SHAREHOLDERS’ AGREEMENT

THIS AGREEMENT is made on ........................*(insert date)*

AND IS MADE BETWEEN:

*(insert name)* of *(insert address)*

*(insert name)* of *(insert address)*

*(insert name)* of . *(insert address)*

WHEREAS:

The parties to this Agreement wish to regulate their obligations as shareholders in the Company.

IT IS AGREED as follows:

1. Definitions

In this Agreement the following terms and phrases shall have the following meaning unless the context otherwise requires:

|  |  |
| --- | --- |
| “Articles” | means the Articles of Association of the Company. |
| “Auditors” | means the auditors for the time being of the Company. |
| “Board” | means the board of Directors of the Company for the time being. |
| “Company” | means the ......*(insert name of Company)* Limited whose registered office is at ....... *(insert registered office details)*. |
| “Memorandum” | means the Memorandum of the Company. |
| “Shareholders” | means the parties to this Agreement. This includes any other party to whom they transfer their shares in accordance with the terms of this Agreement. |
| “Shares” | means Ordinary Shares of ... *(insert value)* each in the Company. |

2. Representations

Each of the Shareholders represents to the other that he has taken all necessary actions to enable him validly to accept and perform the obligations required under the terms of this Agreement and that performance of the provisions of this Agreement will not result in a breach of or constitute a default under any agreement or other contractual restriction binding upon him.

3. Precedence over previous agreements

This Agreement supersedes all previous agreements made between the parties with reference to the subject matter of this Agreement, which agreements shall become of no further force and effect on the signing of this Agreement.

4. Business of the Company

4.1 The business of the Company shall be the undertaking of ..... *(insert business)*.

4.2 The Shareholders undertake with each other that they will not, without the prior written consent of the other parties, while a shareholder in the Company become involved in any business other than that of the Company and that they shall during such period act in the best interests of the Company and use all reasonable endeavours to promote the interests of the Company and devote to its business such of their respective time, attention and resources as are reasonably required for the efficient and profitable conduct of the business of the Company.

5. Board

5.1 Each of the Shareholders shall, while a holder of Shares, be entitled to be a director of the Company unless prevented from being so by law.

5.2 The Shareholders shall use their reasonable endeavours to attend at all Board Meetings (if applicable) and General Meetings.

5.3 The first chairman of the Board shall be ........*(insert name)*.

6. Management

6.1 Each of the Shareholders undertakes to each of the others:

6.1.1 to exercise his votes, rights and powers as a member of the Company;

6.1.2 to exercise his votes, rights and powers as a Director of the Company; and

6.1.3 so far as they may be relevant, to exercise any other rights and powers to procure (insofar as possible) the observance and performance of the provisions of this Agreement.

6.2 The Shareholders shall procure that, save as contemplated by this Agreement, the Company shall not without the prior written consent of all of the Shareholders:

6.2.1 alter its Memorandum or Articles;

6.2.2 increase its share capital or issue any shares, loan stock, debentures or other security or enter into any agreement which shall entitle any party to an allotment of any such securities in the Company or to vote at any General Meeting of the Company or to appoint or remove any Director of the Company;

6.2.3 pass any resolution for the winding up or liquidation of the Company;

6.2.4 pass any resolution for the re-registration of the Company as a public company;

6.2.5 purchase any of its own shares;

6.2.6 other than in the normal course of business, transfer or otherwise dispose of or procure such transfer or disposition of the whole or any substantial part of the assets or undertaking of the Company whether by one transaction or a series of transactions;

6.2.7 create or grant any debenture, mortgage or charge whether fixed or floating or any other security over the whole or any part of the Company’s assets;

6.2.8 lend or advance monies to or guarantee the indebtedness of any person firm or corporation;

6.2.9 acquire any new capital asset or undertaking or enter into any material or long term contract or significant capital commitment or investment with a value in excess of £ ....*(insert amount)*, save in respect of machinery, plant and equipment reasonably required in the ordinary course of the business of the Company in respect of which the Shareholders have a previously agreed policy;

6.2.10 purchase or sell, take or let on lease or tenancy or otherwise acquire or dispose of any real property for any estate or interest;

6.2.11 change the nature or scope of its business or undertake any business other than that of ......*(insert business)*;

6.2.12 engage or dismiss any person as Director;

6.2.13 engage any person as employee or consultant or agent for a remuneration of more than £ ....*(insert amount)* per annum or increase or agree to increase by more than £ ....*(insert amount)* per annum the remuneration payable to any of its Directors, officers, employees, consultants or agents;

6.2.14 dismiss any employee;

6.2.15 establish any profit sharing, bonus or incentive scheme or arrangement nor make any material variation to any such scheme or arrangement as is or may in the future be in force;

6.2.16 enter into any contract or other agreement or arrangements with or in respect of any of its Directors;

6.2.17 institute any litigation save in respect of the debts owing to it in the ordinary course of business;

6.2.18 acquire or dispose of any shares, debentures, debenture stock or other securities in any other company;

6.2.19 allow the aggregate of the amount borrowed and raised by the Company to exceed £ ..... *(insert value)*;

6.2.20 have as its accounting period any period other than a period of twelve months and have as the date of the end of any accounting period any date other than ........*(insert date)*;

6.2.21 alter the accounting policies previously adopted by the Company save as required by law or as required to comply with a statement of standard accounting practice subsequently adopted;

6.2.22 in respect of any accounting period of the Company, pay or distribute any amount to the Shareholders in any capacity by way of dividend bonus or other distribution of a similar kind; or

6.2.23 change its registered office.

7. Finance

7.1 Any finance required by the Company will be borrowed by way of bank facility from the Company’s bankers or from other normal market sources upon terms agreed in writing by all the Shareholders. To the extent such financing is not possible or is not available on terms acceptable to the Shareholders, any funds advanced to the Company by any Shareholder shall be in the form of loans repayable on demand and bearing interest at ....*(insert rate)*% over the base rate of ......*(insert bank)* from time to time and otherwise on normal commercial terms.

7.2 Any guarantees or performance bonds agreed to be given by all the Shareholders shall be given jointly and severally by each Shareholder.

7.3 Any cash and surplus funds from time to time held by the Company shall be placed on deposit at the best rates obtainable and with institutions approved by the Board.

7.4 All cheques drawn by the Company are to be signed by two Directors and all cheques drawn by the Company in excess of £............. *(insert figure)* are to be signed by three Directors.

8. Financial information

The Shareholders shall procure that the Company:

8.1 maintains adequate accounting, financial and other records relating to the conduct of its business;

8.2 prepares internal monthly management accounts in accordance with good accounting practices relating to its business and delivers copies of the same promptly to each Shareholder and in any event not later than the 20th day in each following month; and

8.3 permits all Directors of the Company to have full access to the financial and accounting records of the Company upon reasonable notice during normal working hours.

9. Dividend policy

The issue of a share dividend is a matter for the Board to determine.

10. Confidentiality and outside interests

10.1 Each Shareholder undertakes to the other both during and after the termination of this Agreement (however it shall end) to keep secret and not to disclose or exploit in any way any confidential information concerning the Company or its business or the other Shareholders which may come to his knowledge as a result of participation in the affairs of the Company.

10.2 Each Shareholder undertakes with the others that he shall not during this Agreement or:

10.2.1 for a period of ..... *(insert term)* [years/months] after his ceasing to be a shareholder in the Company alone or jointly with or as manager or agent for any person directly or indirectly carry on or be engaged in the UK in the business of .......*(insert business)*;

10.2.2 for a period of ......*(insert term)* [years/months] after his ceasing to be a shareholder in the Company either on his own account or for any other person employ or solicit or interfere with or endeavour to entice away from the Company any person or business who was in the ..... *(insert term)* preceding such termination a client of the Company and with whom the Shareholder had personal dealings in this period; and

10.2.3 for a period of ......*(insert term)* [years/months] after his ceasing to be a shareholder in the Company either on his own account or for any other person employ or solicit or interfere with or endeavour to entice away from the Company any person who was in the ......*(insert term)* preceding such termination a key employee of the Company.

11. Conflict with Articles

Insofar as any provisions of this Agreement shall conflict with any provisions of the Articles the provisions of this Agreement shall prevail and (if any Shareholder shall so require) the Shareholders shall procure that the Articles are amended to agree with the provisions hereof.

12. Default

12.1 Any Shareholder who satisfies any of the requirements set out in clauses 12.2.1 to 12.2.9 shall be in default of this Agreement (a “Defaulting Shareholder”).

12.2 All Shareholders who are not in default of this Agreement shall be entitled to give a Defaulting Shareholder written notice to terminate this Agreement in respect of the Defaulting Shareholder immediately where such notice is given within the period of 30 days following any of the following events first coming to the notice of the Shareholders not in default:

12.2.1 the Defaulting Shareholder having a receiver or administrative receiver appointed of any part of his property or assets;

12.2.2 in relation to the Defaulting Shareholder (where such Shareholder is a company) the making of an order for the winding up or for the appointment of an administrator or the passing of a resolution for winding up or the approval of a voluntary arrangement by a meeting held under Section 3 of the Insolvency Act 1986, but not including any amalgamation or voluntary liquidation for the purpose only of bona fide reconstruction the terms of which have been approved by the Shareholders not in default (such approval not to be unreasonably withheld);

12.2.3 in relation to the Defaulting Shareholder (where such Shareholder is an individual) the making of a bankruptcy order or the approval of a voluntary arrangement under Section 258 of the Insolvency Act 1986;

12.2.4 the Defaulting Shareholder calling a meeting of his creditors or making any composition or other arrangement with his creditors generally;

12.2.5 the Defaulting Shareholder failing to remedy any breach of his obligations under this Agreement within the period of 30 days after receiving formal written notice of the breach requiring it to be remedied from a Shareholder not in default;

12.2.6 the Defaulting Shareholder having his service agreement with the Company terminated by the Company by reason of his wilful misconduct;

12.2.7 the death of the Defaulting Shareholder;

12.2.8 the Defaulting Shareholder ceasing for whatever reason to be a director of the Company; or

12.2.9 the Defaulting Shareholder ceasing to be an employee of the Company.

13. Consequences of termination

13.1 In the event of a notice of termination being given to the Defaulting Shareholder persuant to clause 12 then the provisions of the Articles shall apply as though the Defaulting Shareholder (“the Seller”) had delivered a transfer notice (“Seller’s Notice”) to the Board upon the date of effective termination for all shares held by him without stipulating any third party or any offer price and as though on such date the other Shareholders (“the Buyers”) had notified the Board that they wished to have the irrevocable option (“Option”) but not the obligation to purchase the Seller’s Shares in the proportions in which they hold Shares for the price per share determined as provided in clause 14 below.

13.2 Within ........ *(insert time e.g. minimum period 30 days)* after receipt by the Board of the Seller’s Notice, the Buyers shall if they wish to exercise the Option give written notice (“Buyers Notice”) to the Seller which notice shall:

13.2.1 state that the Buyers giving notice have elected to exercise their Option and the number of shares the Buyers elect to purchase and

13.2.2 fix a date and time (“the Completion Date”) not sooner than ......*(insert number of days)* not later than ......*(insert number of days)* after the Buyers Notice as the date on which the purchase shall be completed.

13.2.3 If one or more of the Buyers fails to exercise the Option this shall not prohibit the other Buyers from exercising the Option and if this arises, then any of the Buyers shall be entitled to purchase any unsold Shares from the Seller (in proportion to their holdings of shares at such time if there is competition between them).

14. Valuation of shares

The sale and purchase price per share to be transferred under clause 13 above shall be such sum as the Auditors shall certify to be in their opinion the fair value of such Shares as between a willing buyer and a willing seller contracting on arm’s length as at the date of the Seller’s Notice [but without taking into account (if it is the case) that such Shares represent a minority interest in the Company]. The fees and other costs of the Auditors in calculating the value of the Shares shall be shared equally between the Seller and the Buyers.

15. Share transfers

If at any time during this Agreement any of the Shareholders shall wish to transfer any Shares in the Company the following provisions shall apply:

15.1. The relevant shareholder shall deliver to the Company at its registered office their share certificate for the total number of shares in the capital of the Company together with a letter authorising and requesting the Company to act as their agent to sell the Shares at the price and in the manner below.

15.2. Upon receipt of the share certificate and letter of authority the Auditors shall, acting as experts and not as arbitrators, immediately fix and certify the fair value of the Shares at the Company’s expense. In the event that the selling shareholder shall not agree to the valuation, they shall have the right to appoint at their own expense an independent firm of chartered accountants acceptable to all parties and to fix and certain the fair value of the shares. The said firm shall act as experts and not arbitrators and their decision shall be binding on the parties.

15.3. Upon receipt of the said certificate the Board shall forthwith offer in writing the Shares to the Shareholders at the fair value assessed.

15.4. The Shareholders shall accept or decline the offer no later than 21 days after receipt of the offer and shall notify their acceptance by sending a notice in writing to this effect to the Company at its registered office together with a banker’s draft for the whole of the purchase price made payable to the selling shareholder.

15.5. In the event the Shares remain unsold the share certificate (or in the case of a part sale the certificate for the balance of the shares) shall be sent to the selling shareholder who shall be at liberty to deal with the Shares as they think fit in accordance with the Articles.

15.6. Immediately upon receipt from an accepting shareholder of a banker’s draft for the value of the Shares, the Company shall inform the selling shareholder and deal with the draft as they direct, so that in no circumstances whatsoever shall the Company hand over the share certificate (or issue a new share certificate in the case of a part sale) to an accepting shareholder until receipt of the banker’s draft and further, in the case of a part sale, the Company shall forthwith issue to the selling shareholder a new certificate for the balance of their shares following the procedure set out in this clause.

15.7. The parties agree to procure that the Directors shall approve for registration any transfer of Shares in relation to which all the foregoing provisions of this Agreement have been complied with.

15.8. No shareholder will without the consent in writing of all the Shareholders either transfer or part with the beneficial ownership of any Shares held by them at any time during this Agreement.

16. No assignment

No Shareholder may assign or transfer all or any part of his rights under this Agreement without the prior written consent of the other Shareholders and notwithstanding any provision of the Articles shall before transferring any shares to a third party procure that such third party covenants with the remaining Shareholders to be bound by the provisions of this Agreement (including this clause) as though a party hereto.

17. Survival of Causes of Action

The termination of this Agreement howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.

18. Communications

Any communications to be given hereunder shall be in writing and shall be delivered by hand or sent by post to the address of the addressee as set out in this Agreement or to such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this clause; or sent by facsimile transmission to the addressee’s facsimile number as notified from time to time.

19. Severability

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the illegal or unenforceable provision eliminated.

20. Waiver

20.1 Failure of any party to insist upon strict performance of any provision of this Agreement or the failure of any party to exercise any right or remedy to which he is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations under this Agreement.

20.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be such and signed by all the parties to this Agreement.

21. Entire agreement

This Agreement constitutes the entire understanding and agreement between the parties relating to the subject matter of this Agreement.

22. Law and jurisdiction

This Agreement is governed by the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

SIGNED:

*(insert name and signature of Shareholder)*

SIGNED:

*(insert name and signature of Shareholder)*

SIGNED:

*(insert name and signature of Shareholder)*