dividend Event**"), such Dividend shall be allocated to the holders of Shares in the following order of precedence ("**Dividend Preference**"):

³⁷ **[Note:** The Model Documentation presumes that the Investors will insist on the contractual and corporate implementation of two classes of shares: (i) Common Shares (i.e. ordinary common stock (*Stammaktien*; *actions ordinaires*)) for all shareholders other than the Investors, and (ii) Preferred Shares (i.e. preferred shares (*Vorzugsaktien*; *actions privilégiées*)) with dividend, liquidation and subscription preferences (but no voting preferences other than certain veto rights for the holders of Preferred Shares for Important Shareholder Matters; see Section 6(a) and Footnote 6).

To the extent additional voting preferences (*Stimmrechtsaktien*; *actions à droit de vote privilégié*) other than the veto rights for Important Shareholder Matters pursuant to Section 6(a) are agreed and/or the Investors are satisfied with purely contractual preferences (as opposed to their corporate implementation to the extent legally permissible), corresponding adjustments may need to be made to this Section (together with consequential changes throughout the Model Documentation).

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 contract, company and insolvency 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.]

³⁸ **[Note:** Investors may wish to exclude the payment of Dividends during the growth stage of the Company and/or until their exit from their investment (see Footnote 36), in which case no Dividend preferences may be necessary.]

- (i) in **first priority** to the holders of Preferred Shares *pro rata* to their respective holdings in the class of Preferred Shares up to the Preference Amount; and
 - (ii) in **second priority**, if and to the extent the Preference Amount has been fully paid, to all holders of Common Shares *pro rata* to their respective holdings in the class of Common Shares.³⁹
- (b) [Each holder of Common Shares hereby irrevocably undertakes, in favor of the holders of higher ranking Preferred Shares, to execute all documents or instruments and to take all required actions and measures to comply with and (to the extent not yet effected) effect the above Dividend preferences (including the Dividend Preference)] and each holder of Common Shares hereby irrevocably assigns to each holder of higher ranking Preferred Shares pro rata to their holdings of Preferred Shares, to the extent required to give effect to the above Dividend Preference as between and among the Common Shareholders and holders of Preferred Shares, its rights vis-à-vis the Company to receive Dividends, and each holder of higher ranking Preferred Shares hereby accepts such assignment, in each case with effect as per the occurrence of a Dividend Event. The Company hereby acknowledges its notification of such assignment].⁴⁰

10.1.2 Limitation

Notwithstanding anything contained in this Section 10.1 to the contrary (but subject to Section 11), the Dividend Preference set forth in Section 10.1.1(a)(i) shall terminate and cease automatically upon completion of an IPO of the Company.

10.2 Liquidation Preference⁴¹

10.2.1 Grant

- (a) In the event a Liquidation occurs, the proceeds resulting from such Liquidation shall be allocated to the holders of Shares in the following order of precedence ("**Liquidation Preference**"):
 - (i) in **first priority** to the holders of Preferred Shares *pro rata* to their respective holdings in the class of Preferred Shares up to the Preference Amount; and
 - (ii) in **second priority**, if and to the extent the Preference Amount has been fully paid, to all holders of Common Shares *pro rata* to their respective holdings in the class of Common Shares.³⁹

³⁹ [Note: If the Investors wish Dividend preferences (see Footnote 38), the wording of this Section might have to be adjusted to reflect the specific agreement reached regarding the allocation of such Dividends among the holders of different classes of Shares. The suggested wording is one of various potential ways of implementing dividend preferences, hinges on the Preference Amount definition, provides for an embedded cap, is non-participating and provides for no catch-up for holders of Common Shares (see Footnote 96). If a participating dividend preference for the Investors and/or a catch-up for the holder of Common Shares or only a cumulative or non-cumulative Dividend right based on an agreed rate in percentage of the Subscription Amount (instead of the full Preference Amount) is contemplated, corresponding adjustments should be made to this Section (together with consequential changes throughout the Model Documentation).]

⁴⁰ [Note: An assignment of Dividend rights may be necessary to accommodate the commercial agreement reached among the Parties with respect to the Dividend preferences (if any), if and to the extent such contractually agreed Dividend preferences cannot be fully reflected in the corporate Dividend preferences pursuant to the Articles. Each person using the Model Documentation shall satisfy itself by retention of its own counsel of the limited validity and/or enforceability of assignments with respect to future claims and of the tax effects (if any) of any such assignments among the holders of Common Shares and holders of Preferred Shares.]

⁴¹ [Note: Experience from numerous start-up investments show that preferences in respect of deemed liquidation / exit events may prove difficult to handle over various investment rounds at best or even prohibitive for additional investment rounds if they remain in effect for a too long period and/or are not ex-pressed to fall away in certain

- (i) in **first priority** to the holders of Preferred Shares *pro rata* to their respective holdings in the class of Preferred Shares up to the Preference Amount; and
 - (ii) in **second priority**, if and to the extent the Preference Amount has been fully paid, to all holders of Common Shares *pro rata* to their respective holdings in the class of Common Shares.⁴²
- (b) [Each holder of Common Shares hereby irrevocably undertakes, in favor of the holders of Preferred Shares, to execute all documents or instruments and to take all required actions and measures to comply with and (to the extent not yet effected) effect the Liquidation Preference[, and each holder of Common Shares hereby irrevocably assigns to each holder of higher ranking Preferred Shares *pro rata* to their holdings of Preferred Shares, to the extent required to give effect to the above Liquidation Preference as between and among the Common Shareholders and holders of Preferred Shares, its rights *vis-à-vis* the Company to receive Liquidation proceeds, and each holder of higher ranking Preferred Shares hereby accepts such assignment, in each case with effect as per the occurrence of a Liquidation. The Company hereby acknowledges its notification of such assignment]].⁴³
- (c) [Without limiting the generality of the foregoing, the Shareholders acknowledge and agree that in case of a Sale:
 - (i) by way of a sale, transfer or other disposal of assets, the Shareholders shall, if so requested by [an Investor]/[the absolute majority of the voting rights represented by the Investors], resolve on a dividend or liquidation of the Company in order to effect the distribution of proceeds either by way of the Dividend Preference or the Liquidation Preference; and
 - (ii) by way of a sale, transfer or other disposal of Shares, the Liquidation Preference shall be reflected in the price expressed to be payable (1) per one Preferred Share to holders of Preferred Shares and (2) per one Common Share to the Common Shareholders by the acquirer under the relevant share purchase agreement.]]⁴⁴

qualified events. It is therefore recommended to carefully negotiate and calibrate such preferences and determine suitable events triggering the expiration or termination of such preferences.

⁴² [Note: The wording of this Section should be adjusted to reflect the specific agreement reached regarding the allocation of such Liquidation proceeds amongst the holders of different classes of Shares. The suggested wording is one of various potential ways of implementing preferences in respect of deemed liquidation / exit events and hinges on the Preference Amount definition (see Footnote 96).]

⁴³ [Note: See Footnote 40 *mutatis mutandis* also for preferences in respect of deemed liquidation / exit events.]

⁴⁴ [Note: If it is envisaged that the purchase price payable under a potential future share purchase agreement may entail a deferred earn-out element and that the cash portion of the purchase price payable at closing may be lower than the Liquidation Preference of the holders of Preferred Shares, careful consideration should be given as to whether this paragraph should be adjusted to ensure that holders of Common Shares participate (at least partially) in the cash portion of the purchase price payable at closing (rather than only in any deferred and uncertain earn-out payment.)]

10.2.2 Limitation

Notwithstanding anything contained in this Section 10.2 to the contrary (but subject to Section 11), the Liquidation Preference shall terminate and cease automatically upon completion of an IPO of the Company.

10.3 Subscription Preference & Anti-Dilution Adjustments

10.3.1 Grant

- (a) The Shareholders acknowledge and agree that subject to the limitation set forth in [Section 9.2 and] in Section 10.3.3, each holder of Preferred Shares shall have a preferential right to invest in [an Approved Financing and all other future equity and equity related financings (including to participate therein and subscribe for any new equity or equity-related securities convertible to, or granting a right to receive Shares)] raised by the Company and all such new [equity or equity-related securities] shall be available in priority to the holders of Preferred Shares pro rata to their aggregate holdings of Preferred Shares; provided that the Board may revoke the equity subscription preference according to this paragraph if it determines that such revocation is required to implement bona fide measures to obtain emergency financing to avoid or cure an otherwise imminent insolvency of the Company]⁴⁵.
- (b) Each holder of Common Shares hereby irrevocably waives, to the benefit of the holders of Preferred Shares, any statutory subscription right (*Bezugsrecht; droit de souscription préférentiel*) it may have, and each of the Common Shareholders hereby undertakes to execute the necessary waivers required by law, to exercise its powers and voting rights in General Meetings of Shareholders, and to procure that the Director(s) nominated by such Shareholder exercise their powers and voting rights on the Board, in full compliance with the preferential subscription rights of the holders of Preferred Shares set forth in paragraph (a) above.

10.3.2 Anti-Dilution Adjustments⁴⁶

- (a) In the event the Company issues [in any future down-round] [within [number] months following completion of the Capital Increase] [with an aggregate subscription amount exceeding CHF [amount]]:
 - (i) either equity at a subscription or purchase price; or
 - (ii) securities convertible into equity at a conversion price;

⁴⁵ [Note: Consider making such revocation of subscription preferences an Important Board Matter.]

⁴⁶ [Note: Investors will usually insist on anti-dilution adjustments to protect their investment in a startup company against any financial dilution resulting from subsequent capital increases at a subscription price below the subscription price paid by the Investors. The Parties should assess diligently in which cases such protection shall apply. The draft suggests several possible limitations, such as a minimum size of the down-round, a sunset clause after a certain period and/or after completion of the next financing round, some margin / leeway to the latest subscription price before the anti-dilution adjustment applies and a pay-to-play provision.]

in each case [at least *[percentage]*%]⁴⁷ below CHF *[amount]* (which is the subscription price per one Preferred Share paid by a holder of Preferred Shares pursuant to the terms and conditions of the Investment Agreement) each holder of Preferred Shares [participating in such financing round on a *pro rata* basis]⁴⁸ shall, in consideration for the Subscription Amount paid by such Investor in accordance with the terms and conditions of the Investment Agreement and subject to the limitation set forth in Section 10.3.3, be entitled to a [broad-based weighted-average]⁴⁹ anti-dilution adjustment [in such down-round] in accordance with the formula set forth in **Annex 10.3.2 ("Anti-Dilution Adjustment")**]; *provided*, however, that such "Anti-Dilution Adjustment shall forfeit, terminate and cease to apply at the earlier to occur of (1) the date of completion of the next [Approved Financing]/[financing round with an aggregate subscription amount exceeding CHF *[amount]*] and (2) the [fifth] anniversary of the date of completion of the Capital Increase (sunset)]⁵⁰]; it being acknowledged and agreed that this Section 10.3.2 and the formula set forth in **Annex 10.3.2** presumes the absence of any previous down-round and any previous Anti-Dilution Adjustment and shall be applied mutatis mutandis in such modified manner to account for any previous down-round and any previous Anti-Dilution Adjustment].

- (b) Each Shareholder hereby agrees with the other Shareholders, that the Anti-Dilution Adjustment [in each such down-round] shall be effected concurrently with issuance of the other securities [in such down-round] by the issuance to each holder of Preferred Shares of the required number of additional Preferred Shares at nominal value payable by such holder of Preferred Shares in accordance with the formula set forth in **Annex 10.3.2** to achieve the Anti-Dilution Adjustment.
- (c) Each of the Shareholders hereby irrevocably waives any statutory subscription right it may have and hereby undertakes to execute the necessary waivers required by law, to exercise its powers and voting rights in General Meetings of Shareholders, and to procure that the relevant Director(s) nominated by such Shareholder exercise(s) its/their powers and voting rights on the Board, to the extent required to facilitate this Anti-Dilution Adjustment [in respect of any future down-round] in accordance with this Section 10.3.2.

⁴⁷ **[Note:** The Parties may wish to grant some margin / leeway to the latest subscription price before the anti-dilution adjustment materializes.]

⁴⁸ **[Note:** So-called pay-to-play. An Investor shall only benefit from the anti-dilution protection, if such Investor participates in the new financing round pro rata to its shareholding in the Company.]

⁴⁹ **[Note:** A broad-based weighted average adjustment will "compensate" the Investors proportionally (i.e., proportionate to the size of the capital rounds) for a financial dilution suffered by the Investors in an eventual subsequent down-round, whereas a full ratchet adjustment would ensure full "compensation" irrespective of the proportionate size of the relevant capital rounds and a narrow-based weighted average does not include fully diluted share capital in its calculations.]

⁵⁰ **[Note:** The square bracketed wording represents a sunset after completion of the next financing round or, if earlier, expiry of the sunset period.]

10.3.3 Limitations⁵¹

- (a) It is acknowledged and agreed that the subscription preference and Anti-Dilution Adjustment set forth in this Section 10.3 shall not apply, and all Shareholders hereby unconditionally and irrevocably waive all their statutory and preferential subscription rights hereunder or at law and the Anti-Dilution Adjustment set forth herein with respect to, and to the extent required to effect:
- (i) the split of securities or similar reorganizations;
 - (ii) the conversion of Preferred Shares into Common Shares in accordance with Section 11;
 - (iii) the issuance of securities in connection with a bona fide business acquisition by the Company;
 - (iv) the issuance of securities to facilitate strategic transactions, an equipment lease financing or a bank credit arrangement entered into primarily for non-equity financing purposes;
 - (v) the issuance of securities in connection with an ESOP;
 - (vi) [the issuance of securities under a convertible loan or similar instrument [at a discount not exceeding [number] percent]];
 - (vii) the issuance of securities to the public in case of an IPO; and
 - (viii) any Compensatory Capital Increase;
- in each case of (i) to (viii), as approved by the Board with the approval requirements set forth in Section 6(b).
- (b) Subject to Section 11, the preferential subscription rights and Anti-Dilution Adjustments set forth above shall terminate and cease automatically upon completion of an IPO of the Company.

11. Conversion

11.1 Voluntary Conversion

Each holder of Preferred Shares shall have the right to request at any time during the term of this Agreement the immediate conversion of all or a part of its Preferred Shares into Common Shares at a [1:1]⁵² conversion ratio by providing notice to this effect to all other Shareholders and the Company in accordance with Section 18.6 ("**Notice of Voluntary Conversion**"). All

⁵¹ [Note: Appropriate changes are necessary in case of a pay-to-play, i.e. if anti-dilution protection is to be limited to investors who fully participate in the diluting down-round and/or if an investor's preferences should generally cease if such investor does not participate in the next financing round.]

⁵² [Note: While the 1:1 ratio is often seen, the ratio depends on the negotiations/circumstances. By way of example, Parties may choose to apply a different conversion ratio in respect of an IPO to account for the loss of preference rights suffered by the holders of Preferred Shares.]

preferential rights accrued to the holder of Preferred Shares under Sections 10 and 12 prior to the date of such Notice of Voluntary Conversion shall cease and terminate automatically in respect of such converted Shares upon receipt by the other Shareholders of such Notice of Voluntary Conversion and such holder of Preferred Shares shall, in respect of such converted Shares and upon receipt of such Notice of Voluntary Conversion, immediately be deemed to have the same rights and obligations under this Agreement as the other holders of Common Shares for all purposes and intents of this Agreement.

11.2 Mandatory Conversion in IPO⁵³

- (a) All Preferred Shares shall be converted immediately into Common Shares in case of an IPO of the Company at a conversion rate of [1:1]⁵⁴ [on the last business day prior to the first trading day]/[prior to the publication of the offering circular], upon written notice to this effect by the Investors (acting jointly) to all other Shareholders in accordance with Section 18.6 ("**Notice of Mandatory Conversion**"); *provided*, however, that the Notice of Mandatory Conversion may be given by any Director in case of a Qualified IPO.
- (b) If a Liquidation should occur between the conversion and the IPO, all preferences shall apply as if no conversion had taken place. If, within a period of [30] calendar days following the conversion, no IPO is closed, each holder of Preferred Shares shall have the right to request from the other Parties by written notice, in which case the other Parties shall be obliged, to re-establish the share structure and preference rights as existing prior to the conversion.

11.3 Approval

In order to reflect the conversion of Preferred Shares into Common Shares in accordance with Sections 11.1 and 11.2 in the Articles, each Shareholder hereby undertakes to the other Shareholders to approve the necessary shareholder resolution(s) to amend the Articles as soon as reasonably practicable after Notice of Voluntary Conversion and/or Notice of Mandatory Conversion has been given in accordance with this Section 11

12. Exit[/ IPO]

12.1 [Preferred Exit]/[Qualified Exit]

- (a) [The Company shall be managed and operated with a view to maximizing its value for the Shareholders and ultimately achieving an exit, preferably through a Sale [and/or IPO], for the Shareholders from their investment in the Company by no later than [*number*] years after the date of this Agreement, or, if that is not feasible or advisable, at the earliest convenient opportunity thereafter.]

⁵³ [Note: The wording of the mandatory conversion clause presumes one single share class post-IPO. In founder centered companies where their founder DNA is meant to be extended beyond the IPO or for a transition period post-IPO, the introduction of a dual share class structure with voting privileges for such founders may be considered. In such case, changes to this Section together with corresponding adjustments throughout this Agreement will become necessary.]

⁵⁴ [Note: See Footnote 52.]

- (b) [Each Shareholder agrees that if the Board passes a resolution (in each case with the consent of [each of the Investor Directors]/[the majority of the Investor Directors]):
- (i) [recommending a Sale that values the Company in excess of CHF [amount]; or]
 - (ii) [launching an IPO of the Company with newly issued Shares representing an expected aggregate issue price in excess of CHF [amount] based on a valuation provided by [name of investment bank]] ("**Qualified IPO**", and each of (i) and (ii) a "**Qualified Exit Event**";

each Shareholder shall exercise its respective powers and voting rights and provide all such consents and otherwise support all measures as shall be necessary or desirable to procure that such Qualified Exit Event can be effected and consummated. In the event of a Qualified IPO, each Shareholder agrees to waive, and hereby irrevocably waives, any statutory subscription right (*Bezugsrecht; droit de souscription préférentiel*) it may have in respect of a capital increase made for such Qualified IPO, and hereby undertakes to execute the necessary waivers required by law and execute any proxy to exercise its powers and voting rights in General Meetings of Shareholders as may be reasonably requested by the Board to effect such capital increase and approve any other resolutions proposed by the Board to effect and consummate such Qualified IPO in line with market practice.]

12.2 [Preference in IPO]

[In the event of an IPO that includes the offering of pre-existing Shares, each holder of Preferred Shares (including Preferred Shares converted into Common Shares in accordance with Section 11.2), pro rata to its respective holdings of Preferred Shares (including Preferred Shares converted into Common Shares in accordance with Section 11.2) in the share capital of the Company at that time and subject to any regulatory or underwriting requirement or limitations, shall have a priority right over the holder of Common Shares to place its Preferred Shares (i.e., its Common Shares upon completion of a mandatory conversion in accordance with Section 11.2) in the IPO (including the greenshoe / overallotment option) and no holder of Preferred Shares shall be excluded from placing Preferred Shares in the IPO unless all of the other Shareholders' securities are also excluded.]

12.3 [Market Stand-Off / Lock-up in IPO]

[Subject to Section 12.2, each Shareholder hereby undertakes to the other Shareholders and the Company to execute separate lock-up agreements, and to comply with customary transfer restrictions (lock-up/market stand-off) for a period of up to [180]/[360] days following an IPO if:

- (a) requested [or recommended] by the underwriter(s)/global coordinator(s); or
- (b) required under applicable law (including listing requirements)]; or
- (c) deemed necessary by the Board and approved by Investors representing [number]% of the Preferred Shares] in case of an IPO or any subsequent offering.]

12.4 [Registration Rights post-IPO]⁵⁵

[In case of a listing in a jurisdiction that requires registration of shares to ensure their tradability, the registration rights of the holders of Preferred Shares (including Preferred Shares converted into Common Shares in accordance with Section 12.2) [and the Common Shareholders]⁵⁶ towards the Company upon and following completion of an IPO shall be as set forth in **Annex 12.4** or as may otherwise be required by the relevant laws and regulations in order to enable a shareholder to trade its shares.]

13. Transfer Restrictions⁵⁷

13.1 General Restriction

Subject to Section 13.2, each Party acknowledges and agrees that Shares:

- (a) shall not be pledged, assigned by way of security or otherwise used as security and shall remain free and clear of any liens, encumbrances, charges or any other third-party rights; and
- (b) unless expressly provided otherwise in this Agreement, shall not be Transferable:
 - (i) for a period of *[number]* years after the date of this Agreement ("**Lock-up Period**") other than in accordance with Section 13.4, Section 13.5 and/or Section 13.6; and
 - (ii) after expiry of the Lock-up Period (or, if so expressly provided in this Agreement, during the Lock-up Period), only in accordance with this Section 13.

13.2 Permitted Transfers

Notwithstanding anything to the contrary in Section 13.1, the following Transfers shall be permitted [unless such Transfers result in a Change of Control in respect to the Company]:

- (a) any [Investors]/[Shareholders] may at any time Transfer Shares to an Affiliate of such [Investors]/[Shareholders] that is not subject to Sanctions;
- (b) [any [Investor]/[Shareholder]/[Founder]] may at any time Transfer Shares for bona fide wealth or inheritance planning purposes subject to prior approval by the Board to a corporate entity that is (directly or indirectly) fully owned by the same beneficial owner(s) [or his/her/its fully controlled trust], unless such corporate entity [or trust] is

⁵⁵ **[Note:** This Section is subject to registration requirements under U.S. securities laws. Each person using the Model Documentation shall satisfy itself by retention of its own U.S. counsel regarding the need and content of such rights.]

⁵⁶ **[Note:** The Parties should assess on a case-by-case basis if registration rights of Common Shareholders are appropriate.]

⁵⁷ **[Note:** The transfer restrictions set forth in the Model Documentation capture also indirect transfers of shares that lead to a Change of Control at the level of the relevant shareholder. Depending on whether or not the Parties wish to allow or prohibit indirect transfers of shares, corresponding adjustments need to be made to this Section (together with consequential changes throughout the Model Documentation).]

subject to Sanctions or domiciled in a jurisdiction other than Switzerland, [jurisdiction] or [jurisdiction]];⁵⁸

- (c) any re-Transfer of Shares from a transferee as per to Section 13.2(a) [or Section 13.2(b)] back to the relevant transferor;
- (d) [any Transfer of Shares as a result of a merger of the Company that is approved by the Shareholders with the approval requirements set forth in Section 6(a) and does not result in a Change of Control]; and
- (e) [any Transfer of Shares from the Company in compliance with the ESOP to eligible Persons thereunder and back to the Company];

(each Transfer in accordance with this Section 13 a "**Permitted Transfer**") and provided further that if the relevant Affiliate [or corporate entity or trust] ceases to fulfill the requirements according to Section 13.2(a) [or Section 13.2(b)], then such Affiliate [or corporate entity or trust] must immediately re-Transfer the Shares to the previous holder of such Shares.

13.3 Right of First Refusal⁵⁹

13.3.1 Grant⁶⁰

With effect as from the expiry of the Lock-up Period, each Shareholder hereby grants:

- (a) in **first priority** to the holders of Preferred Shares;
- (b) in **second priority** to the Company (within the limitations of Art. 659 CO and Art. 680 CO) or to a third party designated by the Company; and
- (c) in **third priority** to the Common Shareholders;

a right of first refusal with respect to the Shares held by such Shareholder in accordance with the terms and conditions set forth in this Section 13.3 ("**Right of First Refusal**").

13.3.2 Notification

- (a) If a Shareholder (or a group of Shareholders) [wishes to Transfer]⁶¹ all or a part of its Shares (for purposes of this Section and together with, upon exercise of the Tag-Along Right pursuant to Section 13.4, any other Shares co-sold pursuant to

⁵⁸ [Note: Depending on the circumstances of the specific case, the Parties should consider to make this decision an Important Board Matter or keep it as a simple Board decision.]

⁵⁹ [Note: Investors may insist on specific carve-outs for certain share transfers. In addition, strategic corporate investors may insist on a right of first refusal or negotiation for their benefit.]

⁶⁰ [Note: The Parties should assess on a case-by-case basis whether the proposed order of priority for the exercise of the Right of First Refusal among the non-Selling Shareholders is appropriate or needs adjustments (e.g. to grant Founders or Management a first ranking Right of First Refusal with or without the prior consent of the Investors to ensure that their shareholdings as a group relative to the shareholdings of the Investors remain unaffected.)]

⁶¹ [Note: The proposed wording of the Right of First Refusal captures both a pre-emption right (*Vorkaufsrecht*, *droit de préemption*), which presumes the execution of a binding purchase agreement by and between the Selling Shareholder(s) and the proposed acquirer, as well as a right of first offer (*Vorhandrecht*, *droit de première offre*), which is triggered at the time the Selling Shareholder(s) wish to transfer their Shares. If the Parties prefer that the Right of First Refusal is limited to a pre-emption right, corresponding adjustments will be necessary to Section 13.3.]

Section 13.4, collectively the "**Relevant Shares**") to a third party (including another Shareholder) after expiry of the Lock-up Period ("**Right of First Refusal Event**"), such Shareholder(s) (for purposes of this Section, "**Selling Shareholder(s)**") shall submit (i) an offer to all other Shareholders stating in writing the price and terms of the proposed Transfer in accordance with the notice provision set forth in Section 18.6 ("**Right of First Refusal Notice**") and (ii) a copy of such offer to the Company.

- (b) If the Selling Shareholder(s) has/have received a *bona fide* purchase offer from a third party (including another Shareholder), the terms of such offer from the proposed acquirer shall be disclosed to the other Shareholders and the Company in the notice. The Company shall inform each Shareholder forthwith but not later than [five] calendar days after receipt of the Right of First Refusal Notice of (i) the date it received the Right of First Refusal Notice and (ii) the day the Right of First Refusal Exercise Period expires.

13.3.3 Terms and Conditions

The price and terms of the Right of First Refusal shall either be the price and terms of the *bona fide* purchase offer from a third party or, in the absence of such a third-party offer, the price and terms offered by the Selling Shareholder.

13.3.4 Exercise

Each beneficiary of the Right of First Refusal wishing to exercise its right in respect of the Relevant Shares shall so notify the Selling Shareholder(s) (with copy to the Company) in accordance with the notice provision set forth in Section 18.6 ("**Right of First Refusal Exercise Notice**") within a period of [30] calendar days from receipt of the Right of First Refusal Notice by the Company ("**Right of First Refusal Exercise Period**"), it being understood and agreed that the Right of First Refusal may only be validly exercised by a beneficiary with respect to all (but not less than all) of the Relevant Shares. If no Right of First Refusal Exercise Notice is submitted or if the Right of First Refusal is not validly exercised by a Shareholder within the Right of First Refusal Exercise Period, the Right of First Refusal of that Shareholder shall be deemed to have been forfeited (*verwinkt; périmé*) with respect to this particular Right of First Refusal Event.

13.3.5 *Pro Rata* Allocation

- (a) In the event that more than one of the beneficiaries of the Right of First Refusal within a group of beneficiaries having the same order of priority pursuant to Section 13.3.1 validly exercise their Rights of First Refusal, the Relevant Shares shall be allocated among such exercising beneficiaries *pro rata* to their then existing holdings of Shares.
- (b) The Board shall promptly:
 - (i) allocate the Relevant Shares in accordance with the terms and conditions of Section 13.3 among the beneficiaries who have timely submitted a Right of First Refusal Exercise Notice and validly exercised their Right of First Refusal; and

- (ii) notify all Shareholders no later than [ten] calendar days after expiry of the Right of First Refusal Exercise Period of (1) the exercise (or non-exercise) by the beneficiaries of their Right of First Refusal (and, as the case may be, their Tag-Along Right) and (2) the allocation of the Relevant Shares (including, as the case may be, any other Shares co-sold pursuant to Section 13.4) among the beneficiaries.

13.3.6 Consummation

- (a) The Transfer of the Relevant Shares to one or more beneficiaries who validly exercised the Right of First Refusal shall be consummated:
 - (i) within [60] calendar days from receipt of the Right of First Refusal Notice by the Company unless the terms of the *bona fide* purchase offer provided for longer terms, in which case the terms of such *bona fide* purchase offer shall apply; or
 - (ii) in case of receipt of a Tag-Along Exercise Notice by the Company in accordance with Section 13.4.4, at the closing date agreed by and between the Selling Shareholder(s) and the proposed acquirer (such closing date not to be earlier than 45 calendar days after the Company received the Tag-Along Notice.
- (b) The Transfer price shall, unless other terms are stated in the Right of First Refusal Notice, be paid in cash against registration of the acquiring Shareholder(s) [or, as the case may be, the Company] as holder(s) of the respective number of Relevant Shares in the share register of the Company.
- (c) [Should the allocation of Relevant Shares by the Board among beneficiaries who have validly exercised their Right of First Refusal result in a Change of Control in respect of the Company not occurring because one or more beneficiary of the Right of First refusal and not the intended acquirer acquire the Relevant Shares, the possible exercise of Tag-Along Rights shall be irrelevant and the beneficiaries of Right of First Refusal acquiring the Relevant Shares shall be under no obligation to acquire any Shares co-sold.]

13.3.7 Transfer to Proposed Acquirer

In the event the Right of First Refusal is not exercised in accordance with Section 13.3, the Selling Shareholder(s) shall be free, subject only to Sections 13.4, 13.5 and 15, to Transfer the Relevant Shares to the proposed acquirer or, absent any *bona fide* purchase offer from a third party, any acquirer, on terms not more favorable than those offered to the beneficiaries of the Right of First Refusal in the Right of First Refusal Notice, within a period of [six] months after expiry of the Right of First Refusal Exercise Period. Thereafter, the procedure pursuant to this Section 13.3 shall be repeated prior to any Transfer.

13.4 Tag-Along (Co-Sale Right)

13.4.1 Grant

Each Shareholder hereby grants to the other Shareholders⁶² the right to co-sell all the Shares held by such other Shareholder together with the Selling Shareholder(s) (as defined below) to a proposed acquirer in accordance with the terms and conditions set forth in this Sections 13.4 during or after expiry of the Lock-up Period⁶³ ("**Tag-Along Right**"), *provided* the Transfer of Shares by the Selling Shareholder(s) to such proposed acquirer would result in a Change of Control in respect of the Company.

13.4.2 Notification

In the event a Shareholder (or a group of Shareholders) wishes to Transfer all or a part of its Shares (for purposes of this Section, "**Relevant Shares**") in one or a series of related transactions to a proposed acquirer (including another Shareholder) on the basis of a bona fide purchase offer during or after expiry of the Lock-up Period⁶⁴, and *provided* such Transfer of Shares would result in a Change of Control in respect of the Company ("**Tag-Along Event**"), such Shareholder(s) (for purposes of this Sections 13.4, "Selling Shareholder(s)") shall notify the other Shareholders thereof with copy to the Company, mutatis mutandis in accordance with Section 13.3.2 ("**Tag-Along Notice**"). Such a Tag-Along Notice may be part of a Right of First Refusal Notice according to Section 13.3. The Company shall inform each Shareholder forthwith but not later than [five] calendar days after receipt of the Tag-Along Notice of (i) the date it received the Tag-Along Notice and (ii) the day the Tag-Along Exercise Period expires.

13.4.3 Terms and Condition

The terms of the Tag-Along Right shall be the same consideration per Share and otherwise the same terms and conditions as applicable to the Selling Shareholder(s) [(except that:

- (a) [any liability of such other Shareholder(s) for representations, warranties and/or indemnities must be expressed to be several (and not joint);] [and
- (b) payment of the consideration per Share in respect of the Shares co-sold by such other Shareholder(s) must be in immediately available cash]^{65,]66}

⁶² **[Note:** If the Investors were meant to be granted priority rights over the other shareholders in case of (i) a tag-along event generally or (ii) specific tag-along events, the wording of this Section would have to be amended accordingly (together with consequential changes throughout the Model Documentation where appropriate).]

⁶³ **[Note:** The Model Documentation presumes that Transfers of Shares shall not be permissible during the Lock-up Period other than in the context of a Permitted Transfer, a Drag-Along Event, a Tag-Along Event or an exercise of the Purchase Option. If no such Transfers of Shares shall be permissible during the Lock-up Period, the wording of this Section would have to be amended accordingly (together with consequential changes throughout the Model Documentation where appropriate).]

⁶⁴ **[Note:** See Footnote 63.]

⁶⁵ **[Note:** The consideration payable under the agreement entered into by and between the selling shareholder(s) and the acquirer must not necessarily be expressed to be payable fully in cash and/or at closing.]

⁶⁶ **[Note:** The scope of any representations, warranties and/or indemnities to be given by a shareholder exercising its Tag-Along Right must not necessarily be addressed in this Shareholders Agreement, but should in any event be

upon the occurrence of a Tag-Along Event, *provided* that the proceeds resulting from such Transfer shall be deemed to constitute Liquidation proceeds and shall be allocated to the holders of Preferred Shares and the Common Shareholders in accordance with Section 10.2.

13.4.4 Exercise

- (a) Each Shareholder wishing to exercise its Tag-Along Right with respect to its Shares shall so notify the Selling Shareholder(s) in accordance with the notice provision set forth in Section 18.6 ("**Tag-Along Exercise Notice**") within a period of [30] calendar days from receipt of the Tag-Along Notice by the Company ("**Tag-Along Exercise Period**"), it being understood and agreed that the Tag-Along Right may only be validly exercised by a Shareholder with respect to all (but not less than all) of its Shares. If no Tag-Along Exercise Notice is submitted or if the Tag-Along Right is not validly exercised by a Shareholder within the Tag-Along Exercise period, the Tag-Along Right of that Shareholder shall be deemed to have been forfeited (*verwinkt; périmé*) with respect to this particular Tag-Along Event.
- (b) If the proposed acquirer (or, in case of a concurrent exercise of the Right of First Refusal, the Shareholder(s) exercising the Right of First Refusal) refuses to accept the purchase of the Shares from the Shareholders who provided a Tag-Along Notice, the Selling Shareholder(s) shall be prohibited from Transferring the Relevant Shares to the proposed acquirer (or, in case of a concurrent exercise of the Right of First Refusal, to the Shareholder(s) exercising the Right of First Refusal).

13.4.5 Consummation

If the Tag-Along Right according to Sections 13.4 is exercised (and, as the case may be, the Right of First Refusal according to Section 13.3 is exercised as well), the Transfer of Relevant Shares and the Shares co-sold pursuant to Sections 13.4 to the proposed acquirer (or, in case of a concurrent exercise of the Right of First Refusal, to the Shareholder(s) exercising the Right of First Refusal) shall be consummated at the closing date agreed by and between the Selling Shareholder(s) and the proposed acquirer (such closing date not to be earlier than [45] calendar days after the Company received the Tag-Along Notice) by payment [in cash]⁶⁷ of consideration expressed to be payable per Share pursuant to the agreement with the acquirer against registration of the acquirer in the share register of the Company as holder of the respective number of Relevant Shares and the Shares co-sold pursuant to Sections 13.4.

13.4.6 Transfer to Proposed Acquirer

If neither the Tag-Along Right nor the Right of First Refusal according to Sections 13.4 and 13.3 is exercised, the Selling Shareholder(s) shall be free, subject only to Section 15, to Transfer the Relevant Shares to the proposed acquirer on the terms disclosed to the other Shareholders in the Tag-Along Notice and the Right of First Refusal Notice within a period of

carefully considered as it affects the benefit/risk sharing among selling shareholders (but see also Footnote 72 below that applies *mutatis mutandis* also to a tag-along scenario).]

⁶⁷ [Note: See Footnote 65.]

[six] months starting after the expiry of the Tag-Along Exercise Period. Thereafter, the procedure pursuant to this Sections 13.4 shall be repeated prior to any such Transfer.

13.4.7 Precedence over Right of First Refusal

In case of a concurrent exercise of the Right of First Refusal and the Tag-Along Right and to the extent of any conflict or inconsistency between the terms and conditions of Section 13.3 and this Sections 13.4, the terms and conditions set forth in this Sections 13.4 shall prevail and take precedence over Section 13.3 to that extent.⁶⁸

13.5 Drag-Along (Co-Sale Obligation)

13.5.1 Grant

The Shareholders hereby grant the holders of Preferred Shares collectively representing at least [percentage]%⁶⁹ of all Preferred Shares a right to require all other Shareholders to co-sell their Shares to a proposed acquirer in accordance with the terms of this Section 13.5 during or after expiry of the Lock-up Period⁷⁰ ("**Drag-Along Right**").

13.5.2 Notification

In the event holders of Preferred Shares collectively representing at least [percentage]% of all Preferred Shares, [a holder of Preferred Shares]/[a group of holders of more than [50]% of all Preferred Shares]/[all holders of Preferred Shares] wish[es] to Transfer 100% of [its]/[their] aggregate shareholdings in the Company in one or a series of related transactions to a proposed acquirer (including another Shareholder) who wishes to acquire all (but not less than all) Shares in the Company pursuant to a *bona fide* purchase offer during or after expiry of the Lock-up Period^{71,72} ("**Drag-Along Event**"), [that holder]/[that group of holders]/[all holders] of Preferred Shares (for purposes of this Section, "**Relevant Selling Shareholder(s)**") shall notify the other Shareholders thereof with copy to the Company, mutatis mutandis in accordance with Section 13.3.2 ("**Drag-Along Notice**"). The Company shall inform each Shareholder forthwith but not later than [five] calendar days after receipt of the Drag-Along Notice of (i) the date it received the Drag-Along Notice and (ii) the day the [six]-month period according to Section 13.5.4 expires.

⁶⁸ [Note: The Model Documentation presumes that the Right of First Refusal can only be exercised with respect to all Relevant Shares and that Relevant Shares includes any Shares to be co-sold in case of a concurrent exercise of the Tag-Along Right – which means, inter alia, that so-sold Shares do not trigger a renewed or separate Right of First Refusal process.]

⁶⁹ [Note: Given the economic and legal significance of the Drag-Along Right, consider defining the appropriate threshold sufficiently high giving due regard to the Company's cap table for a group of Investors to be able to trigger the Drag-Along.]

⁷⁰ [Note: See Footnote 63 and Footnote 71.]

⁷¹ [Note: See Footnote 63.]

⁷² [Note: It may be appropriate to limit the Drag-Along right with a combination of a time period, which has to elapse since the Closing, and/or a Minimum Return, which needs to be reached. Depending on the specific circumstances, these limitations may be introduced to protect a dragged Investor or a Founder. Such a clause could read as follows: "[and such Transfer, if completed, would result in [Investor 1] receiving consideration in respect of its Shares Transferred at completion exceeding the Minimum Return]"; whereas "Minimum Return" shall mean [with respect to a Drag-Along Event during the Lock-up Period [specify], and with respect to a Drag-Along Event after expiration of the Lock-up Period [specify]].

13.5.3 Terms and Conditions

The terms of the Drag-Along Right shall be the same consideration per Share (within the same class of Shares) and [, except as set forth in Section 13.5.6.]⁷³ otherwise at the same terms and conditions as applicable to the Relevant Selling Shareholder(s), *provided* that the proceeds resulting from such Transfer shall be deemed to constitute Liquidation proceeds and shall be allocated to the holders of Preferred Shares and the Common Shareholders in accordance with Section 10.2.

13.5.4 Consummation

The Transfer of Shares to the proposed acquirer shall be completed at the agreed closing date [(but no later than within a period of [six] months after the date of receipt of the Drag-Along Notice) by the Company] and otherwise in accordance with the proposed terms of the underlying agreement between the Relevant Selling Shareholder(s) and the proposed acquirer.

13.5.5 Precedence over Right of First Refusal and Tag-Along Right

For the avoidance of doubt and notwithstanding anything contained herein to the contrary (i) Section 13.3 shall not apply in case of a Drag-Along Event and (ii) in case of a concurrent exercise of the Drag-Along Right and the Tag-Along Right in accordance with the terms of this Agreement, this Section 13.5 shall take precedence over Section 13.4.

13.5.6 [Key Terms and Conditions]⁷⁴

[The terms and conditions of the Transfer of Shares shall include the following:

- (a) For each Share within the same class of Shares, the purchase price shall be the same pro rata of the par value of such Share. The difference in the purchase price between different classes of Shares shall reflect, and be limited to, the preferences set forth in Sections 10.1 and 10.2. All considerations for the Shares shall be paid on the same date and in cash.
- (b) Each other Shareholder's liability for representations and warranties shall, to the extent legally permissible, be limited to [the same percentage of its purchase price as applicable for the Relevant Selling Shareholder(s)' liability]/[a maximum of [percentage]% of its purchase price], and be subject to the same limitations and remedies as will be applicable to the Relevant Selling Shareholder(s). Each other

⁷³ [Note: Additional requirements for the Drag-Along Right may include cash consideration and limitations on representations and warranties for dragged Shareholders (see also Section 13.5.6) in particular in case of a sale to existing shareholders.]

⁷⁴ [Note: The Parties should consider whether the drag scenario justifies or requires certain principles or criteria to be established that shall apply to the terms of the purchase agreement with the proposed acquirer (including as to the scope of any representations, warranties and/or indemnities to be given by a dragged shareholder) as these affect the benefit/risk sharing among Selling Shareholders (see also Footnote 66 above). Having said that, the Parties should also consider that any too detailed regime on terms applicable to a drag scenario (which may materialize years after the Shareholders Agreement was entered into, i.e. at a time when customary market terms for an outright sale of a company may significantly deviate from perceived market terms at the time the Shareholders Agreement was entered into) may seriously affect the Drag-Along Right and hence jeopardize a suitable exit for the Investors.]

Shareholder shall, upon request by the Relevant Selling Shareholder(s), be obliged to pay the same percentage of its purchase price for the same time periods into an escrow account in favor of the acquirer as the Relevant Selling Shareholder(s). Disclosures shall only limit the other Shareholders' liability if expressly agreed with the acquirer. Each other Shareholder shall be [severally, and not jointly, with the Relevant Selling Shareholder(s) and the other Shareholders]/[jointly and severally with each of the Relevant Selling Shareholder(s) and the other Shareholders] liable for the representations and warranties.

- (c) [Each other Shareholder shall give the representations and warranties which the acquirer or the Relevant Selling Shareholder(s) may reasonably request [. reflecting such Shareholder's stake in and position with respect to the Company (i.e., Founder, senior manager, employee, passive investor, [specify other])].]
- (d) [The representations and warranties the acquirer or the Relevant Selling Shareholder(s) may reasonably request may include, but must not be limited to, [representations and warranties as then customarily agreed or asked for in the context of a sale of companies at a stage and having business activities similar or comparable to the Company]⁷⁵.]
- (e) Each Other Shareholder shall bear its own costs and taxes imposed on it.]

13.6 Purchase Option

13.6.1 Triggering Event and Priority Rights

With effect as from the Effective Date, each Shareholder hereby grants:

- (a) in **first priority** to the Company (within the limitations of Art. 659 CO and Art. 680 CO) or to a third party designated by the Company;
- (b) in **second priority** to the holders of Preferred Shares; and
- (c) in **third priority** to the Common Shareholders;

(for the purposes of this Section, collectively the "**Option Parties**" and individually an "**Option Party**")⁷⁶ the exclusive and irrevocable option ("**Purchase Option**") to purchase all Shares of another Party (other than the Company) (for purposes of this Section, "**Restricted Party**") if any of the following events occurs (each, a "**Triggering Event**"):⁷⁷

⁷⁵ [Note: As an alternative and subject to the caveats set forth in Footnote 72, customary reps & warranties could be specified (e.g., "capacity, title, status, financial statements, assets, ordinary course of business and no material adverse change, taxes, social security and pension, authorizations, compliance, material agreements, employees, intellectual property, real estate, insurance, litigation and proceedings, environment, no finder's fees, and disclosure" and others as deemed appropriate (see, for example, the catalogue of reps & warranties foreseen in Annex 9.1 of the Investment Agreement of the Model Documentation).]

⁷⁶ [Note: The current wording of this Section presumes that the Company shall also qualify as an Option Party. If the Company shall not be a beneficiary of the Purchase Option, corresponding changes need to be made to this Section.]

⁷⁷ [Note: The list of Triggering Events does not include a "reputational" purchase option that may be considered depending on the shareholder base and the sensitivity of the Investor(s) to reputational harm caused by co-shareholders. Such a clause could read as follows: "[the Restricted Party, irrespective of its fault, exposes the

- (d) the Restricted Party dies, becomes incapable to act or otherwise loses its capacity to act for a period of more than [six] months or otherwise permanently loses its capacity to exercise its rights and obligations under this Agreement;
- (e) the Restricted Party becomes subject to an Insolvency Event;
- (f) the Restricted Party commits a criminal act against the interests of a Party, of the Company;
- (g) the Restricted Party materially breaches this Agreement, unless such breach and its effects[, if capable of being cured,] are fully cured within [20] calendar days upon notification in writing of the breach and its effects by any other Party [(the date of the Triggering Event, in this case, shall be the date the cure period lapses, irrespective of whether a breach is curable))]; a material breach shall include, without limitation:
 - (i) any delay in the payment of Shares subscribed for or payments into the reserves or loans to be granted to the Company pursuant to any written agreement; and
 - (ii) any Transfer, pledge or other encumbrance of Shares in violation of this Agreement;⁷⁸
- (h) the employment [or consultancy] agreement between a Restricted Party and the Company is terminated and the Restricted Party is considered a Bad Leaver;
- (i) the employment [or consultancy] agreement between a Restricted Party and the Company is terminated and the Restricted Party is considered a Good Leaver;
- (j) [the Restricted Party becomes the subject of Sanctions;] or
- (k) [a Change of Control occurs in respect of the Restricted Party];⁷⁹

in each case with effect as per the occurrence of such Triggering Event and in proportion to the nominal value of their shareholdings in the Company or in such other proportions and/or other terms as they may agree in writing between themselves.

Company and/or an Investor to sanction or regulatory risks and/or materially adversely affects, or risks to materially adversely affect, the goodwill or reputation of the Company and/or an Investor due to the occurrence of facts, matters, circumstances or events after the Effective Date and a qualified majority of holders of Preferred Shares representing [66 2/3%] of all holders of Preferred Shares (other than the Restricted Party) agree that these risks and/or effects shall constitute a Triggering Event for all intents and purposes of this Section;]".

Also note that the proposed Purchase Option does not provide for a concept of reverse vesting of Founder Shares. If the Parties wish to implement such a concept, corresponding changes need to be made to this Section (together with consequential adjustments throughout the Model Documentation.)

⁷⁸ **[Note:** The Parties may wish to determine carefully what should qualify as material breach for purposes of this Section given the dynamics of the purchase option.]

⁷⁹ **[Note:** The square bracketed wording in sub-paragraph (k) of this definition aims at capturing also indirect transfers of Shares that lead to a Change of Control at the level of the relevant shareholder. To the extent such indirect transfers or certain other transaction (e.g. bona fide restructurings at upper level of structure even if resulting in a Change of Control) are not meant to be captured by the transfer restrictions, corresponding adjustments need to be made to this Sections and to the definition of Change of Control (together with consequential changes throughout the Model Documentation).]

13.6.2 Exercise and Consummation

- (a) The Restricted Party, its legal successor, receiver, insolvency judge or any other Person with the right to act on behalf of the Restricted Party or its estate, shall immediately notify the other Parties of the occurrence of any Triggering Event with respect to such Restricted Party stating in writing the nature of such Triggering Event in accordance with the notice provision set forth in Section 18.6. Upon receipt of such notice or upon a Triggering Event becoming known to the other Parties, such other Parties shall have the right (but not the obligation) to purchase all or, at the discretion of such other Parties, a part of the Shares held by the Restricted Party (such number of Shares for which the Purchase Option is exercised, for purposes of this Section, "**Relevant Shares**"), in proportion to the nominal value of their shareholdings or in such other proportions as they may agree in writing between them:
- (i) In case of the occurrence of any of the Triggering Events pursuant to sub-paragraphs (d), (e), (i), (k) [or (j)] of Section 13.6.1, at a purchase price equivalent to the fair market value of the Relevant Shares as per the date of the Triggering Event; and
 - (ii) without prejudice to any other rights or remedies under this Agreement or applicable law, in case of the occurrence of any of the Triggering Events pursuant to sub-paragraphs (f), (g), (h) [or (j)] of Section 13.6.1, at a purchase price equivalent to the lower of (1) *[specify percentage number]*% of the fair market value of the Relevant Shares as per the date of the Triggering Event and (2) *[specify percentage number]*% of the purchase/subscription price paid by the Restricted Party for the Relevant Shares.⁸⁰
- (b) Each Option Party wishing to exercise its Purchase Option shall so notify the Restricted Party (or, as the case may be, its legal successor, receiver, insolvency judge or any other Person with the right to act on behalf of the Restricted Party or its estate) and the [Company (which shall inform the other Parties without delay)]/[other Parties] within no later than [60] calendar days following receipt of the notice of a Triggering Event or, if no notice was given by the Restricted Party in breach of this Agreement, at any time following such Triggering Event becoming known to it, in accordance with the notice provision set forth in Section 18.6 and state in such notice (i) *the number of Relevant Shares* and (ii) *the purchase price for such Relevant Shares as determined by such Option Party in accordance with sub-paragraphs (i) or, as the case may be, (ii) of Section 13.6.2(a)* ("**Purchase Option Exercise Notice**").
- (c) If the Restricted Party (or, as the case may be, its legal successor, receiver, insolvency judge or any other Person with the right to act on behalf of the Restricted Party or its estate) disagrees with the purchase price for the Relevant Shares as specified in the Purchase Option Exercise Notice, it shall notify its disagreement to

⁸⁰

[**Note:** Any user of the Model Documentation should satisfy itself through retention of counsel of the effects, validity of and/or limitations to embedded bad leaver penalties (be it as liquidated damages or otherwise).]

each Option Party who exercised the Purchase Option in accordance with this Section 13.6.2 and the other Parties in accordance with the notice provision set forth in Section 18.6 within no later than [ten] calendar days following receipt of the Purchase Option Exercise Notice and specify in such notice the purchase price it determined in accordance with Section 13.6.2(a)(i) or, as the case may be, Section 13.6.2(a)(ii) ("**Purchase Price Disagreement Notice**").

- (d) If no Purchase Price Disagreement Notice is submitted in time, the purchase price as stated in the Purchase Option Exercise Notice shall be deemed accepted by the Restricted Party (or, as the case may be, its legal successor, receiver, insolvency judge or any other Person with the right to act on behalf of the Restricted Party or its estate).
- (e) If a Purchase Price Disagreement Notice is submitted in time, and no mutual written agreement between an Option Party (who exercised the Purchase Option in accordance with this Section 13.6.2) and the Restricted Party (or, as the case may be, its legal successor, receiver, insolvency judge or any other Person with the right to act on behalf of the Restricted Party or its estate) in respect of the fair market value underlying the purchase price determination for the Relevant Shares in accordance with Section 13.6.2(a)(i) or, as the case may be, Section 13.6.2(a)(ii) can be reached within [20] calendar days following receipt of the Purchase Price Disagreement Notice, such Option Party and the Restricted Party (or, as the case may be, its legal successor, receiver, insolvency judge or any other Person with the right to act on behalf of the Restricted Party or its estate) may each request the determination of the fair market value underlying the purchase price determination for the Relevant Shares in accordance with Section 13.6.2(a)(i) or, as the case may be, Section 13.6.2(a)(ii) by [*name of independent expert*] as independent expert, or if such independent expert refuses or is not able to act, by an experienced international accounting firm appointed by the President of the Zurich Chamber of Commerce, ("**Expert**") on the basis of a valuation of the Company using methods customarily used at that time to establish the value of businesses in that industry, excluding any control premium for obtaining a majority of the voting rights in the Company or any block premium. The fair market value as determined by the Expert shall be binding and final on the Parties for purposes of determining the purchase price for the Relevant Shares in accordance with Section 13.6.2(a)(i) or, as the case may be, Section 13.6.2(a)(ii), unless based on calculation errors, in which case the fair market value as corrected by the Expert shall be binding and final for such purposes. The Restricted Party, on the one hand, and the Option Parties who exercised the Purchase Option, on the other hand, shall each bear half of the costs of the Expert.
- (f) The Transfer of the Relevant Shares against payment of the purchase price for the Relevant Shares shall be consummated within [60] calendar days from the date of Purchase Option Exercise Notice or, if later, within [30] calendar days from receipt of the final determination of the fair market value from the Expert.

13.6.3 Precedence over Right of First Refusal and Tag-Along Right

For the avoidance of doubt and notwithstanding anything to the contrary contained herein, Section 13.3⁸¹ shall not apply in case one or more Option Party exercises the Purchase Option.

13.7 [Investor Put Option]⁸²

- (a) [Throughout the term of this Agreement and entirely without prejudice to the rest of Section 13, each Investor shall have the right (but not the obligation) to sell all of its Shares then held to the Founders for a consideration in the aggregate amount of [CHF 1.00] ("**Investor Put Option**") at any time such Investor deems fit ("**Investor Put Option Event**") by providing notice to this effect to the Founders (with copy to the Company and all other Shareholders) ("**Investor Put Option Exercise Notice**").
- (b) Upon the occurrence of an Investor Put Option Event, all Founders⁸³ shall, [jointly and severally]/[severally (but not jointly)], be obliged to purchase and accept from such Investor all Shares then held by such Investor for a consideration in the aggregate amount of [CHF 1.00] within [30] calendar days from receipt of the Investor Put Option Exercise Notice.
- (c) For the avoidance of doubt and notwithstanding anything to the contrary contained herein, Sections 13 to 13.5 shall not apply in case an Investor exercises the Investor Put Option.]

13.8 Limitation

Notwithstanding anything contained herein to the contrary, the Transfer restrictions under this Section 13 shall terminate and cease automatically upon completion of [a Sale or] an IPO of the Company.

⁸¹ **[Note:** Each user of the Model Documentation should carefully assess whether – in addition to the proposed exclusion of Right of First Refusal – Tag-Along Rights (Section 13.4) should also be excluded in the context of Option Parties exercising their Purchase Option.]

⁸² **[Note:** The Investor Put Option provides an exit for the investor at a symbolic consideration of CHF 1.00 at any time it deems fit – which may include "limbo" scenarios (i.e., business failures with no tangible prospect of success), regulatory or reputational risks emanating from the Company for the Investor or similar scenarios where it is no longer about maximizing exit proceeds but about exiting fast. Any user of the Model Documentation should satisfy itself through retention of counsel of the effects of such a sale and purchase including under applicable tax laws on all affected Parties.]

⁸³ **[Note:** Each user of the Model Documentation shall satisfy itself by retention of its own tax counsel of tax implications that may result from such Investor Put Option and to consider the suitability of an indemnity for the benefit of the Founder or the Company as buyer.]

14. Share Register

14.1 No Issuance of Share Certificates⁸⁴

The Shareholders acknowledge and agree that the Company will not physically issue share certificates. Rather, all holdings of Shares will be recorded in the Company's share register.

14.2 Issue and Transfer of Shares / Registrations in Share Register

- (a) The issuance of Shares by the Company and Transfers of Shares in accordance with, and subject to, Swiss law, the Articles, and the terms and conditions hereof, will be effected solely by way of (i) a duly executed assignment declaration from the Transferring Shareholder, (ii) the consent of the Board and (iii) the registration of the relevant Party as a shareholder in the Company's share register.
- (b) Each Shareholder hereby (i) assigns and transfers to the other relevant Shareholders, and each such other relevant Shareholders hereby accepts such assignment and transfer, upon and with effect as of the occurrence of a Transfer event, in each case, as required to effect a Transfer of Shares by such Shareholder pursuant to Section 13, and (ii) undertakes to procure that the Director(s) nominated by such Shareholder execute their powers and voting rights on the Board so as to ensure that each Transfer of Shares in accordance with Section 13 and only such Transfer of Shares be approved by the Board and registered in the Company's share register.⁸⁵

15. Accession and Release

- (a) [Each Shareholder]/[The Other Shareholders] undertake[s] to the [other Shareholders]/[Investors] that no Person shall become a shareholder of the Company (including in a case of a Permitted Transfer) unless and until such Person shall first have executed an accession declaration pursuant to which such Person agrees to be fully bound by and be entitled pursuant to the terms and conditions of this Agreement either:
 - (i) in the same capacity (e.g., as Investor, Founder or Other Shareholder) as the transferor or predecessor (in case of a Transfer in compliance with this Agreement or a legal succession); or
 - (ii) in case of issuance of Shares (including new Shares) in the same capacity as the other subscribers of the relevant class of Shares, and such accession

⁸⁴ [Note: If the issuance of physical share certificates is deemed a preferable alternative by the Parties, this may require share escrow arrangements with a third-party escrow agent for deposit of all share certificates (duly endorsed in blank).]

⁸⁵ [Note: The Model Documentation presumes that no physical share certificates are being issued (*aufgehobener Titeldruck; renonciation à l'impression / émission de titres*) and that shares are thus solely evidenced by virtue of corresponding entries in the share register of the Company. If the Parties prefer the issuance of physical share certificates, appropriate share escrow arrangements may become necessary and the wording of this Section would have to be amended accordingly (together with consequential adjustments, as appropriate, throughout the Model Documentation).]

declaration shall state in what capacity such new shareholder is joining this Agreement (e.g., as Investor, Founder or Other Shareholder).

- (b) Each of the Parties agrees that any such accession declaration permitted pursuant to this Agreement does not need to be signed by the Parties to this Agreement.⁸⁶
- (c) Any Party that ceases to be a shareholder of the Company in accordance with the provisions of this Agreement shall automatically cease to be a Party to this Agreement and shall be released from the provisions hereof; *provided* that such cessation and release shall be without prejudice to any accrued rights and obligations of the relevant Party existing at the time of such cessation and release and, for the avoidance of doubt, any restrictions and/or obligations contained in Sections 18.2 and 18.3 shall continue to apply as provided therein.

16. [Liquidated Damages]⁸⁷

- (a) [The Parties acknowledge and agree that each Shareholder entered into this Agreement, and each Investor invested in the Company, by subscribing for Shares in the Company in reliance on the strict adherence by the other Shareholders to the terms and conditions of this Agreement. Any material violation of or non-compliance by any of the other Shareholders with any provision under Sections 2 to 15 [or Section 18.3] may cause irreparable harm to each of the Shareholders.
- (b) Accordingly, each of the Shareholders agrees that in addition to all other remedies that may otherwise be available to each of the Shareholders in any specific case, each of the other Shareholders being in material breach of any provision under Sections 2 to 15 [or Section 18.3] (it being understood that any breach of Section 6 or Section 13 [or Section 18.3] shall be deemed a material breach for purposes of this Section 16) shall be required to pay liquidated damages (*Konventionalstrafe; clause pénale*) to each of the non-defaulting Shareholders in the amount of CHF [amount] (or an equivalent in Shares in the Company at the sole discretion of the non-defaulting Shareholders) for each violation or breach~~[, whereby each continuing violation or breach lasting more than [one] month is considered a new violation or breach]~~. With respect to any violation or breach that is capable of being cured, liquidated damages shall only become payable if such violation or breach is not cured by the defaulting Shareholder within [30] calendar days after having been notified of such violation or breach by any of the non-defaulting Shareholders.
- (c) Notwithstanding the payment of the liquidated damages, the defaulting Shareholder:
 - (i) shall be liable to each of the non-defaulting Shareholders for any losses and damages incurred by such non-defaulting Shareholders in excess of its

⁸⁶ [Note: The Model Documentation presumes that it does not need any changes in case of a contemplated Transfer of shares by existing shareholders to new and/or existing shareholders. In case the Parties envisage changes with regard to special rights granted to certain shareholders, this Section would need to be amended.]

⁸⁷ [Note: Liquidated damages are often agreed upon to strengthen the Parties' comfort in all other Parties' adherence to the agreed terms. Liquidated damages deemed excessive by the competent court or arbitral tribunal may be reduced to appropriate amounts by such court or arbitral tribunal.]

entitlement to the amount of CHF [amount] as set forth in the paragraph above (or an equivalent in Shares in the Company at the sole discretion of the non-defaulting Shareholders) (which entitlement shall be pro rata to the relevant non-defaulting Shareholder's shareholdings in the Company); and

- (ii) shall continue to be bound by the terms of the violated provision, for which each of the non-defaulting Shareholders may continue to seek specific enforcement and/or such other injunctive relief as may be granted by any court and/or arbitral tribunal of competent jurisdiction.]

17. Term

- (a) This Agreement shall enter into force and become effective as of the day the Board ascertains by way of a Board resolution (*Feststellungsbeschluss; constatations relatives à l'augmentation du capital*) in the form of a public deed that the Capital Increase was duly effected, and shall continue to be effective and in force for an initial fixed term expiring at midnight on [date].⁸⁸
- (b) Thereafter, this Agreement shall continue to be in effect for successive renewal periods of [five] years unless terminated by any Shareholder upon [twelve] months' prior written notice to all other Parties with effect as of midnight on the last day of the initial fixed term or the relevant [five]-year renewal period. Any termination by a Shareholder shall only be effective with respect to the respective Shareholder, and shall be without prejudice (i) to the continued binding effect of this Agreement for all other Parties and (ii) to any accrued rights and obligations of the relevant Party existing at the time of such termination and, for the avoidance of doubt, any restrictions and/or obligations contained in Sections 18.2 and 18.3 shall continue to apply as provided therein.
- (c) Notwithstanding the foregoing, this Agreement shall be terminated:
 - (i) automatically and with immediate effect upon the first trading day of the Company following an IPO; or
 - (ii) upon notice of termination by the [other Shareholders]/[Investors (acting jointly)] to the affected Party, in case of an Insolvency Event, loss of capacity (*Handlungsunfähigkeit; incapacité d'exercer les droits civils*) and [specify other important reasons justifying termination, as appropriate] in respect of that affected Party⁸⁹; or
 - (iii) for a specific Party upon such Party ceasing to be a shareholder of the Company in accordance with the terms and conditions of this Agreement;

⁸⁸ [Note: General market practice is to provide for initial fixed terms of around ten years. Excessive initial fixed terms may weaken the legal effectiveness of such fixed terms or subject certain rights once due to applicable statute of limitations.]

⁸⁹ [Note: The Parties should consider whether any such termination event should trigger a call option for the benefit of some or all of the unaffected Shareholders.]

it being understood that in case of sub-paragraphs (ii) and (iii), such termination of this Agreement with respect to such Party shall be without prejudice to:

- (iv) the continued binding effect of this Agreement for and among all other Parties; and
- (v) any accrued rights and obligations of the relevant Party existing at the time of such termination and, for the avoidance of doubt, any restrictions and/or obligations contained in Sections 18.2 and 18.3 which shall continue to apply to such Party as provided therein.

18. Miscellaneous

18.1 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 Shareholders may exercise and enforce its rights hereunder individually in accordance with this Agreement, and the non-performance by the Company or another Shareholder ("**Defaulting Party**") shall neither relieve the Company nor any other Shareholder from performing its obligations under this Agreement, nor shall the Company (provided it is not the Defaulting Party) or any other Shareholder 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.

18.2 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 in connection with their investment in the Company and/or received from any Party and/or the business and the operation of the Company, including:
 - (i) information regarding the business, operations, customers, suppliers, trade secrets, financial, technical or other affairs of the Company or an Investor; and
 - (ii) any reports, summaries, analyses or other documents prepared by a Party, which contain 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 or used for any purpose other than:
 - (iii) the exercise of rights under, the performance of, or as permitted under, this Agreement;
 - (iv) the benefit of the Company; or

- (v) 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 other Person. The Parties shall ensure that their employees, directors, advisors and any 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 to the other Parties or (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 (1) promptly inform the Company and the Investors of such disclosure (to the extent legally permissible) and (2) 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 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 (1) need to know Confidential Information and (2) 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.

18.3 [Non-Competition/Non-Solicitation]⁹⁰

- (a) [Each [*specify capacity of Shareholder (i.e., Founder, Other Shareholder)*] undertakes to the [other Shareholders]/[Investors]/[Company] for the entire term of this Agreement and for a period of [*number*] years after termination of this Agreement that he/she/it will not without the prior written consent of the Board:
- (i) directly or indirectly engage as owner, investor, partner, consultant or employee in any business which is competitive with the Company's business activities as conducted in the ordinary course of business at the date of the relevant Shareholder exits from this Agreement (today: [*description of current business*], ("**Business**")) in all countries where the Company at that time actively pursues such Business; or
 - (ii) use directly or indirectly any knowledge acquired [as shareholder of the Company] for an activity competing with the Business of the Company; or
 - (iii) on his own behalf or for any other Person directly or indirectly actively offer employment to or actively procure employment for any person who is employed by the Company or actively solicit or induce any employee of the Company to leave his employment with the Company; or
 - (iv) solicit, aid or induce any Person which has been a customer of the Company or was or is in the habit of dealing with the Company, to stop using the services of or dealing with the Company in the manner in which such Person shall have been previously accustomed.
- (b) In case of any violation of this non-competition and non-solicitation clause, Section 16 shall apply. Any continuing breach of this non-competition and non-solicitation clause of one month shall be deemed to be a new violation with a new contractual penalty as consequence.]

18.4 Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns; *provided*, however, that neither the Company nor a Shareholder [(other than an Investor)] shall be entitled to assign or transfer any of the rights or obligations hereunder to any other party except in case of a Permitted Transfer (including to Affiliates in accordance with Section 13.1) or with the prior written consent of each [Shareholder]/[Investor].

⁹⁰

[**Note:** Although non-compete and non-solicitation covenants are customarily agreed upon in venture capital/private equity transactions (in particular with respect to founding shareholders, active shareholders and/or strategic investors with competing business operations), they are highly sensitive including under applicable competition laws. Their scope should be limited to those who have decision-making (co-)powers and/or access to business secrets of the Company be it at the level of the Board or the Management. In any event, non-compete and non-solicitation covenants should be carefully negotiated and drafted giving due regard to the specifics of any given case to ensure their consistency with legitimate business needs as well as their full compliance with applicable competition laws.]

18.5 Costs and Expenses

- (a) 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.
- (b) For the avoidance of doubt, this Section 18.5 shall be without prejudice to Section [12.4] of the Investment Agreement with respect to all costs and expenses arising out of or incurred in connection with the transactions contemplated by the Investment Agreement.

18.6 Notices

- (a) Any formal notice to be given under this Agreement shall be given in writing and 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 an internationally recognized courier) [or email] to the following addresses of the Parties:

If to Investor 1: [contact details]

If to 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 Common Shareholders:

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

who shall forward the notices and communications received without delay to each of the Common Shareholders.]

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

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

- (d) Each Party may change or amend the addresses given above or designate additional addresses for the purposes of this Section 18.6 by giving the other Parties written notice of the new address in the manner set forth in this Section 18.6.

18.7 Entire Agreement⁹¹

- 18.7.1 With the exception of the Investment Agreement [and the non-disclosure agreement dated [date]⁹²], 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 with respect to the subject matter hereof that may have been concluded between any of the Parties prior to the date of this Agreement [, except for the confidentiality agreement dated [date], which shall continue to apply to the extent that its provisions are more restrictive than those set out in Section 18.2].

- 18.7.2 [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].]

18.8 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.

18.9 Amendments

- (a) This Agreement (including this Section 18.9) 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)].⁹³

⁹¹ [Note: Consider other documents which shall be entered into at the same time (for example, separate environmental, social and/or governance (ESG) side letter agreement).]

⁹² [Note: Reference to other documents such as shareholder loans etc. to be considered.]

⁹³ [Note: Please note that the Shareholders' Agreement contains several provisions with direct assignments (e.g. in Section 10.1.1 last paragraph, etc.), which under Swiss law require the written form pursuant to art. 12 et seq. CO. Only an authenticated electronic signature according to the Swiss Federal Act on Electronic Signatures is deemed equivalent to a handwritten signature, subject to any statutory or contractual provision to the contrary. Consequently, in order for those direct assignment provisions being enforceable, it is indispensable to have those assignment provisions valid and enforceable, and for that purpose the Shareholders' Agreement must either be signed in wet-ink or with a qualified electronic signature pursuant to art. 14 para. 2bis CO.]

- (b) For the avoidance of doubt, amendments or modifications of the Articles, Board Regulations, [Business Plan] or other constitutive, organizational and governing documents shall not require an amendment of this Agreement, provided, however, that such amendment or modification is made in accordance with the provisions hereof including the consent requirements applicable for such amendments or modifications under this Agreement.
- (c) [Notwithstanding anything contained herein to the contrary, the Parties acknowledge and agree that this Agreement may be amended in writing by an instrument signed solely [by all Investors (acting jointly)]/[by a qualified majority of [Investors]/[Shareholders] representing [specify percentage]% of the issued share capital of the Company] 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.]⁹⁴

18.10 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.

19. Governing Law and Dispute Resolution

19.1 Governing Law

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

19.2 Dispute Resolution

[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 these 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 submitted to the arbitral tribunal in [German]/[French]/[Italian] without translation into English].^{95 96}

⁹⁴ [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.]

⁹⁵ [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/>. If arbitration is chosen, consider a corresponding arbitration clause to be included also in the Articles.]

⁹⁶ [Note: If jurisdiction is favored as alternative to arbitration, consider implementing the following clause: "[All disputes arising out of or in connection with this Agreement, including disputes regarding its conclusion, validity, binding effect,

Signatures on the next page

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]."]

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

[Investor 1]:

Name:

Function:

Name:

Function:

[Investor n]:

Name:

Function:

Name:

Function:

[Founder 1]:

Name:

Function:

Name:

Function:

[Founder n]:

Name:

Function:

Name:

Function:

[Other Shareholder 1]:

Name:

Function:

Name:

Function:

[Other Shareholder n]:

Name:

Function:

Name:

Function:

Company:

Name:

Function:

Name:

Function:

Defined Terms

"**Affiliate(s)**" 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 Investors or by the same advisor as the Investor.

"**Agreement**" shall mean this shareholders 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.

"**Anti-Dilution Adjustment**" shall have the meaning set forth in Section 10.3.2.

"**Anti-Dilution Shares**" shall have the meaning set forth in **Annex 10.3.2**.

"**Approved Financing**" shall have the meaning set forth in Section 9.2]

"**Articles**" shall mean the articles of incorporation (*Statuten; statuts*) of the Company attached to this Agreement in **Annex 4.2** (as amended from time to time in accordance with the terms of this Agreement).

"**Bad Leaver**" shall mean a Restricted Party in case (i) his or her employment agreement has been terminated by the Company for an important reason (*wichtiger Grund; juste motif*) within the meaning of art. 337 CO, or (ii) he has terminated his or her employment agreement other than for an important reason (*wichtiger Grund; juste motif*) within the meaning of art. 337 CO.

"**Board**" shall mean the board of directors (*Verwaltungsrat; conseil d'administration*) of the Company, as appointed from time to time in accordance with the terms of this Agreement.

"**Board Information**" shall have the meaning set forth in Section (b).

"**Board Observer(s)**" shall have the meaning set forth in Section 5.10.

"**Board Regulations**" shall mean the organizational regulations (*Organisationsreglement; règlement d'organisation*) of the Company attached to this Agreement in **Annex 4.3** (as amended from time to time by the Board in accordance with the terms of this Agreement).

"**Business**" shall have the meaning set forth in Section 18.3(a)(i).

"**Business Plan**" shall mean the business plan dated [date] attached hereto as **Annex 8.1** as adjusted or updated from time to time by the Board.]

"**Cap Table**" shall have the meaning set forth in Section 3.1.

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

"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 / chairwoman of the Board (*Verwaltungsratspräsident; président du conseil d'administration*).

"Change of Control" shall mean:

- (a) [in respect of the Company, any Transfer of Shares in one or a series of related transactions that results in the proposed acquirer (including a Shareholder) holding directly, or indirectly through one or more intermediaries, more than [50]% of the then issued share capital of the Company]/[not previously controlling the Company, acquiring directly, or indirectly through one or more intermediaries, control of the Company]; [and
- (b) in respect of a holder of [Common Shares]/[Shares]⁹⁷, any direct or indirect change in the control of such holder, in one or a series of related changes or transactions (including a sale, merger, transfer of assets or any other form of disposition or corporate restructuring in respect of such holder) that result in another Person not previously controlling such holder, acquiring directly, or indirectly through one or more intermediaries, control of such holder;]⁹⁸

[whereby "control", "controlled" or "controlling" shall mean that a Person (either acting alone or with its Affiliates), not previously controlling another Person, becomes the legal or beneficial owner of more than [50]% of the voting rights or equity capital in such other Person, or is otherwise able to exercise a controlling influence over the board of directors or management or officers or similar corporate body of such other Person.]⁹⁹

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

"Common Shareholder(s)" shall mean the Founders and the Other Shareholders.

"Common Shares" shall mean[, as of the date hereof, the common registered shares of the Company specified in **Annex 3.1** and thereafter shall mean] the common registered shares of the Company (*Stammaktien; actions ordinaires*) held by a Party from time to time in accordance with this Agreement and the Articles.

⁹⁷ [Note: If the broad definition is chosen, consider that this qualifies as Triggering Event and, hence, ex-emptions may be required for Investors (e.g. *bona fide* restructurings at upper level of structure even if resulting in a Change of Control), including corresponding adjustments throughout the Model Documentation.]

⁹⁸ [Note: The square bracketed wording in sub-paragraph (b) of this definition aims at capturing also indirect transfers of Shares (e.g. by virtue of a sale or merger or change of control at the level of the relevant shareholder). To the extent such indirect transfers or certain other transaction (e.g. *bona fide* restructurings at upper level of structure even if resulting in a Change of Control) are not meant to be captured by the transfer restrictions, corresponding adjustments need to be made to this Sections (together with consequential changes throughout the Model Documentation).]

⁹⁹ [Note: The proposed wording and the control threshold should be adjusted to ensure that the change of control trigger for drag-along and tag-along rights will suit its purpose in view of the relative weight of individual shareholdings in the aggregate share capital of the Company as well as within and between the different classes of Shares.]

"Common Shareholder Director" shall have the meaning set forth in Section 5.1(b).

"Company" shall have the meaning set forth on the front Page.

"Compensatory Capital Increase" shall have the meaning set forth in the Investment Agreement.

"Confidential Information" shall have the meaning set forth in Section 18.2(a)(i).

"Defaulting Party" shall have the meaning set forth in Section 18.1(a).

"Director(s)" shall mean each of the members of the Board appointed from time to time in accordance with the terms of this Agreement.

"Distribution" shall mean any distribution in the form of Dividends and/or proceeds resulting from a Liquidation.

"Dividend" and **"Dividend Event"** shall have the meaning set forth in Section 10.1.1.

"Dividend Preference" shall have the meaning set forth in Section 10.1.1.

"Drag-Along Event" shall have the meaning set forth in Section 13.5.2.

"Drag-Along Notice" shall have the meaning set forth in Section 13.5.2.

"Drag-Along Right" shall have the meaning set forth in Section 13.5.1

"Effective Date" shall mean the date of this Agreement.

"ESOP" shall mean the Company's employee stock ownership plan or any similar equity incentive program, in each case as resolved by the Board.

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

"Expert" shall have the meaning set forth in Section 13.6.2(e).

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

"General Meeting of Shareholders" shall mean any ordinary or extraordinary general meeting of Shareholders of the Company.

"Good Leaver" shall mean a Restricted Party in case his or her employment agreement has been terminated and he or she is not deemed to be a Bad Leaver.

"IFRS" shall mean the International Financial Reporting Standards, as promulgated by the International Accounting Standards Board (IASB).]

"Important Board Matters" shall have the meaning set forth in Section 6(b) (as set forth in part B of Annex 6).

"Important Shareholder Matters" shall have the meaning set forth in Section 6(a) (as set forth in Part A of Annex 6).

"Independent Director(s)" shall have the meaning set forth in Section 5.1(c)

"Insolvency Event" shall mean with respect to a Party, if such Party becomes insolvent, bankrupt, petitions or applies to any court, tribunal or other body or authority for creditor protection or for the appointment of, or there shall otherwise be appointed, any administrator, receiver, liquidator, trustee or other similar officer of such Party or of all or a substantial part of the such Party's assets.

"Investment Agreement" shall have the meaning set forth in the Preamble (C).

"Investor(s)" shall have the meaning set forth on the front Page.

"Investor Director(s)" shall have the meaning set forth in Section 5.1(a).

"Investor Put Option" shall have the meaning set forth in Section 13.7.

"Investor Put Option Event" shall have the meaning set forth in Section 13.7.

"Investor Put Option Exercise Notice" shall have the meaning set forth in Section 13.7.

"IPO" shall mean the initial public listing of Shares of the Company on an internationally recognized securities exchange, such as the official list of [specify suitable securities exchanges] or any other securities exchange or automated quotation system acceptable to the Investors.

"Liquidation" shall mean a voluntary or non-voluntary liquidation of the Company, a dissolution or winding up of the Company, or a Sale.

"Liquidation Preference" shall have the meaning set forth in Section 10.2.1.

"Lock-up Period" shall have the meaning set forth in Section 13.1(b).

"Management" shall mean the management of the Company to whom the day-to-day management may be delegated in accordance with the terms of this Agreement and the Board Regulations [and shall include [specify]].

"Notice of Mandatory Conversion" shall have the meaning set forth in Section 11.2.

"Notice of Voluntary Conversion" shall have the meaning set forth in Section 11.1.

"Option Parties" shall have the meaning set forth in Section 13.6.1.

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

"Page" shall mean a page of this Agreement.

"Party" and **"Parties"** shall mean each of the Shareholders and the Company.

"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.

"Permitted Transfer" shall have the meaning set forth in Section 13.1(b).

"Preamble" shall mean a preamble of this Agreement.

"Preference Amount" shall mean, as per the date of the relevant Distribution for which the Preference Amount is calculated, the higher of:

- (a) the sum of
 - (i) [[multiple] times]/[one (1) time] the aggregate Subscription Amount paid by the respective holder of Preferred Shares for the respective number of Preferred Shares [and
 - (ii) a non-compounding rate of return of [percentage]% per annum of such aggregate Subscription Amount, accruing daily and to be calculated on a 360/actual days elapsed basis for the period commencing on the payment (value) date of the Subscription Amount and ending on the date of the relevant Distribution for which the Preference Amount is calculated (it being acknowledged and agreed that in case of any earlier Distribution already made to the respective holder of Preferred Shares, such non-compounding rate of return shall be calculated on such reduced aggregate Subscription Amount as from the payment (value) date of such earlier Distribution)],
less
 - (iii) [the amount of any Distribution already received by the respective holder of Preferred Shares[, whereby Distributions already received shall be deducted in first priority from (ii) above and, to the extent such Distributions exceed (ii), in second priority from (i) above]; and
- (b) such amount as would have been payable to the respective holder of Preferred Shares for the respective number of Preferred Shares had all Preferred Shares been converted to Common Shares in accordance with Section 11.1 immediately prior to the payment date of the relevant Distribution for which the Preference Amount is calculated.¹⁰⁰

"Preferred Shares" shall mean [, as of the date hereof, the preferred registered shares in the Company specified in Annex 3.1 and thereafter shall mean] the preferred Shares (*Vorzugsaktien; actions privilégiées*) held by a Party from time to time in accordance with this Agreement and having the preferences set forth in this Agreement and the Articles.

"Purchase Option" shall have the meaning set forth in Section 13.6.1.

"Purchase Option Exercise Notice" shall have the meaning set forth in Section 13.6.2(b).

¹⁰⁰ **[Note:** The proposed wording provides for customary investment rate of return (IRR) preferences for the Investors for dividend distributions and liquidation / exit proceeds through an embedded cap, is non-participating for the Investors and provides no catch-up for holders of Common Shares. The definition should be adjusted to reflect the specific agreement reached regarding the allocation of distributions and proceeds among the holders of different classes of Shares. See also Footnotes 37 to 43.]

"Purchase Price Disagreement Notice" shall have the meaning set forth in Section 13.6.2(c).

"Qualified Exit Event" shall have the meaning set forth in Section 12.1.]

"Qualified IPO" shall have the meaning set forth in Section 12.1.]

"Relevant Selling Shareholder(s)" shall have the meaning set forth in Section 13.5.2.

"Relevant Shares" shall, for purposes of the Sections specified therein, have the meaning set forth in Section 13.3.2, Section 13.4.2 and Section 13.6.2(a).

"Restricted Party" shall have the meaning set forth in Section 13.6.1.

"Right of First Refusal" shall have the meaning set forth in Section 13.3.1.

"Right of First Refusal Event" shall have the meaning set forth in Section 13.3.2.

"Right of First Refusal Exercise Notice" shall have the meaning set forth in Section 13.3.4.

"Right of First Refusal Exercise Period" shall have the meaning set forth in Section 13.3.4.

"Right of First Refusal Notice" shall have the meaning set forth in Section 13.3.2.

"Sale" shall mean the sale, transfer or other disposal (whether through a single transaction or a series of related transactions) of the Shares that result in a Change of Control in respect of the Company or qualify as a Drag-Along Event or the sale, transfer or other disposal of all or [substantially all]/[a major part] of the Company's assets.

"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 [the United Nations Security Council Sanctions Committees, 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)].¹⁰¹

"Section" shall mean a section of this Agreement.

"Selling Shareholder(s)" shall have the meaning set forth in Section 13.3.2 and Section 13.4.2.

"Shareholder(s)" shall mean the Investors, the Existing Shareholders and each (current or future) shareholder of the Company.

"Shares" shall mean any shares from time to time issued by the Company (including, but not limited to current Shares, Common Shares and Preferred Shares).

¹⁰¹ [Note: Relevance and scope to be analyzed and adapted on a case-by-case basis]

"**Subscription Amount**" shall have the meaning ascribed to this term in the Investment Agreement.

"**Swiss GAAP FER**" shall mean the Swiss Generally Accepted Accounting Principles (*FER – Fachempfehlungen zur Rechnungslegung; RPC – recommendations relatives à la présentation des comptes*).]

"**Tag-Along Event**" shall have the meaning set forth in Section 13.4.2.

"**Tag-Along Exercise Notice**" shall have the meaning set forth in Section 13.4.4.

"**Tag-Along Exercise Period**" shall have the meaning set forth in Section 13.4.4.

"**Tag-Along Notice**" shall have the meaning set forth in Section 13.4.2.

"**Tag-Along Right**" shall have the meaning set forth in Section 13.4.1.

"**Transfer(s)**" or "**Transferred**", "**Transferring**" "**Transferable**" shall mean [(i)] any sale, assignment, pledge, encumbrance or any other disposal or transfer of Shares [or (ii) a Change of Control in respect of the relevant holder of [Common Shares]/[Shares], in each case]¹⁰², in each case by contract, corporate resolution, inheritance, court order or by operation of law.

"**Triggering Event**" shall have the meaning set forth in Section 13.6.1.

"**Vice-Chairperson**" shall mean the vice-chairman or vice-chairwoman of the Board.]

"**WAIP**" shall have the meaning set forth in **Annex 10.3.2**.

¹⁰² [Note: The square bracketed wording in the transfer restrictions aims at capturing also indirect transfers of Shares (e.g. by virtue of a sale or merger or change of control at the level of the relevant shareholder). To the extent such indirect transfers are not meant to be captured by the transfer restrictions, corresponding adjustments need to be made to this definition (together with consequential changes throughout the Model Documentation including Section 13.6).]

Cap Table

Attached.

Articles

Attached.

Board Regulations

Attached.

List of Important Shareholder and Board Matters¹⁰³

Part A – Important Shareholder Matters

Each of the following decisions shall be an Important Shareholder Matter and shall require the consent requirements set forth in Section 6(a) of the Agreement:

- (a) any amendment of the Company's corporate purpose;
- (b) any creation of shares with preferential rights of any kind, shape or form or with privileged voting rights;
- (c) any amendment to the restriction of the transferability of shares;
- (d) any creation or reduction of conditional capital or share capital band (*Kapitalband*) other than in accordance with art. 653i CO;
- (e) any increase of capital against the Company's equity, against contributions in kind, by way of set-off or the granting of special benefits;
- (f) any limitation or withdrawal of subscription rights;
- (g) any change of [the corporate name or] registered office of the Company;
- (h) the conversion of participation certificates into shares;
- (i) [the change of the currency of the nominal share capital;]
- (j) [any provision in the Articles concerning the holding of the General Meeting abroad];
- (k) [the introduction of an arbitration clause in the Articles;]
- (l) [the waiver of the appointment of an independent proxy for the holding of a virtual General Meeting;]
- (m) [any sale, transfer or other disposal of all or substantially all of the assets of the Company;]
- (n) [any merger, demerger or similar reorganization of the Company;]
- (o) the liquidation of the Company;
- (p) [any resolution on Dividend payments or other distributions to the shareholders;]
- (q) [the election of the auditors of the Company;] and
- (r) [*specify additional Important Shareholder Matters as appropriate*].

¹⁰³ [Note: If the Company has subsidiaries, the Parties may wish to expand the scope of important matters to capture corresponding matters at the level of such subsidiaries as well. See Footnote 21.]

Part B – Important Board Matters

Each of the following decisions in relation to the Company shall be an Important Board Matter and shall require the consent requirements set forth in Section 6(b) of the Agreement:

- (a) [any acquisition of a business or any part thereof (whether a share or asset transaction);]
- (b) [the sale, transfer or other disposal of all or substantially all of the Company's business and/or assets;]
- (c) [the proposal by the Board to the shareholders to approve a transfer of the Company's shares where the transfer of shares results in the acquirer holding, directly or indirectly, more than *[number]*% of the then issued share capital or voting rights in the Company;]
- (d) [any merger, de-merger, spin-off agreement as well as agreements having similar effect;]
- (e) [the entering into any joint venture or partnership or any profit-sharing agreement (other than routine arrangements wholly within the ordinary course of business);]
- (f) [any investment, capital expenditure, sale of assets, incurrence of debt or any contractual obligation in excess of CHF *[amount]* (whether by a single transaction or a series of related transactions), unless such expenditure has been specifically provided for in the budget and Business Plan;]
- (g) [the entering into or issuance of any securities convertible into equity, including convertible loans and warrants;]
- (h) [the execution of any agreement providing for obligations in excess of CHF *[amount]* (whether by a single transaction or a series of related transactions), save as specifically set forth in the budget and Business Plan;]
- (i) [the appointment and removal of the Company's CEO and all other members of the Management;]
- (j) [the approval of the budget and Business Plan, and any change thereto;]
- (k) [the approval of the ESOP, and any change thereto;]
- (l) [the approval of an Approved Financing]
- (m) [the listing of shares on any securities exchange or automated quotation system;]
- (n) [the issuance of shares or equity-related securities out of the conditional share capital or share capital band (*Kapitalband*) (including the determination of the issue price, the date for the entitlement for dividends and the type of contribution therefor), except [as contemplated under the ESOP;]

- (o) [the creation of any security interests upon any part of any property or assets in any form whatsoever exceeding CHF [*amount*] in aggregate (whether by a single transaction or by a series of related transactions) save as set forth in the budget and Business Plan;]
- (p) [any compensation to any [Independent] Director;]
- (q) [any related-party transactions or arrangements including variations thereof;]
- (r) [any transactions or arrangements other than on arm's-length terms and/or in the ordinary course of business;]
- (s) [the approval and amendment of any share option plan and option and/or share grants to the Management[, except as set forth in the ESOP];]
- (t) [any material change in accounting policies or principles save with the prior approval of the Company's auditors;]
- (u) [any purchase of its own shares or the exercise of a right of first refusal in combination with the designation of a third-party acquirer;]
- (v) [any proposed Transfer of Shares other than in accordance with Section 13;]
- (w) [the approval by the Board that an [Investor]/[Shareholder]/[Founder] Transfers Shares to a corporate entity that is (directly or indirectly) fully owned by the same beneficial owner(s) [or his/her/its fully controlled trust] unless such entity [or trust] is subject to Sanctions or not domiciled in Switzerland, [*jurisdiction*] or [*jurisdiction*];]¹⁰⁴
- (x) [the approval by the Board to the exercise by the Company of its Purchase Option(s) in accordance with Section 13.6 upon the occurrence of a Triggering Event;]
- (y) [*specify additional Important Board Matters as appropriate*]; and
- (z) any amendment or modification of the Board Regulations

¹⁰⁴ **[Note:** Depending on the circumstances of the specific case, the Parties should consider to make this decision an Important Board Matter or keep it a simple Board decision.]

Annex [8.1]

[Business Plan]

[Attached.]

Anti-Dilution Adjustment Formula¹⁰⁵

Based Weighted-Average Ratchet¹⁰⁶

The anti-dilution mechanism shall be a broad-based weighted-average ratchet with no offset for par value paid while subscribing for anti-dilution shares (the "**Anti-Dilution Shares**"). The weighted average issue price ("**WAIP**") and number of Anti-Dilution Shares shall be calculated using the following equations [(it being acknowledged and agreed that Section 10.3.2 and the formula set forth below presumes the absence of any previous down-round and any previous Anti-Dilution Adjustment and shall be applied mutatis mutandis in such modified manner to account for any previous down-round and any previous Anti-Dilution Adjustment)]:

$$WAIP = \frac{(S \times PA) + (S_B \times PB)}{(S + S_B)}$$

Anti-Dilution Shares for all beneficiaries of the Anti-Dilution Adjustment:

$$= ADS = \frac{IA}{WAIP} - SA$$

Anti-Dilution Shares for each beneficiary of the Anti-Dilution Adjustment:

$$= \frac{ADS \times S_x}{SA}$$

where:

IA = total investment amount under the Investment Agreement;

¹⁰⁵ **[Caution:** Each user of the Model Documentation shall satisfy itself that the anti-dilution formula is accurate and complete, which will depend – amongst other factors – on the number of previous investment rounds that shall be protected against future down-rounds. The above formula presumes that there are no convertible loans with discounts to be considered and that only one previous investment round (i.e., the one agreed upon in the Investment Agreement) has occurred so that only one class of Preferred Shares are entitled to anti-dilution protection. It further presumes that no previous down-round triggering an earlier Anti-Dilution Adjustment will have occurred at the time it will be applied to calculate the Anti-Dilution Adjustment in respect of the imminent down-round for which it is applied. Each user of the Model Documentation shall ensure to amend the formula and definitions as may be necessary to reflect the desired outcome. Neither SECA nor any other Person that contributed to the Model Documentation accept any liability for the use of the anti-dilution formula or its accuracy or completeness.]

¹⁰⁶ **[Note:** Alternatives would be a full ratchet adjustment or a narrow-based weighted-average ratchet.]

- S = total no. of all Shares on a fully diluted basis immediately prior to the dilution round (i.e., including, for this purpose, all Shares issuable pursuant to any then existing warrant, conversion or similar subscription rights as well as any granted or grantable options or virtual equity-based securities);
- SA = no. of [Preferred Shares] issued under the Investment Agreement (i.e., [total no. of [Series A Preferred Shares]]);
- SB = total no. of Shares of the dilution round (i.e., the round triggering the dilution that is subject to the Anti-Dilution Adjustment);
- Sx = no. of [Preferred Shares] issued under the Investment Agreement to the applicable/relevant Investor (i.e., [no. of [Preferred Shares]]);
- PA = issue price per [Preferred Share] in CHF under the Investment Agreement (i.e., CHF *[issue price]*);¹⁰⁷ and
- PB = issue price per Share in the dilution round, i.e., the round triggering the dilution that is subject to the Anti-Dilution Adjustment.

¹⁰⁷ **[Note:** If convertible loans with discounted share prices were converted as part of the funding round prior to the dilution round, make sure to make specifications as to which shall be the issue price taken into account for purposes of PA.]

[Registration Rights post-IPO]

[Attached].