

*This document was compiled by the EBAN Law & IP Working  
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## **INTRODUCTION TO SHAREHOLDER'S AGREEMENTS**

### **What?**

A shareholder's agreement regulates the relationship between shareholders in connection with the company's business. The purpose of the agreement is to define the relationship between the different shareholders, their share of the undertaking, the management of the business, the disposal of shareholder's rights and commitments, and to structure the mechanism in management of a company. The shareholder's agreement should be regarded as a complement to the articles of association and the two agreements should not conflict with each other in any manner.

### **Why?**

There are several reasons to enter into a shareholder's agreement, for example:

- To protect the shareholder's investment and establish a fair relationship between them
- To set out the rules that should apply if a party wants to transfer their shares to a third party
- To regulate how potential disputes and deadlocks between shareholders should be resolved
- To define the course of action in the event of the death of a shareholder

### **How?**

It is essential that a shareholder's agreement is tailored to the specific needs of the parties since it is a complex agreement that will need to be drafted with the individual circumstances in mind. Moreover, different shareholders may have diverging opinions regarding the provisions that should be included in the agreement depending on whether they are for example a founding shareholder or an investor, or a minority shareholder or a majority shareholder. Hence, legal advice should always be sought when drafting a shareholder's agreement to ensure the smooth functioning of the business.

### **Key provisions of a shareholder's agreement**

This is a non-exhaustive check-list of the most common provisions included in a shareholder's agreement, providing it complies with the articles of association. Please note that the key provisions vary from one jurisdiction to another. In many continental jurisdiction matters mentioned below should be set out in the articles of association.

### Shares, shareholders and transfer of shares

- In what proportions will the shareholders hold shares?
- Will there be different classes of shares?
- If the company is going to issue new shares, should the existing shareholders first be offered to procure them?
- Can the board of directors block the transfer of shares in certain circumstances?
- What rules should apply to the transfer of shares?

### The management board and the supervisory board

- Who can appoint the members of the management board/supervisory board?
- Should there be a maximum of members of the management board/supervisory board?
- Should there be certain requirements to become a member of the management board/supervisory board?
- What rights of management should be delegated to the management board?

### Shareholder consent

Which are the circumstances and situations that require a unanimous or majority decision from the shareholders? For example:

- to appoint, dismiss or suspend managers and members of the supervisory board
- to adopt the financial statements and dividend distributions
- to amend the articles of association
- to enter into a legal merger or legal division, or to file for bankruptcy
- to dissolve the company

### Sale of a controlling interest

- Drag along rights: should majority shareholders be able to force minority shareholders join into a sale?
- Tag along rights: should shareholders be able to join with other shareholders who intend to sell their shares to a third party?

### Non-competition

- Should previous shareholders be obliged not to compete with the company during a certain period of time after ceasing to be a shareholder?

### Confidentiality

- Should confidentiality provisions be effective after a shareholder has exited the company?

#### Exit strategies

- What happens when a shareholder wants to exit the company?
- Should the existing shareholders have first right of refusal on the shares?

#### Dispute resolution

- How should disputes be resolved?
- Should a third party be appointed to arbitrate and how should this third party be chosen?

#### Breach of the shareholder's agreement

- Should a shareholder be forced to transfer his/her shares in case of for example fraud or dishonesty?

**In the next pages you will find an example of a shareholder's agreement.**

## SHAREHOLDER'S AGREEMENT

LEGAL DISCLAIMER: THIS DOCUMENT IS INTENDED TO SERVE AS A STARTING POINT ONLY AND SHOULD BE TAILORED TO MEET YOUR SPECIFIC LEGAL AND COMMERCIAL REQUIREMENTS. KEEP IN MIND THAT A SHAREHOLDER'S AGREEMENT CANNOT CONFLICT IN ANY MANNER WITH THE ARTICLES OF ASSOCIATION AND MUST THEREFORE BE ADAPTED TO THE ARTICLES OF ASSOCIATION OF THE UNDERTAKING. THE DOCUMENT SHOULD NOT BE CONSTRUED AS LEGAL ADVICE FOR ANY PARTICULAR FACTS OR CIRCUMSTANCES. CONSULT YOUR LAWYER TO ENSURE THAT THE DOCUMENT FITS, AND IS BEING ADAPTED FOR, YOUR SPECIFIC NEEDS AND WHETHER AND TO WHAT EXTENT THE RIGHTS AND OBLIGATIONS CONTEMPLATED IN THE DOCUMENTS ARE VALID AND ENFORCEABLE. EBAN GIVES NO OPINION OR ASSURANCES AS TO THE SUITABILITY, ADEQUACY, VALIDITY AND ENFORCEABILITY OF THE DOCUMENT AND ITS PROVISIONS.

### Parties

[ ] [ ] of [ ] (**Investor**)  
[ ] [ ] of [ ] (**Company**)  
[ ] [ ] of [ ] (**Existing Shareholders**)  
[ ] [ ] of [ ] (**Founders**)

### Background

- 1 The Investor is a shareholder in the Company with effect from the date of this agreement.
- 2 All parties have agreed to enter into this agreement for the purpose of recording the terms of this arrangement and their respective relationships with each other.

### Definitions and Interpretation

#### ARTICLE 1. DEFINITIONS AND INTERPRETATION

##### 1. Definitions

In this agreement the following definitions apply:

**Affiliated Party** means a legal or natural entity of which a legal or natural entity or its ultimate parent company or shareholder, has directly or indirectly 50% or more of the nominal value of the subscribed share capital of the Company or has the voting right in the General Meeting or has the authority to appoint the majority of the Managers/Directors or alternatively has the right of control over the activities of the Company, or any other legal or natural entity that can be considered as a "subsidiary" or part of a "group" as stipulated in .....

**Budget** means the strict budget (with profit and cash-flow forecasts) of the Company and any subsidiaries, referring to the next [ ] financial years

**Business Sale** means the completion of a sale or series of sales by the Company (or any Subsidiary) of all or substantially all of the business and assets of the Company and its Subsidiaries to one or more third parties.

**Class** means a class of Shares having attached to them identical rights, privileges, limitations and conditions.

**Closing date** means [ \_\_ ] or another date the Parties have agreed upon in writing

**Confidential Information** has the meaning set out in article 10.

**Constitution** means the constitution of the Company.

**Deed of Accession** means a deed of accession in the agreed form pursuant to which a person who acquires Shares agrees to be bound by the terms of this agreement.

**Directors** means the directors for the time being of the Company.

**Dispose** means any dealing with a Share or with any interest in or rights attaching to a Share including to grant options or rights of pre-emption over, sell, transfer, assign, part with the benefit of, declare a trust over, or deal with an ownership interest in a Share.

**Drag-Along Event** has the meaning set forth in Article 8.5.1 of this Agreement.

**Drag-Along Notice** has the meaning set forth in Article 8.5.1 of this Agreement.

**Drag-Along Right** has the meaning set forth in Article 8.5.2 of this Agreement.

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, easement or any other security arrangement or any other arrangement having the same effect.

**Expert** has the meaning set forth in Article 8.6.2 of this Agreement.

**Financial Year** means the period of 12 months ending on ..... in each year.

**General Meeting** means the General Meeting of Shareholders of the Company

**Good Leaver** means any Existing Shareholder who ceases to be employed by the Company for any of the following reasons:

- death in service;
- compulsory retirement;
- becoming permanently incapable of discharging efficiently the duties of his employment or any other comparable employment with the Company or a Subsidiary by reason of ill health or infirmity of mind or body, injury or disability (evidenced to the satisfaction of the Management Board);
- redundancy; or
- dismissal in circumstances which have resulted in a claim against the Company for unfair dismissal where the claim is successful on the grounds that the dismissal was unfair pursuant to .....

**Investor Share** means an "A" Preference Share in the Company.

**Major Investor** means a holder of Investor Shares who has paid at least ..... as the total issue price for all of their Shares.

**Management Agreement** means the management agreements between the Company and the Shareholders attached as .....

**Management Board** means the management board of the Company

**Management** means the members of the Management Board

**Meeting of Holders of Preferred Shares** means the General Meeting of holders of Preferred Shares of the Company

**New Securities** means any securities (including convertible securities) in the Company unissued at the date of this agreement but excluding:

- Shares issued or issuable upon conversion of Preference Shares to Ordinary Shares.
- Shares issuable upon exercise of any options or rights to purchase any securities of the Company outstanding as of the date of this agreement and any securities issuable upon the conversion thereof.
- Shares issued pursuant to a share split.

**Option Parties** has the meaning set forth in Article 8.6.1 of this Agreement.

**Ordinary Share** means an ordinary share in the Company.

**Parties** means, collectively the Shareholders, the Founders, and the Company and any other person that becomes a Party to this Agreement and Party means any one of them

**Purchase Option** has the meaning set forth in Article 8.6.1 of this Agreement.

**Redundancy** means in respect of an Existing Shareholder the termination of the Existing Shareholder's employment with the Company or any Subsidiary by reason of a restructure or a state of affairs within the Company or the Subsidiary whereby the position previously occupied by that person no longer exists within the Company or the Subsidiary and where the Management Board in its absolute discretion determines that such an event qualifies as a redundancy for the purposes of these Rules.

**Relevant Selling Shareholder(s)** has the meaning set forth in Article 8.5.1 of this Agreement.

**Relevant Shares** has the meaning set forth in Article 8.3.1 and 8.4.1 of this Agreement.

**Restricted Party** has the meaning set forth in Article 8.6.1 of this Agreement.

**Right of First Refusal** has the meaning set forth in Article 8.3.2 of this Agreement.

**Right of First Refusal Event** has the meaning set forth in Article 8.3.1 of this Agreement.

**Right of First Refusal Exercise Notice** has the meaning set forth in Article 8.3.3 of this Agreement.

**Right of First Refusal Notice** has the meaning set forth in Article 8.3.1 of this Agreement.

**Respective Proportion** means the number of Shares held by a Shareholder divided by the total number of Shares.

**Selling Shareholder(s)** has the meaning set forth in Article 8.3.1 and 8.4.1 of this Agreement.

**Shareholders** means the shareholders in the Company and includes any person who subsequently becomes a shareholder and who adheres to this agreement.

**Shares** means shares in the Company, including the Ordinary Shares and the Investor Shares.

**Share Sale** means an acquisition of Shares by way of transfer which results in one or more third parties holding Shares having a right to exercise more than [50%] of the votes which may be cast on a poll at a general meeting of the Company on all, or substantially all, matters.

**Subsidiary** has the meaning given to that term in the ..... but also includes an entity that would be considered a subsidiary under generally accepted accounting principles.

**Tag-Along Event** has the meaning set forth in Article 8.4.1 of this Agreement.

**Tag-Along Exercise Notice** has the meaning set forth in Article 8.4.3 of this Agreement.

**Tag-Along Notice** has the meaning set forth in Article 8.4.1 of this Agreement.

**Tag-Along Right** has the meaning set forth in Article 8.4.2 of this Agreement.

**Triggering Event** has the meaning set forth in Article 8.6.1 of this Agreement.

## 2. Interpretation

In the interpretation of this agreement, the following provisions apply unless the context otherwise requires :

Headings are inserted for convenience only and do not affect the interpretation of this agreement.

A reference in this agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in .....

If the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day.

A reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

A reference in this agreement to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.

A reference to an article, part, schedule or attachment is a reference to an article, part, schedule or attachment of or to this agreement.

An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

References to the word 'include' or 'including' are to be construed without limitation.

Any schedules and attachments form part of this agreement.

## Financial participation in the corporation

### ARTICLE 2. EQUITY PARTICIPATION

Each of the Shareholders represents and warrants to each other and to the Company that:

such Shareholder at the date hereof (or, if such Shareholder becomes a Party following the date of this Agreement, at the date such Shareholder acquired its Shares), owns

beneficially and of record the number of Shares set forth opposite such Shareholder's name on Schedule ..... attached hereto, as applicable (as such schedules may be amended from time to time to reflect changes in shareholdings);

the Shares held by such Shareholder are held beneficially and of record by such Shareholder, such Shares are not subject to any mortgage, lien, charge, pledge, encumbrance, security interest or adverse claim and no Person has any rights to become a holder or possessor of any of the Shares or of the certificates representing the same, if applicable;

if the Shareholder is an individual, that such Shareholder has the capacity to enter into and give full effect to this Agreement;

if the Shareholder is a corporation, that it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and that it has the corporate power and capacity to own its assets and to enter into and perform its obligations under this Agreement;

if the Shareholder is a trust, partnership or joint venture, that it is duly constituted under the laws that govern it and that it has the power to own its assets and to enter into and perform its obligations under this Agreement;

this Agreement has been duly authorized by such Shareholder and duly executed and delivered by such Shareholder and constitutes a valid and binding obligation enforceable in accordance with its terms, subject to the usual exceptions as to bankruptcy and the availability of equitable remedies;

that the execution, delivery and performance of this Agreement does not and shall not contravene the provisions of its articles, by-laws, constating documents or other organizational documents or the documents by which such Shareholder was created or established or the provisions of any indenture, agreement or other instrument to which such Shareholder is a party or by which such Shareholder may be bound; and

that, subject to the terms of this Agreement, all of the foregoing representations and warranties shall continue to be true and correct during the continuance of this Agreement.

## **Operative Provisions**

### **ARTICLE 3. MANAGEMENT BOARD**

1. The Management Board of the Company shall consist of [Shareholder A] and [Shareholder B]. The members of the Management Board are *[independent / jointly]* authorized to represent the Company.
2. The Management Board shall act in accordance with the articles of association of the Company, this Agreement and the Management Agreements.



3. The Founders commit themselves vis-à-vis the Investors for a period of at least [ \_ ] years after the Closing Date, to be available on a full-time basis to work for the Company to the best of their abilities.
4. The General Meeting shall appoint, dismiss or suspend Managers.
5. The Management Board shall not take any of the following actions without prior written approval of the General Meeting:
  - (a) the takeover of or participation in a company or undertaking or the entry into or termination of strategic cooperation with any other company;
  - (b) substantial amendment, extension or limitation of the activities;
  - (c) any capital expenditure on any one item, or series of related items, in excess of € [ \_ ], to the extent that the amount is not included in the approved Budget;
  - (d) any actions not in the normal course of business or not at arm's length;
  - (e) the provision of a loan to third parties or the provision of security to third parties;
  - (f) the initiation of a lawsuit or the conduct of legal proceedings for any claims exceeding the amount of € [ \_ ], save for legal action in the event of urgency to secure the position of the Company, in which case approval is to be obtained without the least possible delay after initiating the legal proceedings;
  - (g) the entry into or termination of any agreement with a Manager or shareholder of the Company or any person who is an Affiliated Party to a Manager or shareholder of the Company;
  - (h) the granting, amendment or withdrawal of any authority to represent the Company;
  - (i) the hiring of personnel, amendment of the terms and conditions of employment, or amendment of the Management Agreements, including amendment of the management fee, to the extent not included in the Budget;
  - (j) the disposal of or encumbrance of intellectual or industrial property rights of the Company, or the granting of a licence on those rights, except for the granting of licences in the normal course of Company business;
  - (k) the raising of new financing from current or new finance providers;
  - (l) the appointment or change of the Company accountant;
  - (m) the exercise of voting rights attached to shares in subsidiaries of the Company;
  - (n) applying for a moratorium or the filing for bankruptcy;
  - (o) redeeming the Company's own shares.

6. If the Company establishes or acquires a subsidiary, the Management Board shall ensure that the Management Board of these subsidiaries shall not take any of the above actions regarding the Company's subsidiaries without prior written approval of the General Meeting.

#### **ARTICLE 4. SUPERVISORY BOARD**

7. The Company shall have a Supervisory Board. The Supervisory Board will monitor the general policy and strategy and advise the Management Board.
8. The Supervisory Board shall consist of at least ..... members and will be formed on the Closing Date by [ \_ ] (chairman) and [ \_ ].
9. The Meeting of Holders of Preferred Shares has the right to appoint one of the members of the Supervisory Board. The other members including the chairman shall be appointed by the General Meeting. The General Meeting shall assess the amount of remuneration.
10. The body that has the right to appoint a member of the Supervisory Board, also has the right to suspend or dismiss the respective member of the Supervisory Board.
11. Notwithstanding the statutory rights of the Supervisory Board, the Management Board shall issue the financial information that is provided to the Participants under Article 5 at the same time to the Supervisory Board.

#### **ARTICLE 5. THE GENERAL MEETING**

12. Each share has one vote.
13. All resolutions are adopted by simple majority except for the following resolutions which require a two-thirds majority of the votes:
  - (a) to appoint, dismiss or suspend Managers and members of the Supervisory Board;
  - (b) to adopt the financial statements and dividend distributions;
  - (c) to amend the articles of association;
  - (d) to enter into a legal merger or legal division, or to file for bankruptcy;
  - (e) to dissolve the Company;
  - (f) to issue shares or depository receipts of shares, or to authorize a corporate body to do so;
  - (g) to exclude a shareholder of its statutory pre-emption right;
  - (h) to reduce the share capital of the Company;
  - (i) to approve actions of the Management Board as referred to in Article 2.5.

## **ARTICLE 6. INFORMATION**

### **1. Basic financial information**

The Company will provide promptly to each Major Investor:

- Annual unaudited financial statements for each Financial Year, including an unaudited balance sheet as of the end of such Financial Year, an unaudited statement of operations and an unaudited statement of cash flows of the Company for such year, all prepared in accordance with generally accepted accounting principles and practices.
- Quarterly unaudited financial statements for each quarter of a Financial Year of the Company (except the last quarter of the Company's Financial Year), including an unaudited balance sheet as of the end of such quarter, an unaudited statement of operations and an unaudited statement of cash flows of the Company for such quarter, all prepared in accordance with generally accepted accounting principles and practices, subject to changes resulting from normal year-end audit adjustments.
- Prior to the commencement of each Financial Year, the proposed annual business plan together with an operating and capital expenditure budget of the Company as approved by the Management Board.

If the Company has audited records of any of the foregoing described in article 3.1, it shall provide those in lieu of the unaudited versions.

### **2. Confidential information**

Notwithstanding anything in this agreement to the contrary, no Investor by reason of this agreement shall have access to any trade secrets or confidential information of the Company.

### **3. Investor obligations**

Each Investor agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information obtained from the Company pursuant to the terms of this agreement other than to any of the Investor's legal advisers, accountants, consultants, and other professionals, to the extent necessary to obtain their services in connection with monitoring the Investor's investment in the Company.

### **4. Inspection rights**

The Company shall permit each Major Investor to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be requested by such Investor.

## ARTICLE 7. ISSUES OF NEW SECURITIES

1. If the Management Board resolves to make an issue of New Securities, it must give written notice of such intention to the Major Investors setting out the terms of the proposed issue of New Securities.
2. Within ..... business days each Major Investor may give written notice to the Company that it wishes to acquire its Respective Proportion of the New Securities on the same terms.
3. Within ..... days thereafter the Company may issue on the same terms as offered to the Major Investors any New Securities not acquired by the Major Investors pursuant to article 7.2.
4. In the event that the Company has not issued the New Securities within such ..... day period, then the Company shall not thereafter issue or sell any New Securities without again first offering such New Securities to the Major Investors pursuant to this article 7.4.
5. In the event that the Company issues New Securities to a third party under article 7.3 and such New Securities have rights, preferences or privileges that are more favourable to the Shareholder than the terms of the Investor Shares, the Company shall take such action in accordance with all laws to provide substantially equivalent rights for the Investors in relation to the Investor Shares as are attached to the New Securities (with appropriate adjustment for economic terms or other contractual rights and subject to such Investor's execution of any relevant documents executed by the holders of the New Securities in subscribing for the New Securities).

## ARTICLE 8. RESTRICTIONS ON TRANSFER OF SHARES

### 1. General

A Shareholder must not Dispose of any Shares, except:

- in accordance with this agreement; or
- with the consent of each other Shareholder.

Any transfer not in accordance with this article 8 has no effect.

### 2. No Encumbrances

The Shares shall not be pledged, assigned by way of security or otherwise used as security and shall remain free and clear of any liens, encumbrances, charges or any other third party rights.

### 3. Right of First Refusal of the Company and the Shareholders

#### 3. 1. Notification

If a Shareholder wishes to Transfer all [or a part] of its Shares (for purposes of this Article 8.3, the "**Relevant Shares**") to a third party (including another Shareholder) (the "**Right of First Refusal Event**"), such Shareholder(s) (for purposes of this Article 8.3, the "**Selling**

**Shareholder(s)**") shall submit an offer to the Company and all other Shareholders stating in writing the price and terms of the proposed Transfer in accordance with the notice provision set forth in Article 12 (the "**Right of First Refusal Notice**"). If the Selling Shareholder(s) has/have received a *bona fide* purchase offer from a third party (including another Shareholder), the terms of such offer from the proposed acquirer shall be disclosed to the other Shareholders in the notice. The Company shall inform each Shareholder forthwith but not later than ..... Calendar days after receipt of the Right of First Refusal Notice about (i) the date it received the Right of First Refusal Notice and (ii) the day the ..... Calendar day period mentioned in Article 8.3.3 for exercising the Right of First Refusal expires.

### 3. 2. Grant of Right of First Refusal

Each of the Shareholders hereby grants to the other Shareholders and to the Company:

the right (but not the obligation) to acquire all or part of the Relevant Shares from the Selling Shareholder(s) upon the occurrence of a Right of First Refusal Event (the "**Right of First Refusal**") at the price and terms set out in the Right of First Refusal Notice. Such price and terms shall either be the price and terms of the *bona fide* purchase offer from a third party or, in the absence of such a third party offer, the price and terms offered by the Selling Shareholder. If all Rights of First Refusal validly exercised do not, in the aggregate, result in the exercise of Rights of First Refusal for of all Relevant Shares, the Rights of First Refusal shall be deemed not exercised and Article 8.3.5 shall apply.

### 3. 3. Exercise of Right of First Refusal

Each beneficiary of the Right of First Refusal wishing to exercise its right in respect of the Relevant Shares shall so notify the Company and the Selling Shareholder(s) in accordance with the notice provision set forth in Article 12 within a period of ..... Calendar days from receipt of the Right of First Refusal Notice (the "**Right of First Refusal Exercise Notice**") by the Company. If no Right of First Refusal Exercise Notice is submitted by a beneficiary within the period of ..... Calendar days from receipt of the Right of First Refusal Notice by the Company, the Right of First Refusal of that beneficiary shall be deemed to have been forfeited with respect to the respective Right of First Refusal Event (but not for any other or subsequent Right of First Refusal Event(s)).

The terms and conditions for the acquisition of the Relevant Shares including, without limitation, the purchase price, shall be equal to the terms offered in the Right of First Refusal Notice (i.e. the *bona fide* offer by the proposed acquirer or, in the absence of such *bona fide* offer, the price and terms offered by the Selling Shareholder(s)).

### 3. 4. Consummation of Transfer of Relevant Shares upon Exercise of Right of First Refusal

The Transfer of the Relevant Shares shall be consummated within ..... Calendar days from receipt of the Right of First Refusal Notice by the Company unless the terms of the *bona fide* purchase offer provided for longer terms, in which case the terms of such *bona fide* purchase offer shall apply. The Transfer price shall, unless other terms are stated in the Right of First Refusal Notice, be paid in cash against registration of the acquiring Shareholder(s) [or, as the

case may be, the Company] as holder(s) of the respective number of Relevant Shares in the share register of the Company.

### 3. 5. Transfer to Proposed Acquirer

In the event the Right of First Refusal is not exercised or not exercised for all Relevant Shares in accordance with Section 3, the Selling Shareholder(s) shall be free, subject only to Article 8.4, 8.5 and 9 to Transfer the Relevant Shares to the proposed acquirer, on terms not more favorable than those offered to the beneficiaries of the Right of First Refusal in the Right of First Refusal Notice, within a period of ..... months after expiry of the ..... Calendar days period to submit a Right of First Refusal Exercise Notice pursuant to Article 8.3.3. Thereafter, the procedure pursuant to this Article 8.3 shall be repeated prior to any such Transfer.

## 4. Tag-Along (Co-Sale Right)

### 4. 1. Notification

In the event an Investor (or a group of Investors) wishes to Transfer all or a part of its Shares (for purposes of this Article 8.4, the "**Relevant Shares**") in one or a series of related transactions to a proposed acquirer (including another Shareholder) on the basis of a *bona fide* purchase offer, and provided such Transfer of Shares would [[result in a Change of Control] [or]] [relate to ..... percent of all Shares (the "**Tag-Along Event**")], such Investor(s) (for purposes of this Article 8.4, the "**Selling Shareholder(s)**") shall notify the other Shareholders as well as the Company thereof, *mutatis mutandis* in accordance with Article 8.3.1 above (the "**Tag-Along Notice**"). Such a Tag-Along Notice may be part of a Right of First Refusal Notice according to Article 8.3. The Company shall inform each Shareholder forthwith but not later than ..... Calendar days after receipt of the Tag-Along Notice about (i) the date it received the Tag-Along Notice and (ii) the day the ..... Calendar day period for exercising the Tag-Along Right mentioned in Article 8.4.3 expires.

### 4.2. Grant of Tag-Along Right

In addition to the Right of First Refusal pursuant to Article 8.3, each of the Shareholders hereby grants to the other Shareholders the right (but not the obligation) to join the Selling Shareholder(s) and co-sell (together with the Selling Shareholder(s)) [[upon the election of the relevant beneficiaries all their Shares to the proposed acquirer for the same consideration per Share and otherwise at the same terms and conditions as applicable to the Selling Shareholder(s) [[except for [(i)] any representations, warranties and/or indemnities other than (several and not joint) title warranties solely in respect of the Shares sold by such other Shareholder(s) [and (ii) payment of the consideration per Share, which must be in immediately available cash]]] upon the occurrence of a Tag-Along Event (the "**Tag-Along Right**").

#### 4. 3. Exercise of Tag-Along Right

Each Shareholder wishing to exercise its Tag-Along Right with respect to the Relevant Shares shall so notify the Selling Shareholder(s) in accordance with the notice provision set forth in Article 12 within a period of ..... Calendar days from receipt of the Tag-Along Notice (the "**Tag-Along Exercise Notice**") by the Company. If no Tag-Along Exercise Notice is submitted by a Shareholder within the period of ..... Calendar days from receipt of the Tag-Along Notice by the Company, the Tag-Along Right of that Shareholder shall be deemed to have been forfeited with respect to the respective Tag-Along Event (but not for any other or subsequent Tag-Along Event).

If the proposed acquirer refuses to accept the purchase of the Shares from the Shareholders who provided a Tag-Along Notice, the Selling Shareholder(s) shall be prohibited from Transferring the Relevant Shares to the proposed acquirer.

#### 4. 5. Consummation of Transfer of Shares upon Exercise of Tag-Along Right

The Transfer of Shares in case of a Tag-Along Event shall be consummated at the closing date agreed by and between the Selling Shareholder(s) and the proposed acquirer (such closing date not to be earlier than ..... Calendar days after the Company received the Tag-Along Notice) by payment [in cash] of consideration expressed to be payable per Share pursuant to the agreement with the acquirer against registration of the acquirer in the share register of the Company as holder of the respective number of Relevant Shares and the Shares co-sold pursuant to Article 8.4.

#### 4. 6. Transfer to Proposed Acquirer

In the event the Right of First Refusal according to Article 8.3 is not exercised, the Selling Shareholder(s) shall be free, subject only to Article 9, to Transfer the Relevant Shares to the proposed acquirer on the terms disclosed to the other Shareholders in the Tag-Along Notice and the Right of First Refusal Notice within a period of ..... months starting after the expiry of the ..... Calendar days period to submit a Tag-Along Exercise Notice pursuant to Article 8.4.3. Thereafter, the procedure pursuant to this Article 8.4 shall be repeated prior to any such Transfer.

### 5. Drag-Along (Co-Sale Obligation)

#### 5.1. Notification

In the event [a holder of Shares]/[a group of holders of more than ..... percent of Shares]/[all holders of Shares] wish[es] to Transfer ..... percent of [its]/[their] aggregate shareholdings in the Company in one or a series of related transactions to a proposed acquirer (including another Shareholder) who wishes to acquire all (but not less than all) Shares in the Company pursuant to a *bona fide* purchase offer (the "**Drag-Along Event**"), [that holder]/[that group of holders]/[all holders] of Shares (for purposes of this Article 8.5, the "**Relevant Selling Shareholder[s]**") shall notify the other Shareholders thereof, *mutatis mutandis* in accordance with Article 8.3.1 above (the "**Drag-Along Notice**").

The Company shall inform each Shareholder forthwith but not later than ..... Calendar days after receipt of the Drag-Along Notice about (i) the date it received the Drag-Along Notice and (ii) the day the ..... month period according to Article 8.5.3 expires.

## 5.2. Grant of Drag-Along Right

[Without prejudice to the Right of First Refusal pursuant to Article 8.3, the] /[The] Relevant Selling Shareholder[s] shall have the right (but not the obligation) to require all other Shareholders to sell, and the other Shareholders hereby irrevocably agree to sell, all (but not less than all) of their Shares then held to the proposed acquirer [for the same consideration per Share and[, except as set forth in Article 8.5.5,]] otherwise at the same terms and conditions as applicable to the Relevant Selling Shareholder[s] upon the occurrence of a Drag-Along Event (the "**Drag-Along Right**").

## 5.3. Consummation of Transfer

The Transfer of Shares to the proposed acquirer shall be completed at the agreed closing date [(but no later than within a period of ..... months after the date of receipt of the Drag-Along Notice) by the Company] and otherwise in accordance with the proposed terms of the underlying agreement between the Relevant Selling Shareholder[s], [the other Shareholders] and the proposed acquirer.

## 5.4. Drag-Along Right Takes Precedence over Right of First Refusal

For the avoidance of doubt and notwithstanding anything to the contrary contained herein, Article 8.3 shall not apply in case of a Drag-Along Event.

## 5.5. Key Terms and Conditions

The terms and conditions of the Transfer of Shares shall include the following:

- (a) For each Share the purchase price shall be the same. All considerations for the Shares shall be paid on the same date and in cash.
- (b) Each other Shareholder's liability for representations and warranties shall, to the extent legally permissible, be limited to [the same percentage of its purchase price as applicable for the Relevant Selling Shareholder[s]' liability/a maximum of ..... percent of its purchase price], and be subject to the same time limitations as the Relevant Selling Shareholder[s]' liability. Each other Shareholder shall, upon request by the Relevant Selling Shareholder[s], be obliged to pay the same percentage of its purchase price for the same time periods into an escrow account in favor of the acquirer as the Relevant Selling Shareholder[s]. Disclosures shall only limit the other Shareholders' liability if expressly agreed with the acquirer. Each other Shareholder shall be [severally, and not jointly/jointly and severally with each of the other Shareholders] liable for the representations and warranties.



- (c) Each other Shareholder shall give the representations and warranties which the acquirer or the Relevant Selling Shareholder[s] may reasonably request[, reflecting such Shareholder's stake in and position with respect to the Company (i.e. founder, senior manager, employee, passive investor, [other])]. Such representations and warranties shall include, but not be limited to, the following:  
.....Representations and warranties regarding the future shall be excluded. Except as otherwise provided for herein and unless the Relevant Shareholders may reasonably request otherwise (in particular because they agreed to such term or condition with respect of their Shares), the terms and conditions of ..... regarding representations and warranties, indemnification and remedies shall apply, *mutatis mutandis*.
- (d) Each Other Shareholder shall bear its own costs and taxes imposed on it.

## 6. Purchase Option

### 6.1. Triggering Events

The Parties (for the purposes of this Article 8.6 the "**Option Parties**") shall have an exclusive and irrevocable option (the "**Purchase Option**") to purchase the Shares of another Party (the "**Restricted Party**") in proportion to the nominal value of their shareholdings in the Company or in such other proportions and/or other terms as they may agree in writing between themselves if any of the following events (the "**Triggering Event**") occurs:

- (a) the Restricted Party dies, becomes incapable to act or otherwise loses its capacity to exercise its rights and obligations under this Agreement;
- (b) the Restricted Party becomes insolvent, bankrupt or petitions or applies to any court, tribunal or other body or authority for creditor protection or for the appointment of, or there shall otherwise be appointed, any administrator, receiver, liquidator, trustee or other similar officer of the Restricted Party or of all or a substantial part of the Restricted Party's assets;
- (c) the Restricted Party commits a criminal act against the interests of a Party, of the Company or of any of its subsidiaries;
- (d) the Restricted Party materially breaches this Agreement, unless such breach and its effects are fully cured within ..... Calendar days upon notification in writing of the breach and its effects by any other Party; a material breach shall include, without limitation:
  - i. any delay in the payment of Shares subscribed for or payments into the reserves or loans to be granted to the Company pursuant to any written agreement;
  - ii. any transfer, pledge or other encumbrance of Shares in violation of this Agreement.

- (e) any board membership, employment or consultancy agreement, as the case may be, between a Restricted Party and the Company is terminated based on a material, willful or grossly negligent breach of the duties as a board member, the employment agreement or consultancy agreement by such Restricted Party (bad leaver);
- (f) any board membership, employment or consultancy agreement, as the case may be, between a Restricted Party and the Company is ordinarily terminated (good leaver).

## 6.2. Exercise of Purchase Option

The Restricted Party, its legal successor, receiver, insolvency judge or any other person with the right to act on behalf of the Restricted Party or its estate, shall notify the other Parties of the occurrence of any Triggering Event with respect to such Restricted Party. Upon receipt of such notice or upon a Triggering Event becoming known to the other Parties, such other Parties shall be entitled to purchase all or part of the Shares held by the Restricted Party, in proportion to the nominal value of their shareholdings or in such other proportions as they may agree in writing between them, and, in case of the occurrence of any of the Triggering Events (a) or (f), at the fair market value of the Shares. Without prejudice to any other rights or remedies, in case of the occurrence of any of the Triggering Events (b), (c), (d) or (e), the purchase price shall be the lower of the fair market value and the nominal value of the Shares.

If the Parties cannot agree on the fair market value, each Party may request its determination by [*name of independent expert*], or if [*name of alternative independent expert*] refuses or is not able to act, by an experienced international accounting firm appointed by ....., (the "**Expert**") on the basis of a valuation of the Company using methods customarily used at that time to establish the value of businesses in that industry, excluding any control premium for obtaining a majority of the voting rights in the Company or any block premium. The fair market value as determined by the Expert shall be binding and final on the Parties, unless based on calculation errors, in which case the fair market value as corrected by the Expert shall be binding.

The Option Parties who intend to exercise the Purchase Option shall notify the Restricted Party and the other Parties of their intent to exercise the Purchase Option within ..... Calendar days following receipt of notice of a Triggering Event or, as the case may be, following such Triggering Event becoming known to them, and shall thereafter commence the valuation procedure by mandating the Expert if no agreement on the price can be reached within another ..... Calendar days. The Option Parties shall exercise the Purchase Option no later than ..... Calendar days following agreement on the fair market value or receipt of the final determination of the fair market value from the Expert by giving written notice to the other Parties. The Restricted Party, on the one hand, and the Option Parties who announced their intent to exercise the Purchase Option, on the other hand, shall each bear half of the costs of the Expert.

## **ARTICLE 9. DEED OF ACCESSION**

The Company must not allot or issue or register a transfer of any Shares to any person who is not a party to this agreement until that person has executed and delivered to the Company a Deed of Accession.

Any allotment, issue or transfer is void and of no effect unless and until the relevant Deed of Accession has been delivered.

## **ARTICLE 10. NON-COMPETITION**

14. Each of the Shareholders - notwithstanding explicit written approval of all Shareholders - commit themselves to refrain during the period in which they directly or indirectly hold Shares and for a period of [ ] year thereafter, in the geographical areas in which the Company or its present and future subsidiaries operate or intend to operate, other than for the benefit of the Company, directly or indirectly:
  - 1.14.1 to participate in or otherwise be financially involved with, and/or, be employed as adviser or employee, for a company that offers or develops products and/or services that are in competition with the products and/or services the Company or its present and future subsidiaries offer or develop;
  - 1.14.2 to contact the employees of the Company to induce them to terminate their employment with the Company, or to offer them directly or indirectly an employment contract or management contract; or
  - 1.14.3 to contact clients, customers, suppliers and/or other business relations of the Company for the purpose of offering them (on behalf of a third party) products and/or services that are in competition with the products and/or services of the Company or to induce them to break off their relationship with the Company.
15. On the occurrence of any event deemed to be a breach of paragraph 1 of this Article, the Party responsible for the breach shall pay the Company a penalty of € [ ] for each breach and an additional penalty of € [ ] for each day or part thereof that aforementioned breach continues, without prejudice to the Company's rights to recover damages in excess of the amount of such penalty.

## **ARTICLE 11. CONFIDENTIAL INFORMATION**

No Shareholder shall, at any time or under any circumstances, without the consent of the Company, directly or indirectly communicate or disclose to any person (other than the other Shareholders and its or their employees, agents, advisors and representatives) or make use of any confidential knowledge or information howsoever acquired by such Shareholder relating to or concerning the customers, products, technology, trade secrets, systems or operations, or other confidential information regarding the property, business and affairs of the Company (**Confidential Information**) except for:

- Information that becomes generally known in the industry to which the business of the Company is related other than through a breach of this Agreement;
- Information that is lawfully obtained from a third party without breach of this Agreement by the Shareholder;
- Information that is reasonably required to be disclosed by a Shareholder to protect its interests in connection with any proposed Transfer of Shares that is pursuant or subject to this Agreement; or
- Information that is required to be disclosed by law or by the applicable regulations or policies of any regulatory agency of competent jurisdiction or any stock exchange, provided that the Shareholder gives the Company prompt written notice of the compelled disclosure and cooperates with the Company, at the Company's expense, in seeking a protective order or any other protections available to limit the disclosure of the Information.

If a Shareholder ceases to be a shareholder of the Company, the Shareholder shall use all reasonable efforts to ensure that all information and all copies thereof are either destroyed or returned to the Company if the Company so requests, and shall not, directly or indirectly, use for the Shareholder's own purposes, any information discovered or acquired by the Shareholder or the Shareholder's advisors. The Shareholder's obligations in this shall be in addition to and not in derogation of any other obligation of confidentiality owed to the Company by other Shareholders who are employees of or consultants to the Company.

## **ARTICLE 12. NOTICES**

### **1. Giving notices**

Any notice or communication given to a party under this agreement is only given if it is in writing and sent in one of the following ways:

- Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out below.
- Faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out below.

**[Company]**

Name: [Name]  
Address: [Postal address]  
Fax number: [Fax number]  
Attention: [Name]

**[Shareholder 1]**

Name: [Name]  
Address: [Postal address]  
Fax number: [Fax number]  
Attention: [Name]

**[Shareholder 2]**

Name: [Name]  
Address: [Postal address]  
Fax number: [Fax number]  
Attention: [Name]

**2. Change of address or fax number**

If a party gives the other party three business days' notice of a change of its address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.

**3. Time notice is given**

Any notice or communication is to be treated as given at the following time:

- If it is delivered, when it is left at the relevant address.
- If it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) business days after it is posted.
- If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

**ARTICLE 13. DURATION**

16. This Agreement is entered into for an indefinite period.

17. A Party shall cease to be a party to this Agreement for the purpose of receiving benefits and enforcing his rights from the date that he ceases to hold (or beneficially own) any shares in the

capital of the Company (but without prejudice to any benefits and rights enjoyed prior to such cessation).

18. The Agreement shall be terminated by operation of law if all Shares are held by one party.
19. The provisions of Articles 10 (Confidential Information), 13.7 (Governing law and jurisdiction) shall survive termination of this Agreement.

#### **ARTICLE 14. MISCELLANEOUS**

##### **1. Approvals and consents**

Unless this agreement expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.

##### **2. Assignments and transfers**

A party must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of each of the other parties.

##### **3. Costs**

Except as otherwise set out in this agreement, each party must pay its own costs and expenses in relation to preparing, negotiating, executing and completing this agreement and any document related to this agreement.

##### **4. Entire agreement**

This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this agreement was executed.

##### **5. Execution of separate documents**

This agreement is properly executed if each party executes either this document or an identical document. In the latter case, this agreement takes effect when the separately executed documents are exchanged between the parties.

##### **6. Further acts**

Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this agreement and all transactions incidental to it.

#### 7. Governing law and jurisdiction

This agreement is governed by the law of ..... The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

#### 8. Inconsistency with Constitution

If there is any inconsistency between this agreement and the Constitution then the parties agree to abide by this agreement and to do everything required to change the Constitution so that it is consistent with this agreement.

#### 9. No partnership or agency

Nothing contained or implied in this agreement will create or constitute, or be deemed to create or constitute, a partnership between the parties. A party must not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other parties to any obligation.

#### 10. Variation

No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

#### 11. Waivers

A waiver of any right, power or remedy under this agreement must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement does not amount to a waiver.

#### 12. Severability

If at any time any provision of this agreement or any part thereof is or becomes invalid or unenforceable, then neither the validity nor the enforceability of the remaining provisions or the remaining part of the provision shall in any way be affected or impaired thereby. The parties agree to replace the invalid or unenforceable provision or part thereof by a valid or enforceable provision which shall best reflect the parties' original intention and shall to the extent possible achieve the same economic result.

This Agreement is signed on [\_].

on behalf of [_]  _____ [***]	on behalf of [_]  _____ [***]
on behalf of [_]  _____ [***]	on behalf of [_]  _____ [***]
on behalf of [_]  _____ [***]	on behalf of [_]  _____ [***]