

## SHARE PURCHASE AGREEMENT

Dated [REDACTED]

Switzerland

("Seller 1")

and

Switzerland

("Seller 2,  
and together with Seller 1, the "Sellers")

on the one hand

and

Sweden

(" [REDACTED ]" or "Purchaser",  
and together with the Sellers, the "Parties")

on the other hand

regarding

the Sale and Purchase of all of the shares in

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## PREAMBLE

- 1) Z [REDACTED] is a Swiss corporation (*Aktiengesellschaft*) registered in the commercial register of the Canton of [REDACTED] under the number [REDACTED] with its registered seat at [REDACTED] [REDACTED] (the "**Company**") and a share capital of CHF 500,000 divided into 5,000 fully paid up registered shares with a nominal value of CHF 100 each.
- 2) The Company currently owns 95%, and at Closing will own 94%, of the shares in S [REDACTED] [REDACTED], a Swiss corporation (*Aktiengesellschaft*) registered in the commercial register of the Canton of [REDACTED] under the number [REDACTED] ("**S [REDACTED]**"). Currently the remaining 5% of the shares in S [REDACTED] are, and at Closing 6% of the shares in S [REDACTED] will be, held by Mr [REDACTED] H [REDACTED] an executive of S [REDACTED]. The Company and S [REDACTED] are hereinafter referred to as the "**Group**".
- 3) Sellers currently own 100% of the shares in the Company.
- 4) Sellers are willing to sell to Purchaser and Purchaser is willing to acquire from Sellers 100% of the shares in the Company ("**Sale Shares**") in reliance (inter alia) on the representations, warranties and undertakings contained herein ("**Transaction**").

Now, therefore, the Parties agree as follows:

### 1. Definitions

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

### 2. Sale and Purchase

On the terms and subject to the conditions set out in this Agreement, Sellers undertake to sell to Purchaser and Purchaser undertakes to purchase from Sellers at Closing the Sale Shares.

### 3. PURCHASE PRICE

#### 3.1 Elements of Purchase Price

The purchase price for the Sale Shares ("**Purchase Price**") shall consist of three elements:

- a) A defined cash portion paid at the closing date, as described in more detail in Section 3.2;
- b) An earn-out portion, as described in more detail in Section 3.3; and
- c) A call option, as described in more detail in Section 3.4.

The Purchase Price is capped at a maximum of CHF 25,000,000 (twenty-five million Swiss Francs).

#### 3.2 Defined Cash Portion

The defined cash portion will be CHF [REDACTED] ([REDACTED] million Swiss Francs) less the remaining balance at Closing of the Credit Suisse Debt ("**Defined Cash Portion**"). The Credit Suisse Debt will, to the extent possible, be repaid to Credit Suisse before Closing with the cash available in the Group.

### 3.3 Earn-Out

The earn-out portion is calculated annually and shall for each business year from 2012-2013 correspond to an amount of 100% (one hundred percent) of the annual PAT of S [REDACTED], each time based on the audited annual accounts of S [REDACTED]. The earn-out is payable 30 calendar days after the audited results for S [REDACTED] for the relevant business year (2012 or 2013) are known, by latest on June 30<sup>th</sup> of the year following the relevant business year.

PAT  
= Profit  
after  
Taxes

### 3.4 Call Option in Favour of Sellers

Existing owners will grant the Sellers an option to, through a new issue, acquire up to 16,265 shares (currently corresponding to 1.6%) with corresponding shareholder contribution in [REDACTED] Holding AB, the ultimate holding of the Group, at a price of SEK 1 [REDACTED] per share. The call option is only exercisable [REDACTED] P.'s exit, [REDACTED]

## 4. Representations and Warranties of Seller

### 4.1 General Principle

In relation to the Companies, Sellers hereby represent and warrant to Purchaser that the following representations and warranties are true and accurate in all respects and not misleading at Signing and Closing.

In the course of the negotiations of this Agreement Sellers have revealed certain factual and legal circumstances that are set forth in the Schedules to the representations and warranties contained in this Section 4. The following representations and warranties shall only be restricted or qualified by those pieces of information that are explicitly contained in the relevant Schedule that refers to such representation or warranty. There shall be no further restriction to the following representations or warranties. Art. 200 CO shall herewith be excluded and waived.

### 4.2 Capacity and Title of Seller

#### 4.2.1 Authority

Sellers have the unrestricted right and authority to enter into this Agreement and to sell, transfer and deliver to Purchaser the Sale Shares and to perform all other undertakings under or in connection with this Agreement.

#### 4.2.2 Ownership of Sale Shares

Sellers are the sole legal and beneficial owner of the Sale Shares, free and clear of any Encumbrance except for the at Signing still existing pledge of the Sale Shares in favour of Credit Suisse SA as security for the Credit Suisse Debt. The Sale Shares are validly issued and fully paid in. As of Closing, the pledge in favour of Credit Suisse will no longer exist and Sellers will have physical possession of all shares and share certificates representing the Sale Shares.

### 4.3 Status of the Company

#### 4.3.1 Incorporation and Authority

The Companies are corporations duly incorporated and validly existing under the laws of Switzerland. The Companies have the full corporate power and authority to own their respective property and assets and to carry on their business as presently conducted.

#### 4.3.2 No Dissolution or Bankruptcy

No measures have been taken for the dissolution and/or liquidation or declaration of bankruptcy of any of the Companies and no order has been made, petition presented, resolution passed or meeting convened for the winding up of the Companies.

#### 4.3.3 Corporate Books and Registers

The statutory books and registers of the Companies 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.

#### 4.3.4 Capital Structure and Shares

The Company has a share capital of €CHF 500,000 (five hundred thousand Swiss Francs) divided into 5,000 fully paid up registered shares with a nominal value of CHF 100 (one hundred Swiss Francs) each. The Sale Shares have been validly issued and are fully paid up and constitute the entire issued share capital of the Company. No shares or share certificates have ever been issued other than the Share Certificates.

S [REDACTED] has a share capital of CHF 150,000 (one hundred and fifty thousand Swiss Francs), divided into 1,500 fully paid up registered shares with a nominal value of CHF 100 (one hundred Swiss Francs) each. The shares in S [REDACTED] have been validly issued and are fully paid up and constitute the entire issued share capital of S [REDACTED]. Except for the shares in S [REDACTED] held by Mr H [REDACTED] no shares or share certificates have ever been issued other than the share certificates which at Closing will be in possession of the Company.

No rights, contracts, commitments or derivative instruments are outstanding that could require any of the Companies to sell, transfer or issue any of its capital stock.

#### 4.3.5 Execution, Delivery and Performance

The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement will not 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 any of the Companies is a party or by which any of the Companies is bound.

### 4.4 Financial Statements

#### 4.4.1 Compliance with Auditing Principles

Each of the Financial Statements were prepared in accordance with 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 and S [REDACTED] respectively, in all respects at the respective dates thereof and the results of the operations and cash flows of the Companies for the period indicated, and (ii) completely and correctly reflect all of the Companies' assets and liabilities in all respects at the respective dates thereof. The books of account and all supporting books and records of the Companies, all of which have been made available to Purchaser, have been properly kept and are up-to-date and reflect all assets, liabilities and expenditures of the Companies.

#### 4.4.2 Assets (other than Intellectual Property)

- a. All Assets are the property of the Companies and, except for the at Signing still existing pledge of the shares in S [REDACTED] in favour of Credit Suisse SA as security for the Credit

Suisse Debt, none are the subject of any assignment or Encumbrance. As of Closing, the pledge in favour of Credit Suisse will no longer exist and the Company will have physical possession of all shares and share certificates representing 94% of the shares in S [REDACTED]. There are no obligations to sell the Assets other than in the normal course of business.

- b. Assets are, where capable of possession, in the possession of or under the control of the Companies or will be by Closing, or the Companies are entitled and able to take possession or control of such assets.
- c. The Assets comprise all the material assets necessary for the carrying on of the Companies' business to the extent to which the Companies are conducting it immediately prior to the Closing Date.

#### 4.5 No Material Adverse Change

Subsequently to 31 December 2010 until Signing and as of Closing,

- a. the Companies' business has been operated in the ordinary course of business and consistent with past practice and no matter, fact or circumstance has occurred which has had or will likely have a Material Adverse Effect on any of the Companies' business;
- b. no additional debt has been incurred at the Company level and the Company has not declared or paid any dividend;
- c. no dividend is declared or paid by S [REDACTED] other than the dividend to the Company (95%) and H [REDACTED] (5%) in the aggregate amount of CHF 2 [REDACTED] (two [REDACTED] Swiss Francs);
- d. no customer or distributor has materially altered its purchasing quantities of product from the Company or indicated or expressed an intent to do so; and
- e. no supplier of materials, labor or Intellectual Property to the Company has materially altered its supply or price or indicated or expressed an intent to do so.

#### 4.6 Taxes

- a. Each of the Companies has made all returns, computations and registrations and supplied all information and given all notices to relevant Tax Authority (Federal Tax Administration, Cantonal Tax Administration or any other domestic or foreign Tax authority) regarding all kind of domestic or foreign Tax timely and as required by law and all such returns and information and notices are correct and accurate in all material and formal respects and are not the subject of any dispute.
- b. None of the Companies is involved in any material dispute in relation to Tax and no Tax Authority has investigated the Tax affairs of any company of the Sellers.
- c. Each of the Companies has paid all Taxes when due and made all Tax claims, disclaimers, elections and given all notices and consents and done all other things in respect of Tax the making, giving or doing of which was assumed to have been made for the purposes of the balance sheet comprised in the Financial Statements.

#### 4.7 Authorizations

All Authorizations necessary for the carrying on by the Companies of their business 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.

#### 4.8 Compliance with Laws and Regulations

Each of the Companies is carrying on its business and operations so that there are no 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 any of the Companies, 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-law or constitutional documents, or requiring them to take or omit any action.

#### 4.9 Agreements

- a. All of the Companies' agreements are:
  - (i) within the ordinary course of business; and
  - (ii) at arm's length terms and conditions.
- b. There are no commission or similar agreements that would require any of the Companies to pay any commission or fee to a third party in connection with the transactions contemplated by this Agreement.

#### 4.10 Employees

- a. Neither the Company nor any of its Affiliates has any 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 Companies' business or to any director as a consequence of the transactions contemplated by this Agreement.
- b. None of Seller 1, Seller 2, [REDACTED] H [REDACTED] C [REDACTED], [REDACTED] T [REDACTED] and [REDACTED] P [REDACTED] has at Signing given, or has been given, notice of termination of her/his employment with S [REDACTED]/the Company or has indicated an intention to terminate her/his employment with S [REDACTED]/the Company.

#### 4.11 Social Security and Pensions

All Benefit Plans for any period ending before Closing have been fully paid, or, as regards employees of the Companies, 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.

#### 4.12 Intellectual Property

- a. All Business IP is (or, where appropriate in the case of pending applications, will be):



- (i) legally and beneficially owned by the Companies or lawfully used with the consent of the owner under a license and is not subject to any Encumbrance or license outside the ordinary course of business;
  - (ii) 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;
  - (iii) in the case of rights in such Intellectual Property as are registered or the subject of applications for registration are validly registered or applied for in the name of one of the Companies, have been properly used to maintain their validity; and
  - (iv) in the case of Intellectual Property related to software developed for use with the Companies' products and services, is fully and solely owned by the Companies and the Companies have the right to sell or distribute such software without restriction, except that certain software which is integrated with the Companies' products is owned by third parties and the Companies buy certain licenses for selling the relevant software integrated with the Companies' products.
- b. The Companies' business does not infringe, and has not in the past infringed, any Intellectual Property of any third party (or would not do so if the same was valid).

#### **4.13 Information Technology**

- a. Except for the impact linked to the move to the new building, which is accounted for in construction budget, to the best knowledge of Sellers, it will not be necessary for any of the Companies to incur any expenditure to upgrade, modify, develop, expand or replace any of the Computer Systems within the six months following the Signing Date other than as provided for in the Companies' business plan (and on the assumption that the Companies' business does not grow at a greater rate than that forecast in the business plan).
- b. The Company owns or has the right to use all Computer Systems to the extent and in the manner currently used.
- c. The Companies either solely own or are validly licensed to use the software used in the Companies' business and have all rights necessary to develop, modify and maintain such software in so far as is necessary for the Companies' business as carried out at the date hereof.

#### **4.14 Real Property**

- a. The description of real property owned by the Companies ("**Properties**") in **Schedule 4.14a** is accurate.
- b. The Companies have title to the Properties and there are no other material rights, obligations, agreements and restrictions which can be annotated or notated, and no other servitudes and encumbrances, in particular no legal mortgages other than disclosed in the excerpt from the Land Register regarding the Properties. All mortgage notes with an encumbrance on the Properties pursuant to the excerpts from the Land Register are in the unencumbered possession of the Companies, duly endorsed, if applicable. All existing use, with respect to the Companies' business, of the Companies' Properties is permitted under all relevant planning and other legislation and there are no material restrictions to the continued use of the Properties.

#### 4.15 Insurance

- a. The Companies have, and have had since their inception, adequate insurance coverage relating to the Companies' 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.
- b. No product liability, professional liability or similar claim has ever been made against any of the Companies.

#### 4.16 Litigation and Proceedings

- a. None of the Companies is involved in, whether as plaintiff or defendant or other party, or threatened with or threatening any Claim. Sellers have no knowledge of the existence of any fact or circumstance which is reasonably likely to give rise to such a Claim.
- b. There is no outstanding judgement, order, decree, arbitral award or other decision of a court, tribunal, arbitrator or governmental agency against any of the Companies.

#### 4.17 Environment

- a. The Companies' business is being carried on in compliance with all Environmental Laws applicable to the Companies' business. None of the Companies has caused pollution of the environment so as to give rise to a duty of environmental remediation or to liability for compensation.
- b. All Environmental Permits necessary for the carrying on of the Companies' business 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 Companies' business, which are likely to result in the suspension, cancellation, refusal or revocation of any Environmental Permit.

#### 4.18 Disclosure

No representation or warranty by Sellers contained in this Agreement, and no statement contained in any other document delivered or to be delivered by or on behalf of Sellers pursuant to this Agreement, contains any untrue statement of a material fact or omits to state any material fact necessary, in light of the circumstances under which it was made, in order to make the statements herein or therein not misleading. Sellers have disclosed to Purchaser all material information relating to Companies and the Companies' business.

### 5. REMEDIES

#### 5.1 Indemnification by Seller

##### 5.1.1 General Principle

Following the Closing, claims of Purchaser against Seller arising out of any breach of the representations or warranties of Seller contained in Section 4 of this Agreement (other than those contained in Section 6) (each a "**Warranty Claim**") shall be based on this Section 5.

##### 5.1.2 Liability of Seller

In the event of any breach of the representations and warranties by Seller as contained in Section 4, Purchaser shall be entitled to claim a reduction of the Purchase Price (*Minderung*) and damages (*Schadenersatz*) in the amount which is necessary to establish the state described by

such representation or warranty (including all costs and expenses of Purchaser and the Companies, inclusive of fees and expenses for counsel and attorneys). Such claims shall not depend on there being any fault of any of the Sellers.

Any rescission of the Agreement for breach of representations or warranties (*Wandelung*) is excluded. However, the remedies available by law for defects in intention, including mistake and wilful deceit, remain reserved.

#### 5.1.3 Thresholds and Cap

There shall be liability of the Seller only with respect to Warranty Claims which, as a single claim, exceed CHF 50,000 (fifty thousand Swiss Francs) (each a "**Material Warranty Claim**"), and in the aggregate exceed CHF 100,000 (one hundred thousand Swiss Francs), in which event all of such Material Warranty Claims shall be recoverable hereunder and not just the excess.

The maximum aggregate liability of the Seller shall not exceed CHF 1,200,000 (one million two hundred thousand Swiss Francs).

#### 5.1.4 Exclusions

Seller's liability for Warranty Claims shall be excluded:

- a. if and to the extent that any of the Companies and/or the Purchaser has received recovery for such damages or loss under any title whatsoever from a third party, including but not limited to recovery under any insurance policy (except with respect to insurance claims based on policies that are claims-based and not occurrence-based, for any claims arising from events or products manufactured prior to Closing);
- b. if and to extent that any specific provision or reserve for the matter giving rise to the claim was made in the Financial Statements;
- c. if and to the extent that the matter giving rise to a claim was disclosed in Section 4 itself or any of the Schedules thereto.

### 5.2 Survival and Notice of Claims

#### 5.2.1 Survival of Claims

The representations and warranties of the Sellers contained in Section 4 shall be valid and enforceable until 24 (twenty-four) months after the Closing Date, with the exception of Seller's representations and warranties contained in (i) Section 4.2 (Capacity and Title of Sellers) which shall survive until 10 (ten) years following the Closing Date, and (ii) Section 4.6 (Taxes), Section 4.11 (Social Security and Pensions) and Section 4.17 (Environment) which shall survive until 90 (ninety) days after the expiration of the applicable statute of limitations.

#### 5.2.2 Notice of Claims

Notice of Claims, if any, shall be given in writing until the relevant date as set forth in the preceding Section. Defences (*Einreden*) of the Parties shall survive if and as far notice of claims has been given in due form and time. The provisions of Articles 201 and 210 CO are hereby waived and replaced by the above.

### 6. TAX INDEMNITY

After the Closing Date, Sellers shall be liable for, indemnify Swiss Franc for Swiss Franc, and hold harmless Purchaser and/or any of the Companies', as the case may be, from and against all liabilities, costs and expenses resulting from, arising out of, or relating to Taxes of any of the

Companies with respect to any periods until Closing Date unless and to the extent the Tax to which Purchaser's claim for indemnification relates has been provisioned for by a provision for Taxes in the Financial Statements. This indemnity is an indemnity in the meaning of Article 111 CO and the maximum amount payable by the Sellers under this indemnity shall be unlimited. This indemnity shall be valid and enforceable until 90 (ninety) days after the expiration of the applicable statute of limitations in respect of the relevant Taxes.

## **7. CLOSING**

### **7.1 Closing Date and Location**

The closing of this Agreement ("**Closing**") shall take place by execution of the closing actions set forth in Section 7.3 at the offices of Schellenberg Wittmer, Löwenstrasse 19, 8001 Zurich, Switzerland, 15 (fifteen) Business Days after the condition precedent mentioned in Section 7.2 are met ("**Closing Date**"), or at such other date and location as mutually agreed upon by the Parties.

### **7.2 Condition Precedent**

The obligations of the Parties to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by both Parties on or prior to Closing of the following conditions precedent:

#### **7.2.1 Tax Ruling**

Sellers shall have received from the competent Swiss tax authorities a positive tax ruling decision, namely that the total Purchase Price with its three elements as defined under Section 3 is considered private capital gain and is therefore not considered taxable gain or income.

#### **7.2.2 Right to Terminate this Agreement**

- a. The Parties shall use commercially reasonable best efforts to procure that the condition precedent stated in Section 7.2.1 is fulfilled as soon as possible and in any event on or before 30 September 2011. If this condition has not been fulfilled or waived until by that date (or by such later date as the Parties may mutually agree in writing), then either Party may terminate this Agreement with immediate effect, except for the terminating Party who failed to use best efforts to procure the satisfaction of any such condition.
- b. If this Agreement is rescinded in accordance with the preceding Subsection, then, save for the operative Sections 10 to 11 in this Agreement and this Section, all other provisions shall cease to be effective and no Party shall have any rights against the other Party hereunder except for failure to use commercially reasonable best efforts in accordance with Section 7.2.2a.

### **7.3 Closing Actions**

At the Closing, the following actions shall be taken in the following sequence and in mutual interdependence from each other (*Zug um Zug*):

#### **7.3.1 Actions by Purchaser**

Purchaser shall:

- a. pay on account of the Defined Cash Portion in the name of Sellers and the Company to Credit Suisse SA by wire transfer to a bank account of Credit Suisse SA the remaining balance at Closing of the Credit Suisse Debt, if any;

- b. pay to Sellers by wire transfer to a bank account with a Swiss bank to be designated by the Sellers the amount of CHF [REDACTED] ([REDACTED] million Swiss Francs) minus the balance at Closing of the Credit Suisse Debt, if any;
- c. deliver to Sellers:
  - (i) an excerpt of the commercial register (or any equivalent official document) evidencing the signing authority of the Purchaser's signatories; and
  - (ii) a resolution passed by Purchaser's board of directors approving, and authorizing the execution, delivery and performance of, this Agreement.

### 7.3.2 Actions by Sellers

Following the actions by Sellers set forth in the preceding Subsection, Sellers shall present and deliver to Purchaser the following documents:

- a. the Share Certificates duly endorsed in blank and the share certificates representing 94% of the shares in S [REDACTED]
- b. a unanimous resolution of the Company's board of directors consenting to the transfer of the Sale Shares to Purchaser;
- c. the share register of the Company in which Purchaser has been registered as holder of the Sale Shares; and
- d. a letter of resignation of Mr [REDACTED] C [REDACTED] as member of S [REDACTED] board of directors, effective as of the Closing Date and stating that as of such date he has no more claims against S [REDACTED]

## 8. FURTHER OBLIGATIONS OF THE PARTIES

### 8.1 Obligations of Seller

#### 8.1.1 Non-Competition

Each of the Sellers undertakes for a period of two years following the termination of their respective employment contracts, but in any event until 31 December 2013, not to directly or indirectly engage in any activity competing with the business of the Companies in Switzerland and [REDACTED] as conducted in the ordinary course of business at the date of the termination of the respective employment contract. This undertaking includes, without limitation, the conduct of such business in such Seller's (or any of their Affiliates') own name and/or on its own account as well as any financial interest in any such business other than in the form of shares not exceeding 5% of the outstanding share capital of a company listed on a stock exchange. For the avoidance of doubt, the undertaking also comprises the duty of each Seller and his/her respective Affiliate(s) not to use in a competing business any know-how or business secrets of the Companies. The Parties acknowledge that part of the Purchase Price is compensation for this undertaking. For each violation of this undertaking, the violating Seller shall pay to the Purchaser or, if designated by the Purchaser, to the Company or [REDACTED] an amount of CHF 600,000 (six hundred thousand Swiss Francs) as liquidated damages. To the extent the proven damages incurred by the other Investors or the Company exceed the liquidated damages amount, the violating Seller shall also pay such excess. The payment of this sum does not relieve the relevant Seller from this non-competition undertaking, and the Purchaser shall be entitled to claim specific performance of the non-competition undertaking (*Beseitigung des rechtswidrigen Zustands*).

For avoidance of any doubt, activities which do not fall under this clause are activities undertaken at signing of this Agreement within [REDACTED] and [REDACTED]

### 8.1.2 Non-Solicitation

Each of the Sellers undertakes for a period of two years following the termination of their respective employment contracts, but in any event until 31 December 2014, not to solicit the employees of any member of the Company or any of their Subsidiaries. The Parties acknowledge that part of the Purchase Price is compensation for this undertaking. For each violation of such covenant, the violating party shall pay to Purchaser or, if designated by Purchaser, to the Company or S [REDACTED] an amount equal to such employee's last annual gross salary as liquidated damages. To the extent the proven damages incurred by Purchaser or the Company or the Subsidiary exceed the liquidated damages amount, the violating Seller shall also pay such excess. The payment of any such sum shall not operate as a waiver of the above covenant, and Purchaser shall be entitled to claim specific performance of the above covenant.

### 8.2 Discharge

Purchaser agrees to cause the Company to grant discharge without reservations to the members of the board and officers of the Company for the period until Closing within six months after the end of the current business year, provided that Purchaser does after Closing not gain additional or new knowledge of events, facts, matters or circumstances which were not previously known to the Purchaser and which would cause an ordinary business man acting reasonably to deny such discharge.

### 8.3 Obligations of the Purchaser

#### 8.3.1 Indirect Partial Liquidation (*Indirekte Teilliquidation*)

- a. Purchaser undertakes to refrain from any action for the time period of five years following the Closing Date that could lead to an indirect partial liquidation taxation of the Sellers pursuant to Article 20a para. 1 lit. a DBG (Federal direct income tax act) or the corresponding provision in the applicable cantonal income tax act ("**Undertaking**").
- b. In the event Purchaser violates this Undertaking and as a result of such violation negative Tax consequences result for the Sellers under the provisions of indirect partial liquidation the Sellers shall be entitled to claim from Purchaser, and Purchaser shall pay to Sellers, an amount equal to the amount of all Taxes (be it Swiss federal tax, cantonal tax, municipal tax, church tax or any other Tax) imposed on Sellers as a consequence thereof (including all costs and expenses reasonably incurred by Sellers in connection therewith). Notwithstanding anything to the contrary set forth in this Section 8.3.1, none of the Sellers shall have any claim against the Purchaser if the Purchaser obtains a binding ruling from the competent tax authorities with respect to any planned transaction and such ruling confirms that the transaction in question will not result in an indirect partial liquidation of the Company. Sellers agree to fully cooperate in obtaining such rulings.
- c. Sellers agree to notify Purchaser within five days after they receive information including any provisional or final assessments stating that the purchase price is subject to income tax based on an indirect partial liquidation according to Art. 20a para. 1 lit. a DBG (Federal direct tax law) or the corresponding provision in the applicable cantonal tax law. Sellers hereby [obligate/authorize] Purchaser to appeal in their name against any final indirect partial liquidation assessment or decisions and provide Purchaser with all necessary documents or information for such appeal.

### 9.3.2 Other Obligations of the Purchaser

- a. During the earn-out period Purchaser will not interfere with the daily business within the Companies and the Parties agree to:
  - i. not impose the choice of partners or products;
  - ii. not impose any material change in the current working methods, tools, systems, etc. which would increase the Companies' cost basis;
  - iii. not require the liquidity generated by S [REDACTED] and the Company to be used for other of the Purchaser's businesses, requiring S [REDACTED] and the Company to borrow liquidity from a bank. If the liquidity is used for other businesses an interest rate at market rate must be charged;
  - iv. limit the amount of new reports and other new administrative tasks to a reasonable amount which will not considerably increase the current work load of the personnel that needs to be involved;
  - v. exclude from the calculation of the earn-out the difference between the current and the new fees charged by the new auditors and new Board Members to the Companies; and
  - vi. keep the remuneration, fringe benefits, social security and pension fund plans of the entire personnel, including management at the levels before Closing, independently of the written work contracts.
- b. During the earn-out period the Purchaser will not change the shareholder agreement with H [REDACTED] even if according to article 12.2. of such shareholder agreement the Purchaser has the right to do so.
- c. Should the Purchaser sell part or all of the shares in S [REDACTED] or the Company to a third party during the earn-out period, the entire amount of the earn-out is due before the consummation of the transaction. The amount of the earn-out due is then calculated based on the business plan.

## 9. JOINT AND SEVERAL LIABILITY OF SELLERS

The liability of the Sellers for their obligations under this Agreement is joint and several (*Solidarhaftung*).

## 10. MISCELLANEOUS PROVISIONS

### 10.1 Transaction Costs and Taxes

All costs and taxes relating to this Agreement shall be borne by the Parties, with each Party bearing its own costs and taxes (including but not limited to attorneys' fees, financial advisers, taxes, etc.).

### 10.2 Confidentiality

The Parties undertake to keep the contents of this Agreement confidential and not to disclose them to any third party unless required to do so by law or applicable stock exchange regulations or unless mutually agreed upon by the Parties. All documents and information handed out during contractual negotiations are confidential and may not be made available or shown to third parties, even in case this Agreement will not enter into full force and effect or will at a later point in time be regarded as null and void. The Confidentiality Agreement shall remain in full force and effect.

### **10.3 Public Announcements**

Both Sellers and Purchaser shall consult each other and agree to the content of any press release or any other public statement or any communication with customers with respect to this Agreement and the transactions contemplated hereby and shall not issue any such press release or make any such public statement or customer communication prior to such consultation and without the other Party's prior written approval, such approval not to be unreasonably withheld or delayed. Sellers and their Affiliates will refer all inquiries and orders with respect to the Companies' business to Purchaser.

### **10.4 No Waiver/Remedies**

Except if applicable law or this Agreement require the exercise of a right within a certain period of time, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or partial exercise on the part of the Parties of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege which is not precluded by this Agreement.

### **10.5 Notices**

Notices under this Agreement shall be in writing. Notice shall be deemed received upon receipt of a registered letter addressed as follows:

If to Sellers:

If to Purchaser:

### **10.6 Assignment**

Neither Party may assign, in whole or in part, or delegate all or any part of its rights, interests or obligations under this Agreement to any person without the prior written approval of the other Party. Any assignment or delegation made without such approval shall be null and void.

### **10.7 Entire Agreement**

This Agreement together with the Schedules and all documents referred to herein constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and shall replace all other prior agreements or understandings of the Parties relating thereto. The Parties agree that they jointly negotiated and prepared this Agreement and that it shall not be construed against any Party on the grounds that such Party prepared or drafted the same.



#### 10.8 Amendments and Modifications

This Agreement may not be amended or modified except by a document in writing duly executed by the Parties. This undertaking itself may only be modified by such an agreement in writing.

#### 10.9 Severability

Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under the applicable law; if any provision of this Agreement shall be unenforceable or invalid under applicable law, such provision shall be ineffective only to the extent of such unenforceability or invalidity and the remaining provisions of this Agreement shall continue to be binding and in full force and effect. Such unenforceable or invalid provision shall be replaced by such valid and enforceable provision, which the Parties consider, in good faith, to match as closely as possible the invalid or unenforceable provision and attaining the same or a similar economic effect. The same applies in case a gap (*Lücke*) becomes evident.

#### 10.10 Legal Terms

The terms printed in italics in this Agreement constitute Swiss legal terms describing the meaning of the terms in the English language they refer to, and shall be taken into account when interpreting this Agreement.

#### 10.11 Counterparts

This Agreement is executed in two counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

### 11. APPLICABLE LAW / ARBITRATION

#### 11.1 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of Switzerland (excluding the Vienna Convention on the International Sale of Goods dated April 11, 1980).

#### 11.2 Arbitration

Any dispute, controversy or claim arising out of or in connection with this Agreement, including disputes on its conclusion, binding effect, breach, amendment and termination, shall be finally settled by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce ("**Arbitration Rules**") in force on the date when the notice of arbitration is submitted in accordance with the Arbitration Rules. For disputes in which the Parties claim an amount in dispute of CHF 500,000 (five hundred thousand Swiss Francs) or less, the number of arbitrators shall be one. For disputes with a higher amount in dispute, or in which no monetary claim can be specified, the number of arbitrators shall be three. Selection of any arbitrator shall be made by the Parties pursuant to the Arbitration Rules. In the case of three arbitrators, each Party shall select one arbitrator, whereas for the purposes of this Section the Sellers are deemed to be one Party. Any arbitrators shall be lawyers familiar with international business transactions and conversant in English. The arbitration shall be conducted in English; the seat of the tribunal shall be at the seat of S[REDACTED] Switzerland.

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*[remainder of page intentionally left blank]*