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## BOARD REGULATIONS

of

[COMPANY]

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## BOARD REGULATIONS<sup>1</sup>

of

[Company name] AG  
([Company name] SA)  
([Company name] Ltd.)

with registered seat in [seat]

### 1. GENERAL MATTERS

The business of [Company] ("**Company**") shall be conducted in accordance with Swiss law, the articles of association of the Company ("**Articles**") and these board regulations ("**Regulations**").

The Regulations have been adopted by the board of directors ("**Board**", and each member a "**Director**") in accordance with art. 716b para. 3 of the Swiss Code of Obligations ("**CO**").

The purpose of these Regulations is to govern the organization of the Board, to define the executive powers within the Company and to delegate part of the duties and powers of the Board to the [senior] management of the Company ("**Management**").

### 2. EXECUTIVE BODIES

The Company has the following executive bodies:

1. the Board; and
2. the Management.

### 3. BOARD OF DIRECTORS

#### 3.1 Organization

The Board shall consist of [number] of members who shall be elected for [1] -year tenures.

The Board shall determine its own organization. It shall constitute separate committees [(e.g. an audit committee, a risk committee, a compensation and a nomination committee)] if and as

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**[Note:** These board regulations need to be adapted to the special circumstances of the Company. Furthermore, the inclusion of additional specific language relating to the implementation of an internal control system and the risk evaluation procedure should be considered if the circumstances so require.]

the development and the particular needs of the Company may require. In such case special regulations may be issued.

The Board shall appoint its chairperson ("**Chairperson**") [and, as the case may be, its vice-chairperson ("**Vice-Chairperson**") for [one] year tenures. The Chairperson has all duties and competencies conferred to him by law, the Articles and these Regulations.

The Chairperson shall be [one of the Independent Directors (as defined in the Shareholders Agreement)] nominated by the [Board]/[Investor Directors (as defined in the Shareholders Agreement) (acting jointly)]/[absolute majority of shareholder votes].

[The Vice-Chairperson shall be [one of the Independent Directors] nominated by the [Board]/[Investor Directors (acting jointly)]/[absolute majority of shareholder votes]. [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.]

The Board shall appoint a secretary[, who need not be a Director nor a shareholder].

### 3.2 Duties and Powers

The Board has the following duties and powers which by law (art. 716a CO) are inalienable and may not be transferred:

1. to ultimately manage the Company and issue the required directives;
2. to determine the Company's organization;
3. to organize the accounting, financial controls and financial planning systems, as required for the management of the Company;
4. to appoint and dismiss persons entrusted with the management and representation of the Company;
5. to exercise the overall supervision of the persons entrusted with the management, in particular with regard to compliance with the law and with the Articles, operational regulations and directives;
6. to compile the annual report, prepare the general meeting of shareholders (the "**General Meeting of Shareholders**") and to implement the latter's resolutions; and
7. to file an application for a debt restructuring moratorium and to notify the court in the event that the Company is over-indebted;

In addition, the Board has the following duties and powers:

8. to resolve on any resolution pursuant to Section 3.5 below; and
9. to resolve on any other matter which is subject to a Board resolution pursuant to the Articles or mandatory law.

### 3.3 Meetings

Meetings of the Board may be held in person or by video call or any other electronic platform that allows for simultaneous interaction by the Directors.

Meetings of the Board shall be convened by the Chairperson or, if the Chairperson is not available, by another Director as often as the business of the Company requires and whenever a Director, indicating the reasons therefore, requests, but at least [four] times a year.

The notice of any Board meeting shall be dispatched in writing by [courier, mail, or e-mail] not less than [ten] calendar days prior to the date of the meeting. Such notice period may be reasonably shortened in case urgent matters require an earlier or immediate meeting.

The notice shall specify the venue or dial-in information for the video call or electronic platform, respectively, date and time of the meeting as well as the agenda items and, if at all possible, the proposed wording of the resolutions. As part of the notice, the Directors shall be provided with all information reasonably necessary for them to prepare for the meeting and take informed resolutions on the agenda items. No resolutions shall be taken as to items which have not been announced in the agenda, unless all Directors are present and agree.

The Chairperson shall take the chair at the meetings of the Board. In the event that the Chairperson is not present at a meeting, [the Vice-Chairperson or] another Director designated at the meeting shall take the chair.

### 3.4 Quorum of Attendance<sup>2</sup>

A board meeting is validly constituted, if (i) [each]/[at least [number]] Investor Director[s] (as defined in the Shareholders Agreement) and (ii) at least the majority of all Directors are present (including by telephone, video or computer conference or other means of direct communication).

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, subject to the approval requirements set forth in Section 3.5.

Notwithstanding the foregoing, no such 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.

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[Note: To be aligned to Section 5.6 of the Shareholders Agreement.]

### 3.5 Resolutions<sup>3 4</sup>

[Except as set forth below,] resolutions and other actions by the Board are taken by the majority of the votes of the Directors present. In the event of equality of votes cast, the Chairperson shall [not] have the casting vote.

[*Alternative 1:*] <sup>5</sup> [Notwithstanding the foregoing, any affirmative decision on any of the following resolutions (the "**Important Board Matters**") shall require the consent of at least [percentage]% of [all elected Directors]/[the Directors present at the meeting].] <sup>6</sup>

[*Alternative 2:*] <sup>7</sup> [Notwithstanding the foregoing, any affirmative decision on any of the following resolutions (the "**Important Board Matters**") shall require (i) the simple majority of the Directors present at the meeting and (ii) [each]/[at least [number]] Investor Director[s].] <sup>5</sup>

1. [any acquisition of a business or any part thereof (whether a share or asset transaction);]
2. [the sale, transfer or other disposal of all or substantially all of the Company's business and/or assets;]
3. [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;]

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<sup>3</sup> [Note: For background purposes, see explanatory drafting notes (re considerations to be made on how to implement qualified majority thresholds for important board matters) in the Shareholders Agreement of the SECA Model Documentation. Wording to be aligned to Section 6 of the Shareholders Agreement.]

<sup>4</sup> [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 **Fehler! Verweisquelle konnte nicht gefunden werden.**) will need corresponding adjustments together with consequential changes throughout the Model Documentation.]

<sup>5</sup> [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).]

<sup>6</sup> [Note: List of Important Board Matters to be duplicated from **Part B of Annex 6** to the Shareholders Agreement.]

<sup>7</sup> [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 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.]

4. [the entering into any joint venture or partnership or any profit sharing agreement (other than routine arrangements wholly within the ordinary course of business);]
5. [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;]
6. [the entering into or issuance of any securities convertible into equity, including convertible loans and warrants;]
7. [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;]
8. [the appointment and removal of the Company's CEO and all other members of the Management;]
9. [the approval of the budget and business plan, and any change thereto;]
10. [the approval of the Company's employee share option plan (ESOP), and any change thereto;]
11. [the approval of Approved Financing (as defined in the Shareholders Agreement)]
12. [the listing of shares on any securities exchange or automated quotation system;]
13. [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 Company's ESOP;]
14. [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;]
15. [any compensation to any [Independent] Director;]
16. [any related-party transactions or arrangements including variations thereof;]
17. [any transactions or arrangements other than on arm's-length terms and/or in the ordinary course of business;]

18. [the approval and amendment of any share option plan and option and/or share grants to the Management[, except as set forth in the Company's ESOP];]
19. [any material change in accounting policies or principles save with the prior approval of the Company's auditors;]
20. [any purchase by the Company of any of its own shares or the exercise of a right of first refusal in combination with the designation of a third party acquirer;]
21. [any proposed Transfer (as defined in the Shareholders Agreement) of shares other than in accordance with Section 13 of the Shareholders Agreement;]
22. [the approval by the Board that an [Investor (as defined in the Shareholders Agreement)]/[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 (as defined in the Shareholders Agreement) or not domiciled in Switzerland, *[jurisdiction]* or *[jurisdiction]*.]<sup>8</sup>
23. [the approval by the Board to the exercise by the Company of its purchase option(s) in accordance with Section **Fehler! Verweisquelle konnte nicht gefunden werden.** of the Shareholders Agreement upon the occurrence of a Trigger Event (as defined in the Shareholders Agreement);]
24. [*specify additional Important Board Matters as appropriate*]; and
25. any amendment or modification of these Regulations.

### 3.6 Means of Resolutions and Minutes

The Board may pass its resolutions (i) at a meeting with a venue, (ii) using electronic means in analogous application of art. 701c through 701e CO or (iii) in writing on paper, via an electronic platform determined by the Board or in electronic form (such as Skribble, DocuSign or AdobeSign, or which contains an electronic scan of the signature, or via e-mail) unless a member requests an oral discussion in a formal meeting (including by web, video or telephone conference or other means of direct communication).

In the event of resolutions being adopted electronically, no signature is required unless otherwise resolved by the Board. Subject to electronically adopted resolutions, minutes shall be kept of the deliberations and resolutions of the Board and shall be signed by the Chairperson and the secretary, if any. The minutes shall indicate the agenda items as well as the date, time and mode of the meeting.

<sup>8</sup>

[**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.]

### 3.7 Information

Any Director may request information in respect of the Company as will be required from time to time to perform and discharge his/her duties as Director.

At meetings, all persons engaged in the management of the Company shall be required to provide the information requested. Outside meetings, each Director has the right to request information from the Management regarding the general business affairs and, with the approval of the Chairperson, also regarding particular business transactions.

Any confidential information, which has been or will be made available to the Directors[ or Board Observers] in their capacity as Directors[ or Board Observers] ("**Board Information**"), must be treated confidential and such Board Information may be used and shared by a Director [or Board Observer ] with the Investor (as defined in the Shareholders Agreement) who nominated such Director [or Board Observer ]and such shareholders' Affiliates (as defined in the Shareholders Agreement) only:

1. in accordance with the reporting obligations pursuant to the fund documentation relevant for such Investor; or
2. as required by such Investor for (i) the assessment of the Company, (ii) the exercise of shareholder rights (including but not limited to rights under the Shareholders Agreement), (iii) the discussion of upcoming Board matters and decisions, (iv) possible further investments into the Company by such Investor or (v) an exit by such Investor.

### 3.8 Remuneration

The Board shall determine the remuneration of its members.

[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.]

[Upon presentation of appropriate receipts, each Director shall be reimbursed by the Company for all business expenses (including travel costs and hotel accommodation) reasonably incurred by such Director in connection with his/her function as a Director.]

### 3.9 [Board Observers]

[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]:<sup>9</sup> (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. 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 6.]

## **4. MANAGEMENT**

### **4.1 Function**

The management of the Company [shall]/[may] be delegated to the Management in accordance with article [19] of the Articles to the extent a certain duty is not by law, the Articles or these Regulations reserved to the Board. Without limiting the generality of the foregoing, the Management shall implement the business policies of the Company, establish the business plan under the Board's supervision and control, and manage the day-to-day business of the Company.

### **4.2 Composition**

The Management shall [be headed by the Chief Executive Officer (CEO) and] shall be composed of the following members:

3. Chief Executive Officer (CEO);
4. [Chief Financial Officer (CFO);]
5. [others]

and any other officers as the Board may determine from time to time.

### **4.3 Meetings**

The Management shall meet [at least monthly] and whenever a meeting is requested by one of its members. Meetings may also be held by video or telephone conference or other means of direct communication, unless a member requests a discussion in a physical meeting.

### **4.4 Reporting**

The members of Management shall, as a rule, report to the CEO.

At each meeting of the Board, the CEO, or, if so requested by the Board, any member of the Management, shall inform the Board on the state of affairs of the Company so as to allow the Board to comply with its statutory duty to ultimately manage and supervise the Company. If deemed necessary or appropriate, the CEO or the Board may request the participation of other officers.

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[**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 same obligations (in particular fiduciary duty) of board members under Swiss statutory law.]

At any time, the CEO shall report without delay to the Board all significant changes, developments and events affecting the business of the Company.

## **5. SIGNING AUTHORITY**

The Board appoints the persons authorized to sign on behalf of the Company and determines their signing authority. [Unless otherwise resolved by the Board, each Director and all other persons authorized to sign on behalf of the Company shall have joint signatory power by two (*Kollektivzeichnungsberechtigung zu Zweien; signature collective à deux*).]

## **6. [CONFIDENTIALITY]**

[Each Director[, Board Observer] and member of the Management shall be obliged to keep the facts concerning the Company of which he/she may become aware during the performance of his/her duties confidential as far as they have not been published by the Company or have become public otherwise with the approval of the Company. For the avoidance of doubt, subject only to (i) his/her duties of care and loyalty under applicable law and (ii) the conflict of interest rules, nothing herein shall restrict any Director [or Board Observer] appointed by a shareholder of the Company from disclosing information available to him/her in his/her capacity as Director [or Board Observer] to the shareholder that appointed him/her.

The duty of confidentiality shall continue to be in effect after the termination of the mandate. Records containing information subject to the duty of confidentiality shall be returned to the Company upon termination of the mandate/employment at the latest or shall be destroyed.]

## **7. [CONFLICTS OF INTEREST]**

[Directors[, Board Observers] and members of the Management shall arrange their personal and business affairs so as to avoid any situations where they may become subject to a conflict of interest (*i.e.*, any personal interest, or the interest of a closely related individual or entity, that a Director[, Board Observer] or member of the Management might have in a particular matter or transaction which conflicts with the interests of the Company).

Directors and members of the Management shall abstain from voting on matters or transactions in which they have a conflict of interest. In case of a permanent conflict of interest, Directors[, Board Observers] and members of the Management shall resign from their position as Directors[, Board Observers] or members of the Management.

Each Director[, Board Observer] and member of the Management shall disclose to the Board any (potential) conflict of interest generally arising or relating to any matter to be discussed at a meeting, as soon as he/she becomes aware of such (potential) conflict of interest's existence. In the event that the Chairperson is (or might be) affected by a conflict of interest, he/she shall inform [the Vice-Chairperson]/[the Board].

The Chairperson shall make a proposal to the Board commensurate with the relevant circumstances, and the Board shall decide (with the affected person in question abstaining from voting) on whether there is a conflict of interest precluding the respective Director or member of the

Management from voting on the relevant matter or transaction and, in case a conflict of interest is found, on measures commensurate with the seriousness of the conflict of interest. Such decisions may relate (i) to restrictions regarding the access to information, (ii) to restrictions regarding the participation in deliberations and (iii) the request to abstain from voting. The Board may also decide on a combination of such measures or any other appropriate measures.]

**8. MISCELLANEOUS**

**8.1 Effectiveness**

These Regulations shall become effective as of the day hereof.

**8.2 Modifications and Amendments**

Modifications and amendments of these Regulations require a resolution by the Board [to be adopted by a qualified majority of the Directors as set forth in Section 3.5 above].

\* \* \* \* \*

[Place], [Date]

Chairperson of the  
Board of Directors:

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Secretary of the  
Board of Directors:

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