

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
(LONG 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 long-form version of the CLA Model Documentation and as such aims to reflect customary terms typically agreed upon for convertible loans granted by institutional investors. Amongst other relevant assumptions underlying the model documentation, it assumes that:

- the investment is made as a seed/early-stage investment by an institutional 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 shorter version (CLA Model Documentation (short 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", as included in this document in brackets, 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 5). 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. INTEREST⁷

[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 often 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 or payable under the convertible loans may be subject to Swiss withholding tax if the number of 10 or 20 lenders, as the case may be, is exceeded. Investors with tax residence in Switzerland can generally 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.

Interest accrued on the Principal Amount shall become due by the Borrower to the Lender on (i) the Maturity Date⁸, (ii) the date a Default Notice is received by the Borrower, or (iii) the date on which repayment is otherwise mandated under this Agreement, whichever occurs earlier, always without prejudice to the subordination pursuant to Section 14. For the avoidance of doubt, in the event of a Conversion, accrued interest will be added to the Principal Amounts as further set forth in Section 10.

The Borrower is entitled to deduct from the Loan Balance any withholding tax paid or payable to the Federal tax administration regarding such interest.]

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 conditions precedent set forth in Section 5 are not fulfilled or waived, the Principal Amount shall be disbursed within [5] calendar days after the date such conditions have been fulfilled or waived].⁹

5. CONDITIONS PRECEDENT¹⁰

The disbursement of the Principal Amount by the Lender shall be subject to the satisfaction or prior waiver by the Lender [or the Lender Majority]¹¹ of the following conditions precedent:

- (a) shareholder consents from [all]¹² shareholders of the Borrower as set out in **Annex 2** or otherwise;
- (b) [shall not exceed the Maximum Investment Amount as part of this particular CLA Round;]¹³
- (c) [a minimum of [CHF] [*amount*] in aggregate Principal Amount(s) is committed by lenders (including the Lender) as part of this CLA Round;]

⁸ **Note:** This needs to be removed if, on the Maturity Date, a Conversion is mandatory (in contrast to the current draft, see Section 10.2.2).

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:** In simple pre-seed/seed stage convertible loan rounds, investors do not usually conduct a formal due diligence and, therefore, do not typically request conditions precedent. However, if a VC or CVC invests, conditions precedent may come into play. The list here is for illustrative purposes only and primarily addresses needs an institutional investor would typically have.

¹¹ **Note:** Only to be included if there are going to be several lenders in parallel.

¹² **Note:** Since convertible loans are usually not funded via conditional share capital or a capital band (mainly because the category and features of the Conversion Shares in case of a Qualified Equity 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(s). 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).

¹³ **Note:** Only to be included if there are going to be several lenders in parallel.

- (d) [approval of investment by the Lender's investment committee;]
- (e) [satisfactory completion of financial and legal due diligence by the Lender;]
- (f) [the absence of any [material] breach by the Borrower of any provision of this Agreement;]
- (g) [*specify additional conditions precedent as appropriate, including based on due diligence findings*].

If not all conditions precedent set forth above are satisfied or waived by the Lender [or the Lender Majority] until the date which is [two] months from the date of this Agreement, this Agreement shall be deemed terminated automatically with immediate effect except that the confidentiality undertakings in Section 15.2 shall remain in full force and effect for a period of [3-5] years from the date of this Agreement.

6. PURPOSE

Unless otherwise provided for in this Agreement, the Loan may be used for the financing of general corporate purposes of the Borrower, including product and technology development, operations, sales and marketing, management expenses, and salaries[, in accordance with its business plan].

7. TERM AND REPAYMENT

The Loan granted hereunder is granted for a fixed period of time until [end date] (the “**Maturity Date**”).¹⁴

[Unless otherwise provided in this Agreement, t]/[T]he 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 14.¹⁵

The Loan Balance may not be prepaid or repaid by the Borrower without the consent of the Lender [or the Lender Majority] 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.]¹⁶

8. EVENTS OF DEFAULT

If any of the events listed hereafter (each an “**Event of Default**”) occurs, the Lender [or the Lender Majority]¹⁷ may notify the Borrower and declare that all or part of the Loan Balance becomes due and payable within [30] calendar days of receipt of such notice by the Borrower,

¹⁴ **Note:** Convertible loans are usually meant to bridge the period required until the next equity round. The term is set accordingly.

¹⁵ **Note:** Delete this paragraph if this Agreement provides for a mandatory conversion on the Maturity Date pursuant to Section 10.1.

¹⁶ **Note:** Only to be included if there are going to be several lenders in parallel.

¹⁷ **Note:** Only to be included if there are going to be several lenders in parallel.

subject only to any suspensive effect resulting from the subordination pursuant to Section 14 (the “**Default Notice**”) ¹⁸:

- (a) Illiquidity: the Borrower is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts;
- (b) Insolvency: the Borrower is declared bankrupt by a court, applies for bankruptcy (*Konkurs*) or reorganization (*Nachlassstundung*), or has a resolution passed for its winding-up, a creditor files a petition for bankruptcy (*Fortsetzungsbegehren*);
- (c) Breach of Representations and Warranties: any representation or warranty set forth in Section 12 proves to have been inaccurate or misleading in any material respect and the consequences of such breach are not fully cured within [30] calendar days from the date of receipt by the Borrower of a respective written notice from the Lender;
- (d) Breach of Covenant: the Borrower breaches any of the covenants set forth in Section 13 and the consequences of such breach are not fully cured within [30] calendar days from the date of receipt by the Borrower of a respective written notice from the Lender;
- (e) [*specify additional events as appropriate*].

9. SECURITY

The Loan shall not be secured. ¹⁹

10. CONVERSION

10.1 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] ²⁰, 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.

10.2 Voluntary Conversion Events

10.2.1 [Upon a Non-Qualified Equity Financing Round] ²¹

If prior to the Maturity Date no Qualified Equity Financing Round but instead a Non-Qualified Equity Financing Round has taken place, the Loan Balance may be converted into Conversion Shares upon such Non-Qualified Equity Financing Round if such Conversion is requested by

¹⁸ **Note:** As an alternative or further possibility for the Lender, the convertible loan agreement could provide that, upon the occurrence of an Event of Default, the Lender [or the Lender Majority] may request the Conversion within a certain period of the respective Default Notice, in which case the number of Conversion Shares issuable upon such Conversion needs to be determined.

¹⁹ **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.

²⁰ **Note:** Conversion upon maturity can be mandatory or voluntary. To be negotiated on a case-by-case basis.

²¹ **Note:** Especially institutional investors would typically expect to have a voluntary conversion right in case of a Non-Qualified Equity Financing Round, to keep more flexibility. This is, however, to be negotiated on a case-by-case basis.

the Lender [or the Lender Majority]²² within [10] calendar days from the date of the respective notice of the Borrower.

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

10.2.2 [Upon Maturity]²³

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 [or the Lender Majority]²⁴ 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.

10.3 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 10.1, 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 10, 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.²⁵

The Borrower shall procure, to the extent legally permissible, that the rights of the Lender under this Section 10 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 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

²² **Note:** Only to be included if there are going to be several lenders in parallel.

²³ **Note:** See footnote 20 and amend accordingly.

²⁴ **Note:** Only to be included if there are going to be several lenders in parallel.

²⁵ **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 "light" or "large" template, as appropriate.

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.

11. [PRO RATA SUBSCRIPTION RIGHT]²⁶

In addition to the rights for Conversion, the Borrower hereby grants to the Lender a right to participate in the next Qualified Equity Financing Round before the Maturity Date at the price and on the terms such shares are offered to other investors in such Qualified Equity Financing Round (the “Pro Rata Right”).

The Pro Rata Right shall entitle the Lender to subscribe for shares of the most senior class of equity securities of the Borrower issued in the relevant Qualified Equity Financing Round. The number to which the Lender is entitled to subscribe as part of its Pro Rata Right shall be determined by the ratio of

- (a) the number of shares in the Borrower held by the Lender, assuming full conversion of the Loan Balance in accordance with this Agreement, to
- (b) the total number of [issued and outstanding Shares / Fully Diluted Shares] immediately prior to the Qualified Equity Financing Round.

The Borrower shall give the lenders participating in the CLA Round a written notice of its bona fide intention to issue such equity securities, describing the type of equity securities and the price and the general terms upon which the Borrower proposes to issue such equity securities. If the Lender wishes to exercise the Pro Rata Right, it shall notify the Borrower in writing within [10] calendar days from the date of receipt of such notice, failing which its Pro Rata Right shall automatically expire.

12. REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of the Borrower

The Borrower, as per the date of this Agreement and the Disbursement Date, hereby represents and warrants to the Lender as follows:

- (a) the Borrower is a company duly incorporated and validly existing under the laws of Switzerland, and has full power, authority and legal right to own its assets, to carry on its business as it is being conducted and to enter into and perform its obligations under this Agreement;
- (b) the execution, delivery and performance by the Borrower of this Agreement (i) have been or will be duly authorized by all necessary corporate decisions and other

²⁶ **Note:** This is an investor-friendly clause allowing lenders to subscribe for new shares beyond the shares they get as a result of the Conversion. In other words, they get a right to participate in the Qualified Equity Financing Round at the same terms on the basis of their equity stake acquired through the Conversion. A startup should carefully assess if it is ready to grant this right because it reduces the flexibility to onboard new investors.

measures, (ii) require no governmental or regulatory action, authorization or approval, (iii) do not and will not violate or conflict with the provisions of the articles of incorporation or by-laws of the Borrower, and (iv) do not and will not result in a breach of or constitute a default under any agreement or obligation applicable to the Borrower or by which the Borrower is bound;

- (c) the obligations of the Borrower under this Agreement constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms;
- (d) no litigation, arbitration or administrative proceeding before any court, arbitrator or governmental or other authority are currently pending or threatened against the Borrower or any of its assets (i) which may prevent or prohibit the execution or performance by the Borrower of this Agreement, (ii) which might have a materially adverse effect on the Borrower's business, property or financial condition, or (iii) which might have an adverse effect on the Borrower's ability to perform and observe its obligations under this Agreement;
- (e) to the best of its knowledge, the Borrower owns or possesses (or can obtain on commercially reasonable terms) sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes and other intellectual property rights necessary for its business as now conducted, without any conflict with, or infringement of the rights of, others;
- (f) [*specify additional representations as appropriate, including based on due diligence findings*].

12.2 Representations and Warranties of the Lender

The Lender, as per the date of this Agreement, hereby represents and warrants to the Borrower as follows:

- (a) the Lender is entering into this Agreement for its own account for investment, not as a nominee or agent;
- (b) the Lender [qualifies as Swiss Qualifying Bank Creditor]/[qualifies as one "creditor" and is not a Swiss Qualifying Bank Creditor] for Swiss Withholding Tax purposes according to the Swiss Guidelines;
- (c) the Lender has such knowledge and experience in financial and business matters that such Lender is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing such Lender's financial condition and is able to bear the economic risk of such investment for an indefinite period of time;]²⁷
- (d) [the Lender has not been formed solely for the purpose of making this investment and is granting the Loan hereunder for such Lender's own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution

²⁷ **Note:** This representation may help address potential regulatory requirements in foreign jurisdictions.

thereof, and the Lender has no present intention of selling, granting any participation in, or otherwise distributing the same;]²⁸

- (e) [the Lender is not a Sanctions Target and has not taken any actions nor entered into or conducted business activities or other dealings that would be subject to Sanctions, including, without limitation, any transactions, business dealings or contracts with or involving any Sanctioned Jurisdiction or any Sanctions Target.]

13. COVENANTS

From the date of this Agreement for as long as any amount is outstanding under this Agreement, the Borrower hereby covenants and agrees vis-à-vis the Lender, whether directly or through a subsidiary, that it:

- (a) [shall not exceed the Maximum Investment Amount as part of this particular CLA Round;]²⁹
- (b) [shall use best efforts³⁰ to obtain consent in respect of this Agreement by way of soliciting separate consent declarations as set out in Annex 2 until [date] from all³¹ shareholders;]

[if the Borrower provides terms to one or more current or future convertible loan investors that are more favorable to such investor(s) than the terms set forth in this Agreement, the Borrower hereby covenants and agrees vis-à-vis the Lender that such more favorable terms shall equally apply to the Lender and that this Agreement shall be automatically construed and interpreted as if it contained such more favorable terms, unless such equal treatment is explicitly waived by the Lender;]

OR (more Company-friendly)

[if the Borrower agrees with any other lender participating in the CLA Round on the amendment of terms regarding the CLA Round that are [substantially] more favorable for the respective lender than the ones agreed with the Lender, the Borrower hereby covenants and agrees vis-à-vis the Lender that such more favorable terms shall equally apply to the Lender and that this Agreement shall be automatically construed and interpreted as if it contained such more favorable terms, unless such equal treatment is explicitly waived by the Lender;]

- (c) shall not grant, create or permit to subsist any security interest, including personal securities (*Personalsicherheiten*) such as a surety and guarantee, over any of its present or future assets or revenues, except for security interests arising by operation of law or in the ordinary course of business;
- (d) shall not request the distribution of dividends or other direct or indirect distributions to shareholders;

²⁸ **Note:** This representation may help address potential regulatory requirements in foreign jurisdictions.

²⁹ **Note:** Only to be included if there are going to be several lenders in parallel.

³⁰ **Note:** Only be included if not yet mentioned in the conditions precedent above.

³¹ **Note:** See footnote 12.

- (e) [shall not repay any loans or similar financial indebtedness borrowed from its shareholders or their related parties (including Affiliates);]
- (f) shall, within [90] calendar days of the end of each financial year, deliver to the Lender [audited / unaudited] financial statements, all prepared in accordance with applicable law;
- (g) [shall, within [30] calendar days of the end of each financial [semester/quarter], deliver to the Lender unaudited interim financial statements;]
- (h) shall deliver to the Lender, forthwith, any additional information reasonably requested by a Lender in order to (i) account for the investment made in the Borrower 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 or with regard to non-financial reporting obligations;
- (i) shall promptly notify the Lender if an Event of Default has occurred;
- (j) shall promptly notify the Lender of any upcoming Qualified Equity Financing Round and Non-Qualified Equity Financing Round;
- (k) [shall comply with all material laws and regulations applicable to the Borrower in all material respects;]
- (l) [shall remain in compliance with the rule that the aggregate number of Lenders, other than Swiss banks as defined in the SBA or, as regards foreign banks, the relevant banking laws in force in their jurisdiction of incorporation, must not at any time (i) under this Agreement or any other convertible loan agreement entered into by the Borrower under similar terms, exceed 10 and (ii) under all outstanding written debt instruments relevant for classification as a cash debenture (*obligation de caisse*), such as loans, notes, facilities and/or private placements, exceed 20, it being understood that the Borrower shall not be deemed in breach of this covenant if the number of 10, respectively 20, is exceeded solely by virtue of the Lender's non-compliance with its representation under Section 12.2(b);]
- (m) [*consider additional covenants as appropriate*].

14. 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.³²

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,

³² **Note:** Convertible loans are typically subordinated in the sense of art. 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.

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]³³ 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.

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.

³³ **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.

15. MISCELLANEOUS

15.1 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 Parties may exercise and enforce their rights hereunder individually in accordance with this Agreement, and the non-performance by a Party shall not relieve any other Party from performing its obligations under this Agreement, nor shall the non-defaulting Parties 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 pursuant to art. 530 et seq. CO.

[The Loan together with other loans issued in connection with the CLA Round do not form, and they shall not be deemed to constitute, a bond (*Anleiheobligation*) pursuant to art. 3 lit. a no. 7 FinSA and/or art. 1157 et seq. CO.]³⁴

15.2 Confidentiality

Each Party shall, and shall procure that its Affiliates, directors, officers, employees and any other representatives will, keep strictly confidential, not exploit and not disclose, whether publicly or privately, to any person, in whole or in part, orally, in writing or by electronic or other means, any and all information (whether available orally, in writing or in electronic format) (i) received or obtained in connection with the negotiation and execution of this Agreement and the consummation of the transactions thereby contemplated which relates to the other Party or its Affiliates, the provisions or the subject matter of this Agreement or any document referred to herein and any claim or potential claim hereunder or the negotiations relating to this Agreement or any documents referred to herein, this Agreement or its contents, and (ii) in relation to the Borrower, its business and affairs (all such information collectively the “**Confidential Information**”).

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).

Nothing in this Section 15.2 shall prevent any Party or its Affiliates from making an announcement or from disclosing any information (publicly or privately) if and to the extent that:

- (a) such Party or Affiliate is required to make such announcement or disclosure by applicable law, any court of competent jurisdiction or any competent governmental authority or the rules of any stock exchange to which such Party or any of its Affiliates is subject; provided that, if a Party or Affiliate is so required to make any announcement or disclosure other than to a tax authority, the relevant Party shall promptly notify the other Party, where practicable and lawful to do so, before the announcement or disclosure is made

³⁴ **Note:** Only to be included if there are going to be several lenders in parallel.

and shall, where practicable and lawful to do so, co-operate with the other Party regarding the timing and content of such announcement or disclosure or any action which the other Party may reasonably elect to take to challenge the validity of such requirement;

- (b) the Lender is reporting to its investors and/or any of its Affiliates on information pertaining to the Borrower and the investment made or to be made in the Borrower in accordance with its reporting obligations under its fund investment documents or to the extent required for legal, tax, audit or regulatory purposes;
- (c) the information disclosed was lawfully in the possession of the disclosing Party or any of its Affiliates or representatives (in either case as evidenced by written records) without any obligation of secrecy before its being received or held;
- (d) to any purchaser or investor or (in the reasonable opinion of the disclosing Party) prospective purchaser or investor (the "**Prospective Purchaser**") through customary due diligence access or otherwise, provided that where such disclosure is to be made by a Party, such Party shall limit the amount of information regarding the respective other Party and its Affiliates that is disclosed to the Prospective Purchaser to what the Prospective Purchaser strictly needs to know in order to evaluate such purchase or investment and shall ensure that the Prospective Purchaser and its directors, officers, employees, representatives or advisors to whom such information is disclosed are bound by obligations of confidentiality;
- (e) the other Party has provided prior written consent to such announcement or disclosure;
- (f) such announcement or disclosure is required to enable such Party to enforce its rights under this Agreement or for the purpose of any judicial proceedings;
- (g) the information is disclosed on a strictly confidential basis by a Party to its professional advisers, auditors, bankers, rating agencies or insurers; or
- (h) the information is in or comes into the public domain other than by reason of a breach of any obligation in this Section 15.2 by the Party seeking to rely on this Section.

In the event this Agreement is terminated, each Party may request the respective other Party to, and to procure that its Affiliates and their respective directors, officers, employees or other representatives will, promptly (and in no event later than 10 (ten) business days after such request) return or destroy all copies of documents and information furnished by the other Party in connection with the transactions contemplated by this Agreement, except for (i) one (1) copy that may be retained by the relevant Party and by each adviser to each Party hereto for the files which they are required to keep by applicable law or in their capacity as professional advisers, (ii) copies of any computer records or files containing such information which have been created as a result of archiving or back-up procedures for legal, regulatory or internal compliance or governance purposes, or (iii) to the extent that the information is contained in the minutes or supporting papers relating to any board or committee meeting of the relevant Party and which, in any case of subparagraphs (i), (ii) and (iii), shall be kept strictly confidential on the terms of this Agreement.

15.3 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 [except that the Lender is entitled to assign this Agreement in whole to an Affiliate with the prior consent of the Borrower, which consent may not be withheld or delayed, unless such assignment or transfer would lead to more than one “creditor” under this Agreement that is not a Swiss Qualifying Bank Creditor].

15.4 Costs and Expenses

Each Party shall bear its own costs and expenses arising out of or incurred, and any taxes and fees imposed on it, in connection with this Agreement and all transactions contemplated hereby.

15.5 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.

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.

15.6 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.

15.7 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.

15.8 Amendments

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

OR

[The Parties acknowledge and agree that this Agreement may be amended by an instrument signed or a resolution approved by the Borrower and the Lender Majority (whether such majority includes the Lender or not), 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 lender

under the CLA Round nor impose any greater liability or any more onerous obligation than those contained in this Agreement on the other lenders under the CLA Round who do not sign such modification or amendment.]³⁵

15.9 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.

15.10 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.

16. 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]

³⁵ **Note:** Only to be included if there are going to be several lenders in parallel.

[Lender 1]

Signature(s) _____

Names: _____

Titles: _____

[Borrower]

[Borrower]

Signature(s): _____

Names: _____

Titles: _____

List of Annexes

- Annex 1: Defined Terms
- Annex 2: Consent Declaration

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 15.2.

"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 Non-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]³⁶ by the Borrower's [issued and outstanding Shares/Fully Diluted Shares]³⁷ immediately prior to the relevant Qualified Equity Financing Round [or Non-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 [or Non-Qualified Equity Financing Round] if closed within [3 / 4 / 5 / 6] months from the Disbursement Date of the Loan or [rate]% if completed thereafter;³⁸
- 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]³⁹ by the Borrower's [issued and outstanding Shares / Fully Diluted Shares]⁴⁰ 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, and⁴¹
- 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]]⁴² by the Borrower's [issued and outstanding Shares / Fully Diluted Shares]⁴³ immediately prior to the Maturity Conversion,⁴⁴
- 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:

³⁶ **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.

³⁷ **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.

³⁸ **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%.

³⁹ **Note:** See footnote 38.

⁴⁰ **Note:** See footnote 37.

⁴¹ **Note:** See footnote 38.

⁴² **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.

⁴³ **Note:** See footnote 37.

⁴⁴ **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 [or Non-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.

"**DEBA**" shall mean the Swiss Debt Enforcement and Bankruptcy Act of 11 April 1889, as amended.

"**Default Notice**" shall have the meaning given to it in Section 8.

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

"**Equity Financing Conversion**" shall mean a conversion of the Loan in the context of a Qualified Equity Financing Round pursuant to Section 10.1 [or in the context of a Non-Qualified Equity Financing Round 10.2].

"**Event of Default**" shall have the meaning given to it in Section 8.

"**Fair Market Value**" shall mean the fair market value agreed between the relevant Lender [or the Lender Majority] and the Borrower, or if the Lender [or the Lender Majority] 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).

"**Investment Securities**" shall have the meaning given to it in Section 130.

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

["**Lender Majority**"⁴⁵ shall mean one or several lenders under the CLA Round holding in aggregate more than [50-75]% in nominal value of the principal amounts of the loans then issued and outstanding under the CLA Round.]

"**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 [10.1/10.2.2].

"**Maturity Date**" shall have the meaning given to it in Section 7.

["**Maximum Investment Amount**"⁴⁶ shall mean the aggregate principal amount of CHF [*amount*].]

["**Non-Qualified Equity Financing Round**" shall mean any [next / any] *bona fide* share capital increase during which new shares of the Borrower are issued against cash to existing or new investors with the main purposes of financing the Borrower and which does not qualify as Qualified Equity Financing Round.]

"**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.

["**Pro Rata Right**" shall have the meaning given to it in Section 11.]

"**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*]⁴⁷ (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 14.

["**Sanctioned Jurisdictions**" shall mean any country or region that is subject to Sanctions under a Sanctions List.]

["**Sanctions**" shall mean any sanctions being named on a Sanctions List.]

⁴⁵ **Note:** Only to be included if there are going to be several lenders in parallel.

⁴⁶ **Note:** Only to be included if additional amounts are intended to be raised from the Lender or other lenders.

⁴⁷ **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.

["**Sanctions List**" shall mean [any sanctions lists, in each case administered by the United Nations, the European Union, the State Secretariat for Economic Affairs of Switzerland or the Swiss Directorate of International Law.]

["**Sanctions Target**" shall mean each and any person, entity or other party that is (i) governments of a Sanctioned Jurisdiction, (ii) located, domiciled, resident or incorporated in a Sanctioned Jurisdiction, (iii) subject to any sanctions or named on a Sanctions List, or (iv) owned or controlled by persons, entities or other parties referred to in (i) to (iii).]

"**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.

"**Swiss Guidelines**" means the guidelines S-02.123 in relation to inter-bank transactions of 22 September 1986 as issued by the Swiss Federal Tax Administration (*Merkblatt S-02-123 vom 22. September 1986 betreffend Verrechnungssteuer auf Zinsen von Bankguthaben, deren Gläubiger Banken sind (Interbankguthaben)*), S02.130.1 in relation to money market instruments and book claims of April 1999 (*Merkblatt S-02.130.1 vom April 1999 "Geldmarktpapiere und Buchforderungen inländischer Schuldner"*), circular letter No. 34 of 26 July 2011 (1-034-V-2011) in relation to deposits (*Kreisschreiben Nr. 34 "Kundenguthaben" vom 26. Juli 2011*), circular letter No. 15 in relation to bonds and derivative financial instruments as subject matter of taxation of Swiss federal income tax, Swiss Withholding Tax and Swiss Stamp Taxes of 7 February 2007 (*Kreisschreiben Nr. 15 vom 7. Februar 2007 betreffend Obligationen und derivative Finanzinstrumente als Gegenstand der direkten Bundessteuer, der Verrechnungssteuer sowie der Stempelabgaben*) practice note 010-DVS-2019 dated 5 February 2019 published by the Swiss Federal Tax Administration regarding Swiss Withholding Tax in the Group (*Mitteilung-010-DVS-2019-d vom 5. Februar 2019 - Verrechnungssteuer: Guthaben im Konzern*), circular letter No. 46 of 24 July 2019 (1-046-VS-2019) in relation to syndicated credit facilities, promissory note loans, bills of exchange and subparticipations (*Kreisschreiben Nr. 46 vom 24. Juli 2019 betreffend "Steuerliche Behandlung von Konsortialdarlehen, Schuldscheindarlehen, Wechseln und Unterbeteiligungen"*), and circular letter No. 47 of 25 July 2019 (1-047-V-2019) in relation to bonds (*Kreisschreiben Nr. 47 vom 25. Juli 2019 betreffend "Obligationen"*), in each case as issued, and as amended or replaced from time to time, by the Swiss Federal Tax Administration or as substituted or superseded and overruled by any law, statute, ordinance, court decision, regulation or the like as in force from time to time.

"**Swiss Qualifying Bank Creditor**" means any "bank" as defined in the Swiss Federal Code for Banks and Savings Banks dated 8 November 1934 (*Bundesgesetz über die Banken und Sparkassen*) or a person or entity which effectively conducts banking activities as principal purpose with its own infrastructure and staff and which has a banking license in full force and effect issued in accordance with the banking laws in force in the jurisdiction of its incorporation, or if acting through a branch, issued in accordance with the banking laws in the jurisdiction of such branch, all in accordance with the Swiss Guidelines.

"**Swiss Withholding Tax**" means taxes imposed under the Swiss Federal Act on the Withholding Tax of October 13, 1965 (*Bundesgesetz über die Verrechnungssteuer*), together with the related ordinances, regulations and Swiss Guidelines, all as amended and applicable from time to time.

Consent Declaration]⁴⁸

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)**”) ⁴⁹. 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.

⁴⁸ **Note:** Only necessary if the Section dealing with the undertaking to obtain additional shareholder consent is actually included.

⁴⁹ **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: