**SISAT - Swiss Investment Syndicate Agreement Template**

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| *Authors:*Matthieu Gueissaz, BAS  and Blockchain Valley VenturesDr. Paul Peyrot, BAS  and Peyrot Schlegel GyöffyMarcel Jakob, Schellenberg Wittmer |

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| *With the support of:*Alexander Wellinger, Wellinger NotaireAndrea Galea, Go BeyondBrigitte Baumann, Go BeyondCaroline Gueissaz, BASChristian Winkler, BtoVEtienne Gard, BratschiFabio Elsener, Schellenberg WittmerJulien Pache, InvestiereKarim Maizar, Kellerhals CarrardStéphane Rousset, BASThierry Obrist, LEAX AvocatsDr. Thomas Billeter, Impact 51Dr. Thomas Dübendorfer, SICTICThomas Kern, SICTICWerner Vontobel, DIventures |

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**Introductory remarks**

This Investment Syndicate Agreement Template (SISAT) is an initiative lead by [Business Angels Switzerland (BAS)](https://www.businessangels.ch/) with the support of [Alexander Wellinger, Notaire](https://www.notaires.ch/annuaire/vaud/alexander-wellinger), [Blockchain Valley Ventures (BVV)](https://bvventures.ch/), [Bratschi](https://www.bratschi.ch/en.html), [Business to Venture (BtoV)](https://btov.vc/), [DIventures](https://www.diventures.ch/de/home/), [GoBeyond](https://www.gobeyondinvesting.com/), [Impact 51](https://www.impact51.com/), [Investiere](https://www.investiere.ch/), [Kellerhals Carrard](https://www.kellerhals-carrard.ch/), [LEAX Avocats](http://www.leax.ch/fr/), [Peyrot Schlegel Gyöffy Rechtsanwälte,](https://www.psg-law.ch/) [Schellenberg Wittmer](https://www.swlegal.ch/en/) [Swiss ICT Investor Club (SICTIC)](https://www.sictic.ch/). The SISAT aims to be the Swiss standard template agreement to syndicate investments by angel investors investing small amounts in a start-up company. By allowing up to 20 investors to appear as a single-ticket investment, using the SISAT provides investors access to deals where the minimum ticket surpasses their individual desired investment amount.

The SISAT was drafted with the following setup in mind[[1]](#footnote-2):

* All investors who become syndicate partners are domiciled in Switzerland[[2]](#footnote-3), are familiar with venture capital investments and the relevant risks and are in a position to manage their financial interests themselves;
* The partnership invests in one Swiss start-up company only;
* The shares or other equity related securities issued by the start-up company in consideration for the investment shall be held jointly (G*esamthand / propriété commune*) by all partners;
* The lead partner chosen among the partners shall be reimbursed for his/her expenses, but shall not receive any remuneration; and
* All shareholders of the start-up company are bound by a market standard shareholders' agreement (e.g. following the [SECA Model Documentation](https://www.seca.ch/Templates/Templates/VC-Model-Documentation.aspx)).

***General Disclaimer***

The SISAT is limited to the minimum content and is drafted in a user-friendly way in order to enable the venture capital community. It does not constitute legal or tax advice and is not meant to serve as a recommended form suitable for each and every venture capital investment. It is upon the user to analyze, if and to what extent the SISAT is suitable to a specific investment. It is recommended that users seek professional legal and tax advice before entering into any agreement. The authors of the SISAT as well as any organizations and firms which support the SISAT exclude any responsibility and liability related to the SISAT and any information provided herein.

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**To foster the further development of SISAT, you are invited to submit any comments and suggestions to matthieu.gueissaz@sisat.ch**

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| --- | --- | --- |
|  |  | **Investment Syndicate Agreement** |
|  |  |  |
|  |  |  |
| dated |  | [**•**Final date] |
|  |  |  |
| between |  | [**•**Name], residing at: e-mail: |
|  |  |  |
|  |  | [**•**Name], residing at: e-mail: |
|  |  |  |
|  |  | [**•**Name], residing at: e-mail: |
| and |  | [**•**Name], residing at: e-mail: |
|  |  |  |
|  |  | Each: “Partner” |
|  |  | all together hereinafter: “Partners” or the “Partnership” |
| concerning |  | **Co-investment in [•XY Company AG] (“Company”)** |

#### Recitals

1. The Company is a [*type of company, e.g. Swiss joint-stock company or Swiss limited liability company*] with registered domicile at [*address*]. It intends to conduct a financing round (the "**Financing Round**").
2. The Partners wish to invest in the Company and its business and, therefore, to participate in the Financing Round proposed by the Company [and its existing shareholders].
3. The Company has [and its existing shareholders have] asked the Partners to combine their resources and make a joint investment (single-ticket investment).
4. In an effort to allow such single-ticket investments, the Partners are willing to agree to and stay in a partnership under Swiss law for the purpose of the investment in the Company.

Based on the foregoing, the Partners agree as follows:

#### Defined Terms and Interpretation

 **Affiliate:** Any person, partnership or entity (whether incorporated or not) that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the relevant Partner (including funds, investment vehicles or other entities formed or incorporated in any jurisdiction which are managed by the relevant Partner).

**Agreement:** This agreement including its annexes.

**Budget:** As set forth in section 5.6.

**Effective Date:** The date of the last signature of a Partner of this Agreement or the date of execution of the first Financing Round of the Syndicate, whichever comes first. Should additional Partners join the Syndicate at a later point in time, this does not affect the Effective Date.

**Exit**: An exit means (i) an initial public offering of the Shares or of the financial instruments held by the Partnership in the Company for trading on a public stock exchange; (ii) the sale of the Shares or other financial instruments held by the Partnership in the Company against cash or other liquid financial instruments; and (iii) any similar transactions, including an exit or a change of control as defined in the Shareholder Agreement.

**Financing Round:** As defined in Recital A).

**General Assembly:** The shareholders meeting or any other supreme governing body of the Company.

**Later Investment Rounds:** Any offering to invest in equity or similar securities (including equity-linked securities, loans convertible in equity and the like) by the Company or its shareholders, which occurs after the Effective Date.

**Lead Partner:** As set forth in section 6.1.

**Ledger:** As set forth in section 2.4.

**Part or Parts**: The share in the Partnership attributed to a Partner as indicated in the Ledger, calculated with respect to a Partner as the proportion between the weighted ownership in the Shares held by such Partner to the Partnership and the aggregate amount of Shares held by all Partners, all Parts together representing 100%.

 **Partner Assembly**: A physical meeting or a meeting of the Partners held by any other means of duplex communication (such as telephone or video conference) pursuant to this Agreement.

**Partnership**: As defined in section 2.1.

**Qualified Majority**: A resolution by the Partners passed by a majority of at least two thirds of the votes present or represented (one vote per Partner) and an absolute majority of the Parts attributed to the Partners present or represented.[[4]](#footnote-5)

**Shares:** The shares or any other the financial instruments in the Company held by the Partnership.

**Shareholder Agreement**: The shareholder agreement regarding the Company the Partnership is or will become a party to.

English terms to which the Swiss legal term has been added in italics shall be interpreted in accordance with such translation, disregarding the English term to which such translation relates.

#### General Provisions

##### Purpose

The Partners hereby form a simple partnership (*einfache Gesellschaft / société simple*) according to articles 530 ff. of the Swiss Code of Obligations (CO) for the sole purpose of investing in the Company, in particular to participate in the Financing Round (the "**Partnership**").

The Partnership shall operate as an investment club according to article 2 para. 2 lit. f of the Swiss Federal Act on Collective Investments Schemes (CISA) and article 1a of the Ordinance on Collective Investment Schemes (CISO) and, as a consequence, the common understanding of the Partners is that the Partnership shall not be, and shall be operated in a manner to not become, subject to the CISA.[[5]](#footnote-6)

##### Name; Seat and Address

The name of the Partnership shall be “[*• Co-Invest Syndicate*]” or such other name as the Partners may from time to time agree upon. No Partner shall carry on business under such name except as contemplated by this Agreement.

The seat and address of the Partnership shall be at the domicile of the Lead Partner in Switzerland, unless he/she has decided otherwise and communicated the alternative Swiss seat and address in writing to all Partners.

Neither seat, nor address of the Partnership shall be outside Switzerland.

##### Duration

The term of the Partnership commenced on the Effective Date and shall continue until the date on which the business of the Partnership is terminated due to an Exit and the subsequent distribution of the Partnership’s assets, unless the Partners decide to dissolve the Partnership earlier by Qualified Majority decision.

The Partners waive their right to terminate the Agreement or their membership in the Partnership pursuant to article 546 CO.

##### Ledger; Beneficial Ownership

The Partnership shall record the Part of each Partner in ledger kept by the Lead Partner ("**Ledger"**). The initial Ledger is annexed as Annex 1. The Lead Partner may keep the Ledger in a digital form.

The Partners acknowledge that the Ledger does not constitute individual ownership in any assets of the Partnership, including any Shares.

Partners shall disclose the ultimate beneficial ownership with respect to their Part upon first request by the Lead Partner, to the other Partners including the Lead Partner.

##### Allocation of Profits and Losses

Unless defined otherwise herein, all profits and losses of the Partnership are attributed to the Partners in proportion to each Partner's Part.

#### Contributions by the Partners

##### Initial Contribution

Upon request of the Lead Partner in writing, each Partner shall make his/her/its initial contribution as indicated in Annex I within three (3) business days. The contribution may be made in cash to a bank account designated by the Lead Partner or in any other form as agreed between the Partners (e.g. contribution of shares in the Company held by the Partners individually).

No Partner shall be entitled to any interest on any contribution to the Partnership.

##### Later Investment Rounds of Company

No Partner has any obligation to provide any financing to the Company exceeding the initial contribution by each Partner, unless a Partner has confirmed such in writing.

Each Partner has the individual right (but no obligation) to participate in any Later Investment Round through the Partnership. If a Partner does not exercise subscription rights attributed to his/her/its Part within a deadline set by the Lead Partner in writing or waives the relevant subscription rights in writing, the Lead Partner may reassign such rights to other Partners on a pro rata basis.

To the extent Partners participate in a Later Investment Round, the Ledger is updated accordingly.

The Partners [shall refrain from making / shall be allowed to make] direct [debt or equity] investments in the Company other than through the Partnership.[[6]](#footnote-7)

##### Costs and Expenses; Taxes

All costs and expenses related to the set-up, running and wind-down of the Partnership shall be divided between the Partners in proportion to each Partner's Part.

Each Partner shall bear his/her/its own costs and expenses arising out of or in connection with him/her becoming, being or ceasing to be a Partner and each Partner shall be responsible for his/her/its own tax disclosure and liability that may arise as a result of this Partnership and transactions contemplated by this Agreement.

#### Assets and Liabilities of the Partnership

##### Shares

All Shares shall be held in joint ownership of the Partners (*Gesamteigentum /* *propriété commune)* pursuant to article 652 Civil Code (CC).

The Shares shall be registered in the Company's share register in the name of all Partners and the Lead Partner shall be registered as representative, the format of the registration being as follows: *"[• Co-Invest Syndicate] consisting of [name of Partner 1], [name of Partner 2] and [name of Partner 3], represented by [name of Lead Partner]*". The Lead Partner is responsible for the registration in the Company's share register and any update.

The Lead Partner may disclose the identity of the Partnership's and the Partner's ultimate beneficial owners to the Company to the extent legally required or deemed necessary by the Lead Partner.[[7]](#footnote-8)

##### Other Asserts

Any asset of the Partnership other than the Shares may be held in joint ownership (*Gesamteigentum*), co-ownership (*Miteigentum*) or individual ownership of the Lead Partner, as deemed adequate by the Lead Partner.[[8]](#footnote-9)

##### Liabilities

No Partner shall be jointly and severally liable for any obligation or liability to any third party contracted by or on behalf of the Partnership (including by the Lead Partner), unless such obligation or liability has been agreed upon by such Partner in advance (obligations and liabilities as set forth in the Budget are considered agreed upon).

#### Governance

##### Powers of Partners

The Partners shall be the supreme body of the Partnership and shall have the following powers:

* elect and dismiss the Lead Partner;
* ultimate management of the Partnership, including taking of any investment decisions and decisions pertaining to shareholder rights;
* ultimate supervision of the Lead Partner;
* consent to the entering into, any amendments or modifications of, a termination of, or a withdrawal from, the Shareholder Agreement and
* to resolve any other matter, which is subject to resolution by the Partners pursuant to this Agreement or law.

##### Partner Resolutions

Unless specified otherwise in this Agreement, each Partner has [one vote][[9]](#footnote-10) and a Partner resolution requires an absolute majority of the votes cast of the Partners present or represented in a Partners Assembly.

A circular resolution by the Partners shall require the approval of all Partners.

##### Partner Assembly

The Partnership will hold at least one Partner Assembly per year, usually ahead of the annual ordinary General Assembly. A Partner Assembly is called by the Lead Partner upon receipt of the invitation and agenda for the General Assembly from the Company or, if no General Assembly is scheduled, within [six (6)] months after the end of the Company's business year.

A Partner Assembly is called in by the Lead Partner no later than [seven (7)] calendar days prior to the date of the Partner Assembly in writing (including by electronic written means), indicating date and time, the agenda items and the motions.

Partners may be represented in the Partner Assembly by other Partners based on a proxy in writing. No quorum of attendance applies for any Partner Assembly[[10]](#footnote-11). The Lead Partner shall provide minutes in writing to each Partner no later than [five (5)] business days after the Partner Assembly.

Partners representing at least [five (5)][[11]](#footnote-12) per cent of the Parts may request the Lead Partner to call a Partner Assembly. Any Partner may request an item to be placed on the agenda of a Partner Assembly.

The Partners may hold a Partner Assembly without complying with any formal requirements, if and as long as all Partners are present or represented at such meeting and no objection is raised by a Partner.

##### Representation of the Partnership

The Partnership is represented towards third parties (including the Company and other shareholders of the Company) by the Lead Partner.

No other Partner shall have the right to represent the Partnership or enter into any agreements on behalf of it.

##### Information Rights of the Partners

The Partners shall be informed by the Lead Partner about the status of any investment of the Partnership (including the Shares) on a regular basis in writing, at least at the frequency[[12]](#footnote-13) and level of detail as set out in the Shareholder Agreement and any other contractual agreements between the Partnership and the Company.

Any communication of the Company to the Partnership shall be forwarded to all Partners.

Any Partners may reasonably request the Lead Partner to exercise information rights provided for under the Shareholder Agreement or by law and pertaining to the Shares.

##### Budget of the Partnership

The Partners shall resolve on a budget for the costs and expenses of the Partnership, including the expenses of the Lead Partner ("**Budget"**). The initial Budget is attached as Annex II and shall be valid until amended or replaced by a Partner Resolution. The Partners shall, upon first request of the Lead Partner, advance to the Partnership the funds necessary to cover the costs and expenses of the Partnership in line with the Budget.

#### Lead Partner

##### Election and Dismissal of Lead Partner

The Partners shall elect a lead Partner ("**Lead Partner**). The initial Lead Partner is set out in Annex III.

The Partners may dismiss the Lead Partner at any time by a Partner Resolution taken in accordance with this Agreement.

##### Function and Powers of Lead Partner

The Lead Partner shall be entrusted with the ordinary day-to-day management and administration (but not the investment decisions) of the Partnership and the Partners delegate any power relating to the ordinary management and the administration of the Partnership to the Lead Partner. The Lead Partner’s right to represent the Partnership is limited to the matters relating to the Company. This includes representing the Partnership towards the Company and participating and representing the Shares in the General Assembly, in accordance with the instructions of the Partners pursuant to section 6.3.

The Lead Partner shall keep the accounts and other books of the Partnership and prepare appropriate statements.

The Lead Partner shall not be allowed to dispose of any Shares held by the Partnership, interest in Shares or other investments of the Partnership, shall not commit the Partnership to liabilities exceeding [CHF 500 (one-time expenses) or CHF 200 (recurring expenses)][[13]](#footnote-14), shall not borrow any money on behalf of the Partnership and shall not hire any employees, service providers or subcontractors on behalf of the Partnership, unless such has been approved by the Partners (expenses as set forth in the Budget are considered approved).

The Lead Partner shall not make any investments on behalf of the Partnership, including any commitment to any Later Investment Round, unless such has been approved by the Partners and they have committed the necessary funding. If the Partners instruct the Lead Partner to represent them in view of the Financing Round or a Later Investment Round, the Partners hereby renounce their respective subscription rights in favour of the Lead Partner to the extend necessary for the Lead Partner to subscribe to the Shares on the Partners’ behalf.

##### Instructions of Partners regarding Investments and Shareholder Rights

At the Partners Assembly, the Lead Partner shall present any matter related to the Company or other investments of the Partnership to the Partners and ask the Partners for instructions.

The Lead Partner shall present the agenda of the General Assembly and the motions received from the Company to the Partners and the Partners shall communicate their instructions with respect to each agenda item to the Lead Partner. The Lead Partner shall represent the Shares in the General Assembly to the extent legally possible in a way that reflects the instructions of the Partners, even if this requires a split vote of the Shares.

##### Costs and Expenses and Remuneration of Lead Partner

The Lead Partner shall not be remunerated but shall be reimbursed for his/her cost and expenses incurred in the course of performing his/her function pursuant to this Agreement.

##### Limitation of Liability and Indemnification of Lead Partner

The Lead Partner shall not be liable, in damages or otherwise, to the Partnership or the Partners, for any act or omission in connection with or in any way relating to the Partnership's business or affairs, except in the case of any act or omission resulting from gross negligence or wilful misconduct of the Lead Partner.

The Partners agree to indemnify and hold harmless the Lead Partner from and against any damages, claims and liabilities incurred by the Lead Partner in his/her function pursuant to this Agreement, except if the relevant act or omission results from gross negligence or wilful misconduct of the Lead Partner. This indemnity shall not apply to any internal dispute between Partners.

#### Dissolution of the Partnership

##### In case of an Exit

In the case an Exit is anticipated, the Lead Partners shall immediately call a Partnership Assembly, which shall take place as soon as possible.

The Partnership Assembly shall decide on whether to participate in the proposed Exit as follows:

* In case only a full Exit is proposed or possible (e.g. only all, but not less than all Shares may be sold in the relevant Exit), participation of the Partnership in the Exit shall be subject to consent by Qualified Majority;
* In case a partial Exit is proposed or possible (e.g. all or less than all Shares may be sold in the relevant Exit), the Partnership shall participate in the Exit with the proportion of Shares attributable to the Parts of the Partners who consented to the proposed Exit (e.g. if Partners representing 50% of the Parts consent, 50% of the Shares shall participate in the Exit). Any income, financial instruments or other proceeds received in the partial Exit are allocated by the Lead Partner among the Partners consenting to the Exit in proportion to their Parts, after deduction of the costs and expenses related to the partial Exit and any outstanding contributions or advances. If a Partner consents to an Exit and the Shares attributable to the relevant Part have been sold or exchanged, he/she/it is released from the Partnership and ceases to be a Partner upon distribution of the relevant proceeds. The other Partners shall continue the Partnership.

The Partners acknowledge that the investment in the Company is subject to the terms and conditions of the Shareholder Agreement, which may provide for a right of first refusal, drag-along, tag-along, call options, and other rights and obligations which may restrict the decision of the Partners to participate, or abstain from participating in, a specific Exit.

No consent of the Partners is required in relation to a specific Exit, if the Partnership is required to participate in the relevant Exit due its obligations under the Shareholder Agreement.

##### Distribution

Upon winding up of the Partnership, the Lead Partner shall settle any outstanding debts of the Partnership and, thereafter, distribute the remaining assets to the Partners in proportion to their Parts.

In case of a net loss, the Partners shall provide the Partnership with the funds necessary to cover any liabilities, in proportion to their Parts, within [ten (10)] business days from the Lead Partner request.

##### Continuation of Partnership

This Agreement and the Partnership shall continue notwithstanding the withdrawal of, or termination by, a Partner of this Agreement, or the bankruptcy or death of a Partner or a Partner becoming incapable to act (Handlungsunfähigkeit; incapacité d'exercer les droits civils). As the case may be, the relevant Partner's legal successors or representatives shall succeed the relevant Partner.

In case a Partner otherwise loses its capacity to exercise rights or obligations under this Agreement for a period of more than six months and such Partner's legal successor(s) or representative(s) fail to appoint one person as valid legal successor or representative, the other Partners may resolve to exclude the relevant Partner by Qualified Majority.

#### Miscellaneous

##### Communication

Unless explicitly specified otherwise, any communication shall be in writing, which shall include communication by electronic means (e.g. e-mail, DocuSign, Konsento, or any other means of electronic communication reproducing words in a legible and non-transitory form). Communication shall be sent to the addresses specified on the cover page of the Agreement, unless a Partner notifies the other Partners of a change.

##### Release and Accession of Partners

Unless otherwise defined in this Agreement, Partners may be released from the Partnership if approved by a Qualified Majority, with the Partner applying for release abstaining.

A new Partner may join the Partnership subject to (i) prior written consent of all then existing Partners and (ii) the new Partner having duly signed this Agreement.

##### No Assignment or Transfer of Parts

No Partner may delegate, assign or transfer rights or obligations under this Agreement (including his/her/its Part) in part or in full without the prior approval of the Partners by Qualified Majority. However, each Partner may transfer some or all of his/her/its Part to an Affiliate, subject to (i) the Affiliate having duly signed this Agreement and (ii) a written undertaking by such Affiliate that it will immediately re-transfer the relevant Part to the relevant Partner or an Affiliate of such Partner, if and when it ceases to be an Affiliate of such Partner.

For the purpose of this section, transfer includes any voluntary or involuntary transfer or encumbrance (including assignment for security purpose) of any Part or any other Partner’s interest in the Partnership, except those arising in case of the Partner’s death or incapacity, in which case said rights or obligations shall transfer to the Partner’s legal successors or representatives who shall join this Agreement without requiring consent of the other Partners.

##### Amendments

This Agreement, including this section, may only be amended by a document signed by two thirds of the Partners, representing at least the absolute majority of the Parts.

##### Confidentiality

1. Each Partner undertakes that he/she/it will not at any time hereafter publish, divulge, disclose or communicate to any person (other than where relevant to their officers, employees or professional advisors bound by a confidentiality undertaking and whose position makes it necessary to know the same) any information on the Partnership affairs or about the content of this Agreement ("Confidential Information") except for such
2. information that:
3. was known or used by such Partner or its Affiliates prior to its date of disclosure to such Partner as demonstrated by legally admissible evidence available to such Partner or its Affiliates;
4. either before or after the date of the disclosure to such Partner, is lawfully disclosed to such Partner or his/her/its Affiliates by sources which are rightfully in possession of the Confidential Information;
5. either before or after the date of the disclosure to such Partner becomes published or otherwise part of the public domain through no fault or omission on the part of such Partner or its Affiliates;
6. is independently developed by or for such Partner or his/her/its Affiliates without reference to or in reliance upon the Confidential Information as demonstrated by written records; or
7. is required for the performance of the obligations of such Partner under this Agreement or for the implementation of this Agreement; or
8. is required to be disclosed by such Partner to comply with applicable laws or regulations or to defend or prosecute litigation, provided that such provides prior written notice of such disclosure to the Partnership and takes reasonable and lawful actions to avoid or minimize the degree of such disclosure.
9. Disclosure by the Partnership of the identity of any Partner and his/her/its investment position and disclosure by any Partner of his/her/its investment and the size thereof in the Company to an attorney or financial institutions (in each case bound by a confidentiality undertaking or a legal obligation of professional secrecy) shall not constitute a breach of this section.
10. The duty to keep information confidential remains also for a period of three years after the termination of this Agreement.

##### Governing Law

This Agreement shall be governed and construed in accordance with the laws of Switzerland (excluding Swiss Private International Law and international treaties).

##### Dispute Resolution

All disputes arising out of or in connection with this Agreement, including disputes regarding its conclusion, validity, conclusion, validity, binding effect, amendment, breach, termination or rescission shall be subject to the exclusive jurisdiction of the courts [at the seat of the Company / of the Canton of [Geneva/Vaud/Zurich, the venue being Geneva/Lausanne/Zurich 1]][[14]](#footnote-15).

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*Signatures on following page*

**Signatures**

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| --- |
| Place: **•**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Date: **•**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: **•**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| Signature: **•**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Annex I: Ledger**

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| --- | --- | --- |
| **Name** | **Initial Contribution** | **Part** |
| Hans Miller, born 15.02.1980, living in Zürich | CHF 60’000.00 | 40% |
| Andrea Bernasconi, born 14.12.1982, living in Lugano | CHF 80’000.00 | 53.33% |
| Veronica Desmeules, born 07.08.1979, living in Lausanne | CHF 10’000.00 | 6.66% |
| **TOTAL** | **CHF 150’000.00** | 100% |

**Annex II: Budget**

|  |  |  |
| --- | --- | --- |
| **Costs and Expenses** | **Amount p.a.** | **One-time Amount**  |
| [travel expenses Lead Partner] | CHF [500] | n/a |
| [legal advice to Partnership] | n/a | CHF [5'000] |
| [●] | CHF [●] | n/a |
| **TOTAL COSTS AND EXPENSES** | **CHF [5'500]** | **CHF [5'500]** |
| **Income** | **Amount p.a.** | **One-time Amount** |
| [●] | CHF [●] | n/a |
| [●] | n/a | CHF [●] |
| **TOTAL INCOME** | **CHF [**●**]** | **CHF [**●**]** |

**Annex III: Lead Partner**

The Initial **Lead Partner** shall be [Hans Miller].

**SISAT ExplanatoryNote**

***Corporate and Contractual Note***

*Corporate structure* - The SISAT has been drafted to be suitable for equity investments by business angels and other early-stage investors in an early-stage joint-stock corporation (*Aktiengesellschaft / société anonyme*) incorporated in Switzerland. For this purpose, the SISAT is structured as a simple partnership under Swiss law (*einfache Gesellschaft / société simple*) and under Swiss jurisdiction. Other possible structures (such as a limited liability or a joint-stock company, a nominee structure or a blockchain-based decentralized autonomous organization) have been excluded mostly for reasons of cost, regulatory and practical considerations. Other structures might, however, be more suitable in certain cases.

*Subscription of shares by the partnership or the partners -* Pursuant to certain legal scholars and authorities, a simple partnership (meaning: the partners jointly) may not subscribe for shares at incorporation or even at a capital increase of a joint-stock corporation (*Aktiengesellschaft / société anonyme*). However, it is without doubt that newly subscribed shares may be transferred to the simple partnership and may be held jointly by all partners (*Gesamthand / propriété commune*) immediately after the share issuance. Should this legal uncertainty cause friction during the transaction, the following structuring can be a possible solution: 1) the lead partner subscribes for all shares as a fiduciary of all the other partners at incorporation/capital increase 2) immediately after the issuance of the shares he/she/it transfers such shares to the simple partnership to be held jointly by all partners.[[15]](#footnote-16) Notably, it is neither required to submit subscription forms to the cantonal register of commerce, nor is it required by law to mention the subscribing shareholders in the relevant notarial deed. However, cantonal practices, in particular practices of notaries, may differ. Such structuring needs to be discussed with the partners' and start-up company's legal advisor.

*Proxy* - This Agreement grants a proxy to the lead partner to represent the partners towards the start-up company, including the subscription of shares on behalf of the syndicate in a capital increase. To allow for the structuring described in the paragraph above, the Agreement provides for a conditional renunciation of the partners’ subscription rights in favour of the leader partner. Therefore, it is not necessary to collect individual proxies or declarations of renunciation from each partner for a specific capital increase or to hold a general assembly. However, due to different practices of notaries, it may be required to disclose this agreement to the relevant notary to evidence the relevant proxy.

***Tax Note***

*Professionalism of the investor* - In Switzerland, capital gains of private individuals (the positive difference in value between the moment of purchase and sale of an asset such as shares of a company) are, subject to certain exceptions, not subject to income tax and capital losses are not tax deductible. However, if an individual is considered a “professional investor” for tax purposes, this tax exemption does not apply and, as a consequence, capital gains may be subject to income tax. Professionality is established in a two prong test pursuant to circular n°36 by the Swiss Federal Tax Administration dated 27 June 2012.

First, pursuant to the guidelines n°36 of the federal fiscal authorities on the professional trading of securities, if five cumulative conditions are fulfilled, an investor is not considered professional (the guidelines can be found in [French](https://www.estv.admin.ch/dam/estv/fr/dokumente/bundessteuer/kreisschreiben/2004/1-036-D-2012.pdf.download.pdf/1-036-D-2012-f.pdf), [German](https://www.estv.admin.ch/dam/estv/de/dokumente/bundessteuer/kreisschreiben/2004/1-036-D-2012.pdf.download.pdf/1-036-D-2012-d.pdf) and [Italian](https://www.estv.admin.ch/dam/estv/it/dokumente/bundessteuer/kreisschreiben/2004/1-036-D-2012.pdf.download.pdf/1-036-D-2012-i.pdf) using the provided links). In a second step, if one of those conditions is not met, the indices of professionality, outlined in the guidelines, such as frequency of sale, use of external funds, use of a structure for investment, are taken into consideration to determine if an investor is a professional or not. The tax status of an individual investor should have no bearing on the status of the other members to the same simple partnership, i.e. the presence of a professional investor within the simple partnership will not automatically cause the tax authorities to consider all other members as professionals as well.

There are discrepancies between the practices of different Swiss cantonal tax authorities as to the qualification of investors as professional investors for tax purposes. The qualification as professional investor does not depend on the simple partnership structure, but on the individual circumstances of each investor. It is therefore highly recommended that each investor has his/her/its tax situation analysed by a Swiss tax expert, even though syndication should not change his/her/its tax status.

*Tax declaration* - The simple partnership as such is not subject to Swiss taxation (tax transparent). Since the syndicate is tax transparent, each investor must declare his or her own part of the syndicated investment in his/her/its Swiss tax returns. There is no general requirement to indicate the syndicate in the Swiss tax return, be it as a syndicate Partner or Lead Partner. The partners are encouraged to use [Konsento](http://konsento.ch/) (or other similar share register tools or a spreadsheet) to establish an annual allocation of the value of each investor’s part of the investment to be used in his/her/its tax declaration.

*International circumstances* - While this structure could potentially also work for international circumstances (investor or start-up domiciled outside of Switzerland), this can lead, amongst other, to undesired tax consequences. Risks are for example a different qualification of the investment syndicate by the country of domicile of the start-up company or denial of tax transparency.[[16]](#footnote-17) Investors should always seek professional tax advice when investing in companies, or with other investors, domiciled outside of Switzerland.

***Regulatory Note***

A community of people joining to co-invest using a simple partnership structure like the SISAT is considered an investment club pursuant to the Federal Act on Collective Investment Schemes (CISA), and thus not subject to its rules, if the following three conditions are met[[17]](#footnote-18):

1) the syndicate is limited to a maximum of 20 people;

2) investment decisions have to be taken by the members of the syndicate (no delegated asset management); and

3) members are informed about the status of the investments on a regular basis (at least semiannually).

While investment decisions may not be delegated, specific voting rights can, depending on the circumstances. For example, the members may, but are not obligated to, delegate their voting right regarding the election of a new board member of the company but may not delegate their decision to sell their shares or to participate in a subsequent investment round to the Lead Partner. Partners, therefore, must instruct the Lead Partner to approve or refuse of abstain to sell on their behalf, but they may not delegate the decision to the Lead Partner to decide on their behalf. If it is not in compliance with the above safe harbor rules, the partnership may be considered a collective investments scheme pursuant to CISA, which may trigger an authorization requirement by FINMA.

1. Refer to SISAT Explanatory Note for more detailed explanations and considerations. [↑](#footnote-ref-2)
2. **Note**: While international domicile of Investors is not excluded, it can lead to unforeseen and potentially undesired tax and/or regulatory consequences for the individual investor or the syndicate structure and therefore requires a case-by-case analysis. [↑](#footnote-ref-3)
3. For avoidance of doubt, executed syndicate contracts do not have to be shared publicly. [↑](#footnote-ref-4)
4. **Note**: Thresholds to be determined by the Partners before signature as they see fit. [↑](#footnote-ref-5)
5. **Note**: Irrespective of this statement, the Partnership must ensure it fulfils the relevant criteria as defined by CISA and CISO and the relevant authorities on an ongoing basis (see introductory remarks). [↑](#footnote-ref-6)
6. **Note**: Notably, the law prohibits transactions by the Partners by which they frustrate or impair the object of the Partnership or its activity for their own benefit, hence, the Partners shall not take for themselves any business opportunity that could benefit the Partnership. Direct investments may create conflicting interests, and, as a consequence, it is recommended to explicitly address such in the Agreement as the Partners deemed fit. [↑](#footnote-ref-7)
7. **Note**: Whether or not a notification of beneficial ownership is legally required is to be assessed on a case-by-case basis. [↑](#footnote-ref-8)
8. **Note**: Impact of different ownership concepts and risk of bankruptcy of, or debt enforcement against the, Lead Partner to be considered. [↑](#footnote-ref-9)
9. **Note**: Consider adjusting in case Partners' votes shall be weighted according to their Parts, for instance by using the formulation “[voting rights in proportion to his/her/its Parts]”. [↑](#footnote-ref-10)
10. **Note**: Investment decisions (incl. Exit) must always be made by the Partners individually. [↑](#footnote-ref-11)
11. **Note**: Thresholds to be determined on a case-by-case basis. [↑](#footnote-ref-12)
12. **Note**: The frequency should be at least semi-annually. [↑](#footnote-ref-13)
13. **Note**: Thresholds and periodicity to be determined on a case-by-case basis. [↑](#footnote-ref-14)
14. **Note**: Consider that the seat of the Company may change, may even be abroad, in which case non-Swiss courts would have to decide on Swiss law. If such might be relevant, the investor base is international, consider arbitration. For the most current Swiss Rules model arbitration clause and individualized clauses see <https://www.swissarbitration.org/Arbitration/Arbitration-clauses>. [↑](#footnote-ref-15)
15. This requires that the investment contracts (e.g. the Investment Agreement, the Shareholders Agreement) authorise such transfer without any right of first refusal or any other negative consequence for any Partner. A point to be secured before executing the investment. [↑](#footnote-ref-16)
16. **Note:** see [Merkblatt über die steuerliche Behandlung von inländischen Investment Clubs](https://www.estv.admin.ch/dam/estv/de/dokumente/verrechnungssteuer/merkblaetter/s-018-25.pdf.download.pdf/d01825.pdf) / [Notice concernant le traitement fiscal des clubs d’investissement suisses](https://www.estv.admin.ch/dam/estv/fr/dokumente/verrechnungssteuer/merkblaetter/s-018-25.pdf.download.pdf/f01825.pdf) (investment club taxation). [↑](#footnote-ref-17)
17. **Note:** see article 1a of the [Ordinance Collective Investment Schemes](https://www.admin.ch/opc/en/classified-compilation/20062920/index.html). [↑](#footnote-ref-18)