

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

CONVERTIBLE LOAN AGREEMENT (SHORT FORM)

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Purpose and Scope

The purpose of this model documentation for start-up investments on the basis of convertible loans is to facilitate and increase the efficiency of both negotiations for as well as the documentation of start-up convertible loan investments in Switzerland.

SECA has drawn up two model documentations for convertible loans:

- one for investments by investors with little to no need for particular investment protection (“CLA Model Documentation (short form)”) and
- one for investments by investors expecting more sophisticated investment protection, in particular institutional investors (“CLA Model Documentation (long form)”, collectively the “CLA Model Documentation”).

Each model documentation comprising clean and annotated/commented versions of a term sheet and a convertible loan agreement can be downloaded below for free.

This is the short-form version of the CLA Model Documentation and as such aims to reflect customary terms typically agreed upon for convertible loans granted by investors who will not be granted sophisticated investment protection. Amongst other relevant assumptions underlying the model documentation, it assumes that:

- the investment is made as a seed/ early-stage investment by an investor that is not yet a shareholder in the company;
- convertible loan agreements are concluded between the company and the relevant lender;
- the company is incorporated in Switzerland and organized in the form of a stock corporation (*Aktiengesellschaft, société anonyme*).

In addition, important commercial terms (such as interest, discounts and valuation caps/floors) have been included in the model documentation as an example only or have been deliberately left blank.

SECA’s more elaborate version (CLA Model Documentation (long form)) can be downloaded at: <https://www.seca.ch/Templates/Templates/Convertible-Loans-Model-Documentation.aspx>

Working Group

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

- Beat Kühni, attorney-at-law and partner at Lenz & Staehelin;
- Beat Speck, attorney-at-law, civil law notary and partner at Wenger & Vieli;
- Karim Maizar, attorney-at-law and partner at Kellerhals Carrard; and
- Michel Jaccard, attorney-at-law and partner at id est avocats.

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

Caution

It is upon each party to ensure if and to what extent the CLA Model Documentation is suitable to the transaction at hand. Each transaction has its own particularities and requires a deliberate and careful balance of interests. And for many of the legal issues addressed by the CLA Model Documentation, there is more than one valid answer. Accordingly, consult your legal, tax and other advisors to ensure that the CLA Model Documentation fits, and is appropriately adapted to, your specific purpose and re-confirm whether and to what extent the rights and obligations contemplated in the CLA Model Documentation are valid and enforceable. Neither SECA nor any member of its Legal & Tax Chapter or the

Working Group gives any opinion or assurances as to the suitability, adequacy, validity and/or enforceability of the CLA Model Documentation and its provisions. In using or working with the CLA Model Documentation, each user will be deemed to have waived, to the maximum extent legally permissible, any right or claim against, and to have accepted the exclusion of any responsibility or liability of, SECA, any member of its Legal & Tax Chapter and the Working Group. We intend to develop the CLA Model Documentation further over time based on “real life” experiences with it but also on your comments and proposed improvements – which you are invited and encouraged to submit to us (info@seca.ch), any member of the Legal & Tax Chapter or the Working Group.

Zurich, February 2025

CONVERTIBLE LOAN AGREEMENT

dated as of [date]

and entered into by and among

1. Lender

[name Lender 1], [address], [e-mail]

(hereinafter the "**Lender**")^{1, 2, 3}

and

2. Borrower

[name Borrower], [address], [e-mail]

(hereinafter the "**Borrower**")

[and

(the Lender and the Borrower each a "**Party**" and collectively the "**Parties**")

¹ **Note:** If the Lender is a shareholder or an otherwise related party of the Company, from a tax perspective two topics have to be checked / considered: **1. Thin capitalization rules:** Depending on the debt-equity ratio of the Company, the Loan Balance (or a part thereof) could be re-qualified as hidden equity. In such a case (a) the annual Swiss capital taxation would apply, (b) the interest paid would not be deductible with regard to the profit taxation and (c) the (whole) interest would be subject to Swiss withholding tax at a rate of 35%. **2. Limitation of the interest rate:** If the interest paid to a shareholder or related party exceeds the safe-harbor interest rates determined annually by the Swiss federal tax administration, the exceeding interest could be re-qualified as hidden dividend distributions (unless the Company can prove that they are at arm's length). If paid interest qualifies as hidden dividend distribution the consequences are the same as (b) and (c) above. If all interests are properly declared in the tax return by the recipients, Swiss withholding tax is refundable or creditable to Swiss tax residents. For foreign tax residents the refundability depends upon the applicable double tax treaty (if any).

² **Note:** This template provides for one single lender. However, the Company can use the same template with other lenders participating in the Financing Round in parallel or add multiple lenders in one and the same convertible loan agreement. This, however, will give rise to certain significant changes to the document, primarily in order to address the relationship among the lenders and their relationship vis-à-vis the Company. For instance, instead of requiring the consent of each and every lender under the Financing Round for certain decisions or amendments, the concept of the "Lenders' Majority" could be considered. This should be checked in more detail with counsel. If a company has several lenders, it should be aware of the so-called 10/20 non-bank rules as they relate to tax implications in case the loans are interest-bearing (see footnote 7). In addition, having more than 20 non-bank lenders can give rise to substantial exposure under banking/financial market regulations and companies should refrain from entering into agreements before checking this with counsel.

³ **Note:** Since 1 January 2023, art. 634a para. 3 and art. 652c of the Swiss Code of Obligations require companies that conduct a conversion of loans into shares to disclose in the articles of association the identity of the subscriber(s), the amount(s) set off and the number of shares issued in exchange. A respective disclosure will also have to be made in the commercial register (art. 45 para. 2 lit. c of the Swiss Commercial Register Ordinance). These disclosure obligations are new compared to the law applicable prior to 1 January 2023. Given that investors and/or companies may prefer such information to remain confidential, the disclosure rules should be taken into consideration at the very outset when raising funds via convertible loans and advice should be sought from counsel with respect to the best course of action in each case.

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Preamble

- A. The Borrower is organized in the form of a Swiss stock corporation (*Aktiengesellschaft*) registered with the commercial register of the Canton of [canton] under the number CHE-[number].
- B. [The Borrower has proposed to certain potential investors, including the Lender, the issuance of one or several subordinated convertible loans on the basis of [substantially] identical principal terms and conditions (the “**CLA Round**”).]⁴
- C. As part of the CLA Round, the Lender intends to grant to the Borrower a subordinated convertible loan on the basis of the terms and conditions set out in this Agreement.
- D. [Other lenders may enter into separate agreements with the Borrower as part of the CLA Round, as further set out in this Agreement.]⁵

Based on the foregoing, the Parties agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement shall have the meaning as set forth in **Annex 1**.

2. LOAN

The Lender hereby grants to the Borrower a loan (the “**Loan**”) in the nominal amount of [CHF] [amount] ⁶ (the “**Principal Amount**”).

3. INTEREST ⁷

[The Loan shall be interest-free.]

OR

[Interest shall accrue on the Principal Amount at [the rate of [rate]% per annum.] OR [the lower of (i) [rate]% per annum (accruing) and (ii) the maximum safe-harbor rate for the relevant interest

⁴ **Note:** Only to be included if there are going to be several lenders in parallel. Otherwise, the following preamble can be used: “The Borrower has proposed to the Lender the issuance of a subordinated convertible loan in an amount as further set forth in this Agreement [and on the basis of principal terms and conditions which have been summarized in a term sheet of the Borrower dated [date]] (the “**CLA Round**”).”

⁵ **Note:** Only to be included if there are going to be several lenders in parallel.

⁶ **Note:** The currency of the Loan may be different from the currency of the issue price in a (Non-)Qualified Equity Financing Round. For such a case, see the exchange conversion mechanics reflected in the definition of “Conversion Price”.

⁷ **Note:** Convertible loans are usually but not always interest-bearing. Loans that are interest-free are easier to implement because interest is typically accruing (i.e., not paid out) and then added to the Principal Amount in connection with the Conversion upon the next (Non-)Qualified Equity Financing Round. However, investors may request that the loan is interest-bearing. Interest becomes more relevant the longer the next (Non-)Qualified Equity Financing Round takes and the higher the Principal Amount is. Tax-wise it is important to avoid hidden dividend distributions in case the Lender is an existing shareholder of the Company (see footnote 1). Preliminary tax advice should be obtained on this topic.

In addition, compliance with the so-called 10/20 non-bank rule(s) should be checked with counsel: Interest paid under the convertible loans is subject to Swiss withholding tax if the number of 10 lenders (not counting banking institutions) who grant the convertible loans on the same terms and conditions is exceeded. If the terms and conditions differ, the relevant number increases to 20. In both cases Swiss withholding tax will have to be deducted from interest payments and paid to the Swiss Federal Tax Authority by the Company even in cases where interest accrues and is added to the principal upon a conversion event. However, investors with tax residence in Switzerland can claim for a refund of the paid withholding taxes when fully disclosing the related income. In some cases, the Swiss withholding tax is refundable or creditable to foreign tax residents as well, e.g., on the basis of a double taxation treaty with Switzerland.

period as annually published by the Swiss Federal Tax Administration (i.e., currently [percent]%).] Interest shall be calculated on the basis of the actual number of days elapsed and assuming a 365-day year, from and including the relevant value date of the Loan.

4. DISBURSEMENTS

The Principal Amount shall be disbursed by the Lender to the bank account of the Borrower as notified to the Lender for such purposes, free of any costs or charges, within [5] calendar days after the date of this Agreement (the “**Disbursement Date**”). [If on such date, the Borrower has not received shareholder consents from [all]⁸ shareholders as set out in **Annex 2** or otherwise, the Principal Amount shall be disbursed within [5] calendar days after the date such consents have been received or waived by the Lender.]⁹

5. TERM AND REPAYMENT

The Loan granted hereunder is granted for a fixed period of time until [end date] (the “**Maturity Date**”).¹⁰

[Unless otherwise provided in this Agreement, t]/[T] Loan Balance shall become due and payable without further notice on the Maturity Date, provided that the obligation of the Borrower to repay any such amounts under this Agreement shall be suspended for as long as such amounts are subject to the subordination pursuant to Section 8.¹¹

The Loan Balance may not be prepaid or repaid by the Borrower without the consent of the Lender at any time neither before nor after the Maturity Date. [Furthermore, no Loan Balance shall be prepaid unless the Borrower has offered all other lenders in the CLA Round the opportunity to consent to a prepayment.]¹²

6. SECURITY

The Loan shall not be secured.¹³

⁸ **Note:** Since convertible loans are usually not funded via conditional or authorized share capital (mainly because the category and features of the Conversion Shares in case of a Qualified Financing Round are not known in advance) and since the Company cannot guarantee the issuance of Conversion Shares (which is in the competence of the shareholders), it is advised to solicit separate consent declarations in advance from all shareholders (even if this is not explicitly required as a condition precedent or otherwise by the Lender). Alternatively, they can also be added as parties to the convertible loan agreement. If the shareholders' agreement relating to the Company already contains a sufficient advance consent from the shareholders for the purposes of convertible loan agreements, the approval of shareholders for the convertible loan agreement may be dropped entirely depending on the circumstances of the case in question. Not obtaining the approval of all shareholders in connection with a convertible loan bears legal risks as to the validity and enforceability of the convertible loans which is why the parties should seek guidance from their counsel in case they cannot, for whatever reason, obtain appropriate approval from all shareholders. Finally, absent any pre-existing waivers, existing shareholders are generally entitled (but not obliged) to participate in convertible loan financings (see art. 653c para. 2 CO).

⁹ **Note:** In certain cases, disbursement may be staged, i.e., subject to reaching certain milestones, in which case this would need to be reflected accordingly in this Agreement.

¹⁰ **Note:** Convertible loans are usually meant to bridge the period required until the next equity round. The term is set accordingly.

¹¹ **Note:** Delete this paragraph if this Agreement provides for a mandatory conversion on the Maturity Date pursuant to Section 7.1.

¹² **Note:** Only to be included if there are going to be several lenders in parallel.

¹³ **Note:** Convertible loans for startups (both in seed-stage financings as well as in general bridge financings) are typically unsecured. As a matter of mandatory law, they must be unsecured if they are subordinated.

7. CONVERSION

7.1 Mandatory Conversion Events

The Loan Balance shall be mandatorily converted into Conversion Shares simultaneously with the closing of the next Qualified Equity Financing Round, immediately prior to a Change of Control [or within [30] calendar days of the Maturity Date]¹⁴, whichever occurs earlier.

The number of Conversion Shares issuable upon such Conversion shall be determined by dividing the Loan Balance by the applicable Conversion Price.

7.2 [Voluntary Conversion Upon Maturity]¹⁵

If prior to the Maturity Date no Qualified Equity Financing Round has taken place, the Loan Balance may be converted into Conversion Shares within 30 calendar days of the Maturity Date if such Conversion is requested by the Lender latest [10] calendar days prior to the Maturity Date.

The number of Conversion Shares issuable upon such Conversion shall be determined by dividing the Loan Balance by the applicable Conversion Price.

7.3 General Provisions

The Lender hereby undertakes to take all such actions as may be reasonably necessary or appropriate in order to implement the Conversion, in particular to subscribe for the respective number of Conversion Shares and to pay the relevant subscription price by setting off the relevant Loan Balance. [Should a Lender default on its subscription or payment of the relevant subscription price after having been notified by the Borrower, then the right of the Lender to that specific Conversion event shall automatically be deemed forfeited and, if the Conversion constituted a mandatory Conversion pursuant to Section 7.1, the Loan Balance shall be deemed irrevocably waived by the Lender after a cure period of [20] calendar days.]

Prior to the Conversion being implemented pursuant to this Agreement and as a condition precedent to the obligations of the Borrower under this Section 7, the Lender undertakes to accede to the then current shareholders' agreement in relation to the Borrower (if and to the extent the Lender is not already a party thereto) which may contain customary rights and obligations of shareholders, including, for the avoidance of doubt, rights of first refusal, purchase rights, drag-along rights and tag-along rights.¹⁶

The Borrower shall procure, to the extent legally permissible, that the rights of the Lender under this Section 7 be fully honored. The Borrower shall accept the Lender as new shareholder of the Borrower with voting rights and will not claim any restriction on transferability of shares on the grounds of the articles of association (*Statuten*) of the Borrower or for any other reasons.

The Borrower undertakes to disclose to the Lender all information necessary to ensure that the

¹⁴ **Note:** Conversion upon maturity can be mandatory or voluntary. To be negotiated on a case-by-case basis.

¹⁵ **Note:** See footnote 14 and amend accordingly.

¹⁶ **Note:** In the case of a Mandatory Conversion, the Lender may negotiate that the shareholders' agreement relating to the Company shall include, as a minimum, certain investor-friendly provisions relating to the Company's governance (board seats, veto rights, etc.), reporting and information rights, preferential subscription rights, anti-dilution rights, permitted transfers to Affiliates, non-compete and non-solicitation obligations on the Company's founders/active shareholders, etc. A more pragmatic way of tackling this would be to stipulate that the shareholders' agreement to which the Lender commits to accede, shall be substantially in the form of SECA's Model Documentation "large" template.

Lender can ascertain in due course the proper calculation of the Conversion Price. To the extent required for the implementation of the Conversion, the Borrower shall use best efforts to procure that the shareholders of the Borrower waive their subscription rights in order to allow for the Lender to become a shareholder of the Borrower according to the terms of this Agreement.

If the Borrower at any time or from time to time after the date of this Agreement effects a share split, subdivision or consolidation of Shares, the Conversion Price and/or other terms of the Conversion shall be adjusted so that the number of Conversion Shares will reflect such effects without detriment to the Lender.

8. STATUS AND SUBORDINATION

The Loan shall rank *pari passu* without discrimination or preference with other unsecured subordinated obligations of the Borrower.

The Lender hereby irrevocably and unconditionally declares to the Borrower that the Loan Balance owed now or in the future (the “**Relevant Subordination Amount**”), shall be and is hereby subordinated within the meaning of art. 725b para 4 no. 1 CO to all current and future claims of creditors of the Borrower.¹⁷

During such term the Relevant Subordination Amount shall be deferred (*gestundet*) and none of the claims under the Relevant Subordination Amount may neither fully nor partially be repaid, set-off (other than upon a Conversion), novated or otherwise be fulfilled and no security interest may be created in relation to such claims. The claims of the Lender being subject to the subordination shall be listed separately in the financial statements of the Borrower. The Lender hereby waives, with effect from the earlier of (i) the opening of bankruptcy proceedings (*Konkurseröffnung*) over the Borrower (art. 175, 192 DEBA) and (ii) the opening of insolvency proceedings due to deficiencies in the organization (art. 731b para 1bis 3 CO), (iii) the confirmation of a composition agreement with assignment of assets concerning the Borrower (*Bestätigung eines Nachlassvertrags mit Vermögensabtretung*; art. 317 DEBA), [and (iv) the initiation of a voluntary solvent liquidation as an alternative to the bankruptcy of the Borrower]¹⁸ respectively, the Relevant Subordination Amount to the extent necessary that the claims of all other creditors, and the costs of the liquidation, debt moratorium or insolvency proceedings, are covered in full by the proceeds of the liquidation of the Borrower.

In the case of bankruptcy or debt restructuring liquidation of the Lender, the Borrower is permitted to offset the Relevant Subordination Amount against the Borrower’s claims against the Lender.

The Lender acknowledges and agrees that nothing in this Agreement shall be construed as to restrict the board of directors of the Borrower to notify the competent court in case of an over-indebtedness in the sense of art. 725b para. 3 CO.

¹⁷ **Note:** Convertible loans are typically subordinated in the sense of article 725b para. 4 no. 1 CO in order to address the over-indebtedness. Startups should be careful and seek legal advice if the loans are proposed to be non-subordinated.

¹⁸ **Note:** The recommended waiver wording does not affect the subordination that applies irrespective of whether or not there is a bankruptcy, composition agreement, liquidation or similar event. But the wording had been recommended by ExpertSuisse as from 2011 to address a widely criticized federal supreme court decision (4A_277/2010 of 2 September 2010, E. 2.3) that held that subordinated claims without such waiver would qualify as damage for purposes of responsibility claims. Article 757 para. 4 CO now codifies that subordinated claims will not qualify as damage. The square bracketed wording will expand that effect to apply also for a solvent liquidation as an alternative to a bankruptcy.

The subordination pursuant to this Agreement shall automatically be terminated if any of the following events occur:

- (a) a Conversion is conducted, regardless of an over-indebtedness of the Borrower in the sense of art. 725b CO;
- (b) the Lender and the Borrower agree that the subordination be cancelled, provided, however, that such an agreement shall only be deemed valid if financial statements of the Borrower which (i) are not older than six months and (ii) audited in accordance with the then current Swiss Audit Standards (*Schweizer Prüfungsstandards*) show that all claims of the Borrower (including the Relevant Subordination Amount) are sufficiently covered by assets (in case the Borrower is subject to a full audit (*ordentliche Revision*), a summarizing audit report from the auditor without a qualification in the sense of art. 725b CO suffices to satisfy this requirement); or
- (c) the Lender irrevocably waives any claim to the Relevant Subordination Amount.

The subordination pursuant to this Agreement has been approved by the board of directors of the Borrower having given due consideration to the creditworthiness of the Lender. The Lender confirms that sufficient net wealth is at its disposal to absorb a possible or complete loss of the Relevant Subordination Amount.

9. MISCELLANEOUS

9.1 Confidentiality

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

All public announcements or press releases concerning the transactions contemplated by this Agreement shall only be issued after the Parties shall have consulted and agreed on the contents and timing of the relevant public announcement or press release, except that the Borrower shall be free to make public announcements or press releases in respect of the general fact that the CLA Round has been conducted but, for the avoidance of doubt, without disclosing the identity or individual investment amounts of the investors (including the Lender).

9.2 Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns, provided, however, that neither Party shall be entitled to assign or transfer any of the rights or obligations hereunder to any other party.

9.3 Notices

All notices and other communications made or to be made under this Agreement shall be given in writing or electronic form and be delivered by post, courier or email to the addresses indicated on the cover sheet, unless otherwise notified by a Party.

9.4 Entire Agreement

This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes any agreement or understanding with respect to the subject matter hereof that may have been concluded between the Borrower and the Lender prior to the date of this Agreement.

9.5 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.

9.6 Amendments

The Parties acknowledge and agree that this Agreement may be amended by an instrument signed by both Parties.

9.7 Disclaimer

The Lender hereby acknowledges that the Borrower is not subject to oversight by the Swiss Financial Market Supervisory Authority FINMA and the Loan is not protected by the deposit protection rules pursuant to art. 37h et seq. SBA.

9.8 Form Requirements

This Agreement may be executed and amended in writing or in electronic form (such as Skribble, DocuSign or AdobeSign, or which contains an electronic scan of the signature) and be delivered by post, courier or email; the counterpart so executed and delivered shall be deemed to have been duly executed and validly delivered and be valid and effective for all purposes.

10. APPLICABLE LAW AND JURISDICTION

This Agreement shall in all respects be governed by and construed in accordance with Swiss law to the exclusion of its private international law provisions and international conventions and treaties (including the UN Convention on the International Sale of Goods (CISG)).

[Any dispute, controversy or claim arising out of, or in relation to, this Agreement, including the validity, invalidity, breach, or termination thereof, shall be subject to the exclusive jurisdiction of the courts competent for [city], Switzerland.]

OR

[Any dispute, controversy or claim arising out of or in relation to this Agreement, including the validity, invalidity, breach or termination thereof, shall be submitted to mediation in accordance with the Swiss Rules of Mediation of the Swiss Arbitration Centre in force on the date when the request for mediation was submitted in accordance with these Rules. The seat of the mediation shall be in [city], Switzerland. The mediation shall be conducted in English. If such dispute, controversy or claim has not been fully resolved by mediation within 60 days from the date when the mediator(s) has (have) been confirmed or appointed by the Swiss Arbitration Centre, it shall be submitted to the ordinary courts at the registered seat of the Company, subject to appeal to the Swiss Supreme Court.]

* * * * *

[signature page to follow]

[Lender 1]

Signature(s) _____

Names: _____

Titles: _____

[Borrower]

[Borrower]

Signature(s): _____

Names: _____

Titles: _____

Defined Terms

"Affiliate" shall mean any individual, firm, corporation, partnership, association, limited liability company, trust or any other entity that:

- a) directly or indirectly is controlled by or is under common control with a Party;
- b) directly or indirectly controls a Party;

including, without limitation, any venture capital fund or registered investment company now or hereafter existing that is managed or advised by such Party or by the same advisor as such Party, provided, however, that the ultimate beneficial owner(s) of such Party remain(s) at all times the ultimate beneficial owner(s) of the relevant individual, firm, corporation, partnership, association, limited liability company, trust or other entity.

"Agreement" shall mean this convertible loan agreement, including its Annexes and related documents, as amended from time to time.

"Annex" shall mean an annex to this Agreement.

"Borrower" shall have the meaning given to it on the cover page of this Agreement.

"CLA Round" shall have the meaning given to it in Section B. of the Preamble.

"Confidential Information" shall have the meaning given to it in Section 9.1.

"Change of Control" shall mean:

- a) the acquisition of more than 50% of the Borrower's outstanding Shares by any person or entity in any transaction or series of related transactions (other than as a result of *bona fide* equity financing purposes (including, but not limited to a Qualified Equity Financing Round; or
- b) a merger, spin-off or other type of restructuring in which the holders of the voting securities of the Borrower outstanding immediately prior to such transaction retain less than the majority of the total voting power represented by the voting securities of the Borrower or such surviving entity outstanding immediately after such transaction; or
- c) a sale, lease, transfer, exclusive license or other conveyance of all or substantially all of the assets of the Borrower in an arms' length transaction (other than to a wholly-owned subsidiary of the Borrower or to a parent Borrower).

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

"Conversion" shall mean an Equity Financing Conversion, a Change of Control or a Maturity Conversion.

"Conversion Price" shall mean:

- a) with respect to an Equity Financing Conversion, the price per Conversion Share equal to: [the lower of:

(i) the price obtained by dividing CHF [amount]¹⁹ by the Borrower's [issued and outstanding Shares/Fully Diluted Shares]²⁰ immediately prior to the relevant Qualified Equity Financing Round, and]

(ii) [rate]% of the subscription price paid (and not set off) by the investors in such Qualified Equity Financing Round if closed within [3 / 4 / 5 / 6] months from the Disbursement Date of the Loan or [rate]% if completed thereafter;²¹

b) with respect to a Change of Control, a price per Conversion Share equal to [the lower of:

(i) the price obtained by dividing CHF [amount]²² by the Borrower's [issued and outstanding Shares / Fully Diluted Shares]²³ immediately prior to the closing of the Change of Control; and]

(ii) [rate]% of the price per share agreed upon in the context of the Change of Control event if closed within [3 / 4 / 5 / 6] months from the Disbursement Date of the Loan or [rate]% if completed thereafter, and²⁴

c) with respect to a Maturity Conversion, [rate]% of the price per Conversion Share obtained by dividing the [Fair Market Value of the Borrower / CHF [amount]²⁵] by the Borrower's [issued and outstanding Shares / Fully Diluted Shares]²⁶ immediately prior to the Maturity Conversion,²⁷

in each case less any applicable tax deductions.

If the issue or purchase price for the Conversion Shares in an Equity Financing Conversion or a Change of Control is set in a currency other than the currency of the Loan, the Loan shall be converted into the currency of the issue price for the Conversion Shares at the official applicable exchange rate published by the Swiss National Bank for the close of the business day of the day before the date of the subscription by the Lender.

"Conversion Shares" shall mean:

¹⁹ **Note:** A valuation cap is often requested by investors to avoid that an investment made at a low valuation is subsequently converted at a disproportionately high valuation, thereby depriving them of participating in the upside that would have otherwise been achieved in light of the early investment, but it is not mandatory. Therefore, the cap would typically be set at a valuation that the loan investors would deem "not excessive" in the Qualified Equity Financing Round and therefore needs to be negotiated. From a startup's perspective, a valuation cap introduces a negotiation element around valuation which is otherwise left out of convertible loan financing. Rarely seen in seed-stage financings but more frequent in later bridge round financings is a minimum valuation/floor, the counter-element of the valuation cap.

²⁰ **Note:** It is more investor-friendly to stipulate that the price is calculated on a fully diluted basis and more startup-friendly if only on an undiluted basis. This needs to be negotiated carefully.

²¹ **Note:** The discount typically correlates with the term of the loans: the longer the term the higher the discount. From a startup perspective, it can make sense to increase the discount over time based on a pre-defined schedule or at least to avoid a high discount if, for whatever reason, the Qualified Equity Financing Round can be closed very shortly after the raising of the Loan so as to reflect the risk premium more precisely. Discounts typically range between 5% and 30%.

²² **Note:** See footnote 19.

²³ **Note:** See footnote 20.

²⁴ **Note:** See footnote 21.

²⁵ **Note:** This amount can be any pre-agreed amount, including, for example, the post-money valuation of the Borrower after the last Non-Qualified Equity Financing Round. Many investors would argue that in this scenario, the conversion price should be quite attractive as the startup failed to do a Qualified Equity Financing Round.

²⁶ **Note:** See footnote 20.

²⁷ **Note:** As an alternative, it could be provided that, with respect to a Maturity Conversion, the price per Conversion Share shall be obtained by dividing the post-money valuation of the Borrower after the last Non-Qualified Equity Financing Round by the Borrower's [issued and outstanding Shares/Fully Diluted Shares] immediately prior to the Maturity Conversion. Many investors would argue that in this scenario, the conversion price should be quite attractive as the startup failed to do a Qualified Equity Financing Round.

- a) in the case of an Equity Financing Conversion, shares of the most senior class of equity securities of the Borrower issued in the relevant Qualified Equity Financing Round;
- b) in the case of a Change of Control or a Maturity Conversion, shares of the most senior class of equity securities of the Borrower at such time.

In case of fractions, the resulting number of shares shall be rounded down to the next full number and any remaining amount shall be deemed waived by the relevant Lender, unless a Lender agrees to have the number of shares being rounded up and to compensate the difference in cash.

"Disbursement Date" shall have the meaning given to it in Section 4.

"Fair Market Value" shall mean the fair market value agreed between the relevant Lender and the Borrower, or if the Lender cannot agree with the Borrower within 30 days of the initial offer that was shared, the fair market value determined by a mutually acceptable independent auditor. If such independent expert refuses or is not able to act or if the Parties cannot agree upon such independent expert within an additional 30 day period, an experienced national or international accounting firm shall be appointed by the President of the [*specify Canton*] Chamber of Commerce who shall determine the fair market value on the basis of a valuation of the Borrower 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 Borrower or any block premium or minority discount. 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 expert will have the role and powers of an arbitrator within the meaning of art. 189 of the Swiss Code of Civil Procedure (CPC). The expert shall determine the Fair Market Value as soon as possible, but no later than 45 calendar days from the date of her appointment. The expert shall apportion its costs between the Parties *ex aequo et bono*, taking into account the conduct of the relevant Parties during the proceedings and the difference between the amount retained in its determination and the amount advanced by each of the Parties.

"FinSA" shall mean the Swiss Financial Services Act of 15 June 2018, as amended.

"Fully Diluted Shares" shall mean all issued shares of the Borrower together with all option or conversion rights of any kind (whether vested or not and including any authorized but unallocated rights) on an as-converted-basis (but excluding the effects of the conversion rights granted under this Agreement or any other agreement under the CLA Round).

"Lender" shall have the meaning given to it on the cover page of this Agreement.

"Loan" shall have the meaning given to it in Section 2.

"Loan Balance" shall mean the Principal Amount together with accrued interest and all other amounts accrued or outstanding under this Agreement, if any, at the relevant calculation date. For the purposes of a Conversion, interest, if any, shall accrue and be calculated up to the mutually agreed cut-off date; in the absence of such cut-off date, interest shall accrue and be calculated up to the date on which the relevant subscription form is signed by the Lender.

"Maturity Conversion" shall mean a conversion of the Loan upon the Maturity Date pursuant to Section [7.1/7.2].

"Maturity Date" shall have the meaning given to it in Section 5.

["**Maximum Investment Amount**"²⁸ shall mean the aggregate principal amount of CHF [amount].]

"**Party/Parties**" shall have the meaning given to it/them on the cover page of this Agreement.

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

"**Principal Amount**" shall have the meaning given to it in Section 2.

"**Qualified Equity Financing Round**" shall mean the next *bona fide* share capital increase during which new shares of the Borrower are issued against cash in an overall amount equal to or exceeding CHF [amount]²⁹ (including agio) to existing or new investors, [including / excluding] any and all indebtedness that is converted into Conversion Shares (such as the Loan or other loans taken by the Company under the CLA Round).

"**Relevant Subordination Amount**" shall have the meaning given to it in Section 8.

"**SBA**" shall mean the Swiss Banking Act of 8 November 1934, as amended.

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

"**Share(s)**" shall mean any share(s) of the Borrower as issued from time to time, regardless of their class.

²⁸ **Note:** Only to be included if additional amounts are intended to be raised from the Lender or other lenders.

²⁹ **Note:** In order to avoid that the loans are converted in a too small round (jeopardizing the sustainable financing/future of the Company), it is commonplace to agree on a minimum cash amount that needs to be raised in such equity round. This amount needs to be determined on a case-by-case basis. It should not be too high (from a Company's perspective, because otherwise the loans would eventually become due and repayable, subject to the subordination, and from an investor's perspective, because otherwise the Company could avoid the Conversion by engaging in a series of smaller financing round), but it should also not be too low (in order to avoid Conversion upon a financing round which does not render sufficient capital to the Company). The amount needs to be defined in light of the financing strategy of the Company.

Consent Declaration]³⁰

To: [Borrower], its shareholders and the lender(s) under any convertible loan agreement(s) with [Borrower] dated on or around [date] concluded as part of the CLA Round

Place, date

RE: Shareholder Consent Declaration

Dear Madam or Sir:

I am/We are a shareholder of [Borrower], [address] (the “**Borrower**”) and I/we have taken note of the convertible loan agreement(s) the lender(s) are to enter or already have entered into with the Borrower (the “**Convertible Loan Agreement(s)**”) ³¹. Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the Convertible Loan Agreement(s).

In this context, I/we hereby:

- a) acknowledge that I/we have been offered to participate in the CLA Round by granting a convertible loan to the Borrower at the terms as per the Convertible Loan Agreement(s) to honor my/our pre-emptive subscription rights (*Vorwegzeichnungsrechte*);
- b) waive any priority subscription rights with regard to the Convertible Loan Agreement(s) (*Vorwegzeichnungsrecht*) and any subscription rights with regard to any shares in the Borrower to be issued to the lender(s) under the Convertible Loan Agreement(s) (*Bezugsrecht*) to the extent necessary;
- c) acknowledge, approve and ratify the execution of the Convertible Loan Agreement(s) and the discharge of the obligations of the Borrower thereunder, including the issuance of any share in the Borrower, with the rights and preferences, if any, as set forth in the Convertible Loan Agreement(s);
- d) undertake to the lender(s) under the Convertible Loan Agreement(s) to vote my/our shares in the Borrower in favor of the capital increase to the extent necessary for the issuance of new shares in the Borrower in favor of the lender(s);
- e) undertake to the lender(s) under the Convertible Loan Agreement(s) to adopt and/or procure the adoption of the necessary resolutions of the shareholders of the Borrower to effect the conversion of the loans in accordance with the terms of the relevant Convertible Loan Agreement.

³⁰ **Note:** Only necessary if the Section dealing with the undertaking to obtain additional shareholder consent is actually included.

³¹ **Note:** To be adjusted if there are going to be several lenders in parallel.

I further undertake to transfer my obligations pursuant to this Shareholder Consent Declaration to any transferee of shares in the Borrower held by me as of the date hereof.

This Shareholder Consent Declaration shall in all respects be governed by and construed in accordance with Swiss law to the exclusion of its private international law provisions and international treaties.

Any dispute, controversy or claim arising out of, or in relation to, this Shareholder Consent Declaration, including the validity, invalidity, breach, or termination thereof, shall be subject to the exclusive jurisdiction of the courts of the Canton of [...], the venue being [...], Switzerland.

Sincerely yours,

Name of Shareholder: _____

Signatures of Shareholder:

Name:

Title:

Name:

Title: