

This document does not constitute legal advice and is not meant to serve as a recommended form suitable for each and every seed and/or early stage capital investment by business angels and similar 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 seed/early stage capital investment and should always satisfy themselves with their advisors and counsel of the commercial and legal implications of its use.

SHAREHOLDERS AGREEMENT

dated as of [date]

relating to

[the COMPANY]

made by and among

[INVESTORS]

and

[EXISTING SHAREHOLDERS]

and

[the COMPANY]

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Purpose

The purpose of this model documentation "light" for start-up investments (**Model Documentation "light"**) is to facilitate and increase the efficiency of both negotiations for as well as the documentation of start-up investments in Switzerland by business angels and similar start-up investors alike. The Model Documentation "light" is subject to Swiss law. While the Model Documentation "light" is based on SECA's regular model documentation for venture capital investments by institutional investors (see www.seca.ch/templates/templates/vc-model-documentation.aspx) and is fully compatible with the latter for larger follow-on investments with institutional investors, it does not take into account or reflect international documentation standards and concepts commonly expected by institutional investors for larger investments. Rather, the Model Documentation "light" aims at establishing a short and pragmatic yet robust model documentation primarily for smaller start-up investments by non-institutional investors that entails less complexity and requires less sophistication than SECA's regular model documentation – thereby complementing rather than substituting SECA's existing regular VC/PE model documentation.

Documents

The Model Documentation "light" comprises the following documents:

- Term Sheet
- Investment Agreement
- Shareholders Agreement

and certain important ancillary documents, such as Articles of Incorporation (*Statuten; statuts*), Board Regulations (*Organisationsreglement; règlement d'organisation*) and Cap Table.

Working Group

In order to 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. For that purpose, the SECA Legal & Tax Chapter invited two practitioners particularly active in this market segment:

- Beat Speck, attorney-at-law, civil law notary and partner at Wenger & Vieli AG in Zug/Zurich, and
- Ion Eglin, attorney-at-law, civil law notary and partner at Bratschi AG in Zug/Zurich

while SECA's Legal & Tax Chapter was represented by one of its members,

- Beat Kühni, attorney-at-law and partner at Lenz & Staehelin, Zurich/Geneva.

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 Model Documentation "light" on a *pro bono* basis for the benefit of the Swiss start-up financing market as a whole.

Scope

The Working Group first had to agree on a number of assumptions. The Model Documentation "light" is oriented towards seed / early stage financing rounds in the range of CHF 0.5m to CHF 2.5m. Amongst other assumptions and qualifications (see footnotes throughout the Model Documentation "light"), it assumes that:

- typical investors in such seed / early stage financing rounds are business angels or similar non-institutional investors,
- the circle of involved parties consists of founders, (passive or active) shareholders and non-institutional investors such as business angels, family offices or similar investors,

- the company is incorporated in Switzerland and organized in the form of a stock corporation (*Aktiengesellschaft, société anonyme*),
- certain key investor rights (such as preferences on exit proceeds) are not meant to be replicated in the constitutive corporate documents of the company (*i.e.*, the investors will be satisfied with purely contractual preferences and no different classes of shares shall be created in the articles of incorporation of the company) at this early stage of the company,
- further financing rounds will take place, whereby the Model Documentation "light" will be replaced by a more sophisticated version such as SECA's existing, regular model documentation for institutional investors,
- IPO as one of the preferred exit scenarios for the investors shall not be dealt with at this early stage of the company, and
- transaction costs for the implementation of the investment and post-investment administrative running costs for the company shall generally be kept to a reasonable minimum.

In addition, important commercial terms (such as representations and warranties in the Investment Agreement, control rights on shareholder and board level and non-competition related protections in the Shareholders Agreement) have been included in the Model Documentation "light" as an example only or have been deliberately left blank. Given the principle compatibility of the Model Documentation "light" with SECA's existing regular/full VC/PE model documentation (see www.seca.ch/templates/templates/vc-model-documentation.aspx), users are encouraged to compare provisions dealing with particularly important or sensitive matters with SECA's existing regular VC/PE model documentation that may offer more comprehensive provisions.

Caution

It is upon each party to ensure if and to what extent the Model Documentation "light" is suitable to the transaction at hand. Each transaction has its own particularities and requires a deliberate and careful balance of interests. And for many of the legal issues addressed by the Model Documentation "light", there is more than one valid answer. Accordingly, consult your legal, tax and other advisors to ensure that the Model Documentation "light" fits, and is appropriately adapted to, your specific purpose and reconfirm whether and to what extent the rights and obligations contemplated in the Model Documentation "light" 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 Model Documentation "light" and its provisions. In using or working with the Model Documentation "light", 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 Model Documentation "light" 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, June 2018

SHAREHOLDERS AGREEMENT

dated as of [date]

and entered into by and among

1. Investors

1.1 [name Investor 1], [address], [e-mail] ("Investor 1")

1.2 [name Investor n], [address], [e-mail] ("Investor n")

(Investor 1 and Investor n collectively "Investors"
and individually an "Investor")

2. Existing Shareholders¹

2.1 [name Existing Shareholder 1], [address], [e-mail] ("Existing Shareholder 1")

2.2 [name Existing Shareholder n], [address], [e-mail] ("Existing Shareholder n")

(Existing Shareholder 1 and Existing Shareholder n collectively "Existing Shareholders"
and individually an "Existing Shareholder")

and

3. Company

[name Company], [address], [e-mail] ("Company")

(Investors, Existing Shareholders and Company, collectively "Parties"
and individually a "Party")

¹ **[Note:** Under certain circumstances (such as, for example, if different classes of shares exist or are to be implemented or if different commercial and/or legal terms are being agreed for example for founders as opposed to other shareholders) additional definitions may have to be implemented to replicate each relevant sub-group (e.g., "Founding Shareholders" vs. "Other Shareholders", "Common Shareholders" vs. "Series A Shareholders", etc.).]

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Preamble

- A. The Company is organized in the form of a Swiss stock corporation (*Aktiengesellschaft*; *société anonyme*) registered with the commercial register of the Canton of [seat of Company] under the number [commercial register number] having its registered office at [address], Switzerland. The Company's core business consists of [description of core business] ("**Business**").
- B. Concurrently with this Agreement, the Parties have entered into an investment agreement dated [date] ("**Investment Agreement**") pursuant to which (i) the nominal share capital of the Company shall be increased ("**Capital Increase**") and (ii) the Investors agreed to subscribe for newly issued Investor Shares.
- C. The Parties execute this Agreement to govern their respective rights and obligations as shareholders of the Company and provide for the rules governing the operation of the Company, with a view to maximizing its value for the Shareholders and ultimately achieving an exit for the Shareholders from their investment in the Company.

Based on the foregoing, the Parties agree as follows:

1. DEFINITIONS

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

2. GENERAL UNDERTAKING

Each Shareholder hereby undertakes to (i) generally exercise its powers and voting rights as a Shareholder and (ii) procure that the Director(s) nominated by such Shareholder exercise their powers and voting rights on the Board to the extent legally permissible and compatible with the fiduciary duties of such Director(s), in a manner which is consistent with the terms of this Agreement and to ensure that the provisions of this Agreement are given full effect at all times during the term of this Agreement.

The Company will not physically issue share certificates. Rather, all holdings of Shares will be recorded in the Company's share register. The Cap Table is attached hereto as **Annex 2**.

3. ARTICLES AND BOARD REGULATIONS / ORDER OF PRECEDENCE

The Parties undertake to adopt, implement and maintain the Company's articles of incorporation and board regulations in the form as attached hereto as **Annex 3 ("Articles")** and **Annex 4 ("Board Regulations")**, subject to amendments and modifications resolved from time to time in accordance with this Agreement, the Articles, the Board Regulations and other governing documents of the Company, as amended from time to time.

In the event of any conflict or discrepancy between the provisions of this Agreement and the Articles, the Board Regulations or any other governing documents of the Company, the provisions of this Agreement shall prevail in such a case between and among the Shareholders.

4. BOARD OF DIRECTORS

The Board shall comprise a maximum of [number] Directors. Throughout the term of this Agreement:²

- (a) each Investor³ shall have the right to be represented on the Board by one Director nominated by such Investor from time to time (each an "Investor Director"); and
- (b) the Existing Shareholders shall have the right to be represented on the Board by [number] Director[s] nominated from time to time by simple majority of the voting rights represented by the Existing Shareholders (each an "Existing Shareholder Director").

As at the Effective Date, the initial Investor Director(s) shall be [names], the initial Existing Shareholder Director(s) shall be [names] and the initial Chairman shall be [name].

5. CONTROL / IMPORTANT SHAREHOLDER AND BOARD MATTERS

Each Shareholder undertakes and agrees:

- (a) not to cast an affirmative vote in respect of any of the important shareholder matters specified in Part A of **Annex 5 ("Important Shareholder Matters")**, unless any such Important Shareholder Matter will be approved by at least: (i) [66²/₃%] of shareholder votes and the absolute majority of the then issued share capital of the Company [represented at the relevant General Meeting of Shareholders / issued by the Company] and (ii) [66²/₃%] of shareholder votes of the holders of Investor Shares [represented at the relevant General Meeting of Shareholders]/[issued by the Company], whereby each Share shall entitle its holder to one vote irrespective of the class to which it belongs;⁴ and
- [(b)]⁵ [Alternative 1:] that any affirmative decision with respect to any of the important Board matters specified in Part B of **Annex 5 ("Important Board Matters")** shall require the

² **[Note:** The provision does not require a Party to maintain its current shareholdings at the same level for such Party to retain its nomination rights. In case such nomination right was meant to be linked to a minimum percentage of shareholdings to be maintained to justify a Party's nomination right, corresponding adjustments must be made to this provision (together with consequential changes throughout the Model Documentation "light").]

³ **[Note:** Appropriate consideration should be given to a suitable board composition. Depending on the number of Investors, Investors may have to collectively agree on jointly appointing their Investor Director(s).]

⁴ **[Note:** Due to the absence of different classes of shares in the Company's Articles, this is a purely contractual voting undertaking (i.e., not to cast votes unless the specified majority requirements are being met) and will not affect the corporate validity and binding effect of a corporate resolution taken in breach of the contractual voting undertaking.]

⁵ **[Note:** It has been discussed controversially in the Swiss legal doctrine whether double quorum requirements customarily used in venture capital and private equity related shareholders agreements and board regulations (i.e., to the effect that any affirmative decision with respect to any of the Important Board Matters shall require, besides the consent of the simple majority of the Board members present at the meeting, the consent of [each / at least [number]] Investor Director[s]) is compatible with compulsory Swiss corporate law. In light of a recent decision of the Commercial Court of Zurich – that held that such de facto veto rights of Investor Directors are invalid and non-effective as a matter of Swiss corporate law (as opposed to contract law) – the corporate validity and effectiveness of such customary double quorum requirements may be questionable. While the Working Group disagrees with that precedent case and is of the firm view that suitable double quorum requirements should be held valid and effective (also) as a matter of Swiss corporate law in particular with regard to VC/PE investments, parties to venture capital and private equity related shareholders agreements may wish to avoid legal pitfalls of this nature in respect of most sensitive control related key terms and conditions in the Shareholders Agreement. Accord-

consent of at least [percentage]% of [all elected Directors / the Directors present at the meeting].]⁶

[(b)] [Alternative 2:] to procure that the Director(s) nominated by such Shareholder shall not, subject only to their fiduciary duties, cast an affirmative vote with respect to any of the important Board matters specified in Part B of **Annex 5 ("Important Board Matters")**, unless such Important Board Matter will be approved by (i) the simple majority of the Directors present at the meeting and (ii) [each / at least [number]] Investor Director[s].]⁷

6. INFORMATION RIGHTS

During the term of this Agreement, the Company shall provide each Shareholder by e-mail with (i) [audited] financial statements within [120] days of the end of each financial year and (ii) unaudited quarterly financial statements within [45] days of the end of each fiscal quarter.

In addition, each Investor⁸ shall have the opportunity at its discretion to discuss any issues relating to its investment and the Company at least on a bi-annual basis with the Company, and the Company shall allow (i) consultation on significant issues and (ii) access to the books, records and facilities of the Company at any time upon reasonable advance request to the Board at the costs of the Investor.

ingly, the Model Documentation "light" provides for two alternatives, each with its own distinct pros / cons profile and aiming at reducing or mitigating legal risks resulting from a potential invalidity or ineffectiveness of classical double quorum requirement.]

⁶ *[Note: Alternative 1 reflects a legal "safe harbour" approach but requires that the Investors (usually holding minority stakes in start-up investments) secure a sufficient and potentially over-proportional number of Board seats. As a legal "safe harbour", it is the recommended alternative as long as Investors retain a sufficient number of Board seats to avoid petrifying high approval quorum requirements becoming necessary to ensure co-control of Investor Directors (note: petrifying high approval requirements must be avoided as these, depending on the circumstances of a given case, also risk to be held invalid as a matter of compulsory Swiss corporate law).]*

⁷ *[Note: Alternative 2 reflects a purely contractual and indirect voting undertaking (i.e., to procure that Directors nominated by the Shareholder abstain from casting affirmative votes unless the specified majority requirements are being met). As such, it will not affect or set aside the corporate validity and binding effect of a corporate resolution taken in breach of the contractual voting undertaking. In addition, any such indirect voting undertaking may expose a Shareholder to increased risks of being subject to corporate responsibility as de facto corporate body of the Company and is subject to compulsory fiduciary duties of Directors. While the implementation of this alternative will therefore require careful deliberation and consideration in any given case, alternative 2 has the advantage of being consistent with customary market practice, meeting Investor expectations as to their co-control rights and of not requiring over-proportionate Investor board representation.]*

⁸ *[Note: The scope of, and access to, information will vary depending on the information needs of the particular Investors. Corresponding adjustments to this section may be necessary to reflect such needs.]*

7. PREFERENCES⁹ / ANTI-DILUTION

7.1 Dividend¹⁰ / Liquidation Preferences

If the General Meeting of Shareholders resolves to declare a dividend or other distribution ("**Dividend**"), such Dividend, or in the event a Liquidation occurs, the proceeds resulting from such Liquidation, shall be allocated to the holders of Shares in the following order of precedence ("**Dividend Preference**" or "**Liquidation Preference**", as the case may be): (i) in **first priority** to the holders of Investor Shares *pro rata* to their holdings in the class of Investor Shares up to the Preference Amount and (ii) in **second priority**, if and to the extent the Preference Amount has been fully paid, to all holders of Investor Shares and Common Shares *pro rata* to their respective aggregate holdings of Shares in the then issued share capital of the Company on an as-converted basis.

Each holder of Common Shares hereby irrevocably undertakes, in favor of the holders of Investor Shares, to execute all documents or instruments and to take all required actions and measures to comply with and (to the extent not yet effected) effect the above Dividend Preference and Liquidation Preference[, and each holder of Common Shares hereby irrevocably assigns to each holder of higher ranking Investor Shares *pro rata* to their holdings of Investor Shares, to the extent required to give effect to the above Dividend Preference as between and among the Common Shareholders and holders of Investor Shares, its rights *vis-à-vis* the Company to receive Dividends and Liquidation proceeds, and each holder of Investor Shares hereby accepts such assignment. The Company hereby acknowledges its notification of such assignment].¹¹

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

- (a) by way of a transfer of all or [substantially all] [a major part] of the Company's assets, the Shareholders shall resolve on a Dividend or liquidation of the Company in order to effect the Liquidation Preference; and
- (b) by way of a transfer or other disposal (whether through a single transaction or a series of related transactions) of the Shares, the Liquidation Preference shall be reflected in the price expressed to be payable (i) per one Investor Share to holders of Investor Shares and (ii) per one Common Share to the Common Shareholders by the acquirer under the relevant share purchase agreement.]¹²

⁹ **[Note:** The Model Documentation "light" presumes that all agreed preferences will be implemented solely as contractual preferences (as opposed to the corporate implementation of different classes of shares). Each person using the Model Documentation "light" shall satisfy itself by retention of its own counsel of its comfort in, and the limitations and restrictions under, applicable Swiss contract, company and insolvency laws to the validity, legality, binding effect and enforceability of the rights and obligations of the respective holder of Shares towards any other holder of Shares and/or the Company.]

¹⁰ **[Note:** Investors may insist (for tax reasons or otherwise) that no dividends shall be paid during the growth stage of the Company and/or until the occurrence of an exit event or that dividends shall only be paid in case the Investors so request, in which case no dividend preference may be necessary and/or corresponding adjustments would have to be made to this Section and Section 5(a).]

¹¹ **[Note:** Each person using the Model Documentation "light" shall satisfy itself by retention of its own counsel of the limited validity and/or enforceability of assignments with respect to future claims and of the tax effects (if any) of any such assignments among the holders of Common Shares and holders of Investor Shares.]

¹² **[Note:** If it is envisaged that the purchase price payable under a potential future share purchase agreement may entail a deferred earn-out element and that the cash portion of the purchase price payable at

7.2 Anti-Dilution Adjustments¹³

In the event the Company issues, in [any subsequent]/[the next] equity financing round [with a nominal value of at least CHF [amount]] (i) equity at a subscription or purchase price or (ii) securities convertible into equity at a conversion price below the Issue Price, each holder of Investor Shares shall be entitled to a [broad based weighted average]¹⁴ anti-dilution adjustment ("**Anti-Dilution Adjustment**")[, provided that such holder of Investor Shares participates in such subsequent equity financing round at least on a *pro rata* basis.]¹⁵

The Anti-Dilution Adjustment shall be effected by the issuance to each holder of Investor Shares of the required number of additional Investor Shares at nominal value payable by such holder of Investor Shares in accordance with the formula set forth in **Annex 6**.

Each holder of Common Shares hereby irrevocably waives, to the benefit of the holders of Investor Shares, any statutory subscription right (*Bezugsrecht; droit de souscription préférentiel*) it may have to the extent required to give effect to the Anti-Dilution Adjustment.

The Anti-Dilution Adjustment shall not apply with respect to (i) share splits or similar reorganizations and/or (ii) securities issued or issuable or virtual participation rights granted under employee incentive plans (such as an ESOP or a PSOP) in accordance with this Agreement.¹⁶

7.3 Limitation of Preferences [and Anti-Dilution]

The Dividend Preference and Liquidation Preference [and Anti-Dilution Adjustment] under this Section 7 shall terminate and cease automatically upon full payment of the Preference Amount.

8. RAISING OF ADDITIONAL CAPITAL

In order to finance the Company and its operations in accordance with its business plan, the Company shall use its best efforts to raise sufficient additional equity financing in one or a series of additional financing rounds or debt financing, if and as proposed by the Board ("**Approved Financing**"). [Entirely without prejudice to Section 12.9(c), e]/[E]ach Shareholder hereby irrevocably (i) waives any statutory subscription right (*Bezugsrecht; droit de souscription préférentiel*) it may have and (ii) consents to the granting of equal or higher ranking preferential rights in respect of newly issued Shares for the benefit of any investor, if and as may

closing may be lower than the Liquidation Preference of the holders of Investor Shares, careful consideration should be given as to whether this sub-section should be adjusted to ensure that holders of Common Shares participate (at least partially) in the cash portion of the purchase price payable at closing (rather than only in any deferred and uncertain earn-out payment.)

¹³ **[Note:** Investors will usually insist on Anti-Dilution adjustments to protect their investment in the start-up/early stage company against any financial dilution resulting from subsequent capital increases at a subscription price below the subscription price paid by the Investors.]

¹⁴ **[Note:** If the Parties preferred a full ratchet adjustment (ensuring full financial dilution but yielding a potentially disproportional capital dilution in small(er) subsequent financing rounds) corresponding adjustments would have to be made to this Section and in Annex 7.2. See also Footnote 27.]

¹⁵ **[Note:** The Model Documentation "light" provides for a pay-to-play regime to disincentivize Investors from opportunistic Investor behaviour in subsequent financing rounds at lower valuations. If the Parties preferred not to include a pay-to-play regime, the square bracketed wording is to be deleted.]

¹⁶ **[Note:** Should the Investment Agreement include a remedy for breach of reps & warranties thereunder in form of a compensatory capital increase (see also the form Investment Agreement, Footnote 7 therein), such capital increase should be excluded as well.]

be required or deemed appropriate by the Board to effect and consummate such Approved Financing.

9. TRANSFER RESTRICTIONS

9.1 General Restriction

A Transfer of Shares and pre-emption rights on Shares (*Bezugsrechte; droits de souscription préférentiel*) shall only be permitted in accordance with this Section 9, *provided*, however, that (i) holders of [Preferred] Shares may at any time Transfer Shares to an Affiliate and (ii) Section 9.3 (Right of First Refusal) does not apply to Share Transfers between the Company and Shareholders who have acquired their Shares under an ESOP. If an Affiliate ceases to be an Affiliate of the holder of [Preferred] Shares who Transferred the Shares, then such Affiliate must immediately re-transfer the Shares to the holder of [Preferred] Shares concerned. Except as explicitly provided otherwise in this Agreement, the Shares shall not be pledged, assigned by way of security or otherwise used as security and shall remain free and clear of any liens, encumbrances, charges or any other third party rights.

9.2 Accession¹⁷

No person or entity shall become a shareholder of the Company unless and until such person or entity shall first have executed an accession declaration pursuant to which such person or entity agrees to be fully bound by and be entitled pursuant to the terms and conditions of this Agreement in the same capacity as the transferor or predecessor (in case of a Transfer or succession). Each Party agrees in advance that any person or entity executing such accession declaration that is based on an acquisition of Shares permitted pursuant to this Agreement shall become a Party, and that such accession declaration does not need to be counter-signed by the Parties.

9.3 Right of First Refusal¹⁸

9.3.1 Grant and Notification

Each Shareholder hereby grants to the other Shareholders a right of first refusal with respect to the Shares held by such Shareholder in accordance with the terms and conditions set forth in this Section 9.3 ("**Right of First Refusal**"). A Shareholder may exercise its Right of First Refusal only in respect of all (but not a part of the) Relevant Shares.

If a Shareholder (or a group of Shareholders) wishes to Transfer all or a part of its Shares ("**Relevant Shares**") to a third party (including another Shareholder, but excluding an Affiliate) ("**Right of First Refusal Event**"), such Shareholder(s) ("**Selling Shareholder(s)**") shall submit an offer to all other Shareholders (with a copy to the Company) stating in writing the price

¹⁷ *[Note: The Model Documentation "light" presumes that no changes thereto will be required solely by virtue of a contemplated Transfer of shares by existing shareholders to new and/or existing shareholders. In case the Parties envisage changes with regard to special rights granted to certain shareholders this Section would have to be amended.]*

¹⁸ *[Note: The proposed wording of the Right of First Refusal captures both a pre-emption right (Vorkaufsrecht; droit de préemption), which presumes the execution of a binding purchase agreement by and between the Selling Shareholder(s) and the proposed acquirer, as well as a right of first offer (Vorhandrecht; droit de première offre), which is triggered at the time the Selling Shareholder(s) wish(es) to transfer (its) their Shares. If the Parties prefer that the Right of First Refusal is limited to a pre-emption right only, corresponding adjustments will be necessary to Section 9.3.]*

in cash and the other terms of the proposed Transfer of all Relevant Shares ("**Right of First Refusal Notice**").

If the Selling Shareholder(s) has/have received a *bona fide* purchase offer for the Relevant Shares from a third party (including another Shareholder), such offer shall be attached to the Right of First Refusal Notice. In the latter case (*i.e.*, a third party offer), the price in cash and the other terms of the *bona fide* purchase offer from a third party shall be the price and the terms of the Right of First Refusal. Otherwise (*i.e.*, without third party offer) it is the price and the terms offered by the Selling Shareholder.

9.3.2 Exercise

Each Shareholder wishing to exercise its Right of First Refusal in respect of the Relevant Shares¹⁹ shall so notify the Company and the Selling Shareholder(s) within a period of 30 days from receipt of the Right of First Refusal Notice ("**Right of First Refusal Exercise Notice**"). If no Right of First Refusal is validly exercised within this time period, the Selling Shareholder(s) shall be free, subject only to Section 9, to Transfer the Relevant Shares to the proposed acquirer, on terms not more favorable to the proposed acquirer than those offered to the Shareholders within a period of six months after expiry of the 30-day exercise period for the Right of First Refusal. Thereafter, the procedure pursuant to this Section 9.3 shall be repeated prior to any such Transfer.

9.3.3 Pro Rata Allocation

In the event that more than one Shareholder exercises its Rights of First Refusal for the Relevant Shares, the Relevant Shares shall be allocated amongst such exercising Shareholders *pro rata* to their then existing holdings of Shares, unless the exercising Shareholders agree otherwise.

9.3.4 Consummation of Transfer

The Transfer of the Relevant Shares shall be consummated within 60 days from receipt of the Right of First Refusal Notice by the Company unless the *bona fide* purchase offer provided for a longer term, in which case such longer term of the *bona fide* purchase offer shall apply.

9.4 Tag-Along (Co-Sale Right)²⁰

9.4.1 Grant and Notification

Each Shareholder hereby grants to the other Shareholders the right to co-sell all the Shares held by such other Shareholder together with the Selling Shareholder(s) to the proposed acquirer in accordance with the terms and conditions set forth in this Section 9.4 ("**Tag-Along**

¹⁹ *[Note: The Model Documentation "light" presumes that the Right of First Refusal may only be exercised in respect of all Relevant Shares as opposed to only a part of the Relevant Shares (rationale being that partial exercise of the Right of First Refusal may frustrate the proposed Transfer of the remainder of the Relevant Shares to the proposed acquirer as the acquirer may not be willing to proceed with the acquisition of the remaining fraction of the Relevant Shares). In case the Parties wished to allow a partial exercise of the Right of First Refusal, this Section and relevant other Sections of this Agreement would have to be adjusted.]*

²⁰ *[Note: The proposed wording of the Tag-Along Right presumes that the Tag-Along Right may only be exercised with respect to all Shares held by an exercising Shareholder. In case the Parties preferred that Shareholders may exercise their Tag-Along Right also with respect to only a part of their Shares or the pro rata portion of their Shares that is equivalent to the pro rata portion of the Relevant Shares to be sold by the Selling Shareholders, corresponding adjustments have been made to Section 9.4.]*

Right"). A Shareholder may exercise its Tag-Along Right only in respect of all (but not a part of the) Shares held by such Shareholder.

In the event a Shareholder (or a group of Shareholders) wishes to Transfer all or a part of its Shares ("**Relevant Shares**") in one or a series of related transactions to a proposed acquirer (including another Shareholder, but excluding an Affiliate) on the basis of a *bona fide* purchase offer, and *provided* such Transfer of Shares would result in a Change of Control ("**Tag-Along Event**"), such Shareholder(s) ("**Selling Shareholder(s)**") shall notify the other Shareholders (with a copy to the Company) thereof, *mutatis mutandis* in accordance with Section 9.3.1 ("**Tag-Along Notice**"). Such Tag-Along Notice may be part of a Right of First Refusal Notice according to Section 9.3.

9.4.2 Terms of Tag-Along

The terms of the Tag-Along Right shall be the same consideration per Share and otherwise the same terms and conditions as applicable to the Selling Shareholder(s).²¹ The proceeds resulting from such Transfer in case of a Tag-Along Event shall be deemed to constitute Liquidation proceeds and shall be allocated to the holders of Investor Shares and Common Shareholders in accordance with Section 7.1.

9.4.3 Exercise

Each Shareholder wishing to exercise its Tag-Along Right with respect to all Shares held by such Shareholder shall so notify the Selling Shareholder(s) (with a copy to the Company) within an exercise period of 30 days from receipt of the Tag-Along Notice ("**Tag-Along Exercise Notice**"). If no Tag-Along Exercise Notice is submitted until the expiry of the exercise period, the Tag-Along Right of that Shareholder shall be deemed to have been forfeited (*verwirkt; périmé*) with respect to this Tag-Along Event. If the proposed acquirer refuses to accept the purchase of the Shares from the Shareholders exercising their Tag-Along Right, the Selling Shareholder(s) shall be prohibited from Transferring the Relevant Shares to the proposed acquirer.

9.4.4 Transfer to Proposed Acquirer

Subject to the exercise of the Right of First Refusal (if exercised in accordance with Section 9.3), the Selling Shareholder(s) shall be free to Transfer the Relevant Shares to the proposed acquirer on the terms disclosed to the other Shareholders in the Tag-Along Notice and the Right of First Refusal Notice within a period of six months starting after the expiry of the 30-day exercise period for the Tag-Along Right. Thereafter, the procedure pursuant to this Section 9.4 shall be repeated prior to any such Transfer.

9.5 Drag-Along (Co-Sale Obligation)

9.5.1 Grant and Notification

In the event a Shareholder (or a group of Shareholders) solely or jointly holding more than [50] percent of the outstanding share capital of the Company wish(es) to Transfer all its (their)

²¹ *[Note: The scope of any representations, warranties and/or indemnities to be given by a Shareholder exercising its Tag-Along Right (here presumed to be identical to the ones to be given by the Selling Shareholders) and the (cash or non-cash) consideration expressed to be payable under the relevant share purchase agreement should be carefully considered as it affects the benefit/risk sharing among selling Shareholders.]*

shares in one or a series of related transactions to a proposed acquirer (including another Shareholder, but excluding an Affiliate), who wishes to acquire all (but not less than all) Shares in the Company, pursuant to a *bona fide* purchase offer ("**Drag-Along Event**"), such Shareholder(s) ("**Relevant Selling Shareholder(s)**") shall be entitled to require that all other Shareholders co-sell all their Shares to the proposed acquirer ("**Drag-Along Right**").

The Relevant Selling Shareholders shall notify the other Shareholders (with copy to the Company) thereof, *mutatis mutandis* in accordance with Section 9.3.1 ("**Drag-Along Notice**").

For the avoidance of doubt and notwithstanding anything to the contrary contained herein, the Right of First Refusal (Section 9.3) and the Tag-Along Right (Section 9.4) shall not apply in case of a Drag-Along Event.

9.5.2 Terms of Drag-Along and Transfer to Proposed Acquirer

The terms and conditions applicable for the Transfer of all Shares to the acquirer shall be in accordance with the terms of the underlying agreement between the Relevant Selling Shareholder(s) and the acquirer, *provided*, however, that - without the consent of affected Shareholders - (i) such terms and conditions shall be identical for all Shareholders, (ii) the consideration payable by the acquirer shall be in cash, (iii) each Shareholder shall only be severally (and not jointly and severally with all other Shareholders) liable to the acquirer for representations, warranties and other undertakings in such underlying agreement, and (iv) the Transfer of Shares to the acquirer shall be completed no later than within six months after the date of receipt of the Drag-Along Notice by the Company.²²

The proceeds resulting from such Transfer in case of a Drag-Along Event shall be deemed to constitute Liquidation proceeds and shall be allocated to the holders of Investor Shares and Common Shares in accordance with Section 7.1.

10. LIQUIDATED DAMAGES

Each Shareholder being in material breach of any provision of this Agreement (it being agreed that any breach of Section 2, 4, 5, 7, 8, 9 and/or 12.4 shall be deemed a material breach for purposes of this Section 10) shall pay liquidated damages (*Konventionalstrafe; clause pénale*) to each non-defaulting Shareholder in the amount of CHF [amount] for each violation or breach. With respect to any violation or breach that is capable of being cured, liquidated damages shall only become payable if such violation or breach is not cured by the defaulting Shareholder within 20 days after having been notified of such violation or breach by any of the non-defaulting Shareholders.

Notwithstanding the payment of the liquidated damages, the defaulting Shareholder (i) shall be liable to each non-defaulting Shareholder for any losses and damages incurred by such non-defaulting Shareholders in excess of its entitlement to the amount of CHF [amount] as set forth in the preceding paragraph (which entitlement shall be *pro rata* to the relevant non-defaulting Shareholder's shareholdings in the Company), and (ii) shall continue to be bound by the terms of the violated provision, for which each non-defaulting Shareholder may continue to seek specific enforcement and/or such other injunctive relief as may be granted by any court and/or arbitral tribunal of competent jurisdiction.

²² [Note: Certain Parties may wish further protection in a Drag-Along scenario, such as no obligation to enter into a non-compete obligation.]

11. TERM

This Agreement shall enter into force and become effective as of the Effective Date and shall continue to be effective and in force for each Party (and such Party's successors and assigns) for an initial fixed term until the tenth anniversary of the Effective Date. Thereafter, this Agreement shall continue to be in effect for successive periods of five years unless terminated by any Shareholder upon twelve months' prior written notice to all other Parties. Any termination by a Shareholder shall only be effective with respect to the respective Shareholder, and shall be without prejudice to the continued binding effect of this Agreement for all other Parties.

Notwithstanding the foregoing, this Agreement shall be terminated:

- (a) automatically and with immediate effect if the Capital Increase fails to be registered in the competent commercial register within a period for three months after the General Meeting of Shareholders has resolved and approved the Capital Increase; or
- (b) for a specific Party upon such Party ceasing to be a shareholder of the Company in accordance with the terms and conditions of this Agreement, whereas such cessation and release shall be without prejudice to any accrued rights and obligations of the relevant Party existing at the time of such cessation and release.

12. MISCELLANEOUS

12.1 Related Transactions

All transactions and agreements between the Company and the Shareholders (or affiliated or related persons of such Shareholders) shall reflect market conditions and shall be made at arm's length terms.

12.2 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). The obligations of the Parties hereunder are contractual in nature and the Parties agree that they do not form, and this Agreement shall not be deemed to constitute, a simple partnership (*einfache Gesellschaft; société simple*) pursuant to art. 530 et seq. CO.

12.3 Confidentiality

The Parties shall keep the terms of this Agreement and any [confidential] information relating to the Company strictly confidential. The provision regarding confidentiality in the Investment Agreement shall apply *mutatis mutandis*.

12.4 Non-Competition/Non-Solicitation²³

Each Shareholder undertakes for the entire term of this Agreement and for a period of [number] year[s] after termination of this Agreement that without the prior written consent of the Board he/she will not:

- (a) directly or indirectly engage in any way in any business which is competitive with the Business; or
- (a) use directly or indirectly any knowledge acquired as shareholder of the Company for an activity competing with the Business; or
- (b) on his/her own behalf or for any other person, firm or company directly or indirectly offer employment to or procure employment for any person who is employed by the Company or solicit or induce any employee of the Company to leave his/her employment with the Company; or
- (c) solicit, aid or induce any person, firm or company which has been a customer of the Company or was or is in the habit of dealing with the Company, to stop using the services of or dealing with the Company in the manner in which such person, firm or company shall have been previously accustomed.

Any continuing breach of this non-competition and non-solicitation clause of one month shall be deemed to be a new violation with a new contractual penalty as consequence.

12.5 Costs, Expenses and Taxes

Except as otherwise provided in the Investment Agreement, each Party shall bear its own costs and expenses arising out of or incurred, and any taxes imposed on it, in connection with this Agreement and the transactions contemplated by this Agreement.

12.6 Notices

All notices and other communications made or to be made under this Agreement shall be given in writing but dispatched to the other Parties by e-mail (to the e-mail addresses set forth on the first page of this Agreement, as amended from time to time in accordance with the provisions of this Section 12.6).

12.7 Entire Agreement

With the exception of the Investment 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 any of the Parties prior to the date of this Agreement. The Parties confirm that in addition to this Agreement, there are no side agreements relating to the subject matter hereof

²³

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

between any of them that have not been disclosed to the other Parties and the terms of which may affect any of the rights granted to any of the Parties hereunder.

12.8 Severability

If at any time any provision of this Agreement or any part thereof is or becomes invalid or unenforceable, then neither the validity nor the enforceability of the remaining provisions or the remaining part of the provision shall in any way be affected or impaired thereby. The Parties agree to replace the invalid or unenforceable provision or part thereof by a valid or enforceable provision which shall best reflect the Parties' original intention and shall to the extent possible achieve the same economic result. The same applies *mutatis mutandis* in case of any gaps.

12.9 Amendments

The Parties acknowledge and agree that:

- (a) [subject to sub-paragraphs (b) and (c) of this Section 12.9] this Agreement may only be amended by all Parties in writing;
- (b) [this Agreement may be amended by an instrument signed by Parties holding more than *[percentage]*% of the Shares with binding effect on all other Parties; *provided*, however, that any such modification or amendment of any of the provisions of this Agreement shall neither affect any accrued rights of any other Party nor impose any greater liability or any more onerous obligation than those contained in this Agreement on the other Parties who do not sign such modification or amendment;]²⁴ and
- (c) [notwithstanding anything contained in this Agreement to the contrary, this Agreement shall be replaced and superseded by a shareholders agreement in form and substance deemed required or appropriate by the Board to facilitate and effect an Approved Financing, and each Shareholder hereby undertakes to the other Shareholders to execute such a shareholders agreement and any ancillary documents (such as an investment and subscription agreement) in form and substance as proposed by the Board.]²⁵

12.10 Waiver of Rights

No waiver by a Party of a failure of any other Party to perform any provision of this Agreement shall operate or be construed as a waiver in respect of any other or further failure whether of a similar or different character.

²⁴ **[Note:** While similar clauses are customarily used in start-up equity financing transactions of this type, each person using the Model Documentation "light" shall satisfy itself by retention of its own counsel of its comfort in, and the limitations and restrictions under applicable Swiss contract, company and insolvency laws to, the validity, legality, binding effect and enforceability of the rights and obligations of the Parties towards each other.]

²⁵ **[Note:** See foregoing Footnote 24.]

13. GOVERNING LAW AND [JURISDICTION] / [ARBITRATION]

13.1 Governing Law

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

13.2 [Jurisdiction] / [Arbitration]

[The courts of [*place of domicile of the Company*] (Canton of [*canton of domicile of the Company*], Switzerland) shall have exclusive jurisdiction for any and all disputes arising out of or in connection with this Agreement.] / [Any dispute, controversy or claim arising out of or in connection with this Agreement, including its conclusion, validity, binding effect, amendment, breach, termination or rescission shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be one. The seat of the arbitration shall be [Zurich / Geneva / Lugano] and the arbitral proceedings shall be conducted in [English]; *provided* that evidence may be submitted to the arbitral tribunal in [German / French / Italian] without translation into English.]

* * * * *

[*Signature page to follow*]

IN WITNESS WHEREOF, the Parties have signed this Agreement on the Effective Date

[Investor 1]

By: _____
Names: _____
Titles: _____

[Investor n]

By: _____
Names: _____
Titles: _____

[Existing Shareholder 1]

By: _____
Names: _____
Titles: _____

[Existing Shareholder n]

By: _____
Names: _____
Titles: _____

[Company]

By: _____
Names: _____
Titles: _____

List of Annexes

- Annex 1: Defined Terms
- Annex 2: Cap Table
- Annex 3: Articles
- Annex 4: Board Regulations
- Annex 5: List of Important Shareholder and Board Matters
- Annex 6: Anti-Dilution Adjustment Formula

Defined Terms

"**Affiliate**" shall mean any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person or entity specified.

"**Agreement**" shall mean the shareholders agreement dated as of [date] including its annexes, as amended from time to time in accordance with its terms.

"**Annex**" shall mean an annex to this Agreement.

"**Anti-Dilution Adjustment**" shall have the meaning set forth in Section 7.2.

"**Anti-Dilution Shares**" shall have the meaning set forth in **Annex 6**.

"**Approved Financing**" shall have the meaning set forth in Section 8.

"**Articles**" shall have the meaning set forth in Section 3.

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

"**Board Regulations**" shall have the meaning set forth in Section 3.

"**Business**" shall have the meaning set forth in Preamble A.

"**Capital Increase**" shall have the meaning set forth in the Preamble B.

"**Cap Table**" shall mean **Annex 2**.

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

"**Chairman**" shall mean the chairman of the Board (*Verwaltungsratspräsident; président du conseil d'administration*).

"**Change of Control**" shall mean any Transfer of Shares in one or a series of related transactions that results in the proposed acquirer (including a Shareholder) holding, directly or indirectly, more than [50] percent of the then issued share capital of the Company.

"**Common Shares**" shall mean the common registered shares of the Company (*Stammaktien; actions ordinaires*) in accordance with the Articles.

"**Company**" shall have the meaning set forth on the front page of this Agreement.

"**Director**" shall mean each member of the Board appointed from time to time in accordance with the terms of this Agreement.

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

"**Dividend**" shall have the meaning set forth in Section 7.1.

"**Dividend Preference**" shall have the meaning set forth in Section 7.1.

"**Drag-Along Event**" shall have the meaning set forth in Section 9.5.1.

"**Drag-Along Notice**" shall have the meaning set forth in Section 9.5.1.

"**Drag-Along Right**" shall have the meaning set forth in Section 9.5.1.

"**Effective Date**" means the date of this Agreement as set forth on its front page.

"**ESOP**" shall mean one or several employee stock option plans / agreements.

"**Existing Shareholder**" or "**Existing Shareholders**" shall have the meaning set forth on the front page of this Agreement.

"**Existing Shareholder Director(s)**" shall have the meaning set forth in Section 4(b).

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

"**Important Board Matters**" shall have the meaning set forth in Section 5(b) (as set forth in Part B of Annex 5).

"**Important Shareholder Matters**" shall have the meaning set forth in Section 5(a) (as set forth in Part A of Annex 5).

"**Investment Agreement**" shall have the meaning set forth in the Preamble B.

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

"**Investor Director(s)**" shall have the meaning set forth in Section 4(a).

"**Investor Shares**" shall mean common shares (*Stammaktien; actions ordinaires*) having the contractual preferences set forth in this Agreement, which contractual preferences shall be deemed and treated by all Parties hereto as if Investor Shares were issued as preference shares (*Vorzugsaktien; actions privilégiées*) and if the contractual preferences were corporate preferences for all purposes and intents of this Agreement.

"**Issue Price**" shall have the meaning set forth in the Investment Agreement.

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

"**Liquidation Preference**" shall have the meaning set forth in Section 7.1.

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

"**Party**" shall have the meaning set forth on the front page of this Agreement and any further parties adhering to this Agreement in accordance with its terms.

"Preamble" shall mean a preamble of this Agreement.

"Preference Amount" shall mean the sum of (i) the aggregate Subscription Amount paid by the respective holder of Investor Shares and (ii) [number]% per year (to be calculated on the basis of the Subscription Amount paid and not yet compensated by a preferred payment) since payment of the Subscription Amount until the payment date of the relevant Distribution for which the Preference Amount is calculated, less any Distributions already received.

"PSOP" shall mean one or several phantom stock option plans / agreements.

"Relevant Selling Shareholder(s)" shall have the meaning set forth in Section 9.5.1.

"Relevant Shares" shall have the meaning set forth in Section 9.3.1 and 9.4.1.

"Right of First Refusal" shall have the meaning set forth in Section 9.3.1.

"Right of First Refusal Event" shall have the meaning set forth in Section 9.3.1.

"Right of First Refusal Exercise Notice" shall have the meaning set forth in Section 9.3.2.

"Right of First Refusal Notice" shall have the meaning set forth in Section 9.3.1.

"Sale" shall mean the Transfer (whether through a single transaction or a series of related transactions) of the Shares that result in a Change of Control or the sale of all or substantially all of the Company's assets.

"Section" shall mean a section of this Agreement.

"Selling Shareholder(s)" shall have the meaning set forth in Section 9.3.1 and Section 9.4.1.

"Shareholder" shall mean each holder of Shares.

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

"Subscription Amount" shall have the same meaning as in the Investment Agreement.

"Tag-Along Event" shall have the meaning set forth in Section 9.4.1.

"Tag-Along Exercise Notice" shall have the meaning set forth in Section 9.4.3.

"Tag-Along Notice" shall have the meaning set forth in Section 9.4.1.

"Tag-Along Right" shall have the meaning set forth in Section 9.4.3.

"Transfer" (or **"Transferred"**, **"Transferring"** or **"Transferable"**) shall mean any sale, assignment, pledge, encumbrance or any other disposal or transfer of Shares by contract, inheritance, court order or by operation of law.

"WAIP" shall have the meaning set forth in **Annex 6**.

Cap Table

Attached.

Articles

Attached.

Board Regulations

Attached.

List of Important Shareholder and Board Matters

Part A – Important Shareholder Matters

Each of the following decisions shall be an Important Shareholder Matter and shall require the consent requirements set forth in Section 5(a) of this Agreement:

- (a) any amendment of the Company's [Articles or its] corporate purpose;
- (b) any creation of shares with preferential rights of any kind, shape or form or with privileged voting rights [(other than for an Approved Financing)];
- (c) any amendment to the restriction of the transferability of Shares;
- (d) any authorized or conditional capital increase [(other than for an Approved Financing)];
- (e) any increase of capital against the Company's equity, against contributions in kind, or for the purpose of acquiring assets or the granting of special benefits;
- (f) any limitation or withdrawal of subscription rights [(other than for an Approved Financing)];
- (g) any change of [*the corporate name or*] registered office of the Company;
- (h) any sale of all or substantially all of the assets of the Company;
- (i) any merger, demerger or similar reorganization of the Company;
- (j) the liquidation of the Company;
- (k) any resolution on Dividend payments or other distributions to the Shareholders;
- (l) the election of the auditors of the Company; and
- (m) [*specify additional Important Shareholder Matters as appropriate*].

Part B – Important Board Matters

Each of the following decisions shall be an Important Board Matter and shall require the consent requirements set forth in Section 5(b) of this Agreement:

- (a) [the approval of the budget, and any change thereto;
- (b) the sale, disposal or transfer of all or substantially all of the Company's business and/or assets;
- (c) any acquisition of a business or any part thereof (whether a share or asset transaction);
- (d) any investment, capital expenditure, sale of assets, incurrence of debt or any contract obligation by the Company in excess of CHF [*amount*] (whether by a single transaction or a series

of related transactions) unless such expenditure has been specifically provided for in the budget;

- (e) any Approved Financing including any agreements to facilitate and effect an Approved Financing;
- (f) the appointment and removal of the Company's CEO and all other members of the Management;
- (g) the approval and amendment of any share option plan and option and/or share grants to the Management, the issuance of shares or equity-related securities out of the Company's authorized or conditional share capital (including the determination of the issue price, the date for the entitlement for dividends and the type of contribution therefore), except in respect to any Shares issued in accordance with the Anti-Dilution Adjustments;
- (h) the creation of any security interests upon any part of the Company's property or assets in any form whatsoever exceeding CHF [*amount*] in aggregate (whether by a single transaction or by a series of related transactions) save as set forth in the budget or in the ordinary course of business;
- (i) any related-party transactions or arrangements including variations thereof;
- (j) any material change in accounting policies or principles save with the prior approval of the Company's audit company;
- (k) any Transfer of Shares other than in accordance with Section 9 of this Agreement;]
- (l) [*specify additional Important Board Matters as appropriate*]; and
- (m) any amendment or modification of the Board Regulations.

Anti-Dilution Adjustment Formula²⁶

Broad Based Weighted Average Ratchet²⁷

The anti-dilution mechanism shall be a broad based weighted-average ratchet with no offset for par value paid while subscribing for anti-dilution shares (the "**Anti-Dilution Shares**"). The weighted average issue price ("**WAIP**") and number of Anti-Dilution Shares shall be calculated using the following equations:

$$1. \text{ WAIP} = \text{Weighted Average Issue Price} = \frac{(I + I_B)}{(S + S_B)}$$

$$2. \text{ Anti Dilution Shares for the Investor} = DS = \frac{I_A}{\text{WAIP}} - S_A$$

Where,

P_B = share issue price of the dilution round (*i.e.*, the round triggering dilution);

S = total no. of Shares (fully diluted) prior to the dilution round;

S_A = total no. of Preferred Shares issued under the Investment Agreement (*i.e.*, [total no. of Preferred Shares];

S_B = total no. of Shares of the dilution round (*i.e.*, the round triggering dilution);

I = total of all equity investments received by the Company against the issuance of Shares;

I_A = total investment amount under the Investment Agreement (*i.e.*, CHF [total investment amount]); and

I_B = total investment amount of the dilution round (*i.e.*, the round triggering dilution) = $P_B \times S_B$.

²⁶ **[Caution:** Each user of the Model Documentation "light" shall satisfy itself that the anti-dilution formula is accurate and complete, which will depend – amongst other factors – on the number of previous investment rounds that shall be protected against future down rounds. Neither SECA nor any other person that contributed to the Model Documentation accept any liability for the accuracy or completeness of the anti-dilution formula.]

²⁷ **[Note:** Alternatives would be a full ratchet adjustment (more attractive for diluted Investors than a weighted average ratchet) or a narrow based weighted average ratchet (more attractive for Investors under a weighted average ratchet).]