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| **S•E•C•A**  **Swiss Private Equity & Corporate Finance Association Schweizerische Vereinigung für Unternehmensfinanzierung Association Suisse des Investisseurs en Capital et de Financement** | |
| For the avoidance of doubt, this document does not constitute legal advice and is not meant to serve as a recommended form suitable for each seed and/or early stage capital investment in a Swiss start-up/early stage company. It is intended for use as a starting point for drafting and negotiation only. All parties involved should carefully consider departing from its terms where necessary to reflect the business terms underlying the seed/early stage capital investment and should always satisfy themselves with their advisors and counsel of the commercial and legal implications of its use. | |
| Investment and Subscription Agreement | |
| dated [DATE]  relating to  [the COMPANY]  made by and among  [INVESTORS]  and  [FOUNDERS]  and  [OTHER SHAREHOLDERS]  and  [the COMPANY] | |
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Statement

Purpose

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

Documents

The Model Documentation comprises the following documents:

* term sheet,
* investment and subscription agreement,
* shareholders agreement and
* certain important ancillary documents: articles of incorporation (Statuten; statuts) and board regulations (Organisationsreglement; règlement d'organisation).

Working Group

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

* **Martin Frey**, Baker & McKenzie, Zurich;
* **Dieter Gericke**, Homburger AG, Zurich;
* **Hannes Glaus,** Bratschi, Wiederkehr & Buob, Zurich;
* **Beat Kühni**, Lenz & Staehelin, Zurich;
* **Oliver Triebold**, Schellenberg Wittmer, Zurich;
* **Michael Trippel**, Bär & Karrer AG, Zurich;
* **Ulysses von Salis**, Niederer Kraft & Frey AG, Zurich; and
* **Christian Wenger**, Wenger & Vieli AG, Zurich.

Scope

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

* the investment is made as an early stage/seed capital investment (typically CHF 5 – 20 million),
* the circle of involved parties consists of founders, passive or active shareholders and up to three active financial investors, and
* the start-up/early stage company is incorporated in Switzerland and organized in the form of a stock corporation (Aktiengesellschaft, société anonyme).

Further assumptions and qualifications are stated in the footnotes.

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

Caution

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

It is up to each party to ensure if and to what extent the Model Documentation is suitable to the transaction at hand and its interests. Each transaction has its own particularities and requires a careful balancing of interests. And for many of the legal issues addressed by the Model Documentation there is more than one "right" answer.

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

2nd Edition

On account of the comments submitted to us and our own experience with the Model Documentation this 2nd edition provides also model wordings for the following:

* Appendices 9.1 and 9.2 to the Investment Agreement (Representations and Warranties of Existing Shareholders and Investors);
* Section 18.3 of the Shareholders Agreement (Non-Competition and Non-Solicitation); and
* Appendix 10.3.2 to the Shareholders Agreement (Anti-dilution Adjustment Formula).

Zurich, July 2012

This investment and subscription agreement ("Agreement") is dated [date] and entered into by and among

**1. Investors**

1.1 [name Investor 1], [address] ("Investor 1")

1.2 [name Investor 2], [address] ("Investor 2")

1.3 [name Investor 3], [address] ("Investor 3")

(Investor 1, Investor 2 and Investor 3, collectively "Investors" and individually an "Investor")

**2. Founders**

2.1 [name Founder 1], [address] ("Founder 1")

2.2 [name Founder 2], [address] ("Founder 2")

2.3 [name Founder 3], [address] ("Founder 3")

(Founder 1, Founder 2 and Founder 3, collectively "Founders" and individually a "Founder")

**3. Other Shareholders**

3.1 [name Other Shareholder 1], [address] ("Other Shareholder 1")

3.2 [name Other Shareholder 2], [address] ("Other Shareholder 2")

3.3 [name Other Shareholder 3], [address] ("Other Shareholder 3")

(Other Shareholder 1, Other Shareholder 2 and Other Shareholder 3, collectively "Other Shareholders" and individually an "Other Shareholder")

(Founders and Other Shareholders collectively "Existing Shareholders" and individually an "Existing Shareholder")

and

**4. Company**

solely in respect of the obligations of the Company under Sections [3(b), 3.1.1(a), 3.1.2, 6, 7.3.1(a), 7.3.3, 7.4, 8, 11 and 12]:

[Company name], [address] ("Company")

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

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Preamble

* + - * 1. 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.
        2. The Company's core business consists of [description of core business].
        3. The Company intends to increase its share capital in a first round of financing ("Financing Round") by way of issuance of [number] Preferred Shares in the Company with a nominal value of CHF [amount] per Preferred Share, each to be fully paid-in in cash, thereby increasing the issued share capital of the Company by a nominal amount of CHF [amount] from CHF [amount] to CHF [amount], ("Capital Increase").
        4. The Parties intend to enter, inter alia, into a certain shareholders agreement substantially in the form attached hereto as Appendix D ("Shareholders Agreement") on or immediately prior to the Closing Date.
        5. The Parties wish to determine in this Agreement their respective rights and obligations in relation to the Investors' investment in the Company and the subscription and issuance of new Preferred Shares in the Company.

**Based on the foregoing**, the Parties agree as follows:

# Definitions

For purposes of this Agreement (including the introductory paragraphs and the Appendices), capitalized terms shall have the meanings set forth in Appendix 1.

# Current Equity Structure of the Company

As at the date of this Agreement, the Company has an issued statutory share capital in the nominal amount of CHF [amount], divided into [number] common shares (Stammaktien; actions ordinaires) with a nominal value of CHF [amount] per share, each fully paid-in ("Existing Shares"). The Company has [no] treasury shares.

# Increase of Share Capital

In order to give effect to the Capital Increase and on the terms and subject to the conditions of this Agreement:

1. the Investors will provide for cash equity funding to the Company in the amount of CHF [amount] at a pre-money valuation of the Company (fully diluted) of CHF [amount] in [one share capital increase] for purposes of enabling the Company to [expand its Business in accordance with the Business Plan]; and
2. each of the Existing Shareholders and the Company hereby undertakes to the Investors to generally use their powers and take all actions and execute all documents required to effect the transactions contemplated under this Agreement and to consummate the Capital Increase in accordance with the terms and conditions hereof.
   1. Capital Increase / Extraordinary General Meeting of Shareholders

### Undertakings of Existing Shareholders

Each of the Existing Shareholders and (regarding subsection (a)) the Company hereby undertakes to the Investors to:

1. procure that an extraordinary general meeting of shareholders of the Company ("Extraordinary General Meeting") is convened in a timely manner and takes place on the Closing Date;
2. approve, or procure that the Proxy Holder approves, the resolutions to be taken by the Extraordinary General Meeting in accordance with Section 3.1.3; and
3. [specify additional actions/resolutions as appropriate].

### Waiver of Preferential Subscription Rights

Each of the Existing Shareholders hereby unconditionally and irrevocably waives all of its preferential subscription rights (Bezugsrechte; droits de souscription préférentiels) in connection with the Capital Increase and hereby agrees that the Company allocates the appropriate number of Preferred Shares in the Capital Increase exclusively to the Investors in accordance with this Agreement and the cap table set forth in Appendix 5.

### Resolutions to be passed by the Extraordinary General Meeting

The following resolutions shall be passed at the Extraordinary General Meeting on the Closing Date:

1. to replace the Existing Articles by, and adopt, the Articles substantially in the form attached hereto as Appendix 3.1.3(a);
2. to increase the nominal statutory share capital of the Company by the aggregate amount of CHF [amount] from CHF [amount] to CHF [amount] to enable the Capital Increase through the issuance of [number] new Preferred Shares, each at the issue price of CHF [amount] ("Issue Price"), which constitutes a premium (Agio; agio) for each Preferred Share of CHF [amount], to the Investors in accordance with, and at the Subscription Amounts set forth in, Section 4;
3. to elect the following persons as New Director[s]:
   * [name], nominated by [Investor 1];
   * [name], nominated by [Investor 2];
   * [name], nominated by [Investor 3]; and
   * [name], nominated by [the Founders].
4. [additional actions/resolutions as appropriate].
   1. Constitutional Meeting of Newly Elected Board

Each of the Shareholders undertakes to procure that each Director nominated by it will convene for the constitutional meeting of the newly composed Board to be held on the Closing Date immediately following the Extraordinary General Meeting and will approve the following resolutions:

1. to elect [name] as Chairman (Verwaltungsratspräsident; président du conseil d’administration);
2. to grant [each New Director] collective signing power by two (Kollektivunterschrift zu Zweien; signature collective à deux);
3. to replace the Existing Board Regulations by, and adopt, the Board Regulations, substantially in the form attached hereto as Appendix 3.2(c); and
4. to approve the registration of the Investors as shareholders with voting rights of the relevant number of Preferred Shares subscribed by the respective Investors in the Company's share register in accordance with Section 7.3.1(l).

# Subscription of Preferred Shares

* 1. Undertaking to Subscribe

Subject to the terms and conditions of this Agreement (including, without limitation Section 7.2), the respective Investor undertakes to subscribe for Preferred Shares as follows:

1. Investor 1 shall subscribe for [number] Preferred Shares, each at the Issue Price, for an aggregate subscription amount of CHF [amount] ("Investor 1 Subscription Amount");
2. Investor 2 shall subscribe for [number]) Preferred Shares, each at the Issue Price, for an aggregate subscription amount of CHF [amount] ("Investor 2 Subscription Amount"); and
3. Investor 3 shall subscribe for [number] Preferred Shares, each at the Issue Price, for an aggregate subscription amount of CHF [amount] ("Investor 3 Subscription Amount").

For this purpose, each Investor hereby undertakes, subject to the conditions precedent set forth in Section 7.2 being satisfied or waived by each of the Investors, to execute and deliver to the Company on or prior to the Closing Date a Subscription Form as required by Swiss corporate law substantially in the form attached hereto as Appendices 4.1 (a) to (c).

* 1. Cash Contribution

Within [five Business Days] from [the date of this Agreement / the date that the conditions precedent set out in Section 7.2 are satisfied or waived by the Parties]:

1. Investor 1 shall pay in cash the Investor 1 Subscription Amount;
2. Investor 2 shall pay in cash the Investor 2 Subscription Amount; and
3. Investor 3 shall pay in cash the Investor 3 Subscription Amount;

in each case, with a value date at latest on [the fifth Business Day] from [the date of this Agreement / the date that the conditions precedent set out in Section 7.2 are satisfied or waived by the Parties], to the following blocked capital account of the Company (Kapitaleinzahlungssperrkonto; compte de capital bloqué):

Bank: [name], [place]

In favour of: [Company name]

Account No: [number]

IBAN No: [number]

Clearing No: [number]

Reference: Share Capital Increase of [Company name]

# Ownership Structure after the Capital Increase

After completion of the Capital Increase, the ownership structure of the Company shall be as specified in the cap table set forth in Appendix 5.

# Conduct of Business until Closing

The Company shall, and each of the Existing Shareholders hereby undertakes to procure that the Company will, until Full Consummation of the Capital Increase, operate its business in the ordinary course in accordance with past practice, except as explicitly provided by this Agreement or with the prior written consent of [each Investor] (such consent not to be unreasonably withheld or delayed).

[In particular, the Company hereby covenants to each of the Investors not to, and each of the Existing Shareholders hereby undertakes to the Investors to procure that the Company will not:

1. [specify as appropriate]

in each case of paragraphs (a) to ([specify]) above, except with the prior written consent of [each Investor] (such consent not to be unreasonably withheld or delayed).]

# Closing

* 1. Place and Date of Closing

The Closing shall take place on [date] at the offices of [insert name of law firm], or such other date or place as the Parties mutually agree ("Closing Date").

* 1. Conditions Precedent to Closing

The Closing shall be subject to the prior fulfilment (or waiver by each Investor) of each of the following conditions precedent:

1. the execution and delivery of all documents to be exchanged at Closing (other than those to be executed and delivered by the relevant Investor) in accordance with Section 7.3;
2. [the absence of any breach by any Party (other than the relevant Investor) of any material provision of this Agreement, including, but not limited to, the payment obligations set out in Section 4.2 and the representations and warranties given by any other Party under Section 9;]
3. [the absence of a Material Adverse Change with respect to the Company;]
4. [the compliance by all Existing Shareholders and the Company with Section 6; and]
5. [specify additional CPs as appropriate].
   1. Closing Actions

### At Closing, the relevant Party shall deliver the following documents, duly executed and in form and substance satisfactory to the Company and each of the Investors:

1. [bring-down certificates of each of the [Founders] and the Company (signed by the Company's [CEO and Chairman] confirming that to the best of their knowledge, the conditions precedent set out in Section 7.2 (b), (c) and (d) [and [further points]] are satisfied as of the Closing Date, substantially in the form attached hereto in Appendix 7.3.1(a) ("Bring-down Certificates");]
2. [resignation letter[s] from each resigning existing Director, substantially in the form attached hereto as Appendix 7.3.1(b);]
3. acceptance declarations of the New Directors (Wahlannahmeerklärungen; déclaration d'acceptation) together with duly notarized/legalized specimen signature sheets (Unterschriftenmuster; specimen de signature), substantially in the form attached hereto as Appendix 7.3.1(c);
4. [acceptance declarations of [name] as the new Company auditors;]
5. [proxies from each Existing Shareholder for the Extraordinary General Meeting authorizing the Proxy Holder to vote on and approve all resolutions set forth in Section 3.1, substantially in the form attached hereto as Appendix 7.3.1 (e);]
6. a duly signed application to the Register of Commerce of the Canton of [canton] regarding: (1) the increase of the share capital to reflect the Capital Increase, (2) the creation of Preferred Shares (Vorzugsaktien; actions privilégiées) as a new class of shares, (3) the adoption of the Articles, and (4) the election of the New Directors, substantially in the form attached hereto as Appendix 7.3.1(f) ("Application");
7. Shareholders Agreement duly executed by all Parties substantially in the form attached hereto as Appendix D;
8. [employment agreements with [all members of the Management / Key Employees] substantially in the form attached hereto as Appendix 7.3.1(h);]
9. confirmation from [specify name of Company’s bank] evidencing that all Subscription Amounts have been paid in cash and fully credited to the Company's blocked account specified in Section 4.2;
10. [auditors' report (Prüfungsbestätigung; confirmation des réviseurs) confirming the completeness and accuracy of the Board's capital increase report;]
11. circular resolutions or minutes evidencing the Board resolutions regarding: (1) the constitution of the newly composed Board, (2) the election of the Chairman, and (3) the granting of collective signing power by two (Konstituierungsbeschluss; résolution de constitution), all in accordance with this Agreement;
12. circular resolutions or minutes evidencing the Board resolution regarding: (1) the adoption of the Board Regulations, and (2) the registration of the Investors as owners with voting rights of the relevant number of Preferred Shares subscribed by the respective Investors in the Company's share register upon Full Consummation; and
13. [additional deliveries as appropriate].

In addition to the above, the Company and each of the Existing Shareholders undertakes to each Investor to execute or perform such other documents, instruments, certificates or acts as may be reasonably requested by each Investor and/or the Company in order to complete, perfect and consummate the transactions contemplated by this Agreement, including, but not limited to, the increase of the share capital of the Company and the issuance of the respective number of Preferred Shares to the Investors as set forth in this Agreement.

### Upon the delivery of the documents listed in Section 7.3.1, the following actions shall be performed:

1. The Extraordinary General Meeting shall be held in the presence of a public notary approving: (1) the increase of the share capital [(including waivers of preferential subscription rights)], (2) the creation of Preferred Shares as set forth herein, [(3) the creation of conditional share capital in the amount of CHF [amount],] and (4) the adoption of the Articles.
2. An extraordinary general meeting of the Shareholders shall be held electing the New Directors [and [name] as the new Company auditors].
3. Each Investor shall deliver a duly signed original of its Subscription Form in accordance with Section 4.1.
4. The Board shall issue the report of the Board regarding the capital increase (Kapitalerhöhungsbericht; rapport d'augmentation) and take the resolutions on the ascertainment and the execution of the Capital Increase (Feststellungsbeschluss; constatations relatives à l'augmentation du capital) in the presence of a public notary.
5. [specify additional deliveries/actions].

### The Company shall file the Application with the Register of Commerce of the Canton of [canton] immediately after receipt of the above documents.

* 1. Issuance of New Shares and Registration in Share Register

The Company shall deliver to the each Investor [and Existing Shareholder] a copy of the updated share register of the Company evidencing each Investor and Existing Shareholder as legal [and beneficial] owner of the appropriate number of Preferred Shares or Existing Shares immediately upon receipt of the certified extract and/or express confirmation of the Register of Commerce of the Canton of [canton] evidencing the registration of the Capital Increase, the adoption of the Articles, the election of the New Directors and their respective signing powers.

# [Termination and ReScission]

[If case of no Full Consummation of the Capital Increase until the earlier to occur of: [30] Business Days after the Closing or [specific date], then [each Investor who did not cause such delay by a breach of any of its material obligations under this Agreement / the Investors representing the majority of the Subscription Amounts of Investors who did not cause such delay by a breach of any of their material obligations under this Agreement, acting jointly], shall have the right (but not the obligation) to terminate and rescind this Agreement, the Shareholders Agreement and any documents, instruments or deeds executed by any of the Investors (including, but not limited to, the Subscription Forms) with immediate effect by written notice to all other Parties.

In case notice of termination and rescission is made in accordance with the preceding paragraph:

1. each of the Parties acknowledges and agrees that this Agreement (subject to Section 11.8), the Shareholders Agreement (subject to Section 11.8), and any documents, instruments or deeds executed by any of the Investors (including, but not limited to, the Subscription Forms) shall be deemed terminated and shall be without any further effect;
2. each of the Existing Shareholders and the Company hereby undertakes to the Investors to procure that the application to the Register of Commerce of the Capital Increase (if already filed) shall be withdrawn and that the respective Subscription Amounts paid by the Investors for new Preferred Shares hereunder shall be immediately repaid to each of the Investors in cash out of the blocked bank account of the Company.

Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that the right of termination and rescission pursuant to this Section 8 shall be without prejudice to any other rights or remedies that the respective Investor(s) may have under this Agreement, in particular due to its violation, under the Shareholders Agreement or under applicable laws.]

# Representations and Warranties

* 1. Representations and Warranties of the Existing Shareholders

Subject to the limitations set forth in this Section 9 (including Appendix 9.1) and Section 10, [each of the Existing Shareholders] hereby represents and warrants to each of the Investors that the representations and warranties set forth in Appendix 9.1 are true and accurate in all material respects both as of the date of this Agreement and the Closing Date, except for those representations and warranties which are explicitly made as of a specific date.

* 1. Representations and Warranties of Investors

Subject to the limitations set forth in this Section 9 (including Appendix 9.2) and Section 10, each of the Investors hereby represents and warrants to the Existing Shareholders and the Company that the representations and warranties set forth in Appendix 9.2 are true and accurate in all material respects both as of the date of this Agreement and the Closing Date, except for those representations and warranties which are explicitly made as of a specific date.

* 1. Exclusive Representations and Warranties

The Parties acknowledge that none of the Parties has made, and none of the Parties has relied upon, any representation or warranty, express or implied, pertaining to the subject matter of this Agreement other than as expressly provided in this Agreement. In particular, and without limiting the generality of the foregoing, each Investor acknowledges that no Existing Shareholder is making any representations as to budgets, business plans, forward-looking statements, the future development or success of the Company and its business or other projections of a financial, technical or business nature relating to the business of the Company.

Without prejudice to the foregoing, [each of the Existing Shareholders] hereby acknowledges that each Investor has entered into this Agreement and will pay the Subscription Amount in reliance on each of the representations and warranties set forth in this Section 9 (including Appendix 9.1).

# Indemnification; Remedies

* 1. Time Limitations

### Notice of Breach (Rügefrist; avis de violation)

An Investor shall deliver to the Company (which shall receive such notice on behalf of the Existing Shareholders) a notice in writing describing the underlying facts of a claim for misrepresentation or breach of warranty in reasonable detail to the extent then known within [60] calendar days after that Investor has obtained reasonable knowledge of the circumstances which are likely to give rise to a claim for misrepresentation or breach of warranty under this Agreement.

Failure to provide notice of claim consistent with this Section 10.1.1 shall not relieve an Existing Shareholder of any liability it may have under Section 9.1; provided, however, that an Existing Shareholder shall not be liable for any damage, loss, expense, or cost to the extent that the same is attributable to, or caused or aggravated by, or could not be remedied due to, that Investor’s failure to timely provide notice in accordance with this Section 10.1.1. The Parties explicitly waive the application of Article 201 CO.

### Time Limitations on Claims

The representations and warranties given by [the Existing Shareholders] as set forth in Section 9.1 and Appendix 9.1 shall expire, and any claim of an Investor for misrepresentation or breach of warranty shall be time barred, forfeited and precluded from being made (Verjährung; prescription):

1. with respect to representations and warranties made in Appendix 9.1 paragraph[s] [specify relevant paragraphs re legal existence, issue, no encumbrance and title of shares], as of the tenth anniversary of the Closing Date;
2. with respect to the representations and warranties made in Appendix 9.1 paragraph[s] [specify relevant paragraphs re taxes (if any)], as of the earlier of: (1) six months after the later of (i) the fifth anniversary of the Closing Date or (ii) the date on which the relevant [Taxes] have been finally assessed (veranlagt; imposé) and such assessment has become legally binding (rechtskräftig; exécutoire), or (2) the date on which the statute of limitations for the relevant [Taxes] has expired;
3. with respect to representations and warranties made in Appendix 9.1 paragraph[s] [specify relevant paragraphs re social security and pensions (if any)], as of the fifth anniversary of the Closing Date; and]
4. with respect to all other representations and warranties made in Appendix 9.1, as of the expiry of a period of [18] months from the Closing Date.

It is understood and agreed that any notice of claim for misrepresentation or breach of warranty shall be delivered to the Company (which shall receive such notice on behalf of the Existing Shareholders) on or by the applicable date set forth in the preceding paragraphs, in which case the resolution of such claim may be effected after such date; provided, however, that notwithstanding the foregoing, the Investor's claim shall be time-barred, forfeited and precluded from being made (verjährt; prescrit) unless the relevant Investor initiates proceedings on the claim against [the Existing Shareholders] in accordance with Section 12 within [one year] from the date of that Investor's notice of claim to the Company.

### Remedies for the Investors

With respect to a misrepresentation or a breach of warranty notified by an Investor to the Company in accordance with Section 10.1, [the Existing Shareholders] shall have the right, within a reasonable period of time not exceeding [30] calendar days after receipt of such notice of breach from the Company, to put the Company or, with the prior written consent of [all] Investors (such consent not to be unreasonably withheld in case the damage, loss, expense, or cost was incurred by that Investor and not by the Company), that Investor, at [the Existing Shareholders'] own expense, in the position it would have been in had no such misrepresentation or breach of warranty occurred.

If and to the extent the remedy set forth in the preceding paragraph cannot be effected or is not effected within such period of time, then that Investor, subject to the exclusions and limitations set forth in this Agreement, shall have the right to claim that [the Existing Shareholders] pay, and [each Existing Shareholder] shall be[, subject to Section 10.2, jointly and severally] liable to that Investor to pay, damages to the Company (or, if the damage, loss, expense, or cost is incurred by that Investor and that Investor so elects, to that Investor) in the amount which is necessary to put the Company (or, subject to the foregoing requirements, that Investor) in the position it would have been in had no such misrepresentation or breach of warranty occurred. Such damages shall include all duly documented external costs and reasonable expenses of the Company (or, subject to the foregoing requirements, that Investor) including reasonable attorneys' fees[, but shall exclude lost profits].

* 1. [Limitations on Liability]

[Notwithstanding anything contained in this Agreement to the contrary, it is acknowledged and agreed that the liability of [the Existing Shareholders] towards each Investor for misrepresentations or breaches of warranties under this Agreement shall not exceed, in the aggregate, an amount equal to the sum of: (1) [percentage] percent of that Investor's Subscription Amount, and (2) reasonable costs and fees incurred by an Investor in connection with the examination of a possible misrepresentation or breach of warranty and any proceedings brought against [the Existing Shareholders] in connection with any misrepresentation or breach of warranty.]

[The Parties agree that: (1) no disclosure made by any Party to the other Party (including, without limitation, during due diligence and the negotiations of the definitive agreements for the Financing Round [and no disclosure made in the Bring-down Certificates, if any]) shall operate, or be deemed to operate, as an exclusion, reduction or limitation of any liability of a Party towards another Party hereunder, except to the extent of a specific disclosure, reservation, exclusion, reduction, or limitation made in this Agreement (including Appendix 9.1 and Appendix 9.2), and (2) no fact, matter or circumstance in respect of the representations and warranties contained in Appendix 9.1 and Appendix 9.2 shall be deemed disclosed for purposes of this Agreement, unless such fact, matter or circumstance is specifically disclosed in the respective representation or warranty in Appendix 9.1 or Appendix 9.2. The Parties explicitly exclude and waive Article 200 CO, if and to the extent applicable.]

[The Existing Shareholders'] liability for misrepresentation or breach of warranty under this Agreement shall be excluded or reduced, as the case may be, if and to the extent that:

1. the relevant Investor has failed to use commercially reasonable best efforts to mitigate its loss or damage in respect thereof;
2. the relevant Investor or the Company have actually recovered [or, using commercially reasonable best efforts, could recover or could have recovered, as the case may be,] from any third person, including but not limited to an insurer, any sum in respect of any matter to which a claim made relates, after deduction of all duly documented costs and expenses incurred in making such recovery;
3. a specific provision, reserve or valuation allowance has been or is made or included in the [audited] financial statements of the Company as of [date before the signing date] with respect to the facts, matters or circumstances resulting in a misrepresentation of breach of warranty;
4. such liability is attributable to any act, omission, transaction or arrangement of the Investors after the signing of this Agreement;
5. any tax payable by the Company is reduced as a result of a matter giving rise to a claim for misrepresentation or breach of warranty;
6. such claim arises or is increased as a result of any legislation, regulation, rule of law or practice not in force at the date hereof, or as a result of the withdrawal after Closing of any authorization, license or permit previously made by any relevant authority, or as a result of any change made or introduced on or after the date hereof in any legislation, regulation, rule of law or practice of any relevant authority, whether or not such change or withdrawal purports to be effective retrospectively in whole or part.]
   1. Remedies of Existing Shareholders

The provisions of Sections 10.1 and 10.2 shall apply by analogy to any claim by an Existing Shareholder that an Investor is liable for any misrepresentation or breach of warranty under Section 9.2 and Appendix 9.2.

* 1. Remedies Exclusive

The remedies in this Section 10 for any misrepresentation or breach of warranty under this Agreement shall be in lieu of, and not in addition to, the remedies provided for under statutory law. All other remedies including, without limitation, the right to rescind this Agreement shall, subject to the right of termination and rescission in accordance with Section 8, not apply and are expressly excluded and waived.

# Miscellaneous

* 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 Investors may exercise and enforce its rights hereunder individually in accordance with this Agreement, and the non-performance by the Company or another Shareholder ("Defaulting Party") shall neither relieve the Company nor any other Shareholder from performing its obligations under this Agreement, nor shall the Company (provided it is not the Defaulting Party) or any other Shareholder be liable for the non-performance by the Defaulting Party.

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

* 1. Confidentiality

The existence as well as the terms and conditions of this Agreement, and any information exchanged among the Parties (including their respective representatives or advisors) during the due diligence and the negotiation of the definitive agreements for the Financing Round and/or pertaining to the business and the operation of the Company (all such information collectively "Confidential Information"), shall be kept strictly confidential by each Party. The Parties shall neither use in any form nor disclose to any third party any Confidential Information unless explicitly authorized by this Agreement. The Parties shall ensure that their employees, directors and any other representatives as well as the advisors of each Party to whom any such Confidential Information is entrusted comply with these restrictions.

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

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

The term Confidential Information shall not include any information: (1) which as of the time of its disclosure by a Party was already lawfully in the possession of the receiving Party as evidenced by written records, or (2) which at the time of the disclosure was in the public domain, or (3) the disclosure of which was previously explicitly authorized by the respective Party.

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

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

Finally, it is acknowledged and agreed that each of the Investors will report regularly to its investors and/or any of its Affiliates on all information pertaining to the Company and the equity investment made or to be made in the Company in accordance with its reporting obligations under its fund investment documents or to the extent required for legal, tax, audit or regulatory purposes.

[Within 60 calendar days of the Closing, the Company may issue an announcement (in a form approved in advance in writing by the Board and each Investor) confirming the investment by each Investor in the Company under this Agreement; provided, however, that such announcement shall neither disclose the specific terms on which the Investors have invested in the Company nor the amounts invested without the prior written approval of each Investor.

No other announcement or press releases regarding the matters contemplated by this Agreement shall be made by the Company without the prior written consent of the Board and each Investor (such consent of the Investors to be given entirely at their discretion).]

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

* 1. 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 the Company nor a Shareholder [(other than an Investor)] shall be entitled to assign or transfer any of the rights or obligations hereunder to any other party except with the prior written consent of each [Shareholder / Investor].

* 1. Costs and Expenses, Taxes

Subject to the immediately following paragraph, it is agreed that 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 all transactions contemplated hereby.

The Company shall bear all Swiss issuance and stamp taxes arising out of the Financing Round [and shall reimburse the Investors for all [reasonable] legal fees and [reasonable] expenses incurred by the Investors and their advisors in connection with the transactions contemplated by this Agreement [up to an amount not exceeding CHF [amount]]. Such reimbursement shall be paid to the Investors within ten Business Days after the Full Consummation of the Capital Increase].

* 1. Notices

All notices and other communications made or to be made under this Agreement shall be given in writing by [email, ]fax or courier to the following addresses:

If to Investor 1: [contact details]

If to Investor 2: [contact details]

If to Investor 3: [contact details]

If to Founder 1: [contact details]

If to Founder 2: [contact details]

If to Founder 3: [contact details]

If to Other Shareholder 1: [contact details]

If to Other Shareholder 2: [contact details]

If to Other Shareholder 3: [contact details]

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

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

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

In case of the delivery of a notice to the Company on behalf of an Existing Shareholder in accordance with this Agreement, receipt by the Company of the notice shall be relevant for the compliance with the applicable deadlines. Each Existing Shareholder hereby appoints the Company as receiver of such notices on behalf of it. The Company shall send copies of such notices to the Existing Shareholders timely upon receipt.

Each Party may change or amend the addresses given above or designate additional addresses for the purposes of this Section 11.5 by giving the other Parties written notice of the new address in the manner set forth in this Section 11.5.

* 1. Entire Agreement

With the exception of the Shareholders Agreement [and the non-disclosure agreement dated [date]], this Agreement including its Appendices constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes any agreement or understanding that may have been concluded with respect to the subject matter hereof between any of the Parties prior to the date of this Agreement[, except for the confidentiality agreement dated [date]], which shall continue to apply to the extent that its provisions are more restrictive than those set out in Section 11.2.

[The Parties confirm that in addition to this Agreement, there are no side agreements relating to the subject matter hereof between any of them [that have not been disclosed to the other Parties and the terms of which may affect any of the rights granted to any of the Parties hereunder].]

* 1. 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.

* 1. Survival

Notwithstanding any termination and rescission of this Agreement (and the Shareholders Agreement and any documents, instruments or deeds executed by any of the Investors including, but not limited to, the Subscription Forms) pursuant to Section 8, it is acknowledged and agreed that Sections [8, 11, and 12] shall survive any such termination and rescission and continue to be effective as if no such termination and rescission had occurred.

* 1. Amendments

This Agreement (including this Section 11.9) may be amended only in writing by an instrument signed by all Parties.

* 1. 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.

# Governing Law and [Arbitration] / [Jurisdiction]

* 1. Governing Law

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

* 1. [Arbitration] / [Jurisdiction]

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

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

\* \* \* \* \*

[Signature page to follow]

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

[**Investor 1**]

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

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

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

[**Investor 2**]

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

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

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

[**Investor 3**]

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

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

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

[**Founder 1**]

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

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

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

[**Founder 2**]

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

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

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

[**Founder 3**]

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

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

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

[**Other Shareholder 1**]

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

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

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

[**Other Shareholder 2**]

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

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

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

[**Other Shareholder 3**]

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

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

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

solely in respect of the obligations of the Company under Sections [3(b), 3.1.1(a), 3.1.2, 6, 7.3.1(a), 7.3.3, 7.4, 8, 11 and 12]:

[**Company**]

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

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

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

**List of Appendices**

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Appendix 1

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

"Agreement" shall mean this investment and subscription agreement.

"Application" shall have the meaning set forth in Section 7.3.1(f).

"Articles" shall mean the articles of incorporation (Statuten; statuts) of the Company substantially in the form attached to this Agreement as Appendix 3.1.3(a)] and as amended from time to time in accordance with [this Agreement and] the Shareholders Agreement.

"Assets" shall mean all assets owned by the Company other than Intellectual Property.

"Authorizations" shall mean all official authorizations, orders, permissions, product registrations, certifications, certificates, approvals, notices or consents (including all written amendments, supplements or replacements).

"Benefit Plans" shall mean all social security, pension fund or similar payments due by the Company in favour of the employees under the law or any benefit plans.

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

"Board Regulations" shall mean the organisational regulations (Organisationsreglement; règlement d’organisation) of the Board substantially in the form attached to this Agreement as Appendix 3.2(c) and as amended from time to time in accordance with [this Agreement and] the Shareholders Agreement.

"Bring-down Certificates" shall have the meaning set forth in Section 7.3.1(a).

"Business" shall have the meaning set forth in Preamble B).

"Business Day" shall mean any day other than Saturday or Sunday on which banks are open for business in [city/canton].

"Business IP" shall mean all Intellectual Property which is being used, and/or is required, in or in relation to the business operations of the Company.

["Business Plan" shall mean the business plan from time to time adopted by the Board, setting out [specify].]

"Capital Increase" shall have the meaning set forth in Preamble C).

"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).

"Claim" shall mean any claim, legal action, proceeding, suit, litigation, prosecution, investigation, enquiry or arbitration, whether actual or threatened, whether as claimant or as defendant, whether domestic or foreign, whether civil, criminal or administrative.

"Closing" shall mean the closing of the Capital Increase as set forth in Section 7.

"Closing Date" shall have the meaning set forth in Section 7.1.

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

"Company" shall mean [specify].

"Computer Systems" shall mean all computer systems used by or on behalf of the Company at any time including, without prejudice to the generality of the foregoing, computer processors, computer programs, technical or other documentation, telecommunication systems and equipment, data entered into, created or stored by such computer systems and all other computer-related hardware, software or peripherals.

"Confidential Information" shall have the meaning set forth in Section 11.2.

["Current Business Plan" shall mean the business plan of the Company attached hereto as Schedule 4 to Appendix 9.1.]

"Defaulting Party" shall have the meaning set forth in Section 11.1.

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

"Encumbrance" shall mean any claim, charge, pledge, mortgage, security, lien, option, equity, power of sale, hypothecation, usufruct, retention of title, right of pre-emption, right of first refusal or other third party rights or security interest of any kind or an agreement to create any of the foregoing.

"Environmental Law" shall mean any national, supranational or local laws, legislation or orders in Switzerland or in any country where the Company has any Business interests and that are applicable to the Business and which concern or relate to compensation in respect to damage to the environment (including, without limitation, laws relating to hygiene, emissions, discharges or threatened releases of Hazardous Substances into the environment, or to the production, processing, distribution, management, use, treatment, storage, burial, disposal, transport or handling of Hazardous Substances).

"Environmental Permit" shall mean any Authorization which is necessary under Environmental Law for the operation of the Business at the date of this Agreement.

"Existing Articles" shall mean the existing articles of incorporation (Statuten; statuts) of the Company as in effect and in force as per the date of this Agreement.

"Existing Board Regulations" shall mean the existing organisational regulations (Organisationsreglement; règlement d’organisation) of the Board as in effect and in force as per the date of this Agreement.

"Existing Shareholder(s)" shall have the meaning set forth on Page 1.

"Existing Shares" shall have the meaning set forth in Section 2.

"Extraordinary General Meeting" shall have the meaning set forth in Section 3.1.1(a).

"Financial Statements" shall have the meaning set forth in section 3.1 of Appendix 9.1.

"Financing Round" shall have the meaning set forth in Preamble C).

"Founder" and "Founders" shall have the meaning set forth on Page 1.

"Full Consummation" shall mean that the Preferred Shares issued in connection with the Capital Increase have been registered in the commercial register in accordance with Section 7.3.3.

"Hazardous Substances" shall mean any wastes, pollutants, contaminants or other substances (including, without limitation, electromagnetic fields, radioactive substances, liquids, solids, gases, noise, heat and vibration) which are materially harmful to human health or other life or the environment by virtue of their toxic, explosive, radioactive, corrosive, noisy, caustic or noxious properties.

"Intellectual Property" shall mean any trademarks, service marks, trade names, domain names, logos, patents, inventions, trade secrets and other rights in know-how, design rights, utility models, copyrights, software, rights in databases and all other similar proprietary rights anywhere in the world, including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations.

"Investor" and "Investors" shall have the meaning set forth on Page 1.

"Investor 1 Subscription Amount" shall have the meaning set forth in Section 4.1(a).

"Investor 2 Subscription Amount" shall have the meaning set forth in Section 4.1(a).

"Investor 3 Subscription Amount" shall have the meaning set forth in Section 4.1(a).

"Issue Price" shall have the meaning set forth in Section 3.1.3(b).

["Key Employee" shall mean each member or the Management and [specify additional key employees, as appropriate].]

"Management" shall mean the [CEO, CFO, CIO] and [specify additional key members of management, as appropriate] of the Company.

"Material Adverse Change" shall mean any adverse change relating to the structure, business, financial condition, prospects, assets and liabilities, or results of operations of or other material adverse effect on the Company that would cause, or is likely to cause, a reasonable investor to abstain from entering into and/or consummating the transactions contemplated under this Agreement.

"Material Agreements" shall mean as defined in section 9.4.a) of Appendix 9.1."New Director" shall mean each of the persons, who are elected as new members of the Board upon nomination in accordance with Section 3.1.3(c) and Section 7.3.1(b).

"Other Shareholder(s)" shall have the meaning set forth on Page 1.

"Page" shall mean a page of this Agreement.

"Party" and "Parties" shall have the meaning set forth on Page 1.

"Preamble" shall mean a preamble of this Agreement.

"Preferred Shares" shall mean preferred shares (Vorzugsaktien; actions privilégiées) with a nominal value of CHF [amount] per Preferred Share, each to be fully paid in in cash pursuant to the terms of this Agreement and having the preferences set forth in the Articles and the Shareholders Agreement.

"Premises" shall mean any premises required by the Company to conduct its Business.

"Proxy Holder" shall mean the proxy holder whose name is entered in the proxy as the person who is appointed to represent and act for the issuer of the proxy.

"Required Consents" shall mean as defined in section 2.5b of Appendix 9.1."Section" shall mean a section of this Agreement.

"Share Certificates" shall mean all shares and share certificates which as of the date of this Agreement validly represent the Shares.

"Shareholder" shall mean each shareholder of the Company.

"Shareholders Agreement" shall have the meaning set forth in Preamble D).

"Subscription Amount" shall mean the total of the subscription amounts payable by the respective Investor for all of its Preferred Shares in accordance with Section 4.1(a) to (c).

"Subscription Form" shall mean the subscription forms to be executed by the Investors in accordance with the terms of this Agreement, substantially in the form attached to this Agreement as Appendices 4.1(a) to (c).

"Taxes" shall mean all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of Switzerland or any other jurisdiction, and any penalty, fine, surcharge, interest, charges or costs relating thereto or to any account, record, form, return or computation required to be kept, preserved, maintained or submitted to any Tax Authority, and Taxation shall have the same meaning.

"Tax Authorities" shall mean any governmental or other authority whatsoever competent to impose, collect or assess any Taxes, whether in Switzerland or elsewhere.

"Tax Returns" shall mean any and all returns, reports and forms required to be filed with a Tax Authority with respect to any Tax.

Appendix 9.1

Representations and Warranties of Existing Shareholders

* + - 1. Capacity and Title of Existing Shareholders
         1. Authority

Each of the Existing Shareholders has the unrestricted right and authority to enter into this Agreement and to perform all undertakings under or in connection with this Agreement. This Agreement constitutes a valid, legal and binding obligation of the Existing Shareholders, enforceable against the Existing Shareholders in accordance with its terms. Neither of the Existing Shareholders is over-indebted (überschuldet; surendetté), insolvent (insolvent; insolvable) nor unable to pay its debts as they fall due (illiquid; non liquide) and there are no circumstances that indicate any over-indebtedness or insolvency or illiquidity of the Existing Shareholders in the foreseeable future.

* + - * 1. Execution and Performance

The execution and the performance of this Agreement by the Existing Shareholders have been authorized by all necessary, if applicable, corporate action of each of the Existing Shareholders and it will not:

With regard to Existing Shareholders who are legal entities, result in a breach of any provision of the constitutional documents, such as the articles of incorporation or Board Regulations, of any of the Existing Shareholders; or

result in a breach, or default under, any term or provision of any agreement, license or other instrument or of any order, judgment or decree of any court, governmental agency or regulatory body to which any of the Existing Shareholders is a party or by which any of the Existing Shareholders is bound.

* + - * 1. No Consents Required

None of the Existing Shareholders requires any notice, consent, waiver, approval or clearance by any governmental agency or regulatory body of any nature or any other person other than mentioned in this Agreement to enter into this Agreement and to consummate the transactions contemplated by this Agreement. There are no proceedings or investigations whatsoever pending or threatened against any of the Existing Shareholders that could compromise the consummation of the transactions contemplated by this Agreement.

* + - * 1. Ownership of Existing Shares

The Existing Shareholders are the sole legal and beneficial owners of the Existing Shares, free and clear of any Encumbrance. [The Existing Shareholders each have physical possession of all shares and share certificates representing the Existing Shares.]

* + - 1. Status of the Company
         1. Incorporation and Authority

The Company is a corporation duly incorporated and validly existing under the laws of Switzerland. [In particular, in the context of the incorporation of the Company and/or subsequent capital increases, there have not been any undisclosed intended acquisitions of assets (beabsichtigte Sachübernahmen; reprises de biens envisagées).] The Company has the full corporate power and authority to own its property and assets and to carry on its Business as presently conducted. The articles of incorporation and the excerpt of the commercial register relating to the Company contained in Schedule 2.1 are complete and correct and reflect the current factual and legal circumstances of the Company. There are no further applications to the commercial register that are not (yet) reflected in the documents attached in Schedule 2.1. There is no further or more extensive authority to sign on behalf of the Company than those set forth in Schedule 2.1.

* + - * 1. No Dissolution, Bankruptcy or Insolvency

No measures have been taken for the dissolution and liquidation or declaration of bankruptcy of the Company. In particular:

No order has been made, petition presented, resolution passed or meeting convened for the winding up (or other process whereby the Business is terminated and the assets of the Company are distributed amongst the creditors and/or shareholders or other contributors) of the Company and there are no cases or proceedings under applicable insolvency, bankruptcy, composition, moratorium, reorganization, or similar laws and no events have occurred which would justify any such case or proceedings.

No receiver (including an administrative receiver), liquidator, administrator, commissioner or similar official has been appointed in respect of the Company and no step has been taken for or with a view to the appointment of such a person.

The Company is neither over-indebted (überschuldet; surendettée), nor insolvent (insolvent; insolvable) nor unable to pay its debts as they fall due (illiquid; non liquide).

* + - * 1. Corporate Books and Registers

The corporate books and registers of the Company are up to date [in all material respects] and contain records which are complete and accurate [in all material respects] of all matters since its incorporation required to be dealt with in such books and registers.

* + - * 1. Capital Structure and Existing Shares

The Company has a share capital of CHF [amount], divided into [number] fully paid up registered shares with a nominal value of CHF [amount] each. The Existing Shares have been validly issued and are fully paid up and constitute the entire issued share capital of the Company. The Preferred Shares, if issued in accordance with the Investment and Subscription Agreement, will be validly issued and fully paid-up. No rights, contracts, commitments or derivative instruments are outstanding that could require the Company to sell, transfer or issue any of its capital stock. No shares or share certificates have ever been issued by the Company [other than the Share Certificates].

* + - * 1. Execution and Performance

The execution and the performance by the Company of its obligations under, this Agreement and the consummation of the transactions contemplated by this Agreement will not:

result in a breach of any provision of the constitutional documents, such as the articles of incorporation or Board Regulations, of the Company; or

result in a breach, or default under, any term or provision of any agreement, license or other instrument or of any order, judgement or decree of any court, governmental agency or regulatory body to which the Company is a party or by which the Company is bound. Schedule 2.5(b) sets forth a complete and correct list of any notice, consent, waiver, approval or clearance required as a result of or in connection with the sale of the Shares contemplated by this Agreement, or under any agreement, instrument or permit of the Company or by which the Company is bound ("Required Consents").

* + - 1. Financial Statements
         1. Compliance with Auditing Principles

Each of the audited statutory financial statements of the Company for the last [three] completed business year[s], the unaudited statutory financial statements of the Company as of [date] and the management profit and loss statement and management balance sheet as of [date] (collectively, "Financial Statements") were prepared in accordance with [the International Financial Reporting Standards (IFRS) / US GAAP / Swiss GAAP FER / the CO], including balance sheet consistency and valuation consistency. The Financial Statements (i) are free from any misstatement and reflect the financial position of the Company in all respects at the respective dates thereof and the results of the operations and cash flows of the Company for the period indicated, and (ii) completely and correctly reflect all of the Company’s assets and liabilities in all respects at the respective dates thereof. The books of account and all supporting books and records of the Company, all of which have been made available to the Investors, have been properly kept, are up-to-date and reflect all assets, liabilities and expenditures of the Company.

* + - * 1. Absence of Contingent or Undisclosed Liabilities

There are no contingent or other liabilities of the Company, other than those stated in the Financial Statements (including the notes to the Financial Statements, subject to non-material changes due to the ordinary course of business.

* + - * 1. Assets (other than Intellectual Property)

All Assets are the property of the Company and none are the subject of any assignment or Encumbrance. There are no obligations to sell the Assets other than in the normal course of business.

Assets are, where capable of possession, in the possession of or under the control of the Company or will be by Closing, or the Company is entitled and able to take possession or control of such assets.

The Assets comprise all the material assets necessary for the carrying on of the Business to the extent to which the Company is conducting it immediately prior to the Closing Date.

All existing use, with respect to the Business, of the Company’s Properties is permitted under all relevant planning and other legislation and there are no restrictions to the continued use of the Property, and no restrictions are threatened which would prevent the carrying on of the Business in any respect.

* + - 1. [Current Business Plan]

[The Current Business Plan as attached hereto as Schedule 4 has been prepared by the Company's management with the care of a duly acting business person and has been reviewed by the Company's management as of Signing and/or Closing. All statements of opinion, forecasts, projections and budgets contained or referred to in the Current Business Plan have been honestly and reasonably made, have been properly prepared on bases and assumptions which are fair and reasonable and are fair and reasonable in the circumstances. No material facts have been omitted from the Current Business Plan which would render the information contained in it misleading and it contains all information necessary to enable the Investors to make an informed assessment of the assets, liabilities, financial position, profits, losses and prospects of the Company. There are no essential facts and/or circumstances upon which the assumptions in the Current Business Plan are based that are not or no longer existing as of Signing and/or Closing. The Parties are in agreement that the foregoing does not encompass any kind of guarantee or warranty that the anticipated sales revenues, earnings or other expectations contained in the documents actually will be achieved.]

* + - 1. Ordinary Course of Business; No Material Adverse Change

Subsequently to [date of last Financial Statement] until Signing and as of Closing,

the Business has been operated in the ordinary course of business and consistent with past practice;

none of the business decisions listed in Appendix 6 to the Shareholders Agreement have been taken or implemented by the Company or its shareholders during that time period; and

no Material Adverse Change has occurred.

* + - 1. Taxes

All notices, reports, accounts, computations, statements, assessments, registrations and any other necessary information which the Company was legally obliged to submit to any Tax Authority for the purposes of Taxation, have been submitted by the Company within applicable time limits and were accurate and complete [in all material respects].

All Taxes (whether of Switzerland or elsewhere), for which the Company has been liable or is liable to account for, have been duly and timely paid.

The Company has, in accordance with applicable time limits, maintained all records in relation to Taxes as required by law and such records are sufficient to enable the Company to accurately calculate its Tax liability.

The Company has complied within applicable time limits with all notices lawfully served on it and any other requirements lawfully imposed on it by any Tax Authority.

With respect to Taxes, the Company has not paid, within the past seven years ending on the date of this Agreement, and will not become liable to pay, any material penalty, fine, surcharge or interest charged.

The Company is not involved in any dispute with any Tax Authority and has not, within the past 12 months, been subject to any visit, audit, investigation, discovery or access order by any Tax Authority. The Company is not aware of any circumstances existing which make it likely that a visit, audit, investigation, discovery or access order with respect to Taxes will be made in the next 12 months.

In the Financial Statements the Company has made full provision or reserve for any period ended on or before the relevant accounts date for all Taxation assessed or liable to be assessed on it.

* + - 1. Authorizations

All Authorizations necessary for the carrying on by the Company of its business operations have been obtained, are in full force and effect and have been and are being complied with [in all material respects]. There is no investigation, inquiry or proceeding outstanding which is likely to result in the suspension, cancellation, modification or revocation of any of such Authorizations in any material respect and none of such Authorizations has been breached in any material respect. The execution and consummation of this Agreement will not lead to the termination or otherwise affect any of the Authorizations nor will it give any right to the competent authorities or other third parties to terminate or alter such Authorizations.

* + - 1. Compliance with Laws and Regulations

The Company carried on is carrying on its business and operations so that there are no [material] breaches of applicable laws, regulations, by-laws or of its constitutional documents, and there is no investigation or enquiry by, or order, decree, decision or judgement of, any court, tribunal, arbitrator, governmental agency or regulatory body regarding any matter against the Company, or any person for whose acts or defaults the Company may be liable, nor is there any notice or other communication (official or otherwise) from any court, tribunal, arbitrator, governmental agency or regulatory body with respect to an alleged violation and/or failure to comply with any such applicable law, regulation, by-laws or constitutional documents, or requiring them to take or omit any action. In particular, the Board and the Company's management are aware of the Swiss Corruption Penal Code, and especially among others, of article 102 and article 322ter et seqq. of the Swiss Penal Code in connection with article 4a of the Federal Law Against Unfair Competition and article 59 of the Swiss Federal Tax Law concerning the Direct Federal Income Taxes. The legal and tax consequences of these laws are generally known within the Company; the Board and the Company's management have taken the necessary measures in time that the Company's employees act in accordance with these legal requirements.

* + - 1. Agreements
         1. All Agreements in the Ordinary Course of Business

With the exception of the agreements listed in Schedule 9.1, the Company is not party to any contract, agreement, arrangement or understanding, which has not been entered into in the ordinary course of its Business.

* + - * 1. Arm’s Length Terms and Conditions

The Company is not party to any contract, agreement, arrangement or understanding, which is not at arm’s length.

* + - * 1. Arrangements with Related Persons

With the exception of the agreements listed in Schedule 9.3, the Company is not and has not been party to any contract, agreement, arrangement or understanding with any Existing Shareholders or any person related to or connected with the Existing Shareholders or in which any such person is interested (whether directly or indirectly).

* + - * 1. With Respect to Material Agreements

All contracts, agreements, arrangements or obligations to which the Company is a party and which are of material importance to the Business are listed in Schedule 9.4(a) ("Material Agreements"), including without limitation:

any contract, agreement or commitment relating to the Business providing for the payment by the Company in one or several instalments of an amount in excess of CHF [amount] or the equivalent thereof;

any contract, agreement or commitment concerning confidentiality, ownership of inventions or non-competition;

any financing contract;

any contract, agreement or commitment with any employee of or consultant to the Company;

any joint venture, consortium, partnership or other unincorporated association (other than a recognised trade association);

any contract, agreement or commitment with [all / the top ten] distributors or resellers of the Company;

any contract, agreement or commitment with [all / the top ten] customers of the Company;

any contract, agreement or commitment with [all / the top ten] suppliers of the Company; and

any lease agreement.

Each Material Agreement is valid and in full force and effect, and has been disclosed in full to the Investors.

The Company has neither received nor given notice of termination of any Material Agreement. The Company is not in default under or in breach of any Material Agreement, and no party to any Material Agreement has the right to terminate or modify its obligations as a result of the transactions contemplated by this Agreement.

The Company is not, except as consistent with the ordinary course of business, a party to any agency, distributorship, marketing, purchasing, manufacturing or licensing agreement or arrangement or any agreement or arrangement that restricts its freedom to carry on its business in any material respect;

No offer, tender or the like which is capable of being converted into an obligation of the Company CHF [amount] by acceptance or other act of a third party is outstanding to the exclusion of offers, tenders or the like made in the ordinary course of business.

There is no outstanding guarantee, indemnity, surety or comfort letter (whether or not legally binding) in excess of CHF [amount].

Except for Required Consents, no agreement between the Company and a third party, including, without limitation, lease agreements for the Properties, may be terminated or altered by such third party by reason of the conclusion or implementation of this Agreement.

* + - 1. Employees

Schedule 10(a) contains a list of all employees of the Company indicating name, birth date, date of entry, position, signature authority, termination periods, and all remuneration payable including bonus, incentives, severance payments, rights to pension promises and other benefits, if any. At Closing, all employment agreements between the Company and its employees are in writing and contain only customary terms and conditions. As at the date of this Agreement, no material salary increases have been resolved but not yet implemented.

The Financial Statements contain any and all overtime claims of all employees of the Company and all outstanding holidays of all employees of the Company as per the relevant accounts date. Since such accounts date, overtime claims and outstanding holiday entitlements accrued only in the ordinary course of business.

The Company does not, as at the Closing Date, have in existence any share incentive scheme.

The Company has in relation to each of its employees complied with all obligations imposed by all relevant laws, ordinances and collective labor agreements. All employees of the Company have the necessary working permits or are Swiss citizens.

No collective labor agreement (GAV; CCT) is applicable to the Company and/or its employees. There is no and has never been any employee unrest or strike action and there are no current disputes with any governmental or self-regulatory authority, any works council or other employee representatives.

The Company has no obligation to make any severance, change-of-control or transaction bonus payment, or any payment of compensation for loss of office, employment or redundancy to any present or former employee who has performed services for the Business or to any director as a consequence of the transactions contemplated by this Agreement.

None of the key employees of the Company listed in Schedule 10(g) has at Signing given, or has been given, notice of termination of her/his employment or has indicated an intention to terminate her/his employment.

The Company has no obligation, other than those disclosed in Schedule 10(h), to pay any bonus or similar payments to any present or former employee.

* + - 1. Social Security and Pensions

All Benefit Plans for any period ending before Closing have been fully paid, or, as regards employees of the Company, provided for in the relevant financial statements. All contributions required to be made under the terms of any such Benefit Plans until the Closing have been timely made or provided for in the relevant financial statements. On the basis of and compared to the funding requirements of applicable law, none of the Benefit Plans has any accumulated funding deficiency.

* + - 1. Intellectual Property

All Business IP is listed in Schedule 12(a) and is (or, where appropriate in the case of pending applications, will be):

legally and beneficially owned by the Company or lawfully used with the consent of the owner under a license;

valid and not being infringed or challenged or opposed by any person in any manner and there is no reason to anticipate such infringement, challenge or opposition;

not subject to any Encumbrance or any license in favour of another;

in the case of rights in such Intellectual Property as are registered or the subject of applications for registration, including without limitation the Business IP listed in Schedule 12(a), are validly registered or applied for in the name of the Company, have been properly used to maintain their validity, and all registration or renewal fees which are due have been paid and all steps which are required for their registration, maintenance and protection have been taken; and

in the case of Intellectual Property related to software developed for use with the Company’s products, is fully and solely owned by the Company and the Company has the right to sell or distribute such software without restriction.

The business operations of the Company do not infringe, and have not in the past infringed, any Intellectual Property of any third party (or would not do so if the same was valid). Without prejudice to the foregoing, the Company has not (except as consistent with the ordinary course of business):

granted any licenses in respect of any Intellectual Property required by the Business;

knowingly permitted or caused, in connection with the Business, any infringement of Intellectual Property owned by a third party without taking action in relation to that infringement and remedying it; or

entered into any charge, mortgage or other Encumbrance in relation to the Intellectual Property required by the Business.

The Company has taken all measures to maintain the confidentiality of its trade secrets and know-how.

As to Intellectual Property or know-how licensed to the Company, each license is in full force and effect without default by any party thereto, the Company has paid all royalties due thereunder, and is not anticipated that any such license may terminate or change as a result of the transaction contemplated by this Agreement.

The Existing Shareholders have disclosed to the Investors all correspondence relating to the Business IP and/or the Intellectual Property of the Company.

* + - 1. Real Property

The Company does not own any real property.

The Company has good and valid title as lessee to all real property used for the operation of its business and such real property is accurately and comprehensively listed in Schedule 13(b).

There are no liabilities outstanding due to any reconstruction of the real property rented or leased by the Company and all payment obligations related thereto have been discharged.

* + - 1. Plant and Machinery

The material plant, machinery, vehicles and all other equipment and stock owned or used in connection with the Business:

are in good repair and condition and reasonable working order, subject to ordinary wear and tear; and

have been regularly and properly maintained as recommended by the relevant manufacturer.

* + - 1. Insurance

The Company has, and has had since its inception, adequate insurance coverage relating to the Business and for which it is customary in the Company’s line of business to obtain insurance coverage, including without limitation product liability, general liability, property and workers’ compensation insurance.

All insurance policies are in full force and effect and no material act, omission, misrepresentation or non-disclosure has occurred which makes any of these policies voidable, nor have any circumstances arisen which would render any of these policies void or unenforceable for illegality or otherwise, nor has there been any breach of the terms, conditions and warranties of any of the policies that would entitle insurers to decline to pay all or any part of any claim made under the policies. The Company has not breached and is not in arrears with any of its obligations under the insurance contracts, nor has the insurer communicated the intention to terminate any of these policies or contracts; in particular, all insurance premiums have been paid when due.

No product liability, professional liability or similar claim has ever been made against the Company.

* + - 1. Litigation and Proceedings

The Company (and any person for whose acts or defaults the Company may be liable) is involved in, whether as plaintiff or defendant or other party, or threatened with or threatening any Claim. Neither the Company nor the Existing Shareholders have knowledge of the existence of any fact or circumstance which is reasonably likely to give rise to a Claim.

There is no outstanding judgement, order, decree, arbitral award or other decision of a court, tribunal, arbitrator or governmental agency against the Company (or a person for whose act or default the Company is liable).

* + - 1. Competition Law

The Company has complied with all applicable antitrust and competition laws in any jurisdiction and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against it alleging any failure to comply with such antitrust and competition laws.

* + - 1. [Environment]

[The business operations of the Company have been and are being carried on in compliance with all Environmental Laws. The Company has not caused pollution of the environment so as to give rise to a duty of environmental remediation or to liability for compensation. All assets used by the Company comply and have in the past complied with all Environmental Laws.

All Environmental Permits necessary for the carrying on of the Business as well as for carrying on the Business as conducted in the past and as now carried on have been obtained, are in full force and effect and have been and are being complied with in all respects. There are no investigations, enquiries or proceedings outstanding with respect to the Business (as well as the business as conducted by the Company today and in the past), which are likely to result in the suspension, cancellation, refusal or revocation of any Environmental Permit.]

* + - 1. No Brokerage or Commissions

No person is entitled to receive from the Company any options, a finder’s fee, brokerage, commission or other form of remuneration in connection with the transactions implemented or contemplated by this Agreement or anything in it and the Company is not liable to pay to any of its board members, managers, employees, agents and advisers any sum whatsoever or grant any options to such persons in connection with this Agreement.

* + - 1. [Disclosure]

[The Existing Shareholders have disclosed to the Investors all material information relating to the Company and the Business.]

Appendix 9.2

Representations and Warranties of Investors

* + - 1. Capacity of Investors
         1. Authority

Each of the Investors has the unrestricted right and authority to enter into this Agreement and to perform all undertakings under or in connection with this Agreement. This Agreement constitutes a valid, legal and binding obligation of the Investors, enforceable against the Investors in accordance with its terms. Neither of the Investors is over-indebted (überschuldet; surendetté), insolvent (insolvent; insolvable) or unable to pay its debts as they fall due (illiquid; non liquide) and there are no circumstances that indicate any over-indebtedness or insolvency or illiquidity of the Investors in the foreseeable future.

* + - * 1. Execution and Performance

The execution and the performance of this Agreement by the Investors have been authorized by all necessary corporate action of each of the Investors and it will not:

result in a breach of any provision of the constitutional documents, such as the articles of incorporation or board regulations, of any of the Investors; or

result in a breach, or default under, any term or provision of any agreement, license or other instrument or of any order, judgment or decree of any court, governmental agency or regulatory body to which any of the Investors is a party or by which any of the Investors is bound.

* + - * 1. No Consents Required

None of the Investors requires any notice, consent, waiver, approval or clearance by any governmental agency or regulatory body of any nature other than mentioned in this Agreement to enter into this Agreement and to consummate the transactions contemplated by this Agreement. There are no proceedings or investigations whatsoever pending or threatened against any of the Investors that could compromise the consummation of the transactions contemplated by this Agreement.