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**Swiss Startup Association**

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Loan agreement

from

[Date]

between

[Name]

[Street.]

[ZIP, City]

[Country]

(**"Lender"**)

and

[Name]

[Street.]

[ZIP, City]

[Country]

(**"Borrower"**)

("Lender and Borrower together the "**Parties"**

and one **"Party"** each)

1. **Preamble**

The Borrower is a stock corporation (*Aktiengesellschaft*) under Swiss law with their registered office in [...], which is entered in the Commercial Register of the Canton of [...] under company number CHE- [...]. The Borrower has a share capital of CHF [...], divided into [...] [fully paid-in] registered shares with a nominal value of CHF [...] each.

The Lender agrees to make a loan to the Borrower in accordance with this Agreement.

[Option: The Lender agrees to make a subordinated loan to Borrower pursuant to this Agreement].

[Note: A subordinated loan may be necessary depending on the circumstances, in particular in order to avoid any over-indebtedness, respectively the duty to notify a judge due to over-indebtedness.]

In light of the foregoing, the Parties agree as follows (the "**Agreement**").

[Note: The following agreement is designed exclusively for a Borrower in the form of a stock corporation. If the form of a corporation of a Borrower is deviated from, the Agreement shall be adapted. In addition, the following Agreement is designed for [one (1)] Lender. If more than one Lender makes identical Loans, the Agreement shall be amended.]

1. **Amount, disbursement and purpose of the loan**

The Lender provides the Borrower with a loan ("**Loan**") of CHF [...].

The Loan is granted to the Borrower for the purpose of [description of what the loan is to be used for].

The Loan shall be transferred to the Borrower's bank account known to the Lender [or to the account notified by the Borrower] within [...] business days after the signing of the Agreement by both Parties.

[OR.]

The Borrower hereby confirms that they have already received the Loan in full on [...].

1. **Interest**

[Option 1: The Loan is interest-free.

[Option 2: The Loan shall bear interest at a rate of [x]% per annum from the date of receipt in the account of the Borrower (value date).

Interest is calculated considering the effective calendar days having passed and assuming an interest year of 360 days (current/360).

The interest is due for payment to the Lender, in case of early repayment according to this Agreement, *pro rata temporis* as per the date of repayment or, in the absence of early repayment, at the end of the term of the Loan.

[Option 3: The Loan amount shall bear interest from the date of receipt in the account of the Borrower (value date) at a corresponding interest rate [to be determined jointly] / [set in accordance with the Swiss Federal Tax Authority (SFTA) circular (as set out in the last paragraph of this section 4)] annually.

The interest is calculated taking into account the effective calendar days and assuming an interest year of 360 days (current/360).

The interest is due for payment to the Lender either *pro rata temporis* with any early repayment or, in the absence of early repayment, at the end of the term of the Loan.

[If the Lender is a shareholder of the Borrower, the interest rate shall be determined in accordance with the respective applicable circular ("Tax Recognised Interest Rates for Advances or Loans in CHF") of the SFTA and shall be automatically adjusted annually based on the respective applicable circular of the SFTA. The adjustment is made in each case after publication of the circular and is retroactive to the current calendar year. The interest rate shall be based on the lower limit of the recommended interest rate range of the respectively valid circular].

1. **Duration of loan**

This Agreement shall enter into force upon signature by both Parties and shall terminate automatically upon repayment of the Loan [plus interest]. The Loan is granted on a fixed basis until [...].

Early repayment by the Borrower is possible at any time without payment of an early repayment penalty or any other penalty, [but requires the prior written consent of the Lender].

[Note: In the case of a subordinated loan, repayment is not readily possible because this is contrary to the deferral condition in the subordination. Legal advice should be sought for this case if early repayment is nevertheless to be possible].

The Lender is entitled to terminate the Loan at any time after its disbursement and with immediate effect and to demand immediate repayment of the Loan [including accrued interest] if there is good cause (*wichtiger Grund*), in particular:

1. if the Borrower fails to perform its obligation to pay any amount under this Agreement and fails to make the payment due within [...] business days after the due date; and/or
2. If the Borrower breaches any [material] provision of this Agreement and fails to restore the condition in accordance with this Agreement within [...] business days of written notice by the Lender; and/or
3. if a change in the legal and/or economic structure of the Borrower occurs which has a negative impact on the ability of the Borrower to meet their financial obligations under this Agreement, in particular as a consequence of a merger, quasi-merger, transformation, liquidation or sale of all or any material assets of the Borrower; and/or
4. if one or more shareholders of the Borrower sell shares equivalent to at least [...] % of the registered share capital of the Borrower to a third party in a single (including in a series of related) economic transaction(s).
5. **Subordination**

In the event of bankruptcy or over-indebtedness (evidenced by an audited balance sheet or interim balance sheet) of the Company, the Lender hereby irrevocably and unconditionally declares to the Borrower that the outstanding Loan [together with any accrued interest now or hereafter owing in respect of the Loan] (the "**Subordinated Amount**"), shall be subordinated to all present and future claims of creditors of the Borrower.

During the subordination period, the Subordinated Amount shall be deferred and none of the claims under the Subordinated Amount shall be repaid, novated, or otherwise satisfied, in whole or in part, and no security interest shall be created in respect of such claims.

In the event of bankruptcy or voluntary liquidation of the Borrower, the Lender waives its claim to coverage from the bankruptcy or liquidation proceeds to the extent that not all non-subordinated creditors can be satisfied in full for their claims.

The subordination can only be cancelled if:

1. a balance sheet of the Borrower audited by the auditors shows that all liabilities are covered by the assets, calculated at going concern or liquidation values, and that there is no imminent threat of new over-indebtedness; and/or
2. the Lender definitively waives in writing the assertion of the claims deferred in rank; and/or
3. the Loan is converted into share or participation capital.
4. **Final provisions**
	1. **Transfer/Assignment of Agreement**

The Lender is entitled to transfer the claims flowing from this Agreement with all rights and obligations to a legal successor. The Borrower shall only be entitled to transfer with the prior written consent of the Lender.

* 1. **Contract amendments**

Amendments, supplements or the cancellation of the present contract are only legally valid in writing and signed by both Parties. This also applies in particular to this written form clause.

* 1. **Severability clause**

Should this contract be or become legally ineffective in whole or in part, the remaining provisions shall remain unaffected. The Parties undertake to replace an invalid provision with a valid provision that comes as close as possible to the economic purpose of the invalid provision. The same shall apply in the event of a loophole.

* 1. **Costs and expenses**

Each Party shall bear its own costs and expenses incurred in connection with this Agreement.

* 1. **Secrecy**

The Parties undertake to treat the conclusion and the content of this contract as well as all documents made available in the course of the contract negotiations as confidential. This is subject to disclosures required by law or other regulations, as well as obligations to provide truthful information to competent authorities and courts.

[Option: Shareholders as well as (potential) investors are excluded, which disclose information to the respective other Party under the condition that they are also bound to confidentiality.]

* 1. **Announcements**

The Parties shall agree in advance on all public communications in connection with this Agreement. Excluded from this are statutory reporting obligations and reports based on applicable stock exchange law.

* 1. **Applicable law and place of jurisdiction**

This contract is governed by Swiss law (to the exclusion of international private law). The exclusive place of jurisdiction for all disputes or claims arising from or in connection with the present contract is [place, Switzerland]. In addition, either Party may apply to any competent court for precautionary measures.

Signatures on the next page.

**Lender:**

[if company: company name here]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place, Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
[Name, Function] [Name, Function]

**Borrower:**

[Company Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place, Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
[Name, Function]