

## SHAREHOLDERS AGREEMENT OF

"[INSERT COMPANY NAME HERE]"

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**Shareholders Agreement** entered into between:

"[Insert Name of Individual / Entity Here]"

"[Insert ID Number / Company Registration Number Here]"

and

"[Insert Name of Individual / Entity Here]"

"[Insert ID Number / Company Registration Number Here]"

Whereby it is agreed as follows:

**1. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

Clause headings shall be used for reference purposes only and shall not be used for the interpretation of the terms of this agreement unless a contrary intention clearly appears.

1.1 XXXXXXXXXXXXXXX:

1.1.1 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX,

1.1.2 The singular includes the plural and the plural includes the singular,

1.1.3 Natural persons include juristic entities.

1.2 XXXXXXXXXXXXXXXXXXXXXXX assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1 "Act" means the Companies Act, 2008.

1.2.2 "Company" means:  
"[Insert Name of Company and Registration Number Here]"

1.2.3 "Business" means:  
"[Insert nature of Company Business, Details and Location Here]"

1.2.4 "XXXXXXXXXXXXXXXXXXXX" means:







7.4.1 if such shares are acquired by other existing shareholders, on payment in full of the purchase price by those purchasing shareholders; or

7.4.2 if such shares are to be acquired by a third party, on conclusion of the sale agreement with the third party,

and the shareholder which appointed such directors indemnifies the company if the directors fail or refuse to resign.

## 8. Quorum for directors' meetings

The quorum for any directors' meetings of the company shall be all the directors, provided that if, within 15 (fifteen) minutes from the time appointed for a meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week, at the same time and place or, if that day be a public holiday, a Saturday or a Sunday, to the next succeeding day other than a public holiday, a Saturday or a Sunday and if, at such adjourned meeting, a quorum is not present within 15 (fifteen) minutes from the time appointed for the meeting, the director/s or its/their alternates then present, provided that he/she/they are sufficient to form a quorum in accordance with the provisions of the Act, shall be a quorum.

## 9. Quorum for shareholders' meetings

The quorum for shareholders' meetings of the company shall be all shareholders, provided that if, within 15 (fifteen) minutes from the time appointed for a meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week, at the same time and place or, if that day be a public holiday, a Saturday or a Sunday, to the next succeeding day other than a public holiday, a Saturday or a Sunday and if, at such adjourned meeting, a quorum is not present within 15 (fifteen) minutes from the time appointed for the meeting, the shareholder/s then present in person or by proxy shall be a quorum.

## 10. XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX, being  
"[Insert Managing Directors Name Here]" XXXXXXXXXXXXXXXXXXXXXXXX  
agreement for so long as the "[Insert Managing Directors Name Here]" holds  
at least "[Insert % Here]" % of the entire issued share capital in the  
company.



- 15.3 Resolutions signed by all directors / shareholders being present in south Africa and being no less than are sufficient to reach a quorum, shall be valid and effectual as if passed at a meeting of directors / shareholders. If a director / shareholder is not present in South Africa but has appointed a proxy who is present in South Africa, the resolution must instead be signed by such proxy.

## 16. Pre-emptions and transfers of shares

- 16.1 Unless otherwise agreed in writing by all the shareholders of the company, a shareholder may sell or otherwise dispose of or transfer (including not limited *eiusdem generis* by way of donation, dividend or by way of the terms of a will) the shares held by it in the company only in terms of this clause 16 and clause 18 and any other provision of this agreement specifically providing for disposal, and only if, in one and the same transaction, it likewise sells, disposes of or alienates a pro rata share of its claim against the company on loan account ("loan account"). Furthermore, the provisions of this clause 16 and clause 18 shall also apply *mutatis mutandis* to any rights offers or allotments made to any shareholders. Accordingly, all references in this clause and clause 18 and in the lien, transmission and forfeiture provisions of the articles of association of the company to the offer, sale, disposal, alienation, transfer or transmission of a share in the company shall, unless the context otherwise requires, be deemed to apply also to the pro rata share of the loan account of the holder of such share and to any rights offers or allotments.

- 16.2 Subject to clause 16.7, a share may be transferred from:

- 16.2.1 "[Insert Shareholder Here]" to any other member of the "[Insert Company Here]" group and vice versa and from any member of the "[Insert Company Here]" group to any other member of the "[Insert Company Here]" group (provided that if it ceases to be a member of the "[Insert Company Here]" group, it shall transfer same to any other member of the "[Insert Company Here]" group within 14 (fourteen) days of such cessation.
- 16.2.2 A shareholder in the company, to the trustee *nomine officio* of a trust established primarily for the benefit of one or more of any immediate relations and/or any descendant of the shareholder and/or the shareholder, and vice versa.
- 16.2.3 A shareholder in the company, to any private company and/or close corporation, all the shares of all classes of

which are, and/or the entire interest in which is, held and beneficially owned by the shareholder and/or his immediate relations and/or trustees as are referred to in clause 16.2.2 and vice versa.

### 16.3 Procedure for disposal of shares:

16.3.1 When it is intended to dispose of the shares of a shareholder (other than in terms of clause 16.2 or 18.2 or any other permitted provision in the agreement), the disposer shall offer the shares in writing to the other shareholders, stating the price (which shall sound in money in South African currency) and the terms of payment required by it and no other terms shall be stipulated save for that contemplated in clause 16.8 and if it intends selling or otherwise disposing or transferring to a particular third party if the offer is not accepted by the other shareholders, it shall disclose the name of such third party.

16.3.2 If, within 14 (fourteen) days after the receipt of the offer (during which period the offer shall be irrevocable), it is not accepted in writing in respect of all the shares offered or such lesser number of the shares offered as the disposer may agree to in writing, by any of the other shareholders, if more than one, proportionately to their shareholdings, or in proportions agreed among them, then if:

16.3.2.1 A third party was named in the offer contemplated in clause 16.3.1, the disposer may, within a further 14 (fourteen) days, but not thereafter without again making an offer to the offeree shareholders in terms of clause 16.3.1 dispose of the shares offered (but not fewer save if the third party to whom the shares are to be disposed of, is itself a shareholder) to the third party only, at a price not lower and on terms not more favourable to such person than the price at and terms on which the other shareholders were entitled to purchase them.

16.3.2.2 A third party was not named in the offer, the disposer shall notify the other shareholders in writing of the proposed third party acquirer within 7 (seven) days of finding a third party acquirer, but if such a third party acquirer has not been found by the disposer within 21 (twenty-one) days of the expiry of the period contemplated in clause 16.3.2, the disposer shall if it wishes to dispose of the

shares, be obliged to recommence entirely the procedure in clause 16.3 and the offer shall be deemed to have been made to the other shareholders for a period of 48 (forty-eight) hours from such notification (during which it shall be irrevocable). If it is not accepted in writing within 48 (forty-eight) hours in respect of all the shares offered, by any of the other shareholders, if more than one, proportionately to their shareholding, or in proportions agreed among them, the disposer may dispose of the shares offered (but not fewer) provided such disposal occurs within 14 (fourteen) days of the expiry of the period contemplated in clause 16.3.2, but not thereafter without again making an offer to the offeree shareholders in terms of clause 16.3.1, to such named third party at a price not lower and on terms not more favourable to such person than the price and terms at and on which the other shareholders were entitled to purchase them.

- 16.3.3 The fact that the offeror gives any third party normal warranties excluding any profit warranty shall not constitute terms more favourable than those given to the remaining shareholders who will not be given any warranties provided that the giving of any warranties to a third party is not a method of permitting the third party to pay a lower purchase price to frustrate the pre-emption.
- 16.3.4 If the offer referred to in clause 16.3.1 is accepted in writing in respect of all the shares offered or such lesser number of the shares offered as the disposer may agree to in writing, by any of the other shareholders, the resulting sales shall be indivisibly interrelated, the intention being to ensure that if any one of the offerees breaches its obligations pursuant to the sale resulting from the acceptance of the offer, and if as a result the disposer elects to cancel any such sale, it shall be entitled (but not obliged) to cancel all the other sales to the other offerees, even though they may have complied with their obligations.
- 16.3.5 If while an offer in terms of this clause 16.3 is pending, the provisions of clause 18.2 become operative in respect of those shares so offered, then at the election of the remaining shareholders (which election shall be made in writing delivered to the offeror within 48 (forty-eight) hours after the provisions of clause 18.2 become operative), the offer in terms of this

clause 16.3 shall be deemed to be withdrawn and substituted with the deemed offer in terms of clause 18.2.

- 16.4 Any disposal of shares to any non-shareholder of the company shall be subject to the condition that the transferee shall undertake in writing not to operate in competition to the principal business of the company while it is a shareholder.
- 16.5 Subject to clause 16.7, transfer of any shares acquired in terms of this clause 16 shall be given to the person so acquiring them.
- 16.6 Except as provided in clauses 16.2 and 16.3 and 18 or any other express provision of this agreement, or in any written agreement in force between all the shareholders, no share may be disposed of, pledged or transferred without the written consent of all shareholders or the sanction of a resolution passed unanimously at a meeting at which all shareholders were present or represented.
- 16.7 Notwithstanding anything to the contrary herein contained, no share shall be transferred to a non-shareholder including the heirs or beneficiaries of any shareholder unless it agrees:
- 16.7.1 To be bound by any written agreement in force between the company and its shareholders and/or between the shareholders governing their relationship as shareholders in the company.
- 16.7.2 To nominate a *domicilium citandi et executandi* for the purposes of clause 24; and
- 16.7.3 To binding himself as surety or guarantor or indemnitor in the selling shareholder's stead.
- 16.8 Any shareholder who disposes of its shares as contemplated in this clause 16 shall be entitled to stipulate as a condition of such sale that:
- 16.8.1 The disposing shareholder shall be released pro rata to the number of shares sold, as a surety or guarantor or indemnitor on behalf of the company, subject to the purchaser(s) of the shares in question binding himself as surety or guarantor or indemnitor in his stead; or
- 16.8.2 If the release contemplated in clause 16.8.1 cannot be achieved, or pending such release being implemented, the disposing shareholder shall be indemnified by the



17.3.6 The provisions of the Arbitration Act, 1965 shall apply to this arbitration.

## **18. Forced sales**

18.1 Reference hereinafter to "the offering shareholder" shall mean:

18.1.1 Any shareholder which is a company (if its holding of shares in and claims on loan account against the company are its major assets other than cash), which ceases to be ultimately controlled, directly or indirectly, by all or some of the controlling shareholders in question or the persons contemplated in clause 16.2

18.1.2 The private company and/or close corporation referred to in clause 16.2.3 if any shares in its capital and/or any interest in such close corporation cease to be held by the original shareholders referred to in clause 16.2.3.

18.1.3 The executor of any natural shareholder who dies or if the shareholder is a company or close corporation, if its controlling shareholder who is a natural person, dies or if the shareholder is a trust if the beneficiary of the trust by reason of whose association the trust became a shareholder in the company, dies.

18.1.4 The transferee referred to in clause 16.2, if the natural shareholder:

18.1.4.1 From whom the shares were originally transferred, pursuant to clause 16.2; or

18.1.4.2 Who was the controlling shareholder of the shareholder which was the transferor, dies.

18.1.5 The provisional trustee or the provisional liquidator of any shareholder who is provisionally sequestered or provisionally liquidated.

18.1.6 Any shareholder which is a trust if it ceases to operate primarily for the benefit of those who are beneficiaries on the date when the trust first becomes a shareholder in the company or who became beneficiaries subsequently but are

immediate relations and/or descendants of the shareholder contemplated in clause 16.2.2.

18.2 Procedure for share offering:

- 18.2.1 As soon as an event contemplated in any one of the clauses above occurs, the offering shareholder shall notify the remaining shareholders in writing.
- 18.2.2 Within 60 (sixty) days after learning of the occurrence of any event contemplated in the clauses above, any one or more of the remaining shareholders of the company ("the interested shareholders") may, by notice in writing to the offering shareholder, compel the offering shareholder to offer his shares in the company to the interested shareholders at a price sounding in money in South African currency being the fair market-related value of the shares to be agreed between the interested shareholders and the offering shareholder or, failing agreement, to be determined by the auditors of the company, who shall act as experts and not as arbitrators.
- 18.2.3 Unless the auditors' decision is challenged within 15 (fifteen) days of the aforesaid determination and notification thereof by the auditors to the last one of the interested shareholders, as contemplated hereafter, it shall be final and binding on the interested shareholders and the offering shareholder. The auditors' charges shall be paid by the interested shareholders and the offering shareholder pro rata to their respective shareholdings in the company. If any interested shareholder or the offering shareholder challenges the auditors' decision, which it may only do by delivering a certificate by another auditor setting out the basis on which such decision is challenged, the matter shall be referred to an independent chartered accountant appointed by the chairperson for the time being of the Institute of Chartered Accountants SA. Such independent chartered accountant shall act as an expert and not as an arbitrator and his decision shall be final and binding. He shall determine the liability for his charges. If any determination is manifestly unjust, but the court exercises its general power, if any, to correct such determination, the parties shall be bound thereby.
- 18.2.4 In determining the value of such shares, no deduction shall be made for the fact that the shares in question constitute a

minority interest in the company nor for the fact that new management shall be managing the company nor shall any premium be added for the fact that the shares in question constitute a majority or controlling interest in the company nor, if the purchaser is an existing shareholder, for the fact that by purchasing the shares in question, such shareholder would be in a position to control the company's affairs.

- 18.2.5 As soon as the price has been agreed or determined as aforesaid and notified in writing to the interested shareholders and the offering shareholder, the offering shareholder shall be deemed to have offered the shares to the interested shareholders (if more than one in proportions agreed among them or if not so agreed proportionately to their shareholding) at the price as agreed or determined. Such offer shall be open for acceptance thereafter for a period of 10 (ten) days and failing acceptance thereof in respect of all such shares within such period shall lapse. Such lapsing of the offer shall not affect the continued application of the pre-emptive provisions of this agreement. If the offer is accepted, the effective date of the sale shall be the day prior to the date upon which the event contemplated in one of the clauses above, which triggered the offer, occurs.
- 18.2.6 The proportionate share of the purchase price so agreed or determined of each interested shareholder who accepts the offer together with interest at the rate payable by the company to its bankers in respect of funds borrowed on overdraft (or if the company has not borrowed any such funds on overdraft at the relevant time, the rate which would have been payable by the company to its bankers had it so borrowed funds on overdraft) calculated monthly in arrears, shall be payable in 3 (three) equal instalments payable at 3 (three) monthly intervals over not more than 3 (three) months.
- 18.2.7 Any interested shareholder who accepts the offer shall be entitled to accelerate the payment of all or any part of such shareholder's portion of the purchase price. If any instalment is not paid on due date therefore (and remains unpaid for a period of 7 (seven) days after receipt by an interested shareholder of written notice demanding payment) or if an interested shareholder is liquidated or sequestrated or placed under a judicial management order

(whether provisional or final) or if a final judgment is granted against an interested shareholder and such judgment is not satisfied within a period of 7 (seven) days from the date of the grant of such judgment, the full outstanding balance of the purchase price due by such shareholder shall immediately become due and payable.

- 18.2.8 Provided that in determining the purchase price payable for the shares, account shall have been taken of the liabilities in respect of which the offering shareholder may have given the guarantees, suretyships and indemnities referred to below, each of the interested shareholders who accepts the offer shall use his best endeavours to procure the release of the offering shareholder pro rata (in the same ratio as the shares so purchased by him in terms of this clause 18.2 bear to all the shares held by the offering shareholder) from any liability which the offering shareholder may have under any guarantees, suretyships and indemnities which may have been given by the offering shareholder for the company's obligations. If in determining such price no such liability was taken into account, each of the interested shareholders who accepts the offer shall use his best endeavours to procure such release, on the same pro rata basis referred to above, only in respect of any liability arising after the acceptance of the deemed offer. Until the release as aforesaid is procured, each of the interested shareholders who accepts the offer indemnifies the offering shareholder against any such liability, on the same pro rata basis referred to above.
- 18.2.9 The shares shall be delivered in transferable form to the shareholders in question against payment of the first instalment and shall be pledged by them to the offering shareholder to secure their obligations to pay the balance of the purchase price and any interest thereon. The offering shareholder shall be deemed to have ceded the voting rights in respect of the shares to the selling shareholder until such time as all the obligations to pay the purchase price and any interest thereon have been fulfilled. If the offering shareholder does not deliver the shares in transferable form on due date, any other shareholder of the company is irrevocably and *in rem suam* appointed as the attorney and agent of the offering shareholder to sign the necessary transfer forms and the company will be entitled to cancel the share certificate/s of the offering shareholder without the delivery of same being necessary. To perfect the pledge, the share certificates and transfer forms in negotiable form shall







motive of benefiting the business of such shareholder at the expense of the company. Shareholders shall not make determinations as to requirements of capital, the sole or main purpose of which is to limit the amount of the dividends being paid so as to put pressure on any shareholders to dispose of their interests in the company.

21.3 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX no steps are taken which could in any way frustrate the payment of dividends or like payments to the company from any of its subsidiaries.

**22. XXXXXXXXXXXXXXXXXXXXXXXX**

XX  
XXXXXXXXXXXXXXXXXXXX.

**23. Severability**

Any provision in this agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this agreement, without invalidating the remaining provisions of this agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**24. Domicilium citandi et executandi**

24.1 The parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses :

24.1.1 "[Insert Shareholder 1 Details Here]"

Physical: "[Insert Address Here]"  
Postal: "[Insert Address Here]"  
Phone: "[Insert Phone Number Here]"  
E-mail: "[Insert Email Address Here]"

24.1.2 "[Insert Shareholder 2 Details Here]"

Physical: "[Insert Address Here]"  
Postal: "[Insert Address Here]"  
Phone: "[Insert Phone Number Here]"  
E-mail: "[Insert Email Address Here]"

24.1.3 "[Insert Shareholder 3 Details Here]"

Physical: "[Insert Address Here]"  
Postal: "[Insert Address Here]"  
Phone: "[Insert Phone Number Here]"  
E-mail: "[Insert Email Address Here]"

24.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax or e-mail.

24.3 Any party may by notice to any other party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that party to another physical address where postal delivery occurs in South Africa or its postal address or its telefax number or e-mail address, provided that the change shall become effective *vis-à-vis* that addressee on the 10<sup>th</sup> (tenth) business day from the receipt of the notice by the addressee.

24.4 Any notice to a party:

24.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 10<sup>th</sup> (tenth) business day after posting (unless the contrary is proved);

24.4.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

24.4.3 sent by telefax to its chosen telefax number stipulated in clause 24.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved); or

24.4.4 sent by e-mail to its chosen e-mail address stipulated in clause 24.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

24.4.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.



## Shareholder 1

Date: "[Insert Signature Date Here]"

Place: "[Insert Place Of Signature Here]"

Signature: \_\_\_\_\_

"[Insert Shareholder Name Here]"

Witness: \_\_\_\_\_

"[Insert Witness Name Here]"

## Shareholder 2

Date: "[Insert Signature Date Here]"

Place: "[Insert Place Of Signature Here]"

Signature: \_\_\_\_\_

"[Insert Shareholder Name Here]"

Witness: \_\_\_\_\_

"[Insert Witness Name Here]"

### Shareholder 3

Date: "[Insert Signature Date Here]"

Place: "[Insert Place Of Signature Here]"

Signature: \_\_\_\_\_

"[Insert Shareholder Name Here]"

Witness: \_\_\_\_\_

"[Insert Witness Name Here]"