

# S • E • C • A

Swiss Private Equity & Corporate Finance Association  
Schweizerische Vereinigung für Unternehmensfinanzierung

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

## SERIES A SHAREHOLDERS AGREEMENT

dated [DATE]

for

[the COMPANY]

made by and between

[INVESTORS]

and

[FOUNDERS]

and

[OTHER SHAREHOLDERS]

and

[the COMPANY]

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## STATEMENT

### Purpose

The purpose of this model documentation for venture capital investments (the "**Model Documentation**") is to facilitate and render more efficient the negotiations and documentation of venture capital transactions in Switzerland. The Model Documentation is subject to Swiss law but takes into account international, including Anglo-American documentation standards and concepts.

### Documents

The Model Documentation comprises the following documents:

- term sheet (series A),
- investment and subscription agreement (series A),
- shareholders agreement (series A) and
- certain important ancillary documents: articles of association (*Statuten*) and board regulations (*Organisationsreglement*).

### Working Group

In order to incorporate the collective experience of Swiss private equity practice and ensure broad acceptance in the industry SECA (**Hannes Glaus** of LustenbergerGlaus&Partner, head of the SECA Legal&Tax Chapter) invited a group of practitioners from some of the major Swiss law firms active in the field to develop a commonly acceptable set of model documentation. The group consisted of:

- **Martin Frey**, Baker & McKenzie, Zurich;
- **Dieter Gericke**, Homburger AG, Zurich;
- **Beat Kühni**, Lenz & Staehelin, Zurich;
- **Michael Trippel**, Bär & Karrer AG, Zurich;
- **Ulysses von Salis**, Niederer Kraft & Frey AG, Zurich;
- **Christian Wenger**, Wenger & Vieli AG, Zurich.

Special thanks are owed to **Beat Kühni** who provided the initial drafts and incorporated as well as reconciled the many adaptations and annotations throughout the process.

### Scope

The Working Group first had to agree on a number of assumptions. The Model Documentation is oriented not exclusively, but also towards national and international, including Anglo-American investors. Further, it assumes that

- the investment is made as a series A early stage investment (typically CHF 5 – 20 million),
- the circle of involved parties consists of founders, (passive or active) shareholders and up to 3 active (financial) investors,
- the start-up/early stage company is incorporated in Switzerland and organised in the form of a stock corporation (*Aktiengesellschaft, société anonyme*),
- further assumptions and qualifications are stated in the footnotes.

In addition, important commercial terms (such as representations and warranties in the Series A Investment and Subscription Agreement, control-related veto rights on shareholder and board level and anti-dilution, registration and non-competition related protections in the Series A Shareholders Agreement) have been included in the Model Documentation as an example only and/or have been deliberately left blank.

### Caution

Consult your lawyer, tax and other advisors to ensure that the Model Documentation fits, and is being adapted for, your specific purpose your specific purpose and whether and to what extent the rights and obligations contemplated in the Model Documentation are valid and enforceable. Neither SECA nor the members of the working group give any opinion or assurances as to the suitability, adequacy, validity and enforceability of the Model Documentation and its provisions.

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 careful balancing of interests. And for many of the legal issues addressed by the Model Documentation there is more than one valid answer.

We intend to develop the Model Documentation further over time based not only on our experiences but also on your comments which you are kindly invited to submit to us ([info@seca.ch](mailto:info@seca.ch)).

This series A shareholders agreement (the "**Agreement**") is dated *[date]* and entered into by and between:

**1. Investors**

1.1 *[Investor 1]*, *[address]* (hereinafter referred to as "***Investor 1***")

1.2 *[Investor 2]*, *[address]* (hereinafter referred to as "***Investor 2***")

1.3 *[Investor 3]*, *[address]* (hereinafter referred to as "***Investor 3***")

*[Investor 1]*, *[Investor 2]* and *[Investor 3]*, hereinafter collectively the "**Investors**" and individually an "**Investor**")

**2. Founders**

2.1 *[Founder 1]*, *[address]* (hereinafter referred to as "***Founder 1***")

2.2 *[Founder 2]*, *[address]* (hereinafter referred to as "***Founder 2***")

2.3 *[Founder 3]*, *[address]* (hereinafter referred to as "***Founder 3***")

*[Founder 1]*, *[Founder 2]* and *[Founder 3]*, hereinafter collectively the "**Founders**" and individually an "**Founder**")

**3. Other Shareholders**

3.1 *[Other Shareholder 1]*, *[address]* (hereinafter referred to as "***Other Shareholder 1***")

3.2 *[Other Shareholder 2]*, *[address]* (hereinafter referred to as "***Other Shareholder 2***")

3.3 *[Other Shareholder 3]*, *[address]* (hereinafter referred to as "***Other Shareholder 3***")

*[Other Shareholder 1]*, *[Other Shareholder 2]* and *[Other Shareholder 3]*, hereinafter collectively the "**Other Shareholders**" and individually an "**Other Shareholder**")

and

**4. Company**

*[the Company]*, *[address]* (hereinafter referred to as "**Company**")

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## Introduction

- A. The Company is organized in the form of a Swiss stock corporation (*Aktiengesellschaft*) having its registered office at [*address*], Switzerland.
- B. The Company's core business consists of [*description of core business*] (the "**Business**"). The Parties have entered into a series A investment and subscription agreement dated [*date*] (the "**Series A Investment and Subscription Agreement**") pursuant to which (i) the nominal share capital of the Company shall be increased (the "**Series A Capital Increase**") and (ii) the Investors agreed to subscribe for newly issued preferred A Shares in the Company (the "**Preferred A Shares**").
- C. Prior to completion of the Series A Capital Increase as contemplated by the Series A Investment and Subscription Agreement, the Company's nominal share capital amounts to CHF [*amount*] and is divided into [*number*] registered shares with a nominal value of CHF [*amount*] per share, each fully paid in. The ownership structure after completion of the Series A Capital Increase is set out in **Appendix 3.1**.
- D. As a condition precedent for the subscription of newly issued Preferred A Shares by the Investors as contemplated by the Series A Investment and Subscription 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 (including the introductory paragraphs and the appendices), capitalized terms shall have the meanings set forth in **Appendix 1**.

### 2. GENERAL UNDERTAKING

The [Common Shareholders]/[Shareholders]<sup>1</sup> acknowledge their common intent to procure, and to generally co-operate 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, preferably through a Sale [and/or IPO], for the Shareholders from their investment in the Company.

Each Shareholder hereby undertakes to the other Shareholders to:

- (a) generally exercise its powers and voting rights as a shareholder of the Company; and

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<sup>1</sup> [*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.*]

- (b) 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),

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

### 3. OWNERSHIP STRUCTURE

#### 3.1. Ownership Structure Following Completion<sup>2</sup> of the Series A Capital Increase

Subject to Permitted Transfers of Shares hereunder, as of completion of the Series A Capital Increase pursuant to the terms and conditions of the Series A Investment and Subscription Agreement, the ownership structure of the Company [(on a fully diluted basis)]<sup>3</sup> and the holdings of each Shareholder in the respective class of Shares shall be as set forth in **Appendix 3.1**.

#### 3.2. Implementation of Different Classes of Shares<sup>4</sup>

As of [completion]<sup>5</sup> of the Series A Capital Increase pursuant to the terms and conditions of the Series A Investment and Subscription Agreement, the Company's share capital [(on a fully diluted basis)]<sup>6</sup> shall be divided into [two (2)]<sup>7</sup> different classes of Shares: Common Shares and Preferred A Shares. The respective rights attaching to each of the two different classes of

<sup>2</sup> *[Note: The Series A Investment and Subscription Agreement may provide that the Series A 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 Series A Investment and Subscription Agreement (and presumably in the Business Plan). If so, corresponding adjustments need to be made to this provision (together with consequential adjustments throughout the Model Documentation).]*

<sup>3</sup> *[Note: To the extent the Company has implemented any form of employee participation plans as of the date of this Agreement (or envisages implementing such plans prior to full completion (or completion of the first tranche) of the Series A Capital Increase, it is recommended that the dilutive effect of such plans on the shareholdings of the Shareholders be reflected in Appendix 3.1, and that a specific section be added to this Agreement addressing the employee participation plan (in particular the maximum amount of shares to be issued under such employee participation plan).]*

<sup>4</sup> *[Note: The Model Documentation presumes that the Investors will wish to have their preferential rights as holders of Preferred A Shares pursuant to the terms and conditions of this Series A Shareholders Agreement (e.g. re dividends, liquidation, subscription preference and veto rights as a separate class of shareholders for certain important shareholder decisions; see also Footnote 30) implemented into the articles of incorporation of the Company to the extent legally permissible. If the Investors are satisfied with purely contractual preferences, corresponding adjustments may need to be made to this provision (together with consequential changes throughout the Model Documentation).]*

<sup>5</sup> *[Note: See Footnote 2.]*

<sup>6</sup> *[Note: See Footnote 3.]*

<sup>7</sup> *[Note: It is presumed that there will be only two classes of Shares. To the extent the Parties agree on (presumably second ranking) additional preferential rights (e.g. for active Founders), corresponding adjustments need to be made to this provision (together with consequential changes throughout the Model Documentation).]*



Shares shall be as set forth in this Agreement [and, subject to the order of precedence as set forth in the [third]/[second] paragraph of [Section 4.1, the Series A Articles]].<sup>8</sup>

#### 4. ARTICLES AND BOARD REGULATIONS / ORDER OF PRECEDENCE

##### 4.1. Order of Precedence

The rights and obligations of the Shareholders in their respective 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 constitutive, organizational and governing documents as amended from time to time in accordance with the relevant provisions contained therein.

[Unless expressly provided otherwise herein, the Articles, the Board Regulations and other constitutive, organizational or 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 the Investors (acting jointly).]<sup>9</sup>

In the event of any conflict or discrepancies between the provisions of this Agreement and the Articles, the Board Regulations or any other constitutive, organizational or 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 Association

As of completion of the Series A Capital Increase pursuant to the terms and conditions of the Series A Investment and Subscription Agreement and subject to amendments made, as the case may be, in accordance with the terms of this Agreement, the Company's articles of association shall be substantially in the form as attached hereto as **Appendix 4.2** (the "**Series A Articles**").<sup>10</sup>

<sup>8</sup> *[Note: See Footnote 4. In case the Investors are satisfied with purely contractual preferences, the square bracketed reference to the Articles is to be deleted.]*

<sup>9</sup> *[Note: Irrespective of whether the (contractual) preferential rights for the holders of Preferred A Shares pursuant to the terms and conditions of this Agreement are partially implemented into the Articles at the time this Agreement and Articles are negotiated (see Footnote 4), 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 (acting jointly) 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.]*

<sup>10</sup> *[Note: If the investment contemplated to be made by the Investors pursuant to the Series A Investment and Subscription Agreement is split into several tranches and depends upon the Company reaching certain agreed milestones (see Footnote 2), such successive capital increases may necessitate corresponding amendments to the Series A Articles, in which case this section may need corresponding adjustments.]*

### 4.3. Board Regulations

As of completion of the Series A Capital Increase pursuant to the terms and conditions of the Series A Investment and Subscription Agreement and subject to amendments made, as the case may be, in accordance with the terms of this Agreement, the Board Regulations of the Company shall be substantially in the form as attached hereto as **Appendix 4.3**.<sup>11</sup>

## 5. BOARD OF DIRECTORS

### 5.1. Representation of the Board and Initial Composition

The Board shall comprise a maximum of [number] Directors. Throughout the term of this Agreement:<sup>12</sup>

- (a) [each of] the Investors shall have the right to be represented on the Board by [number] Director[s] nominated by [each of]/[the absolute majority of the voting rights 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**");<sup>13</sup>
- (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] the 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 Shareholders Director**"); and

<sup>11</sup> [Note: If a staggered investment through several tranches is contemplated by the Series A Investment and Subscription Agreement (see Footnotes 2 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.]

<sup>12</sup> [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 decisionmaking 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 provision (together with consequential changes throughout the Model Documentation).]

<sup>13</sup> [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). For this purpose, Section 5.9 should be inserted to govern the rights and duties of such Board observers.]

(c) [the [Board / Shareholders collectively by [the majority] of voting rights represented by the Shareholders] shall from time to time nominate *[number]* independent Director[s]<sup>14</sup> (each an "**Independent Director**").]

## 5.2. Election

The Directors shall be elected by the General Meeting of Shareholders in accordance with Section 5.1 above for [one (1)]<sup>15</sup> 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 above.

## 5.3. Chairman/[Vice-Chairman]

The initial Chairman shall be *[name of chairman]*. Thereafter, the Chairman shall be [one of the Independent Directors to be] nominated by the [Investor Directors] [(acting jointly)] for any subsequent terms. The Chairman shall be elected by the Board. The Chairman shall [have]/[not have] the casting vote.<sup>16</sup>

[The Vice-Chairman shall be elected, from time to time, by the Board. If and to the extent the Chairman is unavailable, has a conflict of interest, or is otherwise not able to act, the Vice-Chairman shall assume the powers and duties of the Chairman.]

## 5.4. Organization of the Board / Delegation of Responsibilities

Subject to the terms and conditions of this Section 5, (i) the organization and the responsibilities of the Board, (ii) the majority requirements for affirmative resolutions on Important Board Matters, (iii) the delegation of the management of the Company by the Board to the Senior Management, and (iv) the reporting shall be set forth in the Board Regulations and in compliance with the terms and conditions set forth in this Agreement.

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 Senior Management.

## 5.5. [Signing Authority]

[As a general rule, the Board shall not grant individual signing authorities (*Einzelzeichnungsberechtigung*) to Directors and/or officers of the Company and [all Directors] shall be granted

<sup>14</sup> *[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 are meant to be made directly by the Shareholders (rather than upon recommendation of the Board), the section would need corresponding adjustments.]*

<sup>15</sup> *[Note: Suitable terms of office range from one to three years.]*

<sup>16</sup> *[Note: The Series A Articles could provide for election of the Chairman by the General Meeting of Shareholders. Further, the casting vote of the Chairman (if considered appropriate by the Parties in any given case) presumes that the Series A Articles do not explicitly exclude such casting vote. As an alternative, the granting (or revoking) of the casting vote could also be delegated to the General Meeting of Shareholders.]*

collective signing powers (*Kollektivzeichnungsberechtigung*), in each case in compliance with the Board Regulations.]

## 5.6. Quorum of Attendance

Each Shareholder acknowledges and agrees that the Board shall only be deemed to be validly constituted and entitled to transact business, if:

- (a) [each]/[at least *number*] Investor Director[s]; and
- (b) at least [*half of all*] Directors

are present (including by video, computer or telephone conference), and each Shareholder hereby undertakes to the other Shareholders to procure that the Director(s) nominated by it pursuant to Section 5.1 subsections (a) or (b) above abstain from participating in Board meetings and from transacting business if the Board is not validly constituted in accordance with this Section 5.6. Notwithstanding the foregoing, no such quorum of attendance shall be required if the only agenda item of the meeting of the Board consists in the confirmation of the execution of a capital increase and the corresponding change of the Articles (in particular art. 634a, 651 para 4, 651a, 652e, 652g and 653g CO).

## 5.7. [Board Compensation]<sup>17</sup>

[Unless otherwise resolved by the Board from time to time, each Director shall receive a net amount of CHF [*•*] per annum (net of social security contributions, if any, payable by the relevant Director) as remuneration for his/her function as a member of the Board throughout his/her term as a Director. 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 member of the Board.]

## 5.8. [D&O Insurance]

[The Company will procure appropriate directors' and officers' insurance coverage.]

## 5.9. [Board Observer]

[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 (the "**Board Observer**"). Each Board Observer shall: (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 7 (Information Rights) and Section 20.1 (Confidentiality).]

<sup>17</sup> *[Note: The Parties may wish to specify the compensation and reimbursement arrangements for Directors in the Series A Shareholders Agreement (absent any contractual arrangements, it is within the reasonable discretion of the Board to determine its compensation and reimbursement for business expenses).]*

## 6. CONTROL / IMPORTANT SHAREHOLDER AND BOARD MATTERS<sup>18, 19</sup>

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

- (a) any affirmative vote on any of the important shareholder matters specified in Part A of **Appendix 6** (the "**Important Shareholder Matters**")<sup>20</sup> requires the approval of at least: (i) [two thirds (66 2/3 %)]<sup>21</sup> of shareholder votes [and the absolute majority of the then issued nominal share capital of the Company]<sup>22</sup> [represented at the relevant General Meeting of Shareholders][issued by the Company] [and (ii) [two thirds (66 2/3 %)] of shareholder votes of the holders of Preferred A 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 pursuant to the terms and conditions of this Agreement and the Articles; and
- (b) any affirmative decision with respect to any of the important Board matters specified in Part B of **Appendix 6** (the "**Important Board Matters**"), including without limitation any amendment of the Board Regulations, shall require, besides the consent of the majority of the Board members present at the meeting, the consent of [each]/[at least [number]] Investor Director[s].

## 7. INFORMATION RIGHTS

During the term of this Agreement, the Company shall provide [each Investor] with, and each Investor shall have access to, the following information:<sup>23</sup>

- (a) within [ninety (90)] Calendar days of the end of each financial year, audited financial statements prepared in accordance with the CO [and Swiss GAAP/IFRS];

<sup>18</sup> [Note: The Parties may wish to carefully consider appropriate veto rights of the Investors and amend the (purely indicative and exemplary) wording accordingly. Similarly, Investors may insist depending on the relative weight of their shareholdings that they be granted the right to positively impose certain important shareholder and/or board decisions (as opposed to veto rights only) by way of voting undertakings (Stimmbindungsverpflichtungen). If so, this section would need corresponding adjustments.]

<sup>19</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 Appendix 6) will need corresponding adjustments.]

<sup>20</sup> [Note: The list of Important Shareholder Matters reflects the list of shareholder matters for which a qualified majority requirement applies pursuant to article 704 para. 1 of the Swiss Code of Obligations ("CO") (see Footnote 21) except to the extent so indicated by [square bracketed] additional matters which the Parties may opt to include in (or delete from) the list.]

<sup>21</sup> [Note: This is the minimum threshold set forth by compulsory Swiss law for most of the Important Shareholder Matters, pursuant to article 704 para. 1 CO. Accordingly, no lower threshold is permissible for those matters.]

<sup>22</sup> [Note: This additional minimum threshold set forth in article 704 para. 1 CO may not be necessary (and, accordingly, may be deleted) to the extent that no preferential voting rights (Stimmrechtsprivilegien) 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 A Shares.]

<sup>23</sup> [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.]

- (b) within [thirty (30)] Calendar days of the end of each fiscal quarter, unaudited quarterly financial statements[, and a twelve (12) month rolling forecast];
- (c) within [twenty (20)] Calendar days of the end of each month, monthly management accounts (i.e. balance sheet, profit and loss statement, cash flow statement);
- (d) no later than [sixty (60)] Calendar days prior to the end of each financial year, the proposed budget for the next following financial year; and
- (e) forthwith, any additional information reasonably requested by an Investor [or by its controlling company] in order to (i) account for the investment made in the Company or (ii) 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.

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 Senior 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/Chairman].

## 8. BUSINESS AND OPERATION OF THE COMPANY

### 8.1. Business

As of the date hereof, the Company's core business consists of the Business as described in the introductory paragraph B.

[The Shareholders recognize that the Business relates to an innovative product and a developing market. Accordingly, the Parties understand that the Board (i) may examine from time to time the scope of the Business and, in particular, explore from time to time the possibility of expanding the Business to areas adjacent to or relating to the Business, and (ii) may resolve to adjust or modify the Business from time to time as an Important Board Matter in accordance with the terms hereof.]

[The Business shall be conducted in the best interest of the Company in accordance with the terms hereof and the Business Plan and on sound commercial profit-making principles with the aim of (i) further developing the Business, (ii) reaching the milestones set forth in the Business Plan, (iii) generating highest sustainable profits for further investments in the Business or, as the case may be, distribution to the Shareholders, and (iv) achieving an exit for the Investors from their investment in accordance with the terms of this Agreement.]

### 8.2. [Business Plan]<sup>24</sup>

[The Business Plan agreed among the Parties is attached hereto as **Appendix 8.2.**]

<sup>24</sup> *[Note: The Model Documentation presumes that the Investors will insist that a (typically 3-5 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).]*

### 8.3. [Company's Policies]

[The Company shall manage its operations in compliance with high standards of quality, customer service, financial prudence and corporate ethics. The Company shall apply service and delivery policies based on best industry practice and in strict compliance with applicable laws and regulations.]

## 9. [RELATIONSHIP BETWEEN COMPANY AND SHAREHOLDERS]

[All transactions and agreements between the Company and the Shareholders (or affiliated or related persons of such Shareholders) shall reflect market conditions and shall be made on arm's-length terms.]<sup>25</sup>

## 10. FUNDING / FINANCIAL MATTERS

### 10.1. No Commitment for Further Funding<sup>26</sup>

Subject to the terms of the Series A Investment and Subscription Agreement[, the Shareholder Loans and the Finance Documents], nothing herein 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).

### 10.2. Raising of Additional Financing

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 additional equity financing in one or a series of additional financing rounds or debt financing, if and as proposed by the Board [with the prior approval of [each]/[at least [number]] Investor Director[s]]<sup>27</sup> (the "**Approved Financing**").

[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 investor, if and as may be required or deemed appropriate by the Board with the prior approval of [each]/[at least [number]] Investor Director[s]]<sup>28</sup> to arrange for and/or implement such Approved Financing.]

<sup>25</sup> *[Note: Market conditions / arm's length terms should be adhered to as a matter of Swiss corporate and tax laws irrespective of whether this section in incorporated or deleted. The form Board Regulations list any transactions with related parties and/or not reflecting arm's length terms as Important Board Matters for which specific consent requirements (veto rights) apply.]*

<sup>26</sup> *[Note: The Model Documentation presumes that no firm commitment for further funding (other than the Series A Capital Increase, which may be split up into various tranches and may depend on the Company reaching certain agreed milestones) is agreed between the parties. To the extent firm commitments for additional funding are agreed, corresponding adjustments may need to be made to this provision (together with consequential changes throughout the Model Documentation).]*

<sup>27</sup> *[Note: The consent requirements from Investor Directors should reflect the corresponding approval requirements as set forth in Section 6(a) above.]*

<sup>28</sup> *[Note: The consent requirements from Investor Directors should reflect the corresponding approval requirements as set forth in Section 6(a) above.]*

### 10.3. Distribution of Dividends<sup>29</sup>

The Shareholders understand that in the interest of achieving the targets defined in the Business Plan, substantial investments will need to be made; accordingly, the payment of dividends 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].

If the General Meeting of Shareholders resolves to declare any dividend in cash, in kind or otherwise (the "**Dividend**"), it shall be allocated to the holders of Shares in accordance with the Dividend Preference set forth in Section 11.1.

### 10.4. Accounting Standards and Policies

The financial statements and accounts of the Company [and any of its Affiliates] shall be prepared in accordance with the CO and [Swiss GAAP/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 CO[, Swiss GAAP/IFRS], or the accounting practices or reference periods, and (ii) delivers to each Investor:

- (a) a short description of any change necessary for those financial statements and accounts to reflect the CO[, or Swiss GAAP/IFRS], or the accounting practices or reference periods as previously applied; and
- (b) a comparison between (i) the financial position of the Company on the basis of the previously-applied accounting practices and reference periods (i.e. without such change) and (ii) the financial position of the Company on the basis of the newly applied accounting practices and reference periods (i.e. with such change being applied).

Any change to the Company's accounting practices or 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/IFRS]) in accordance with the terms hereof.

### 10.5. 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.

### 10.6. Inspection / Audit Rights

The Company hereby grants [each Investor]/[each of [Investor •]] 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,

<sup>29</sup> *[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) above.]*



audit and to make copies of any book and record of account of the Company. Any information obtained during such audit shall be subject to the same restrictions as set forth in Section 7 (Information Rights) above and Section 20.1 (Confidentiality).

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].

## 11. PREFERENCES<sup>30</sup>

### 11.1. Dividend Preferences<sup>31</sup>

#### 11.1.1. Grant of Dividend Preferences

If the General Meeting of Shareholders resolves to declare a Dividend it shall be allocated to the holders of Shares in the following order of precedence (the "**Dividend Preference**"):

- (a) in **first priority** to the holders of Preferred A Shares (whose entitlements with respect to the Dividend shall rank senior to the Dividend entitlements of all other Shareholders) pro rata to their holdings in the class of Preferred A Shares up to the Preference A Amount; and
- (b) in **second priority**, if and to the extent the Preference A Amount has been fully paid, to all holders of Preferred A Shares and Common Shares pro rata to their respective aggregate holdings of Shares in the then issued share capital of the Company [on an as-converted basis].<sup>32</sup>

<sup>30</sup> *[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)) for all shareholders other than the Investors, and (ii) Preferred A Shares (i.e. preferred shares (Vorzugsaktien)) with dividend, liquidation and subscription preferences (but no voting preferences other than certain veto rights for the holders of Preferred A Shares for Important Shareholder Matters; see Section 6(a) and Footnote 4 above).*

*To the extent additional voting preferences (Stimmrechtsaktien) 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 provision (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.]*

<sup>31</sup> *[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 29 above), in which case no Dividend preferences may be necessary.]*

<sup>32</sup> *[Note: If the Investors wish Dividend preferences (see Footnote 31 above), the wording of this section should 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.]*

[Each holder of Common Shares hereby irrevocably undertakes, in favor of the holders of higher ranking Preferred A 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 A Shares pro rata to their holdings of Preferred A Shares, to the extent required to give effect to the above Dividend Preference as between and among the Common Shareholders and holders of Preferred A Shares, its rights vis-à-vis the Company to receive Dividends, and each holder of higher ranking Preferred A Shares hereby accepts such assignment. The Company hereby acknowledges its notification of such assignment].<sup>33</sup>

### 11.1.2. Limitation of Dividend Preference

Notwithstanding anything contained in this Section 11.1 to the contrary (but subject to Section 12), the Dividend Preference set forth in Section 11.1.1(a) shall terminate and cease automatically upon the first to occur of (i) completion of an IPO of the Company or (ii) full payment of the Preference A Amount.

## 11.2. Liquidation Preference

### 11.2.1. Grant of Liquidation Preference

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 (the "**Liquidation Preference**"):

- (a) in **first priority** to the holders of Preferred A Shares (whose entitlements with respect to the Liquidation proceeds shall rank senior to the Liquidation proceeds entitlements of all other Shareholders) pro rata to their holdings in the class of Preferred A Shares up to the Preference A Amount; and
- (b) in **second priority**, if and to the extent the Preference A Amount has been fully paid, to all holders of Preferred A Shares and Common Shares pro rata to their respective aggregate holdings of Shares in the then issued share capital of the Company [on an as-converted basis].<sup>34</sup>

[Each holder of Common Shares hereby irrevocably undertakes, in favor of the holders of Preferred A 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 Liquidation Preference)], and each holder of Common Shares hereby irrevocably assigns to each holder of higher ranking Preferred A Shares pro rata to their holdings of Preferred A Shares, to the ex-

<sup>33</sup> *[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 Series A 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 A Shares.]*

<sup>34</sup> *[Note: See Footnote 32 above.]*

tent required to give effect to the above Liquidation Preference as between and among the Common Shareholders and holders of Preferred A Shares, its rights vis-à-vis the Company to receive Liquidation proceeds, and each holder of higher ranking Preferred A Shares hereby accepts such assignment. The Company hereby acknowledges its notification of such assignment]].<sup>35</sup>

[Without limiting the generality of the foregoing, the Shareholders acknowledge and agree that in case of a Sale by way of a:

- (a) transfer of all or [substantially all] [a major part] of the Company's assets, the Shareholders shall resolve on a dividend or liquidation of the Company in order to effect the above Liquidation Preference; and
- (b) transfer or other disposal (whether through a single transaction or a series of related transactions) of the Shares, the Liquidation Preference shall be reflected in the price expressed to be payable (i) per one Preferred A Share to holders of Preferred A Shares and (ii) per one Common Share to the Common Shareholders by the acquirer under the relevant share purchase agreement.]<sup>36</sup>

### **11.2.2. Limitation of Liquidation Preference**

Notwithstanding anything contained in this Section 11.2 to the contrary (but subject to Section 12), the Liquidation Preference set forth in Section 11.2.1(a) shall terminate and cease automatically upon the first to occur of (i) completion of an IPO of the Company or (ii) full payment of the Preference A Amount.<sup>37</sup>

### **11.3. Subscription Preference**

#### **11.3.1. Grant of Preferred Subscription Rights in Subsequent Capital Rounds**

The Shareholders acknowledge and agree that each holder of Preferred A Shares shall have a preferential right to subscribe for any new equity or equity related securities offered by the Company at the same terms and conditions specified in such offer, i.e. that new equity or equity related securities offered shall be available in their entirety to the holders of Preferred A Shares, if and to the extent necessary to effect the anti-dilution protection of each holder of Preferred A Shares pursuant to Section 11.3.2]<sup>38</sup>.

<sup>35</sup> [Note: See Footnote 33 above.]

<sup>36</sup> [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 A Shares, careful consideration should be given as to whether this sub-section 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.)]

<sup>37</sup> [Note: The parties may decide that the preferences terminate if a holder of preference shares does not subscribe shares in a subsequent B financing round (**pay to play**).]

<sup>38</sup> [Note: The preferential subscription right of the Investors may (or may not) be limited to the extent necessary to effect the anti-dilution protection of the Investors pursuant to Section 11.3.2.]

This preferential right of the holders of Preferred A Shares to subscribe shall be pro rata solely to the aggregate total of Preferred A Shares then held by the holders' of Preferred A Shares (i.e. without taking into account the aggregate total of any other Shares then held by any other holders of Shares). Each holder of Common Shares hereby irrevocably waives, to the benefit of the holders of Preferred A Shares [and to the extent necessary to give full effect to the preferential subscription rights set forth in this Section 11.3.1], any statutory subscription right (*Bezugsrecht*) 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 these preferential subscription rights.

### 11.3.2. Anti-dilution Adjustments<sup>39</sup>

In the event the Company issues equity or equity related securities at a subscription or purchase price below CHF [*amount*] (which is the subscription price per one (1) Preferred A Share paid by a holder of Preferred A Shares pursuant to the terms and conditions of the Series A Investment and Subscription Agreement), each holder of Preferred A Shares shall, in consideration for the Subscription Amount paid by each Investor in accordance with the terms and conditions of the Series A Investment and Subscription Agreement, be entitled to a [full ratchet]/[weighted average]<sup>40</sup> anti-dilution adjustment in accordance with the formula set forth in **Appendix 11.3.2** (the "**Anti-dilution Adjustment**").

Each Shareholder hereby agrees with the other Shareholders, that the Anti-dilution Adjustment shall be effected[, at the sole discretion of the Investors [(acting jointly)]]:

- (a) by a transfer of such number of Common Shares by the [Founders]/[Common Shareholders] to the holders of Preferred A Shares pro rata to the Shares then held by each [Founder]/[Common Shareholder] at no additional consideration; or
- (b) by the issuance to each holder of Preferred A Shares of the required number of additional Preferred A Shares at nominal value payable by the [Investors] in accordance with the formula set forth in **Appendix 11.3.2**;

in each case to achieve the Anti-dilution Adjustment. In case the Anti-dilution Adjustment is to be effected pursuant to sub-paragraph (a) above, the Shareholders agree to cast their votes, or to procure that their votes are cast, at an extra-ordinary General Meeting of Shareholders so as to effect a conversion of the Common Shares to be transferred to the holders of Preferred A Shares into Preferred A Shares.

Each of the 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

<sup>39</sup> [*Note: Investors will usually insist on anti-dilution adjustments to protect their investment in the start-up/early stage company against any financial dilution resulting from subsequent capital increases at a subscription price below the subscription price paid by the Investors.*]

<sup>40</sup> [*Note: A full ratchet adjustment will ensure the issuance of the number of additional Preferred A Shares to the Investors that is required to ensure that the initial subscription price paid by the Investors under the Series A Investment and Subscription Agreement is effectively adjusted downwards to the subscription price payable by new investors in any subsequent capital increase whereas a weighted average adjustment will only partially compensate the Investors for any such financial dilution.*]

that the relevant Director(s) nominated by such Shareholder exercise(s) its/their powers and voting rights on the Board, in order to facilitate this Anti-dilution Adjustment in accordance with this Section 11.3.2.

### 11.3.3. Limitation of Preferred Subscription Rights and Anti-dilution Adjustment

Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that this Anti-dilution Adjustment shall not apply, and all Shareholders hereby unconditionally and irrevocably waive all their preferential subscription rights hereunder or at law with respect to:

- (a) share splits or similar reorganizations;
- (b) [conversion of Preferred A Shares into Common Shares in accordance with Section 12;]
- (c) securities issued in connection with a bona fide business acquisition by the Company;
- (d) securities issued or issuable pursuant to strategic transactions, an equipment lease financing or a bank credit arrangement entered into primarily for non-equity financing purposes; and
- (e) the issuance of securities to the public in case of an IPO;

in each case of (a) to (e) above, as approved by the Board in accordance with the terms hereof.

Notwithstanding anything contained in this Section 11.3.3 to the contrary (but subject to Section 12), the preferential subscription rights and Anti-dilution Adjustments set forth above shall terminate and cease automatically upon completion of [the first to occur of a Sale or] an IPO of the Company.<sup>41</sup>

## 12. CONVERSION

### 12.1. Voluntary Conversion

Each holder of Preferred A Shares shall have the right to request at any time during the term of this Agreement the conversion of all or a part of its Preferred A Shares into Common Shares at a [1:1]<sup>42</sup> conversion ratio by providing notice to this effect to all other Shareholders and the Company in accordance with Section 20.5 (the "**Notice of Voluntary Conversion**"). All preferential rights accrued to the holder of Preferred A Shares under Sections 11 and 13 prior to the date of such Notice of Voluntary Conversion shall cease and terminate automatically upon receipt by the other Shareholders of such Notice of Voluntary Conversion and such holder of Preferred A Shares shall, with regard to such converted shares, have the same rights and obligations under this Agreement as the other Common Shareholders. The Parties shall procure that the Articles will (if necessary) be adjusted accordingly.

<sup>41</sup> *[Note: Appropriate changes are necessary if anti-dilution protection is to be limited to investors who fully participate in the diluting financing round and/or if an investor's preferences should generally cease if such investor does not participate in the next financing round ("pay-to-play").]*

<sup>42</sup> *[Note: While the 1:1 ratio is often seen, the ratio depends on the negotiations/circumstances. For example, parties may choose to apply a different ratio in case of an IPO (as they lose preference rights).]*

## 12.2. Mandatory Conversion in IPO

All Preferred A Shares shall be converted into Common Shares in case of an IPO of the Company at a conversion rate of [1:1]<sup>43</sup> [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 20.5 (the "**Notice of Mandatory Conversion**"); provided however, that the Notice of Mandatory Conversion shall be given by any Director in case of a Qualified Exit Event. 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 [thirty (30)] Calendar days following the conversion, no IPO is closed, each holder of Preferred A Shares, by written notice, may require the other Parties to re-establish the share structure and preference rights as existing prior to the conversion.

## 12.3. Resolution by the Shareholders to approve Conversion

In order to achieve the conversion of Preferred A Shares into Common Shares in accordance with Sections 12.1 and 12.2 above, each Shareholder hereby undertakes to the other Shareholders to approve the necessary shareholder resolution(s) to effect the above conversion as soon as reasonably practicable after Notice of Voluntary Conversion and/or Notice of Mandatory Conversion has been given in accordance with this Section 12.

## 13. EXIT[ / IPO]

### 13.1. [Preferred Exit]/[Qualified Exit]

[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.]

[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]) recommending a Sale that values the Company in excess of CHF [amount] [or an IPO with a firm underwriting commitment of the underwriter(s)/global co-ordinator(s) in respect of newly issued Shares representing an aggregate issue price in excess of CHF [amount]] (each, 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 the Company can complete the Qualified Exit Event.]

### 13.2. [Preference in IPO]

[In the event of an IPO that includes the offering of pre-existing Shares, each holder of Preferred A Shares, pro rata to its respective Preferred A Shares holdings in the share capital of

<sup>43</sup> [Note: While the 1:1 ratio is often seen, the ratio depends on the negotiations/circumstances. For example, parties may choose to apply a different ratio in case of an IPO (as they lose preference rights).]

the Company at that time and subject to any regulatory or underwriting requirement or limitations, shall have a priority right over the other Shareholders to place its Preferred A Shares (i.e. its Common Shares upon completion of a mandatory conversion in accordance with Section 12.2 above) in the IPO (including the greenshoe) and no holder of Preferred A Shares shall be excluded from placing Preferred A Shares in the IPO unless all of the other Shareholder securities are also excluded.]

### 13.3. **[Market Stand-off / Lock-up in IPO]**

[Subject to Section 13.2 above, each Common Shareholder hereby undertakes to the Investors to execute separate lock-up agreements, and to comply with customary transfer restrictions (lock-up/market stand-off) for a period of up to one (1) year following an IPO if and as requested by the underwriter/global co-ordinator or under applicable listing requirements in case of an IPO or any subsequent offering.]

### 13.4. **[Registration Rights post-IPO]**

[In case of a listing in a jurisdiction that requires registration of shares to ensure their tradeability, the registration rights of the holders of Preferred A Shares (including Preferred A Shares converted into Common Shares in accordance with Section 12.2 above) and the Common Shareholders towards the Company upon and following completion of an IPO shall be as set forth in Appendix 13.4 or as may otherwise be required by the relevant laws and regulations in order to enable a shareholder to trade its shares.]

## 14. **TRANSFER RESTRICTIONS**

### 14.1. **General Restriction**

Subject to Section 13, each Party acknowledges and agrees that Shares shall not be transferable (i) for a period of [●] years after the date of this Agreement and (ii) thereafter only in accordance with this Section 14, provided, however, that holders of Preferred A Shares may at any time transfer Shares to an Affiliate (each transfer in accordance with this Section 14 and to an Affiliate by holders of Preferred A Shares a "**Permitted Transfer**"). If an Affiliate ceases to be an affiliate of the holder of Preferred A Shares who transferred the Shares, then such Affiliate must immediately re-transfer the Shares to the holder of Preferred A Shares concerned.

### 14.2. **No Encumbrances**

The Shares 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.

### 14.3. Right of First Refusal of the Company and the Shareholders

#### 14.3.1. Notification

If a Shareholder (or a group of Shareholders) [wishes to Transfer]<sup>44</sup> all [or a part] of its Shares (for purposes of this Section 14.3, the "**Relevant Shares**") to a third party (including another Shareholder) (the "**Right of First Refusal Event**"), such Shareholder(s) (for purposes of this Section 14.3.1, the "**Selling Shareholder(s)**") shall submit an offer to the Company and all other Shareholders stating in writing the price and terms of the proposed Transfer in accordance with the notice provision set forth in Section 20.5 (the "**Right of First Refusal Notice**"). 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 in the notice. The Company shall inform each Shareholder forthwith but not later than five (5) Calendar days after receipt of the Right of First Refusal Notice about (i) the date it received the Right of First Refusal Notice and (ii) the day the 30 Calendar day period mentioned in Section 14.3.3 for exercising the Right of First Refusal expires.

#### 14.3.2. Grant of Right of First Refusal<sup>45</sup>

Each of the Shareholders hereby grants to the other Shareholders and to the Company:

- (a) in **first priority** to the holders of Preferred A Shares (whose entitlements with respect to the Relevant Shares shall rank senior to, and (if and to the extent exercised) to the exclusion of, the entitlements of the Company and all Common Shareholders in case of a Right of First Refusal);
- (b) in **second priority** to the Company (whose entitlements with respect to the Relevant Shares shall, subject to Art. 659 CO, rank junior (if and to the extent exercised) to the entitlements of the holders of Preferred A Shares but senior to, and (if and to the extent exercised) to the exclusion of, the right of all Common Shareholders in case of a Right of First Refusal); and
- (c) in **third priority** to the Common Shareholders (whose entitlements with respect to the Relevant Shares shall rank junior (if and to the extent exercised) to the entitlements of

<sup>44</sup> [Note: The proposed wording of the Right of First Refusal captures both a pre-emption right (Vorkaufsrecht), 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), 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 14.3.]

<sup>45</sup> [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.)]



the holders of Preferred A Shares and the Company in case of a Right of First Refusal);<sup>46</sup>

the right (but not the obligation) to acquire all or part<sup>47</sup> of the Relevant Shares from the Selling Shareholder(s) upon the occurrence of a Right of First Refusal Event (the "**Right of First Refusal**") at the price and terms set out in the Right of First Refusal Notice. Such price and terms 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. If all Rights of First Refusal validly exercised do not, in the aggregate, result in the exercise of Rights of First Refusal for of all Relevant Shares, the Rights of First Refusal shall be deemed not exercised and Section 14.3.6 shall apply. If the Rights of First Refusal validly exercised, in the aggregate, result in the exercise of Rights of First Refusal for the acquisition of a number of shares exceeding the Relevant Shares, Section 14.3.4 shall apply.

### 14.3.3. Exercise of Right of First Refusal

Each beneficiary of the Right of First Refusal wishing to exercise its right in respect of the Relevant Shares shall so notify the Company and the Selling Shareholder(s) in accordance with the notice provision set forth in Section 20.5 within a period of thirty (30) Calendar days from receipt of the Right of First Refusal Notice (the "**Right of First Refusal Exercise Notice**") by the Company. If no Right of First Refusal Exercise Notice is submitted by a beneficiary within the period of thirty (30) Calendar days from receipt of the Right of First Refusal Notice by the Company, the Right of First Refusal of that beneficiary shall be deemed to have been forfeited (*verwirken*) with respect to the respective Right of First Refusal Event (but not for any other or subsequent Right of First Refusal Event(s)).

The terms and conditions for the acquisition of the Relevant Shares including, without limitation, the purchase price, shall be equal to the terms offered in the Right of First Refusal Notice (i.e. the *bona fide* offer by the proposed acquirer or, in the absence of such *bona fide* offer, the price and terms offered by the Selling Shareholder(s)).

### 14.3.4. Pro Rata Allocation of Right of First Refusal

In the event that the beneficiaries of the Right of First Refusal within a group of beneficiaries having the same order of priority pursuant to Section 14.3.2 exercise their Rights of First Refusal, in the aggregate, for more than the number of Relevant Shares, the Relevant Shares shall be allocated as follows:

- (a) with respect to beneficiaries that are holders of Preferred A Shares, among such holders of Preferred A Shares pro rata to their then existing Preferred A Shares sharehold-

<sup>46</sup> [Note: To be assessed on a case-by-case basis whether any priority rights in respect of Rights of First Refusal are appropriate and, if so, whether a second ranking Right of First Refusal for the benefit of the Company is desirable.]

<sup>47</sup> [Note: The parties should determine whether the Right of First Refusal may be exercised solely with respect to all Relevant Shares or also with respect to a certain part of the Relevant Shares. If a partial exercise of the Right of First Refusal is permissible, this may in effect frustrate the proposed transfer of the remainder of the Relevant Shares to the proposed acquirer as the acquirer may not be willing to proceed with the acquisition of the remaining fraction of the Relevant Shares.]

ings in the Company as determined on the basis of all issued Preferred A Shares held by all holders of Preferred A Shares who exercise their Right of First Refusal; and

- (b) with respect to beneficiaries that are Common Shareholders, pro rata to their then existing Common Shares shareholdings in the Company as determined on the basis of all issued Common Shares held by all Common Shareholders who exercise their Right of First Refusal.

The Board shall promptly allocate the Relevant Shares in accordance with the terms and conditions of Section 14.3 among the beneficiaries who have submitted a Right of First Refusal Exercise Notice and promptly notify all Shareholders no later than ten (10) Calendar days after expiry of the thirty (30) Calendar days period to submit a Right of First Refusal Exercise Notice pursuant to Section 14.3.3 (i) of the exercise (or non-exercise) by the beneficiaries of their Right of First Refusal and (ii) of the allocation of the Relevant Shares among the beneficiaries.

#### **14.3.5. Consummation of Transfer of Relevant Shares upon Exercise of Right of First Refusal**

The Transfer of the Relevant Shares shall be consummated within sixty (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. 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.

#### **14.3.6. Transfer to Proposed Acquirer**

In the event the Right of First Refusal is not exercised or not exercised for all Relevant Shares in accordance with Section 14.3, the Selling Shareholder(s) shall be free, subject only to Sections 14.4, 14.5 and 16, to Transfer the Relevant Shares to the proposed 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 (6)] months after expiry of the thirty (30) Calendar days period to submit a Right of First Refusal Exercise Notice pursuant to Section 14.3.3. Thereafter, the procedure pursuant to this Section 14.3 shall be repeated prior to any such Transfer.

### **14.4. Tag-Along (Co-Sale Right)**

#### **14.4.1. Notification**

In the event an Investor (or a group of Investors) wishes to Transfer all or a part of its Shares (for purposes of this Section 14.4, the "**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, and provided such Transfer of Shares would [result in a Change of Control] [or] [relate to • percent of all Shares or • percent of all Preferred A Shares]<sup>48</sup> (the "**Tag-Along**

<sup>48</sup> [Note: Depending on the percentage levels of shareholdings of the various shareholders in the start-up/early stage company, lower or higher thresholds may be appropriate as a trigger for the tag-along right.]

**Event**"), such Investor(s) (for purposes of this Section 14.4, the "**Selling Shareholder(s)**") shall notify the other Shareholders as well as the Company thereof, *mutatis mutandis* in accordance with Section 14.3.1 above (the "**Tag-Along Notice**"). Such a Tag-Along Notice may be part of a Right of First Refusal Notice according to Section 14.3. The Company shall inform each Shareholder forthwith but not later than five (5) Calendar days after receipt of the Tag-Along Notice about (i) the date it received the Tag-Along Notice and (ii) the day the 30 Calendar day period for exercising the Tag-Along Right mentioned in Section 14.4.3 expires.

#### 14.4.2. Grant of Tag-Along Right

In addition to the Right of First Refusal pursuant to Section 14.3, each of the Shareholders hereby grants to the other Shareholders<sup>49</sup> the right (but not the obligation) to join the Selling Shareholder(s) and co-sell (together with the Selling Shareholder(s)) [[upon the election of the relevant beneficiaries all or] a pro rata portion of] their Shares to the proposed acquirer for the same consideration per Share and otherwise at the same terms and conditions as applicable to the Selling Shareholder(s) [(except for [(i)] any representations, warranties and/or indemnities other than (several and not joint) title warranties solely in respect of the Shares sold by such other Shareholder(s) [and (ii) payment of the consideration per Share, which must be in immediately available cash]<sup>50</sup>]]<sup>51</sup> upon the occurrence of a Tag-Along Event (the "**Tag-Along Right**").

#### 14.4.3. Exercise of Tag-Along Right

Each Shareholder wishing to exercise its Tag-Along Right with respect to the Relevant Shares shall so notify the Selling Shareholder(s) in accordance with the notice provision set forth in Section 20.5 within a period of thirty (30) Calendar days from receipt of the Tag-Along Notice (the "**Tag-Along Exercise Notice**") by the Company. If no Tag-Along Exercise Notice is submitted by a Shareholder within the period of thirty (30) Calendar days from receipt of the Tag-Along Notice by the Company, the Tag-Along Right of that Shareholder shall be deemed to have been forfeited (*verwirken*) with respect to the respective Tag-Along Event (but not for any other or subsequent Tag-Along Event).

If the proposed acquirer 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.

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<sup>49</sup> *[Note: If the Investors are 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).]*

<sup>50</sup> *[Note: See Footnote 52.]*

<sup>51</sup> *[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 Series A Shareholders Agreement, but should in any event be carefully considered as it affects the benefit/risk sharing among selling shareholders.]*

#### 14.4.4. Consummation of Transfer of Shares upon Exercise of Tag-Along Right

The Transfer of Shares in case of a Tag-Along Event 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 forty five (45) Calendar days after the Company received the Tag-Along Notice) by payment [in cash]<sup>52</sup> 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 Section 14.4.

#### 14.4.5. Transfer to Proposed Acquirer

In the event the Right of First Refusal according to Section 14.3 is not exercised, the Selling Shareholder(s) shall be free, subject only to Sections 16, 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 [six (6)] months starting after the expiry of the thirty (30) Calendar days period to submit a Tag-Along Exercise Notice pursuant to Section 14.4.3. Thereafter, the procedure pursuant to this Section 14.4 shall be repeated prior to any such Transfer.

### 14.5. Drag-Along (Co-Sale Obligation)

#### 14.5.1. Notification

In the event [a holder of Preferred A Shares]/[a group of holders of more than [fifty (50)] percent of Preferred A Shares]/[all holders of Preferred A Shares] wish[es] to Transfer one-hundred (100) percent 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 (the "**Drag-Along Event**"), [that holder]/[that group of holders]/[all holders] of Preferred A Shares (for purposes of this Section 14.5, the "**Relevant Selling Shareholder[s]**") shall notify the other Shareholders thereof, *mutatis mutandis* in accordance with Section 14.3.1 above (the "**Drag-Along Notice**"). The Company shall inform each Shareholder forthwith but not later than five (5) Calendar days after receipt of the Drag-Along Notice about (i) the date it received the Drag-Along Notice and (ii) the day the [six (6)] month period according to Section 14.5.3 expires.

#### 14.5.2. Grant of Drag-Along Right

[Without prejudice to the Right of First Refusal pursuant to Section 14.3, the]<sup>53</sup>/[The] Relevant Selling Shareholder[s] shall have the right (but not the obligation) to require all other Shareholders to sell, and the other Shareholders hereby irrevocably agree to sell, all (but not less

<sup>52</sup> [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.]

<sup>53</sup> [Note: If the drag-along right is meant to overrule the right of first refusal, this wording is to be deleted; see Section 14.5.4.]

than all) of their Shares then held to the proposed acquirer [for the same consideration per Share and[, except as set forth in Section 14.5.5,]]<sup>54</sup> otherwise at the same terms and conditions as applicable to the Relevant Selling Shareholder[s] upon the occurrence of a Drag-Along Event (the "**Drag-Along Right**").

The proceeds resulting from such Transfer in case of a Drag-Along Event shall be deemed to constitute Liquidation proceeds and shall be allocated to the holders of Preferred A Shares and the Common Shareholders in accordance with Section 11.2.

#### 14.5.3. **Consummation of Transfer**

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] [(6)] 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], [the other Shareholders] and the proposed acquirer.

#### 14.5.4. **Drag-Along Right Takes Precedence over Right of First Refusal**<sup>55</sup>

[For the avoidance of doubt and notwithstanding anything to the contrary contained herein, Section 14.3 shall not apply in case of a Drag-Along Event.]

#### 14.5.5. **Key Terms and Conditions**<sup>56</sup>

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

- (a) For each Share within the same class of Shares (in particular Common Shares and Preferred A Shares), the purchase price shall be the same[, pro rata of the par value of such Shares]. The difference in the purchase price between different classes of Shares shall reflect, and be limited to, the preferences set forth in Sections 11.1 and 11.2. 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 [●] percent of its purchase price], and be subject to the same time limitations as the Relevant Selling Shareholder[s] liability. Each other 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 [sever-

<sup>54</sup> [Note: Additional requirements for the Drag-Along Right may include cash consideration and limitations on representations and warranties for dragged Shareholders (see Section 14.5.5, etc..)]

<sup>55</sup> [Note: See Footnote 53.]

<sup>56</sup> [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.]

ally, and not jointly/jointly and severally with each of 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, [other])]. Such representations and warranties shall include, but not be limited to, the following: [see Appendix 9.1 of the Form Series A Investment and Subscription Agreement]. Representations and warranties regarding the future shall be excluded. Except as otherwise provided for herein and unless the Relevant Shareholders may reasonably request otherwise (in particular because they agreed to such term or condition with respect of their Shares), the terms and conditions of the Series A Investment and Subscription Agreement regarding representations and warranties, indemnification and remedies shall apply, *mutatis mutandis*.
- (d) Each Other Shareholder shall bear its own costs and taxes imposed on it.]

## 14.6. Purchase Option

### 14.6.1. Triggering Events

The Parties (for the purposes of this Section 14.6 the "**Option Parties**") shall have an exclusive and irrevocable option (the "**Purchase Option**") to purchase the Shares of another Party (the "**Restricted Party**") 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 if any of the following events (the "**Triggering Event**") occurs:

- (a) the Restricted Party dies, becomes incapable to act or otherwise loses its capacity to exercise its rights and obligations under this Agreement;
- (b) the Restricted Party becomes insolvent, bankrupt or 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 the Restricted Party or of all or a substantial part of the Restricted Party's assets;
- (c) the Restricted Party commits a criminal act against the interests of a Party, of the Company or of any of its subsidiaries;
- (d) the Restricted Party materially breaches this Agreement, unless such breach and its effects are fully cured within 20 (twenty) Calendar days upon notification in writing of the breach and its effects by any other Party; 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;
  - ii. any transfer, pledge or other encumbrance of Shares in violation of this Agreement.

- (e) any board membership, employment or consultancy agreement, as the case may be, between a Restricted Party and the Company is terminated based on a material, willful or grossly negligent breach of the duties as a board member, the employment agreement or consultancy agreement by such Restricted Party (bad leaver);
- (f) any board membership, employment or consultancy agreement, as the case may be, between a Restricted Party and the Company is ordinarily terminated (good leaver).

#### 14.6.2. Exercise of Purchase Option

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 notify the other Parties of the occurrence of any Triggering Event with respect to such Restricted Party. Upon receipt of such notice or upon a Triggering Event becoming known to the other Parties, such other Parties shall be entitled to purchase all or part of the Shares held by the Restricted Party, in proportion to the nominal value of their shareholdings or in such other proportions as they may agree in writing between them, and, in case of the occurrence of any of the Triggering Events (a) or (f), at the fair market value of the Shares. Without prejudice to any other rights or remedies, in case of the occurrence of any of the Triggering Events (b), (c), (d) or (e), the purchase price shall be the lower of the fair market value and the nominal value of the Shares.

If the Parties cannot agree on the fair market value, each Party may request its determination by [*name of independent expert*], or if [*name of alternative 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, (the "**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, unless based on calculation errors, in which case the fair market value as corrected by the Expert shall be binding.

The Option Parties who intend to exercise the Purchase Option shall notify the Restricted Party and the other Parties of their intent to exercise the Purchase Option within thirty (30) Calendar days following receipt of notice of a Triggering Event or, as the case may be, following such Triggering Event becoming known to them, and shall thereafter commence the valuation procedure by mandating the Expert if no agreement on the price can be reached within another twenty (20) Calendar days. The Option Parties shall exercise the Purchase Option no later than twenty (20) Calendar days following agreement on the fair market value or receipt of the final determination of the fair market value from the Expert by giving written notice to the other Parties. The Restricted Party, on the one hand, and the Option Parties who announced their intent to exercise the Purchase Option, on the other hand, shall each bear half of the costs of the Expert.

#### 14.7. Limitation

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

## 15. SHARE REGISTER

### 15.1. No Issuance of Share Certificates<sup>57</sup>

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.

### 15.2. Issue and Transfer of Shares / Registrations in Share Register

Accordingly, 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:

- (a) a duly executed assignment declaration from the transferring Shareholder;
- (b) the consent of the Board; and
- (c) the registration of the relevant Party as a shareholder in the Company's share register.

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 14, 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 14 and only such Transfer of Shares be approved by the Board and registered in the Company's share register.<sup>58</sup>

## 16. ACCESSION AND RELEASE

[Each Shareholder]/[The Other Shareholders] undertake[s] to the [other Shareholders]/[Investors] that no person or entity shall become a shareholder of the Company unless and until such person or entity shall first have executed an accession declaration pursuant to which such person or entity agrees to be fully bound by and be entitled to the terms and conditions of this Agreement in the same capacity as the transferor or predecessor (in case of a transfer or succession). Such accession declaration shall state whether such new shareholder is joining this Agreement as Investor, Founder or Other Shareholder. Each of the Parties agrees that any

<sup>57</sup> *[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).]*

<sup>58</sup> *[Note: The Model Documentation presumes that no physical share certificates are being issued (aufgehobener Titeldruck) 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).]*



such accession declaration that is based on an acquisition of Shares permitted pursuant to this Agreement does not need to be signed by the Parties to this Agreement.<sup>59</sup>

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 20.1 and 20.2 shall continue to apply as provided therein.

#### 17. **LIQUIDATED DAMAGES**<sup>60</sup>

[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 16 [or Section 20.2] hereof may cause irreparable harm to each of the Shareholders.

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 16 [or Section 20.2] (it being understood that any breach of Sections 6, 14 and 20.2 shall be deemed a material breach for purposes of this Section 17) shall be required to pay liquidated damages (*Konventionalstrafe*) 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. 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 thirty (30) Calendar days after having been notified of such violation or breach by any of the non-defaulting Shareholders.

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 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.]

<sup>59</sup> [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.]

<sup>60</sup> [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.]

## 18. TERM

This Agreement shall enter into force and become effective as of the day the Board ascertains by way of a Board resolution (*Feststellungsbeschluss*) in the form of a public deed that the Series A Capital Increase was duly effected, and shall continue to be effective and in force for an initial fixed term expiring at midnight on [date]<sup>61</sup>.

Thereafter, this Agreement shall continue to be in effect for successive periods of [five] ([5]) years unless terminated by any Shareholder upon [twelve] ([12]) 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 (5)] year period. Any termination by a Shareholder shall only be effective with respect to the respective Shareholder, and shall be without prejudice to the continued binding effect of this Agreement for all other Parties.

Notwithstanding the foregoing, this Agreement shall be terminated:

- (a) automatically and with immediate effect upon completion of an IPO of the Company; or
- (b) upon notice of termination by the [other Shareholders]/[Investors (acting jointly)] to the affected Party, in case of bankruptcy, loss of capacity (*Handlungsunfähigkeit*) and [specify other important reasons justifying termination, as appropriate] in respect of that affected Party<sup>62</sup>; or
- (c) 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;

(it being understood that in case of sub-paragraphs (b) and (c) above, such termination of this Agreement with respect to such Party shall be without prejudice to the continued binding effect of this Agreement for and among all other Parties).

## 19. NATURE OF PARTIES' RIGHTS AND OBLIGATIONS

Except as specifically provided otherwise in this Agreement, the rights and obligations of the Parties hereunder shall be several (and not joint). Each of the Investors may exercise and enforce its rights hereunder individually in accordance with this Agreement, and the non-performance by the Company or another Shareholder (the "**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.

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*) in accordance with Art. 530 et seq. CO.

<sup>61</sup> [Note: The initial fixed term should not exceed 15 years.]

<sup>62</sup> [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.]

## 20. MISCELLANEOUS

### 20.1. Confidentiality

The existence as well as the terms and conditions of this Agreement, and any information exchanged between the Parties (including their respective representatives or advisors) in connection with their investment and common shareholdings in the Company and/or received from any Party and/or the Company's representatives pertaining to the business and the operation of the Company (all such information collectively referred to herein as "**Confidential Information**"), shall be kept strictly confidential by each Party hereto. The Parties shall neither use in any form nor disclose to any third party any Confidential Information unless explicitly authorized by this Agreement. The Parties shall ensure that their employees, directors and any other representatives as well as the advisors of each Party to whom any such Confidential Information is entrusted comply with these restrictions.

Without limiting the generality of the foregoing, the term Confidential Information shall include in particular:

- (a) [any information regarding this Agreement, the investments made or to be made by each Investor in the Company and the commercial terms and conditions of the investments; and
- (b) any trade secrets, financial or confidential information of the Company or any of the Investors.]

The term Confidential Information shall not include any information: (i) which as of the time of its disclosure by a Party was already lawfully in the possession of the receiving Party as evidenced by written records, or (ii) which at the time of the disclosure was in the public domain, or (iii) the disclosure of which was previously explicitly authorized by the respective Party.

The non-disclosure obligation shall not apply to any disclosure of Confidential Information required by law or regulations. In the event a disclosure of Confidential Information is required by law or regulations (including, without limitation, for tax, audit or regulatory purposes), the disclosing Party shall use all reasonable efforts to arrange for the confidential treatment of the materials and information so disclosed.

Each Party may use any Confidential Information in accordance with this Agreement. But, subject to the terms hereof, each Party acknowledges and agrees that any Confidential Information made available to it (including to any representative or advisor of such Party) by the Company or any other Party (including their representatives or advisors) hereunder shall not be used by such Party other than (1) as permitted under this Agreement, (2) for the benefit of the Company, or (3) for the respective Party's assessment of the Company or an exit, and shall not be exploited by or for the benefit of such Party or any of its Affiliates or third party.

Finally, it is acknowledged and agreed that each of the Investors will report regularly to its investors and/or any of its Affiliates on all information pertaining to the Company and the equity investment 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.

Nothing herein shall restrict the Company from granting third parties customary due diligence access for purposes of financial, commercial, strategic or similar transactions based on appropriate non-disclosure and non-use agreements.

## 20.2. [Non-Competition/Non-Solicitation]<sup>63</sup>

*[to be completed if and as agreed and appropriate]*

## 20.3. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto 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 to Affiliates in accordance with Section 14.1 or with the prior written consent of each [Shareholder]/[Investor].

## 20.4. Costs and Expenses

It is agreed that [the Company]<sup>64</sup> shall bear its own costs and expenses arising out of or incurred in connection with this Agreement and all transactions contemplated hereby.

It is further agreed that [the Company]<sup>65</sup> shall reimburse the Investors for all [reasonable] legal fees and expenses incurred by the Investors and their advisors in connection with the transactions contemplated by this Agreement [up to an amount not exceeding CHF [amount]].

For the avoidance of doubt, this Section 20.4 shall be without prejudice to Section [12.3] of the Series A Investment and Subscription Agreement with respect to all costs and expenses arising out of or incurred in connection with the transactions contemplated under the Series A Investment and Subscription Agreement.

## 20.5. Notices

All notices and other communications made or to be made under this Agreement shall be effective upon receipt and shall be given in writing by telefax or courier to the addressees listed below:

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

If to [Investor 2]: *[contact details]*

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<sup>63</sup> *[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 and are to be carefully negotiated and drafted giving due regard to the specifics of any given case.]*

<sup>64</sup> *[Note: Each person using the Model Documentation should satisfy itself of the potential tax consequences resulting from such cost allocation to the company.]*

<sup>65</sup> *[Note: See Footnote 64.]*

If to [*Investor 3*]: [contact details]

If to [*Founder 1*]: [contact details]

If to [*Founder 2*]: [contact details]

If to [*Founder 3*]: [contact details]

If to [*Other Shareholder 1*]: [contact details]

If to [*Other Shareholder 2*]: [contact details]

If to [*Other Shareholder 3*]: [contact details]

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

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

If to Common Shareholders: To [the Company], Attn. [CEO/Chairman]  
[contact details],  
who shall forward the notices and communications re-  
ceived without delay to each of the Common Sharehold-  
ers]

Each Party may change or amend the addresses given above or designate additional addresses for the purposes of this Section 20.5 by giving the other Parties written notice of the new address in the manner set forth in this Section 20.5.

[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).]

## 20.6. Entire Agreement

With the exception of the Series A Investment and Subscription Agreement, [the term sheet dated [date] and the non-disclosure agreement dated [date]], this Agreement including its Appendices constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes any agreement or understanding that may have been concluded between the Parties prior to the date of this Agreement.

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].

## 20.7. 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.

## 20.8. Amendments

This Agreement (including this Section 20.8) may be amended only in writing by an instrument signed by all Parties.

For the avoidance of doubt, amendments or modifications of the Articles, Board Regulations, Business Plan, the term Business, 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 (i) the provisions hereof and (ii) the consent requirements applicable for such amendments or modifications under this Agreement.

[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) with binding effect on all other Parties; provided, however, that any such modification or amendment of any of the provisions of this Agreement shall neither affect any accrued rights of any other Party nor impose any greater liability or any more onerous obligation than those contained in this Agreement on the other Parties who do not sign such modification or amendment.]<sup>66</sup>

## 20.9. 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.

## 20.10. Governing Law and Jurisdiction

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

[Any dispute, controversy or claim arising out of or in connection with this Agreement, including its conclusion, validity, binding effect, amendment, breach, termination or rescission shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be [one (1)/[three

<sup>66</sup> *[Note: Each person using the Model Documentation shall satisfy itself by retention of its own counsel of its comfort in, and the limitations and restrictions under applicable Swiss 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.]*

(3). The seat of the arbitration shall be [Zurich]/[Geneva] and the arbitral proceedings shall be conducted in [English].

[<sup>67</sup>All disputes arising out of or in connection with this Agreement, including disputes regarding its conclusion, validity, binding effect, amendment, breach, termination or rescission shall be subject to the exclusive jurisdiction of the [ordinary]/[commercial] court[s] of the Canton of [canton of domicile of the Company], the venue being [city].]

\* \* \* \* \*

[Signature page to follow]

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<sup>67</sup> [*Note: Alternative to arbitration clause.*]

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

**[Investor 1]**

By: \_\_\_\_\_

Names: \_\_\_\_\_

Titles: \_\_\_\_\_

**[Investor 2]**

By: \_\_\_\_\_

Names: \_\_\_\_\_

Titles: \_\_\_\_\_

**[Investor 3]**

By: \_\_\_\_\_

Names: \_\_\_\_\_

Titles: \_\_\_\_\_

**[Founder 1]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Founder 2]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Founder 3]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Other Shareholder 1]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**[Other Shareholder 2]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[Other Shareholder 3]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

solely in respect of the obligations of the Company under Sections [7, 5.7, 5.8, 10.1, 10.2,10.4, 10.5, 10.6, 11.1.1, 11.1.2, 13.1, 13.4, 14.1, 14.2, 14.3, 15, 16 and 18 to 20] hereof:

**[Company]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**List of Appendixes**

Appendix [C]:	List of Common Shareholders (incl. shareholdings prior to Series A Capital Increase)
Appendix 1:	Defined Terms
Appendix 3.1:	Ownership Structure Following Completion of Series A Capital Increase
Appendix 4.2:	Series A Articles
Appendix 4.3:	Board Regulations
Appendix 6:	List of Important Shareholder and Board Matters
Appendix 11.3.2:	Anti-Dilution Adjustment Formula
<u>[Appendix 13.4:]</u>	<u>[Registration Rights post IPO]</u>

**List of Common Shareholders**

(incl. shareholdings prior to Series A Capital Increase)

[list]

### Defined Terms

"**Affiliates**" 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 funds, investment vehicles or other entities formed or incorporated in any jurisdiction which are managed by any of the Investors.

"**Agreement**" shall mean the series A shareholders agreement, including its appendices.

"**Anti-dilution Adjustment**" shall have the meaning set forth in Section [11.3.2] of this Agreement.

"**Approved Financing**" shall have the meaning set forth in Section [10.2] of this Agreement.

"**Articles**" shall mean the articles of association of the Company attached to this Agreement in Appendix 4.1 (as amended from time to time in accordance with the terms of this Agreement).

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

"**Board Regulations**" shall mean the organizational regulations of the Company attached to this Agreement in Appendix 4.3 (as amended from time to time by the Board in accordance with the terms of this Agreement).

"**Board Observer**" shall have the meaning set forth in Section [5.9] of this Agreement.

"**Business**" shall have the meaning set forth in the introductory paragraph [B] of this Agreement.

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

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

"**Chairman**" shall mean the chairman of the Board (*Verwaltungsratspräsident*).

"**Change of Control**" shall mean 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, more than fifty (50) percent of the then issued share capital of the Company, where such acquirer would not hold Shares in excess of the above threshold without the proposed Transfer of Shares.

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

"**Common Shares**" shall mean[, as of the date hereof, the common registered shares of the Company specified in Appendix [3.1] of this Agreement and thereafter shall mean] the common registered shares of the Company (*Stammaktien*) in accordance with the Articles.

"**Common Shareholders**" shall mean all of the holders of Common Shares.

"**Common Shareholder Director**" shall have the meaning set forth in Section [5.1. (b)] of this Agreement.

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

"**Confidential Information**" shall have the meaning set forth in Section [20.1.] of this Agreement.

"**Defaulting Party**" shall have the meaning set forth in Section [19] of this Agreement.

"**Director**" 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**" shall have the meaning set forth in Section [10.3] of this Agreement.

"**Dividend Preference**" shall have the meaning set forth in Section [11.1.1.] of this Agreement.

"**Drag-Along Event**" shall have the meaning set forth in Section [14.5.1] of this Agreement.

"**Drag-Along Notice**" shall have the meaning set forth in Section [14.5.1] of this Agreement.

"**Drag-Along Right**" shall have the meaning set forth in Section [14.5.2] of this Agreement.

"**Expert**" shall have the meaning set forth in Section [14.6.2.] of this Agreement.

"**Finance Documents**" shall mean [specify].

"**Founder**" and "**Founders**" shall have the meaning set forth on the first page of this Agreement.

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

"**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)] of this Agreement (as set forth in Part B of Appendix [6] of this Agreement).

"**Important Shareholder Matters**" shall have the meaning set forth in Section [6 (a)] of this Agreement (as set forth in Part A of Appendix [6] of this Agreement).

"**Independent Director**" shall have the meaning set forth in Section [5.1. (c)] of this Agreement.

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

"**Investor Director**" shall have the meaning set forth in Section [5.1. (a)] of this Agreement.

"**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 [11.2.1.] of this Agreement.

"**Manager**" shall mean any of [*specify*], together the "**Management**".

"**Notice of Mandatory Conversion**" shall have the meaning set forth in Section [12.2] of this Agreement.

"**Notice of Voluntary Conversion**" shall have the meaning set forth in Section [12.1] of this Agreement.

"**Option Parties**" shall have the meaning set forth in Section [14.6.1.] of this Agreement.

"**Other Shareholder**" and "**Other Shareholders**" shall have the meaning set forth on the first page of this Agreement.

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

"**Permitted Transfer**" shall have the meaning set forth in Section [14.1.] of this Agreement.

"**Purchase Option**" shall have the meaning set forth in Section [14.6.1.] of this Agreement.

"**Preference A Amount**" shall mean the sum of (i) the aggregate Subscription Amount paid by the respective holder of Preferred A Shares and (ii) [●]% per year (to be calculated on the basis of the Subscription Amount paid and not yet compensated by a preferred payment) since payment of the Subscription Amount until the payment date of the relevant Distribution for which the Preference A Amount is calculated, less any Distributions already received; whereby Distributions paid shall be allocated in the first priority to (ii) and in the second priority to (i).

"**Preferred A Shares**" shall mean preferred Shares (*Vorzugsaktien*) having the preferences set forth in the Articles and this Agreement.

"**Qualified Exit Event**" shall have the meaning set forth in Section [13.1.] of this Agreement.

"**Relevant Selling Shareholder(s)**" shall have the meaning set forth in Section [14.5.1] of this Agreement.

"**Relevant Shares**" shall have the meaning set forth in Section [14.3.1] and [14.4.1] of this Agreement.

"**Restricted Party**" shall have the meaning set forth in Section [14.6.1.] of this Agreement.

"**Right of First Refusal**" shall have the meaning set forth in Section [14.3.2] of this Agreement.

"**Right of First Refusal Event**" shall have the meaning set forth in Section [14.3.1] of this Agreement.

"**Right of First Refusal Exercise Notice**" shall have the meaning set forth in Section [14.3.3] of this Agreement.

"**Right of First Refusal Notice**" shall have the meaning set forth in Section [14.3.1] of this Agreement.

"**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 or the sale of all or [substantially all] [a major part] of the Company's assets of the Company.

"**Selling Shareholder(s)**" shall have the meaning set forth in Section [14.3.1] and [14.4.1] of this Agreement.

"**Senior Management**" shall mean the senior 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.

"**Series A Articles**" shall mean the articles of association of the Company attached to this Agreement in Appendix [4.2] (as amended from time to time in accordance with the terms of this Agreement).

"**Series A Capital Increase**" shall have the meaning set forth in the introductory paragraph [B] of this Agreement.

"**Series A Investment and Subscription Agreement**" shall have the meaning set forth in the introductory paragraph [B] of this Agreement.

"**Shareholder**" shall mean each shareholder of the Company.

"**Shareholder Loans**" shall mean any loans or similar debt instruments granted by a Shareholder to 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 A Shares).

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

"**Swiss GAAP**" shall mean the Swiss Generally Accepted Accounting Principles (*FER – Fachempfehlungen zur Rechnungslegung*).

"**Tag-Along Event**" shall have the meaning set forth in Section [14.4.1] of this Agreement.

"**Tag-Along Exercise Notice**" shall have the meaning set forth in Section [14.4.3] of this Agreement.

"**Tag-Along Notice**" shall have the meaning set forth in Section [14.4.1] of this Agreement.

"**Tag-Along Right**" shall have the meaning set forth in Section [14.4.2] of this Agreement.

"**Transfer**" shall mean any sale, assignment, pledge, encumbrance or any other disposal or transfer of Shares.

"**Triggering Event**" shall have the meaning set forth in Section [14.6.1.] of this Agreement.

"**Vice-Chairman**" shall mean the vice-chairman of the Board.

**Ownership Structure Following Completion of Series A Capital Increase**

*[table with ownership structure]*



**Series A Articles**

(see attached)

**Board Regulations of the Company**

*(Organisationsreglement)*

(see attached)

### List of Important Shareholder and Board Matters

#### **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 this Agreement:

- (a) any amendment of the Company's [Articles or its] corporate purpose;
- (b) any creation of shares with preferential rights of any kind, shape or form or with privileged voting rights;
- (c) any restriction of the transferability of shares;
- (d) any authorized or conditional capital increase;
- (e) any increase of capital against the Company's equity, against contributions in kind, or for the purpose of acquiring assets 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) [any sale of all or substantially all of the assets of the Company];
- (i) [any merger, demerger or similar reorganization of the Company];
- (j) [the liquidation of the Company];
- (k) [any resolution on Dividend payments or other distributions to the shareholders];
- (l) the election of the auditors of the Company; and
- (m) [*specify additional Important Shareholder Matters as appropriate*].

#### **Part B – Important Board Matters**

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

- (a) [any acquisition of a business or any part thereof (whether a share or asset transaction);]
- (b) [the sale, disposal or transfer of all or substantially all of the Company's Business (as defined in the Series A Shareholders Agreement) 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 acquiror holding, directly or indirectly, more than [number]% of the then issued share capital or voting rights in the Company;]

- (d) [the entering into any joint venture or partnership or any profit sharing agreement (other than routine arrangements wholly within the ordinary course of business);]
- (e) [any investment, capital expenditure, sale of assets, incurrence of debt or any contract obligation by the Company 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 (in each case as defined in the Series A Shareholders Agreement);]
- (f) [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;]
- (g) [the appointment and removal of the Company's CEO and all other members of the Management;]
- (h) [the approval of the Budget and Business Plan, and any change thereto;]
- (i) [the listing of shares of the Company on any securities exchange or automated quotation system;]
- (j) [the issuance of shares or equity-related securities out of the Company's authorized or conditional share capital (including the determination of the issue price, the date for the entitlement for dividends and the type of contribution therefore), except [as contemplated under the Company's ESOP or] in respect to any shares issued in accordance with the anti-dilution provisions under the Series A Shareholders Agreement;]
- (k) [the creation of any security interests upon any part of the Company's 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;]
- (l) [any related-party transactions or arrangements including variations thereof;]
- (m) [any transactions or arrangements other than on arm's-length terms and/or in the ordinary course of business;]
- (n) [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];]
- (o) [any material change in accounting policies or principles save with the prior approval of the Company's auditors;]
- (p) [any purchase by the Company of any of its own shares;]
- (q) [any proposed transfer of Shares other than in accordance with Section [14] of the Series A Shareholders Agreement;]
- (r) any amendment or modification of the Board Regulations; and
- (s) [specify additional Important Board Matters as appropriate].

**Anti-dilution Adjustment Formula**

[formula]

[Appendix 13.4]

**[Registration Rights post-IPO]**