Shareholders Agreement

The Parties (The Shareholders”) named in this Agreement

And

[Insert Company Name] (The “Company”)

***\* Add/delete іnfоrmаtіоn in brасkеtѕ as аррrорrіаtе***

This agreement is dated: [date]

**Between:**

1. **The Parties** named below **(“the Shareholders”**); and
2. **[company name]**, a private limited company registered in Ireland, number [1234567], having its registered office at [insert registered office] **("the Company"**)

The Shareholders are:

[name] of [address]

[name] of [address]

[name] of [address]

[name] of [address]

The background to this agreement is:

1. The company was incorporated in the Republic of Ireland under registration number [1234567]
2. The company has an authorised share capital of €[xxx] ordinary Shares of €[x] each of which [xxx] Ordinary Class Shares has been issued and is fully paid up and is beneficially owned by the Shareholders
3. The parties have agreed these terms in order to regulate the relationship between them.
4. In the event of a conflict between the Shareholders, this Shareholders Agreement takes precedence over the Constitution of the Company.

These are the terms of the agreement:

# Definitions

These definitions apply unless the context requires a different interpretation:

|  |  |
| --- | --- |
| "Act" | means the Companies Act 2014 and any subsequent additions, amendments or related regulations. |
| “Auditors” | means the auditors from time to time of the Company |
| “Board” | means the Board of Directors of the Company |
| "Business" | means the business of [state nature of business concisely]. |
| “Company” | means the Company and such other companies as are now and may hereafter be subsidiaries of the Company for the time being |
| “Confidential Information”  | means all information, including:personal data, as defined in applicable law, owned by any data subject whom a party to this agreement may contact in relation to the subject matter of this agreement or the business of the Company. information which may give a commercially competitive advantage to any other person. It includes among other things:information about staff, their performance and their personal contact information,data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer relationships, customer profiles, sales estimates, business plans;information created or arising from this agreement;information owned by a third party and in respect of which a party has an obligation of non-disclosure.information, comment or implication published on any Internet social medium.data or information relating to processes, formulae, procedures, designs, drawings, apparatus, specifications, and all other scientific and regulatory data;information about the Intellectual Property and the know-how of the Company.[It does not include information that it is reasonably necessary to disclose to a customer or other person in the usual course of business so far as that information is disclosed in those circumstances.] |
| “Connected person” | means in relation to any party hereto (a) the spouse or child of that party or (b) a person acting in his/her capacity as trustee of any trust the principal beneficiaries of which are that party, his/her spouse or any of his/her children or (c) any body corporate wholly owned by such party, spouse, child or trust |
| “Constitution” | means the constitution of the Company  |
| "Director" | means a director of the Company. |
| [“Drag Along Notice”] | [means a notice given by a majority shareholder requiring all remaining shareholders to sell their shares in accordance with paragraph 26] |
| [“Drag Along Rights”] | means the rights conferred by paragraph 26]  |
| "Fair Price"  | means the price of Sale Shares or Transfer Shares certified by an independent accountant instructed for the purpose of such valuation and based on the letter of instruction set out in Schedule [3]. |
| "Intellectual Property" | means intellectual property of every sort, whether or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today; and including, among others, patents, trademarks, unregistered marks, designs, copyrights, software, domain names, discoveries, creations and inventions. |
| “Ordinary Shares” | means ordinary shares carrying voting rights and equal entitlements to dividends and capital |
| “PR” | means the personal representatives or other person in control of the affairs of a shareholder as a result of the happening of a Relevant Event. |
| “Relevant Date” | means the date of a Relevant Event. |
| “Relevant Event” | Means any one of:the death of a shareholder; orthe registration of an enduring power of attorney in respect of personal care or business affairs of a shareholder; orthe certification of a shareholder as a patient as defined in section 2 of the Mental Health Act 2001. |
| “Relevant Shares” | means shares which are owned by a shareholder whose affairs become subject to a Relevant Event. |
| “Sale Price” | means the price at which shares are sold |
| “Sale Shares” | means the shares which a shareholder wishes to sell |
| “Selling Shareholder(s)” | means the shareholder(s) selling shares |
| “Shareholders” | means the parties named in this Agreement and each of their successors, transferees or personal representatives |
| “Transfer Date” | means a date when a shareholder transfers shares, whether or not that transfer complies with the provisions of this agreement. |
| “Transfer Notice” | means a notice given by a shareholder specifying Sale Shares |

#  Interpretation

In this agreement unless the context otherwise requires:

* 1. a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.
	2. a reference to one gender shall include any or all genders and a reference to the singular may be interpreted where appropriate as a reference to the plural and vice versa.
	3. a reference to a person or party includes reference to that person's successors, legal representatives, permitted assigns and any person to whom rights, and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that person.
	4. a reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context otherwise requires. The schedules form part of this agreement.
	5. the headings to the paragraphs and schedules (if any) to this agreement are inserted for convenience only and do not affect the interpretation.
	6. unless the context requires otherwise, words importing the singular include the plural and vice versa, and pronouns importing a gender include each of the masculine, feminine and neuter genders.
	7. any agreement by any party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
	8. [except where stated otherwise], any obligation of any person arising from this agreement may be performed by any other person.
	9. a reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information, belief or awareness that person would have if he had made reasonable inquiries.
	10. a reference to an act or regulation includes new law of substantially the same intent as the act or regulation referred to.
	11. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

# Relationship of parties

* 1. Nothing in this agreement shall create a partnership or agency or the relationship of employer and employee between any of the parties, though such relationships may be created by other means.
	2. This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties. Each party acknowledges that, in entering into this agreement, he does not rely on any representation, warranty or other term not forming part of this agreement.
	3. Each shareholder undertakes to use his/her best endeavours at all times to promote the interests, reputation and business of the Company.

# Constitution

The Shareholders each confirm and ratify the provisions of the Constitution to the exclusion of all prior and other provisions except as varied by this agreement.

# Shareholders' details

The shareholders in the Company are:

|  |  |
| --- | --- |
| **Name of Shareholder** | **Number of Shares Class A** |
| ABC | 40 |
| DEF | 30 |
| GHI | 30 |

# Completion

The parties agree to give effect to this agreement immediately and in particular:

* 1. to conduct such business of the Company and sign such resolutions and minutes as may be necessary to provide for this agreement to become entirely effective.
	2. The Company shall not be obliged to issue shares to a shareholder unless payment of the specified price is made in respect of all of the shares which that shareholder has agreed to take up.

# Covenants concerning the Company

7.1 The following provisions shall take effect immediately upon Completion and shall continue in force with regard to each of the parties for so long as such Shareholder shall hold any shares in the capital of the Company and said parties agree and covenant to be bound by the said following provisions. Save as hereinafter expressly provided all rights and obligations of each of the parties hereto (other than the Company) under this paragraph 7 shall subsist only for so long as such party shall continue to hold shares in the capital of the Company.

7.2 Each of the parties hereby covenants with one another that he or she or it as the case may be shall take all necessary actions (other than the investment of further monies) and exercise all such voting rights as he or she or it may from time to time have in the Company so as to procure (insofar as lies within his or her or its power of procurement individually or collectively with the others) that the Company shall comply in full with each of the matters set out in the succeeding clauses of this clause

* 1. The Company shall be managed and operated on a commercial and arm’s length basis.
	2. The Company shall carry on its business in an efficient and business-like manner and to its best advantage.
	3. The business of the Company shall be controlled by the Board and the Company shall not enter into any contract or transaction whereby its business would be controlled otherwise than by its Board.

# Special voting rights

* 1. Every reference on this agreement to a percentage of voting rights shall be construed as a reference to rights and percentages of the total number of issued shares, and not merely the number present and voting.
	2. A shareholder shall be treated as present, provided he is present either in person, by proxy, by alternate director or at a distance if the meeting so takes place.
	3. The foregoing provision does not apply to a vote on any issue not specifically mentioned in this agreement.

# Appointment and removal of Directors

* 1. The Board shall be constituted in accordance with the Constitution.
	2. The Board shall consist of no more than [insert number] members who may be appointed and removed in accordance with this paragraph 9.
	3. Meetings of the Board shall be held at least every [6] months. All meeting of the Board shall be convened in accordance with the Constitution.
	4. Each shareholder who owns at least [5] % of the voting shares of the Company may be a director or may appoint a director. He/she need not do so.
	5. If a shareholder shall reduce his holding of voting shares so that his residual holding is less than [5]% of all the voting shares of the Company, then he shall resign as a Director and the provisions of paragraphs [27 and 28] shall apply. **Note: you may need to change this paragraph number to continue to apply to the paragraph headed “Shareholder's continuing rights and obligations" AND “Restrictions on shareholder after transfer”.]**
	6. To nominate some person other than himself, a shareholder shall write to the [company secretary] and to each other Directors to state his/her wish and his/her nomination. The [company secretary] shall immediately call a meeting with usual notice. At the meeting, all shareholders shall vote in favour of the person nominated.
	7. [Each Director must be a shareholder of the Company] **OR** [A Director, who is not a shareholder, may be appointed only if his appointment is approved by shareholders entitled to vote [80] % of the shares in the Company. This provision over-rides any vote at a meeting at which one or more shareholders is absent].
	8. A Director may be removed by a vote to that effect at any meeting of the Company [provided that a Director specifically nominated by a shareholder may be removed only if that shareholder votes in favour of the removal].
	9. The quorum for meetings of the Board is [x]

# Managing Director

* 1. The Managing Director of the Company shall be [insert name] or, if he/she shall no longer be a Director, then such other person as the remaining Directors appoint.
	2. [The Managing Director must be a shareholder of the Company].

# Duties of Directors

* 1. After completion of this agreement, the Company shall immediately enter into a service contract with each Director.
	2. The Directors of the Company and their principal duties will be:

[Name], will be responsible for . . . . . .

[Name], will be responsible for . . . . . .

[Name], will be responsible for . . . . . .

#  Proxy votes

* 1. Any action or decision which may be taken by a shareholder at any time, may be taken by a proxy, appointed by him/her in his/her place.
	2. A shareholder may not appoint more than one proxy.
	3. No person may act as proxy until his/her principal has given seven days’ notice of his/her appointment in hard or soft copy to the Company [and/or not less than [48] hours’ notice to each shareholder.]

# Company's obligations

* 1. The Company undertakes with each of the shareholders to:
		1. carry on the Business efficiently;
		2. ensure that any decision reasonably likely to affect the Business (apart from day-to-day administration) is taken by the Directors or by the shareholders in general meeting;
		3. maintain insurances appropriate and usual for the Business and assets.
		4. buy, sell and deal at all times and in all circumstances at the best price and on most favourable terms reasonably available.
		5. keep accurate accounts and records of the Company and the Business and to make all information of every sort available to the Directors, in every case within a timescale appropriate to the subject matter;
		6. provide each shareholder within [4 weeks] of the end of each [quarter /calendar month] with unaudited management accounts for that month;
		7. deliver to each shareholder as promptly as reasonably practicable such additional financial or other information as may be requested by that shareholder upon giving reasonable prior written notice; and
		8. prepare such accounts in respect of each accounting reference period as are required by statute and procure that such accounts are audited and submitted to the shareholders within 3 months after the end of the relevant accounting reference period.

# Shareholders' obligations

* 1. The shareholders agree to exercise their powers in relation to the Company to procure that the Company complies with the letter and the spirit of its obligations under this agreement.
	2. Each shareholder undertakes with each of the other parties that whilst he/she remains a party to this agreement he/she will not cast any of the voting rights exercisable in respect of any of his shares, under the instruction of any other person.

# Actions requiring 75% shareholder consent by law

* 1. The following actions shall not be taken without the consent of shareholders who together hold at least 75 % of the share capital of the Company:
		1. change the name of the Company;
		2. adopt or amend the Constitution of the Company;
		3. [release of Company’s right to purchase own shares;]
		4. [re-allotment or variation in re-allotment of treasury shares;]
		5. [assignment of a Director’s office to another;]
		6. [financial assistance for acquisition of shares or transactions with Directors;]
		7. [reduction or variation in the Company’s capital on reorganisation;]
		8. [distribution of pre-acquisition profits;]
		9. pass any resolution for winding-up the Company when it is not insolvent.

# Dividend policy and procedure

* 1. The shareholders shall ensure that the Directors comply with the following provisions.
	2. Dividends shall be paid only in accordance with the Act and the Constitution.
	3. The Company may by ordinary resolution declare dividends.
	4. A dividend must not be declared unless the Directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the Directors.
	5. [No dividend shall be paid until the annual accounts of the Company have shown a profit after tax of at least [sum] for at least three consecutive years].

# Actions requiring more than 50% shareholder consent

The following matters require the consent of shareholders who together hold at least [65] % of the share capital of the Company:

* 1. capitalise, repay or distribute money or credit from its reserves or any of its distributable profits, by dividend or otherwise.
	2. to change the financial year of the Company or make any change to the accounting policies and principles adopted by the Company;
	3. to permit the registration (upon subscription or transfer) of any person as a shareholder of the Company;
	4. in any way change the quantity, structure, value, or rights of or attaching to, any share or security of the Company or grant any option over any share or security;
	5. change any contractual arrangement with any Director or shareholder from that existing upon completion of the terms of this agreement;
	6. except in emergency, appoint a new director, dismiss a Director or change the allocation of duties from one Director to another.
	7. sell, transfer, lease, license or in any way dispose of the Business's undertaking or freehold or leasehold property;
	8. buy any new business or company or make a substantial investment in business of a type different from the Business or change the nature or scope of the Business or start any new business or new project;
	9. otherwise than in the normal course of business, sell or otherwise dispose of any intellectual property rights of the Company.

# Existing Intellectual Property

* 1. Schedule [1] of this agreement correctly records the ownership of Intellectual Property owned by any IP shareholder.
	2. Nothing in this agreement shall prevent a shareholder from entering into an arm's length agreement with the Company for use of his Intellectual Property.
	3. If any shareholder (the "IP shareholder") owns Intellectual Property which has been or is currently, used by the Company ("SHIP"), the following terms shall apply.
	4. In the absence of any other documented licence agreement between the Company and the IP shareholder, the IP shareholder shall be deemed to have granted a licence to the Company in the terms and for the purposes in which it has hitherto been used, for the licence fee of €[1] per year.
	5. The IP shareholder may at any time restrict any deemed licence on giving [6] months' written notice to the Company.
	6. If, on expiry of the [6] month notice period, the IP shareholder and the Company shall have failed to make a new agreement, the deemed licence shall be construed as a licence in the following terms:
		1. The IP shareholder shall have no claim, nor shall the Company suffer any loss in respect of the past use of the SHIP by the Company.
		2. The IP shareholder grants whatever licence to the Company as is necessary to enable the Company to maintain, and avoid breach of, every sub-licence of the SHIP to every customer or client to whom any formal or unrecorded licence has been granted in the course of the Company’s business.
		3. All other deemed licences shall terminate, so that the Company may not continue to use the SHIP.
		4. The Company will acknowledge that it has no right or interest in the SHIP, except as stated in this paragraph.

#  New Intellectual Property

* 1. Each shareholder understands that whilst associated with the Company, he may discover or create Intellectual Property. Each shareholder now agrees that if he is or becomes involved in any way with the creation or improvement or discovery of Intellectual Property he will:
		1. do his utmost to ensure that the Company acquires or retains the rights in that property;
		2. inform the Company reasonably soon after any such creation or discovery;
		3. provide to the Company whatever full code, passwords, specification, description, text or drawings as are together necessary to enable the Intellectual Property to be used, registered or protected by the Company.
	2. To make this effective each shareholder now undertakes to do whatever is reasonably necessary or desirable to enable the Intellectual Property to be transferred into the name of the Company or otherwise to secure ownership by the Company.
	3. If Intellectual Property owned by a shareholder and used by the Company with his permission, is incorporated into an object or product which is clearly different from its original form, then the shareholder who owns that intellectual property is deemed to have no claim on the new intellectual property formed, in part at least, from his original.
	4. This paragraph does not apply to Intellectual Property created by a shareholder in connection with a business which is not related to the Business of the Company and not competitive with it.

# Assets introduced by a shareholder

* 1. This paragraph does not apply to Intellectual Property.
	2. The assets listed under the name of each shareholder in Schedule [2] are owned by that shareholder.
	3. This paragraph applies to those assets and also to any other assets owned by a shareholder, which are used by the Company from time to time.
	4. Unless a clear intention of gift is shown, all such assets shall remain the property of the shareholder who owns them.
	5. Each shareholder, who has permitted his assets of any description to be used by the Company, hereby grants a licence to the Company for its continued use of the assets. This licence:
		1. is limited to use by the Company in its own business;
		2. prohibits reproduction in any form, of the asset licensed;
		3. shall terminate at any time on giving three months’ notice in writing to the [company secretary].

# Confidentiality

* 1. Each shareholder agrees and undertakes that he will:
		1. not remove from Company's premises or copy or allow anyone else to copy from any document, computer disk, tape or other tangible item which contains any Confidential Information except as may be necessary in the course of his work for the Company;
		2. in respect of any part of the Confidential Information of the Company, from today until the expiry of five years from the termination of this agreement, keep it secret and not divulge or make it known to anyone nor use it for the benefit of himself or any other person.
		3. comply with the law regarding protection, disclosure, and processing of personal information.
	2. This paragraph does not apply to disclosure:
		1. made with the consent of the proper officers of the Company or under the authority of the Directors or by order of the court.
		2. of information or knowledge which comes into the public domain otherwise than by reason of his default.
		3. as may be necessary in the course of his work for the Company.

# General provisions relating to shares

* 1. [No party shall assign, mortgage, charge, or otherwise encumber, any share or other rights or obligations under this agreement without the prior written consent of other shareholders together holding [80]% of shares of the Company].
	2. [A shareholder may freely dispose of some or all of his shares to [his spouse or life partner of at least three years, or his child, or to the trustees of a trust in which that person / any of those people is/are named exclusively, as beneficiaries].
	3. [A shareholder may at any time transfer shares part or all of his shareholding to another shareholder at such price as the two shareholders shall agree.]

#  Permitted share issues and on-going funding

23.1 In the event of the Company wishing to issue additional Shares it shall firstly do so pro rata to the existing shareholders. It shall notify each of the shareholders (the **“Notice Parties”**) in writing of its wish to do so and the notification shall specify the number of additional shares (the **“New Shares”**) it wishes to allot pro rata and the terms on which it proposes to allot the New Shares and shall invite the Notice Parties to indicate within one calendar month if they are willing to subscribe for all or any of the New Shares.

23.2 At the expiration of the period the Company shall allot to each Notice Party the number of New Shares as that Notice Party shall have notified the Company he/she is willing to subscribe for, in proportion to the existing proportions of the share capital of the Company then held by the Notice Parties respectively.

23.3 In the event of the Notice Parties not subscribing for all or any of the New Shares, the Company may allot so many of the New Shares as have not been subscribed for by the Notice Parties to a third party or parties on terms no more favourable than the terms on which they were offered to the Notice Parties provided that the name(s) of such third party or parties have been notified to the Notice Parties at the time they were invited to subscribe for the New Shares.

# Share sale by shareholder(s)

* 1. If a shareholder (the "Seller") wishes to sell all or any of his/her shares, he/she must first offer them to the existing shareholders by giving a Transfer Notice to the Company.
	2. The price at which the Sale Shares are sold shall be the “Sale Price” agreed by the Seller and the Directors and if the Sellers and the Directors are unable to agree a price within 28 days of the Transfer Notice the Sale Price shall be the “Fair Price” as determined by the Accountant on a going concern basis (if appropriate) as between a willing seller and a willing buyer [ignoring any reduction in value which may be ascribed to the Sale Shares by virtue of the fact that they represent a minority interest or majority interest] and on the assumption that the Sale Shares are capable of transfer without restriction.
	3. If the Accountant is asked to determine the Fair Price, as soon as the Company receives his/her determination it will provide a certified copy to the Seller and the Seller shall be entitled within 10 days of receipt of the certified copy to cancel the Company’s authority to sell the Sale Shares by notice in writing. The cost of obtaining the Accountant’s determination of Fair Price shall be borne by the Company unless the Seller has given notice of his/her cancellation, in which case the Seller shall bear the cost.
	4. The Transfer Notice shall be conditional only upon acceptances being received for all of the Sale Shares.
	5. The Transfer Notice shall not be revocable except with the consent of the Directors and shall constitute the Company as the agent of the Seller for the sale of the Sale Shares.
	6. Promptly after the Transfer Notice is received, the Directors shall send a copy of the Transfer Notice to each shareholder and a notice for the number of such shares he/she may buy, in proportion to the shares already held by that shareholder.
	7. A shareholder wishing to accept any or all of the shares offered to him/her shall give written notice of his/her acceptance to the Seller and to the Company within [21] days of receipt of the Transfer Notice or notification of the Fair Price. Payment of the Sale Price shall be tendered with the notice of acceptance.
	8. If such notice is not received by the Company within [21] days, that shareholder is deemed to have declined the offer.
	9. A notice of acceptance shall be irrevocable and shall give rise to a legally binding and unconditional contract between the Seller and the buying shareholder, conditional only upon acceptances being received for all of the Sale Shares.
	10. The Sale Shares shall be sold free from all charges and with full title guarantee at the Fair Price and together with all rights attaching to the Sale Shares on or after the date of the Sale Notice.
	11. In exchange for the Sale Price, the Seller shall deliver to each buying shareholder a signed share transfer form in respect of the Sale Shares bought by him/her together with the share certificate(s) for the Sale Shares.
	12. If the Seller fails to comply with the procedure set out above, the Company may act as his/her agent on his behalf without confirmation or further instruction.
	13. [If in respect of all or any Sale Shares the Seller's offer lapses or is declined by the shareholders, then the Seller shall at any time within six months after the final offer by the Company to its shareholders be at liberty to sell and transfer the entire legal and beneficial interest in any Sales Shares that have not been sold to any person at the Sale Price].
	14. In the event of the death of any Shareholder being an individual, he or she (or their personal representatives) shall be deemed to have given a Transfer Notice in respect of his/her shares, in which event the provisions of paragraph 29 shall apply.
	15. The Board shall refuse to register any transfer of Shares and shall not issue any Shares to any person (other than a Shareholder) who has not, prior to the transfer or issue, entered into an agreement in the form of the deed of adherence set out in Schedule 4 whereby the transferee has covenanted with the remaining shareholders to become a party to this Agreement and to be bound by the terms and conditions.

**[If you require a majority shareholder(s) to be able force a minority shareholder to join in the sale of shares to a third party you should add the following paragraph 25]**

1. **[Drag along rights**
	1. If the holder(s) ofat least [60%] of the entire issued share capital of the Company (the **“Selling Shareholders”**), wish to transfer all of their interest in their shares to a bona fide arm’s length Third Party Purchaser, the Selling Shareholders shall have the option, subject to Board consent ( not to be unreasonably withheld), to require all remaining Shareholders to sell and transfer their shares to the Third Party Purchaser in accordance with this paragraph 2
	2. The Selling Shareholders may exercise this option by giving 14 days written notice (a “**Drag Along Notice”**) to the Shareholders.
	3. The notice shall specify that the Shareholders are required to transfer all their shares, the person to whom they are to be transferred, the Fair Price and the proposed date of the transfer.
	4. Such a notice shall be irrevocable but will lapse if for any reason there is not a sale to the Third-Party Purchaser within 90 days after date of service of the notice.
	5. [The Selling Shareholders shall be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice].
	6. If any of the Shareholders fail to execute a transfer in respect of the shares under this paragraph 25 such defaulting holder shall be deemed to have irrevocably appointed the Chairperson of the Company (or failing the Chairperson the Company Secretary) to be his/her agent and attorney to execute all necessary transfers on his/her behalf.]

**26. Procedure after transfer**

If, at any time, and for any reason, a shareholder ceases to be a shareholder, he will immediately:

26.1 resign as a Director of the Company and from any other office connected with the affairs of the Company without compensation for loss of office;

26.2 immediately transfer to whomever the Company directs, any shares in any company held by him as nominee of the Company;

26.3 irrevocably authorise the Company to appoint some other person to sign his resignations on his behalf;

* 1. not from that time represent to anyone that he is still a Director or shareholder of the Company or associated with it;
	2. return to the Company without request all property owned by the Company whether or not he perceives such property to have value;
	3. delete all Confidential Information from any computer disks, tapes or other media;
	4. not contact or communicate with any customer, supplier, or employee of the Company;

If he/she fails to comply with any provision of this paragraph where compliance could be achieved by the signing of some document or doing of something by someone else, then he/she now irrevocably authorises the Company to appoint some person in his/her name and on his/her behalf to sign any document or do any such thing (without prejudice to any claims which he/she may have against the Company arising out of this agreement or its transfer).

# 27. Shareholder's continuing rights and obligations

* 1. This agreement shall be binding upon the successors and permitted assignees of each shareholder.
	2. The rights and obligations of a shareholder shall cease on the Transfer Date, except that the following obligations shall remain in full force and effect:
		1. any right or obligation arising from this agreement and outstanding and unsatisfied at the Transfer Date;
		2. any right or obligation arising from his employment by the Company or his connection with it;

#  Restrictions on shareholder after transfer

Each shareholder covenants jointly and severally with one another and the Company that:

* 1. after the Transfer Date, he/she will continue to acknowledge the ownership by the Company of any Intellectual Property rights of the Company at any time the Company may call upon him to do so;
	2. he/she will not within [three] years of the Transfer Date directly or indirectly, advise, instruct, do or assist in any activity the effect of which is to promote the sale of any product or service which competes with any product or service offered for sale by the Company within the period of [three] years immediately preceding the Transfer Date.
	3. the restrictions imposed by the last previous sub paragraph extend only to the area covered by the counties of [Dublin, Galway, Cork] or such other areas, whether more or less in expanse, as contain one or more customers of the Company;
	4. he/she will not within [three] years of the Transfer Date directly or indirectly, advise, instruct, do or assist in any activity the effect of which is to encourage any person to breach any contract between that person and the Company;
	5. he/she will not within [three] years of transfer, directly or indirectly, employ or provide work to any person who was employed by or who worked as a contractor for the Company within the period of three years immediately preceding the Transfer Date;
	6. he/she will not within [three] years of transfer, either on their behalf or on behalf of other persons directly or indirectly solicit or endeavour to solicit the services of any person employed by the Company;
	7. the provisions of this paragraph are fair and reasonably required for the protection of the Company.
	8. In the event of any covenant contained in paragraph **2** being held unreasonable by reason of area, duration, type or scope of restriction contained in it the said covenant shall be given effect in its reduced form as may be decided by any court of competent jurisdiction

# Transfer of shares on death or incapacity

* 1. A PR must, as soon as this provision comes to his/her notice, notify the Directors of a Relevant Event whereupon the following provisions shall take effect.
	2. Relevant shares shall not be re-registered in the name of any person unless the PR agrees to, and partakes in, the following procedure.
	3. Notice of a Relevant Event by a PR shall be irrevocable and shall be deemed to constitute an unconditional offer for sale of the Relevant Shares at the Fair Price in accordance with the procedure here set out.
	4. Promptly after notice of a Relevant Event has been received by the Directors, the auditors of the Company shall be instructed to determine the Fair Price of the Relevant Shares. The cost of such work shall be payable by the PR.
	5. Any such offer shall be deemed to have been made:
		1. to the Company which shall have the right to accept any or all of the Relevant Shares (if it is lawfully able to do so) by written notice given by it to all shareholders within 14 days of the notification of the value of the Relevant Shares; or
		2. if or to the extent that any offer made to the Company is not accepted, then to all shareholders in proportion to the number of shares owned by them at the date of the Relevant Event.
	6. A shareholder wishing to accept any or all of the shares offered to him/her shall give written notice of his acceptance to the Company within [21] days of the notification of the Fair Price. If such notice is not received by the Company within 21 days, that shareholder is deemed to have declined the offer.
	7. A notice of acceptance shall be irrevocable and shall give rise to a legally binding and unconditional contract between the Company or the person giving it and the PR whereby the PR shall transfer to the Company or the shareholder the appropriate shares and the Company or the shareholder shall pay the Fair Price.
	8. If neither the Company nor the shareholders accept the offer to buy the Relevant Shares, then the Company shall buy the shares within six months of the offer having been made at the price of 90% of the Fair Price.

# Transfer of shares on bankruptcy

* 1. If a bankruptcy order is made against any shareholder, the remaining shareholders shall offer to buy the shares of the bankrupt shareholder from his/her trustee on the following terms:
		1. [The remaining shareholders shall appoint one of their number to negotiate with the trustee].
		2. The price offered shall be the minimum price reasonably obtainable;
		3. As between the remaining shareholders, each shall be entitled to buy shares pro rata with his/her existing holding, so as to preserve the proportions held by them;
		4. If any remaining shareholder does not wish to buy his/her proportionate number of shares, he/she need not do so. If he does not, the shares that would have constituted his entitlement shall be offered pro rata to the then remaining shareholders.

#  Transfer of shares on termination

* 1. If the employment of any person holding shares is terminated by the Company, such person (“the Transferor”) is deemed to have given the Company a Transfer Notice in respect of all the shares registered in his/her name.
	2. A Transfer Notice shall constitute the Company as the agent of the Transferor for the transfer of the shares registered in his /her name.
	3. The Company shall, within 7 days of the Transfer Notice, offer the shares to the remaining Shareholders.
	4. The price offered shall be the minimum price reasonably attainable.
	5. As between the remaining shareholders, each shall be entitled to buy shares pro rata with his/her existing holding, so as to preserve the proportions held by them.
	6. If any remaining shareholder does not wish to buy his/her proportionate number of shares, he/she does not need to do so. If he/she does not, the shares that would have constituted his/her entitlement shall be offered pro rata to the then remaining shareholders.
	7. If neither the Company nor the shareholders accept the offer to buy the Relevant Shares, then the Company shall buy the shares within six months of the offer having been made at the price of 90% of the Fair Price.

**[Note: If it is your intention to take out life polices on the Shareholders you should add the following paragraph 32]**

# [Life insurance provision

In this paragraph:

"Beneficiaries" means such of the shareholders as are entitled to acquire the shares of the Life Assured at the date when the decision to claim is made.

The "Life Assured" means each of:

[full name of shareholder] born on [date of birth] of [address]

[full name of shareholder] born on [date of birth] of [address]

[full name of shareholder] born on [date of birth] of [address]

The "Trigger Event" means the death or disablement of a Life Assured. Disablement means disablement to such an extent that the body of shareholders considers that the Life Assured is no longer able to carry out his duties to the Company adequately.

The "Sum" means the sum payable under a policy on the happening of the Trigger Event.

* 1. The Company agrees to pay the premiums to maintain policies of insurance in the circumstances set out below in consideration of the ongoing benefit to it from work done by the Lives Assured, whether as Director, employee or otherwise, for the Company.
	2. Each policy shall be in such sum as the body of shareholders / Directors shall from time to time agree represents the value of the shares of that Life Assured defined as the (approximate) sum required to purchase the shares and interest of that Life Assured.
	3. (Subject to the consent of the insurer) the Company may increase or reduce the sum insured for any one or more of the Lives Assured so as to provide the appropriate sum.
	4. The policy shall pay the Sum on the happening of a Trigger Event.
	5. The Sum shall be payable to the Beneficiaries.
	6. Any term or definition in this paragraph shall be interpreted as re-defined by reference to the terminology used by the insurer in a relevant policy.]

# Publicity

No public or press announcement shall be made about the subject matter of this agreement unless the text has been first approved by all the parties.

# Conflict with the Constitution

If any conflict arises between this agreement and the Constitution of the Company, then:

* 1. as between the shareholders, this agreement shall prevail;
	2. the shareholders shall procure whatever modification is necessary to the Constitution to cure the conflict.

# Miscellaneous matters

* 1. This agreement does not create any partnership between the parties and the Company.
	2. No amendment or variation to this agreement is valid unless in writing, signed by each of the parties or his authorised representative.
	3. This agreement may be executed in multiple counterparts. All such counterparts when executed will be deemed to be an original, all of which will constitute one and the same agreement.
	4. In the event of a dispute arising out of this agreement the parties undertake to attempt to settle it through professional mediation before commencing litigation.
	5. If the extent only, of any part or provision of this agreement is held to be unlawful, void or unenforceable, then that part or provision shall be deemed to be reduced so far as to permit it to become valid and enforceable without affecting the remainder of the agreement.
	6. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
	7. Any obligation in this agreement intended to continue to have effect after termination or completion shall so continue.
	8. This agreement does not give any right to any third party.
	9. Any communication to be served on either party by the Company or other party shall be delivered by hand or sent by first class post or recorded delivery or by e-mail.

It shall be deemed to have been delivered:

if delivered by hand: on the day of delivery;

if sent by post to the correct address: within 72 hours of posting;

If sent by e-mail to the address from which the receiving party

has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.

* 1. The validity, construction and performance of this agreement shall be governed by the laws of Ireland and the parties agree that any dispute arising from it shall be litigated only in that country.

Signed by [full name of a Director], duly authorised on behalf of the Company

Signed by [full name], a shareholder:

Signed by [full name], a shareholder:

## Schedule 1 - Existing IP owned by IP shareholder

[Provide the list of any existing IP owned by shareholder]

## Schedule 2 - Ownership of assets used by the Company

## Schedule 3 - Letter of instruction to accountants for valuation

On the letterhead of the company

To: Bloggs accountants

Dear Sirs

Shares valuation - this company

This letter is by way of instruction from the directors to you on behalf of the company. The instruction is to place a value first on all the shares of the company and second on a holding representing [x]% of the shares in issue.

To assist you we now enclose:

* the accounts for the last three years in full not filed, version;
* monthly management accounts since the date of the last published accounts;
* details of the current and forward order book;
* budget for the next [two] years;

You may well need other documents which we shall be pleased to supply on request.

We seek your advice as a preliminary point on the most appropriate basis of valuation, but in any event we shall ask you to make appropriate adjustments for the items listed below:

OR

Please make your valuation on the following assumptions:

1. That the transaction is between a willing seller and a willing buyer at arm's length.
2. That any restrictions on the transfer of shares by this agreement or by the constitution of the company are to be ignored.
3. That the appropriate yardstick for a valuation is the value placed on companies in the same business as this company and whose shares are publicly listed, [discounted by x%].
4. That the appropriate yardstick for a valuation is a multiple of x times the net profit before / after tax, and after having made the adjustments listed below.
5. That the appropriate yardstick for a valuation is the net value of the assets of the company, including / excluding all goodwill and intellectual property.
6. That the appropriate yardstick for a valuation is to take the average profit before tax of the last three years, then add back:
	1. depreciation,
	2. salary payments to the directors,
	3. other emoluments of the directors,
7. That the remuneration, benefits and pensions of directors are at market rates (which you may judge to be more or less that the figures paid and shown in the accounts).
8. That the company is a going concern and will continue to be so.
9. That there is no outstanding or anticipated litigation not disclosed to you.
10. That no director is aware of any fact which may materially change your valuation.
11. That the directors believe it is unlikely that the shares of the company will be offered for sale to the public and arrangements made for its shares to be traded in any public market within the next three years.
12. That they are aware of no approach which could result in an offer from a third party for all or a substantial proportion of the shares in the company.

Yours faithfully,

**Schedule 4 – Deed of Adherence**

**This agreement is made on** [insert date]

**BETWEEN**

1. [Name of company] (a company incorporated and registered in the Republic of Ireland with company number [number] whose registered office is at [insert registered address] (**Company**);
2. The persons whose names and addresses are set out the body of this agreement (**Shareholders**);
3. [name of new shareholder] of [home/registered address] (**New Shareholder**).

**BACKGROUND**

This agreement is supplemental to a Subscription and Shareholders Agreement dated [date] and entered into by [details] (Shareholders Agreement).

The New Shareholder wishes to subscribe for Ordinary Shares.

**OPERATIVE PROVISIONS**

1. The definitions contained in the Shareholders’ Agreement will have the same meanings in this agreement save where the context otherwise requires.
2. The New Shareholder confirms (subject to paragraph 3 below) that they have been given and read a copy of the Shareholders Agreement and covenants with each person named in the Annex to this agreement to perform and be bound with effect from the date of this agreement OR with effect from the date on which the New Shareholder is registered as a member of the Company by all the terms of the Shareholders Agreement as if the New Shareholder was a party to the Shareholders Agreement as a Shareholder. By executing this agreement, all parties confirm that it is the intention that the New Shareholder shall be bound by and entitled to the benefit of the provisions of the Shareholders’ Agreement as if they were party to the Shareholders Agreement and named in the Shareholders Agreement as a Shareholder.
3. This agreement may be executed in any number of counterparts, each of which when executed will be an original but together will constitute one and the same agreement.
4. This agreement will be governed by and construed in accordance with the laws of the Republic of Ireland.

Signed by [full name of a Director], duly authorised on behalf of the Company

Signed by [full name], a shareholder:

Guidance notes:

Shareholders' agreement: standard version

General notes

1. Although all matters relating to the structure and management of a company must stay within the framework provided by the Act, this agreement is comparatively unregulated. It is therefore open to you to make whatever arrangements you wish. The starting point for this agreement should therefore be a "wish list" or agenda of agreed points. If they do not appear here already, add them!
2. There are also some important preliminary decisions relating to who does what, how the whole deal terminates, and what happens when someone dies or wants to sell their shares. This is very important.
3. Before you can discuss the detail of this document, everyone involved should talk about the "exit strategy". We can advise confidently that there will be a dispute at some stage, between leavers, sellers, holders, or whatever.
4. What we can do in this document is to give you ideas on how to minimise your disputes by advance agreement. Sadly, neither you nor we know what problems will arise. You cannot stop bad things from happening, but you can provide as best you can. That is what we try to do in paragraphs 20 onwards. So, do please consider what we have proposed and what realistic alternatives you might use.
5. When two people each own 50% of the shares, you have stalemate from the start. This structure is sometimes essential but avoid it if you can. Several clever ways have been devised to avoid conflict, but they are built on the assumption that price is the only consideration.
6. Other issues you should address are:
	1. What if the buying shareholder has no money?
	2. What if one of the shareholders is indispensable to the business, so that if he goes, there will be no business?

Paragraph specific notes

Notes following the numbered paragraphs

1. **Definitions**

It is our policy to limit the number of definitions to the bare minimum. We do provide long definitions occasionally, not because they are important to the meaning of the document but so that anyone signing the agreement cannot later deny that he knew what was included in the meaning.

1. **Interpretation**

There are some very important points here that affect many other parts of the document. Leave these items in place unless there is a good reason to edit or remove. We suggest that you read them a couple of times so that as you run through the rest of the document, bells ring!

1. **Relationship of parties**

This is a simple statement for the avoidance of doubt. Of course, other documents may indeed create the relationships mentioned. For example, most directors will be employees. It is important however, that this document does not accidentally create other relationships. On the other hand, whilst it is important that this document is not confused with any other, there is no reason why it should not refer to other relevant documents, such as a long term purchase or sale contract with one shareholder. If it is essential that one of the parties does in fact sell to or buy from the company, then edit this paragraph.

1. **Constitution**

This clause should be retained

1. **Shareholders' details**

In providing shareholder details, we assume the company has been formed and shares issued. If that is not the case, this agreement may be drawn in advance and dated the same day or the day after, the issue of the (new) shares.

1. **Completion**

This is little more than a reminder to shareholders that they need to pay up for their shares and complete the formalities of minutes, and so on. The Act provides that minutes should always be kept. However, this will not be enforced or criticised until there is a dispute among shareholders or directors and someone uses this omission against the company.

The agreement does not of itself make things happen. So far as change must be made, it is likely to be through service contracts, minutes of meetings, and so on. It is therefore important to specify and list the actions to be taken to complete the agreement.

1. **Covenants concerning the Company**

These covenants should be retained

1. **Special voting rights**

The Act assumes that every company has a large number of shareholders. It provides that a motion is carried when the appropriate proportion (usually 51% or 75%, of those members “present and voting” vote in favour. However, if there are only four shareholders and one is on holiday, it would be all too easy to call a meeting and take action, knowing that he will object but will be powerless to stop that motion from being carried.

To avoid that issue, we have provided that any motion relating to anything mentioned in this agreement shall be decided only by a real majority. That is to say, the guys who are absent “count” in the calculation as against the motion.

Remember however, that a good modern constitution allows for meetings to take place via telecoms software even if the participants are scattered over the whole world. A shareholder will also be “present” if he sends a proxy or uses an alternate director.

1. **Appointment and removal of Directors**

It is not necessary for a shareholder to be a director or for a director to be a shareholder. In a small, private company it is usual for every shareholder to also be a director. We have provided for that. If a shareholder does not wish to be a director, he can nominate someone in his place.

As you would expect, it is reasonable to provide for a shareholder to lose his right to appoint a director when he sells his shares. However, you also need to cover the possibility that a shareholder may mischievously decide to sell most of his shares, keeping just one or more. That means he would still be entitled to be, or appoint, a director. That person could then make mischief or otherwise be obstructive at meetings.

To prevent this, we have provided that the right to appoint a director is removed when a shareholder no longer holds a given percentage of shares. We have suggested 5%, but it is up to you to decide what that percentage should be.

Remember that the actual appointment or removal must take place within the framework of the Companies Act, that is, by resolution of the shareholders in general meeting.

We have included an important provision for a shareholder with a very small holding of shares to be excluded from the power to appoint a director. You may think this is unnecessary right now but consider a situation where a shareholder might die and his shares may be distributed among several beneficiaries. We strongly advise that you leave this provision in place.

1. **Managing Director**

Edit as you require

1. **Duties of Directors**

The identity of the directors is an obvious requirement. It is good practice to specify areas of responsibility. The details of the terms of service should be recorded in separate contract.

It is certain that shareholders will not see each other's roles in the same light. You may wish to set out precise allocation of specific duties so that it is clear only Joan looks after the Dublin branch or only John buys steel. It also prevents one shareholder-director from interfering in the duties allocated to another. You can word this paragraph widely or narrowly.

1. **Proxy votes**

The law requires that you enable proxy voting. It is very useful in any event.

The question of absence through holidays or sickness is often overlooked. It is likely that the constitution covers the situation at meetings but will not cover other situations. You need to be able to appoint someone to vote your shares if you are unable to do so. Like most of the provisions of this agreement, the parties will refer only in times of dispute or mistrust. It is therefore important to preserve the rights set out in the agreement in all situations.

A proxy votes his principal's shares. He stands in the shoes of the principal only for the purpose of voting. He is not expected to contribute to the proceedings of a meeting unless asked by the chairman.

1. **Company's obligations**

The company and the shareholders are parties. Although the company can act only through its directors, it does have a separate legal identity. In the event of suspected fraud or a dispute, it is useful to be able to select whether to sue shareholders, directors or the company. We have included these obligations by the company to provide this option. Ultimately, it is an incentive towards good management.

Of course, because the company can act only through its directors, it means that every director is also bound to do his best to make sure the company complies.

Edit freely so as to include what is important in your business.

1. **Shareholders' obligations**

This provision is intended to prevent a shareholder from acting secretly on behalf of a predator or other third party interest.

Edit as you require.

1. **Actions requiring 75% shareholder consent by law**

This paragraph is most important. In setting out these points, we are merely reminding all shareholders that these items require a 75% majority because the Companies Act says so. Any attempt to reduce it will be void. However, you can increase the 75% if you wish to do so.

1. **Dividend policy and procedure**

Payment of a dividend must accord with tax law and the Companies Act, Section 124. The tax element relates in part to the availability of profit out of which a dividend may be paid. If the accounts of the company show a net loss it is unlawful to pay a dividend. We advise very strongly that you take advice from your accountant before paying a dividend.

Payment of a dividend must also accord with the company constitution.

We have not provided for an interim dividend because interim accounts are required in order to show that an interim dividend is justified. Very few private companies draw interim accounts.

You do not have to include a dividend policy in a shareholder’s agreement. A young and expanding company may prefer to state categorically that no dividend shall be paid. Conversely, a major shareholder may wish expressly to require that a dividend shall be paid - particularly a shareholder who is not a director.

The usual way to provide for an outside shareholder to receive dividend with certainty is to issue preference shares.

We recommend that you leave this paragraph substantially in place, with insertions or changes where required.

1. **Actions requiring more than 50% shareholder consent**

The default position is that shareholders can do almost anything with a majority of over 50%. We have listed here a number of important areas where you might think you need a majority greater than 50%.

You can set the percentage that you want and list the decisions that you want. You could include personal use of company jet or whether dogs are allowed in the kitchen. We advise only, not to make it so rigid that even a small matter would require the consent of all shareholders.

1. **Existing Intellectual Property**

When a company is first formed, it is usual, rather than exceptional, for it to use intellectual property owned by one of more of its new shareholders. That may be to exploit a patent, use a trademark, use business plans and ideas, use software, spreadsheets, artwork, website, and many more "works" and IP which are technically owned by one of the shareholders.

As new shareholders are brought in (and this agreement is required) IP ownership records become lost or ignored. At some stage, either the IP owner, or some other shareholder becomes aware of its value to the company. Nasty conflicts can easily arise when a logo or brand name or other critical IP is suddenly worth a large amount of money.

This paragraph provides a route through the maze. The ideal provision is not one that needs to be in this agreement at all. It is to identify essential IP and make sure the owner either assigns it to the company or enters into a licence agreement. It is important that a mere acknowledged permission leaves the company open to problems and conflict - particularly if that IP is used in products or services sold to customers or clients.

Every binding agreement must be for value (consideration). It is quite acceptable if that value is very low - say €1. Whatever it is, make sure that the transaction goes through the books of the company.

Although the assumption here is for the IP owner to continue to allow the company to use his IP virtually free, of course there is no problem if the arrangement is a proper commercial licence or sale deal.

1. **New intellectual property**

The scope and potential value of intellectual property is very wide. It is sometimes difficult to identify, let alone to track. The provisions in this agreement are therefore thorough. As long as we do not know today what intellectual property we shall depend on tomorrow, it would be sensible to take a cautious view. This is particularly important in cases where one of the shareholders is in business in some way associated with that of the company.

1. **Assets introduced by a shareholder**

Over time, shareholders tend to introduce assets for use in the company. It might be a picture to hang on the office wall, or an old desk. Later, arguments arise over ownership. This paragraph prefers to protect the company, that is, the other shareholders, against the asset owner. Specifically, he may not remove his item until at least three months’ notice has been given.

This paragraph grants a formal licence to the company to use assets introduced by a shareholder.

1. **Confidentiality**

It is for the parties to decide whether they think this provision is appropriate. This happens where software, customer lists, and designs creep out of the business premises. You cannot stop it from happening, but you can at least make clear that it is in breach of this agreement. You might also decide to edit the definition.

1. **General provisions relating to shares**

Here are three issues you can cover if you wish to do so. In any small private company, the eternal fear is that a substantial shareholder will give her shares to her child or children who will then “interfere” in the management of the company. Everyone wants to be able to see their children progress into a “family business” but few of us want to have to negotiate our next pay rise with our cousin’s children. This agreement forces shareholders to face these difficult decisions now, not later.

1. **Permitted share issues and on-going funding**

You may want to allow for the issuing of further shares into the future and this sets out the procedure for you to do just that.

Though your future requirements may not be clear you should use this paragraph to provide clarity around this possibility.

1. **Share sale by single shareholder**

We have provided in detail for a right of pre-emption in the event that a shareholder wishes to sell. This is a procedure whereby the existing shareholders have the first opportunity to buy the seller's shares. This is the procedure most often used in practice. It marginally favours the continuing shareholders. By changing the instructions to the valuer-accountants you could reduce or increase the value a departing shareholder would receive.

The downside is that the body of shareholders may have difficulty in raising a large sum if the majority shareholder wants "out".

The draft letter of instruction for a valuation is covered below.

1. **Drag along rights**

This paragraph allows for what are called “drag-along rights”. This is a right that enables a majority shareholder to force a minority shareholder to join in the sale of the company to a third party.

The majority owner(s) doing the dragging must give the minority shareholder the same price, terms and conditions as any other seller.

This paragraph prevents a situation arising where the majority of shareholders wish to sell the company but are prevented from doing so by a minority shareholder who does not want to.

1. **Procedure after transfer**

It is not unknown for a shareholder with a grievance to retain a small number of shares, so as to qualify him, through this agreement, to interfere with decision making by the remaining directors. We have therefore provided an option for you to apply this provision not only to a departing shareholder, but also to one whose holding is reduced to whatever level you decide.

There is no reason why you cannot duplicate this template paragraph and edit each version to apply as to one for departing shareholders and one for extreme minorities.

The extent of these provisions is a matter of choice. If colleagues fall out, it may be very important to those remaining to have in place a basis for continuation with minimum disruption. Some of these provisions are difficult to control, but we recommend inclusion simply to establish the rights of the remaining shareholders. Edit or delete if you so choose.

1. **Shareholder's continuing rights and obligations**

It is almost impossible to devise a deal whereby all shareholders are treated equally because at the moment when one decides to sell, the common interest is broken. It is therefore difficult to place precise obligations on the parties or company. Whilst legal documents should generally contain only matters which can be regulated precisely, we have included this brief paragraph in order to prompt the parties to give some thought to this very important matter. Leave as is or edit or delete.

1. **Restrictions on shareholder after transfer**

The carefully chosen wording of these restrictions is necessary to withstand the general proposition that an agreement "in restraint of trade" is always interpreted by a court against the person seeking to rely on it. The provision **themselves are similar to those in a senior contract of employment. Some or** all may be inappropriate to apply against one or more shareholders who may have taken shares in some capacity which is not compatible with some or all of these provisions. We suggest you do not edit.

1. **Transfer of shares on death or incapacity**

There are two caveats to the application of this paragraph:

First, probate law will take precedence over anything you say here. Second, a PR is also bound by the law and in any event, is not a party to this agreement. The only strong "card" in your hand is that the company may refuse to register a shareholder who has acquired shares in a way that is not allowed. "Not allowed" means not allowed in law or by reference to the constitution. It could be claimed to apply via this agreement, but the legal basis to do so is less strong.

A PR is compelled to carry out the financial, contractual commitments of the deceased, that have crystalised as a specific sum of money - but not any others.

In practice, a PR will usually co-operate with any reasonable suggestion - with the single proviso that the estate is properly paid for the shares owned by the dead person.

This provision is intentionally precise and thorough because the remaining shareholders are likely to be dealing with a professional adviser who will be happier to deal with a well-documented procedure than to rely on something vague.

Since most shareholders' agreements are between small numbers of shareholders it is likely that they will be able to discuss any offer made and to act in concert to buy at the lowest price. As the agreement is now drawn, that best price is specified at 90% of the fair price. You may wish to insist that the company should buy the shares at full price or a lower price, but it is very important to make some provision for the possibility that neither the company nor the shareholders wish to buy the shares.

1. **Transfer of shares on bankruptcy**

We are sometimes asked what steps should be taken when a court order is made, declaring a shareholder bankrupt. What happens in those circumstances is not in your power to control so we cannot provide for it fully in this document. All the possessions of the bankrupt person pass by operation of law to the trustee in bankruptcy, a government department. He is obliged to sell to the highest bidder.

However, the shareholders can agree with each other as to how they buy the shares from the trustee, when he is ready to sell. This paragraph prevents one or more shareholders from bidding up the price of the shares so as to exclude one or more shareholders and so change the balance of power in the company.

A trustee in bankruptcy will often sell at a low price and will almost never engage in litigation. You will benefit by taking a strong line.

1. **Transfer on termination of employment**

If it is the Company’s policy to allow only employees to be shareholders of the company then you include this section in your agreement.

1. **Life insurance provision**

This paragraph may be deleted if you do not intend to take out "key man" or other insurance on the lives of any director or shareholder.

1. **Publicity**

We have no comment

1. **Conflict with the Constitution**

As stated previously, it is important to set out the priority.

1. **Miscellaneous matters**

A number of special points. We have identified each of these as important to protect you. Some are relevant to particular paragraphs in the document, some apply more generally. Some are included to strengthen your position, some to minimise disruption and expense. Do not delete unless you are quite positive of the legal effect of doing so.

**Letter to accountant - valuers**

All good things come to an end. The "end" is where conflict will arise. So, the better you manage it in advance, the easier it will be when the arrangement terminates. Bear in mind:

1. The valuation method is very important. Different methods will throw up very different results.
2. No matter what you put in the letter, or what valuation method you choose, it is up to the accountant how to work from that instruction. If you have already appointed an accountant or auditor, we suggest that you discuss the method of valuation with him. Agree it in detail. Let him give you the words to put in the instruction letter.
3. Remember, you are instructing the accountant to provide a figure. Whether you want to discount that figure for this agreement, is entirely for you to decide.
4. Remember too, that there is no compulsion to comply with the shareholder agreement if all shareholders agree to do something differently.

**Deed of Adherence**

Once you’ve got a signed subscription and shareholder agreement in place, then, when you’re bringing on board further shareholders (provided that you’re doing so on the same terms) they will not need to sign the shareholder agreement itself. Instead, they can simply sign a deed of adherence to it, which is a simpler document but that binds them, and you, to the same terms as the original shareholder agreement. You can use our deed of adherence for these purposes. There is one already attached to this template agreement at Schedule 4.

End of notes