

Shareholders Agreement

entered into by and between

Name and Surname of First Shareholder: _____

Identity Number : _____

(hereinafter referred to as the "First Shareholder")

and

Name and Surname of Second Shareholder: _____

Identity Number: _____

(hereinafter referred to as the "Second Shareholder")

and

Name and Surname of Third Shareholder : _____

Identity Number: _____

(hereinafter referred to as the "Third Shareholder")

and

Name and Surname of Fourth Shareholder: _____

Identity Number: _____

(hereinafter referred to as the "Fourth Shareholder")

and

NAME OF COMPANY: _____

REGISTRATION NUMBER: _____

("The Company")

WHEREAS the parties hereto, other than the Company, together own, directly or indirectly, all of the Shares as of date hereof;

AND WHEREAS the parties hereto wish to record their agreement as to the manner in which the Company's affairs are to be conducted and to agree upon the terms on which the securities of the Company, now or hereafter outstanding and held by them, will be held, transferred and voted;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the mutual agreements herein contained the parties hereto and agree as follows:

1. DEFINITIONS

Whenever used in this agreement, the following words and terms have the meanings set out below:

- (a) "Agreement" means this Shareholders Agreement;
- (b) "Shareholders" means, collectively, the First, Second, Third - and Fourth Shareholder;
- (c) "First Shareholder" will mean _____;
- (d) "Second Shareholder" will mean _____;
- (e) "Third Shareholder" will mean _____;
- (f) "Fourth Shareholder" will mean _____;
- (g) "Parties" means, collectively, the Shareholders and the Company and any other party that becomes a party to this Agreement and "Party" means any one of them;
- (h) "Effective date" means the date of commencement of business;
- (i) "Goodwill" means the goodwill attaching to the business.

2. PARTIES

The Parties to this shareholders agreement are -

- 2.1. **Full Name and Surname:** _____;
Identity Number: _____;
- 2.2. **Full Name and Surname:** _____;
Identity Number: _____;
- 2.3. **Full Name and Surname :** _____;
Identity Number: _____;
- 2.4. **Full Name and Surname:** _____;
Identity Number: _____;
- 2.5. **Company Name:** _____ registration number _____.

a company duly registered in accordance with the company laws of the Republic of South Africa, with its registered office at (“**Company**”).

3. SHARE CAPITAL OF THE COMPANY

3.1. Unless otherwise agreed between all the Shareholders, neither the authorised, nor the issued share capital of the Company shall be increased, reduced or otherwise changed, nor shall the rights attaching to any shares or class of shares be changed in any manner, except as set out herein.

3.2. Any new shareholder shall only be admitted to the Company upon the approval of all Shareholders of such admission, which admission shall not be unreasonably withheld.

3.3. The Parties agree that the Shareholders shall hold as soon as possible after the Signature Date, the following respective percentages of shareholdings in the Company, which shall be achieved either by means of the transfer of shares already issued at the Signature Date, or by means of the issue of new shares in the Company, as soon as possible after the Signature Date, which transfer or issue of shares, as the case may be, shall be effected against payment of the par value thereof to either the transferor or the Company, as the case may be:

3.3.1. **First Shareholder:** _____ - [___%] shareholding.

3.3.2. **Second Shareholder:** _____ - [___%] shareholding.

3.3.3. **Third Shareholder :** _____ - [___%] shareholding.

3.3.4. **Fourth Shareholder:** _____ - [___%] shareholding.

4. THE RESPONSIBILITIES OF THE SHAREHOLDERS

4.1. The responsibilities of the First Shareholder will be as follows:

4.2. The responsibilities of the Second Shareholder will be as follows:

4.3. The responsibilities of the Third Shareholder will be as follows:

4.4 The responsibilities of the Fourth Shareholder will be as follows:

5. LOANS AND FUNDING

5.1. The capital needs of the Company (including both share capital and loan capital), from time to time, shall be decided by the Shareholders by means of a majority decision.

5.2. Any decision of the Shareholders to finance the capital requirements of the Company by means of loans from the Shareholders to the Company in proportion to their respective shareholding in the Company, shall be subject to a majority decision of Shareholders to that effect. Any decision of the Shareholders to finance the capital requirements of the Company by means of loans procured from financial institutions or other third parties which are to be secured by suretyships or guarantees to be given by all the Shareholders for the benefit of such financial institution or other third party, shall be subject to a majority decision of the Shareholders approving and requiring such suretyships. Such suretyships, guarantees or indemnities granted by the Shareholders, if approved as aforesaid, shall be subject to the provisions of this Agreement.

Shareholders shall from time to time for their own benefit and as often and to such extent as they may decide by means of a decision as required withdraw funds from the Company, whether as dividends or as the repayment of Shareholder loan accounts.

5.3. Withdrawals in terms of clause 5.2 shall, subject to any provision to the contrary -

5.3.1. at all times be made in proportion to the shareholding of the Shareholders in the Company, unless the Shareholders agree otherwise;

5.3.2. only be made if justified by the financial and cash flow position of the Company.

5.4. The Parties shall from time to time determine any special remuneration, if any, to which directors of the Company or Shareholders acting in any contractual relationship in relation to the Company, are entitled for any specific services rendered to or in the interest of the Company, as well as any remuneration payable to any Shareholder in his capacity as an employee of the Company.

5.5. The Shareholders shall from time to time by majority decision determine the dividend policy of

the Company and the remuneration payable to directors in their capacity as such.

6. SALE OF SHARES AND PRE-EMPTIVE RIGHTS

- 6.1. Should any of the Shareholders ("**the Offeror**") wish to sell, alienate or transfer his shares in the Company, he/she shall first give notice to the other Shareholders ("**the Offerees**") of his intention and offer to sell his shares in and loan account against the Company to the Offerees on the terms and conditions set out herein.
- 6.2. The offer in terms of 6.1 -
 - 6.2.1. shall be in writing and be delivered to the Offerees;
 - 6.2.2. shall state the purchase price and other terms and conditions at which the Offeror offers his shares and loan account for sale;
 - 6.2.3. shall remain open for acceptance by the Offerees for a period of 20 (TWENTY) days after it has been received by them;
 - 6.2.4. shall be deemed to be made to the Offerees in proportion to their respective shareholdings in the Company.
- 6.3. The Offeror shall upon acceptance of the offer by the Offerees, and against payment of the purchase price, hand over to the Offerees a duly signed share transfer form together with the share certificate(s) as well as a written cession of the Offeror's loan account to the Offerees. Effect shall be given, if applicable, to the delivery of the share certificates as contemplated in this clause 6.3, in that the auditors of the Company shall, with effect from the date delivery is to take place as contemplated in this clause 6.3, hold the relevant share certificates pursuant the provisions of this agreement for and on behalf of the Offerees instead of the Offeror in trust.
- 6.4. Should any one of the Offerees not accept the Offeror's offer, the Offeror shall be obliged to offer the shares not so accepted to the remaining Offerees, *mutatis mutandis* provided that such offer shall remain open for acceptance for only 10 (TEN) days after it is received by the remaining Offerees.
- 6.5. If the Offerees do not accept the whole of the Offeror's offer, the Offeror shall be entitled within a period of 60 (SIXTY) days after the Offeror has been notified of the Offerees' non-acceptance or the expiry of the period referred to herein, as the case may be, to sell, exchange or otherwise alienate and transfer his shares in and the whole of the loan account against the Company to a *bona fide* third party provided that -

- 6.5.1. the shares and the loan account are transferred only at exactly the same price and on exactly the same terms and conditions as the same were offered to the Offerees;
- 6.5.2. the *bona fide* third party agrees in writing with the Offerees and the Company to be bound and to abide by the provisions of this Agreement;
- 6.5.3. if the Offeror's shares and the whole of his loan account are not transferred within the 60 (SIXTY) days period referred to herein, or should the Offeror wish to decrease the purchase price or to amend the terms and conditions of the sale to make them less stringent, then the provisions of this agreement shall again apply to the sale by the Offeror of his shares in and loan account against the Company;
- 6.5.4. the sale shall be subject to the provisions of this agreement.
- 6.6. The Offerees shall not be entitled to refuse or unduly delay transfer of the Offeror's shares to the purchaser thereof unless they have reasonable grounds to so refuse or delay the transfer.
- 6.7. Should any one of the Shareholders purchase any other Shareholder's shares in a loan account against the Company, then the purchaser shall be obliged to use his best endeavors to obtain the release of the seller from any liability under any suretyship, guarantee or other act of intercession given by the seller for the obligations of or on behalf of the Company and, if the purchaser's endeavors do not result in such release, the purchaser hereby indemnifies the seller against such liability.
- 6.8. **Tag along**
 - 6.8.1. Should the Offeror wish to sell his shares in and loan account against the Company to a non-shareholder of the Company, any of the other Shareholders shall be entitled to require of the Offeror to procure, as a condition of the sale by the Offeror to the non-shareholder of the Offeror's shares in the Company, the purchase of such other Shareholder's shares in and the whole of his loan accounts against the Company -
 - 6.8.1.1. by the purchaser of the Offeror's shares in and loan account against the Company; and
 - 6.8.1.2. on exactly the same terms and conditions on, and for the same consideration at which the Offeror's shares in and loan account against the Company are to be purchased, failing which the Offeror shall not be entitled to sell his shares in and loan account against the Company.
- 6.9. **Drag along**
 - 6.9.1. Should any one Shareholder or a group of Shareholders of the Company receive a *bona*

fide offer from a *bona fide* third party not being a Shareholder of the Company to purchase all of the issued shares of the Company, and Shareholders holding at least 70% (SEVENTY PERCENT) of the issued ordinary shares in the Company, which accordingly represent 70% (SEVENTY PERCENT) of the voting rights of the Company, vote at a general meeting of Shareholders of the Company in favour of the acceptance of such offer, as contemplated in this agreement, then all the Shareholders of the Company, including those not wishing to accept the offer, shall be obliged to sell their respective shares in the Company to such third party wishing to purchase all the issued shares in the Company, provided that such third party shall also be obliged to purchase any credit loan accounts then due by the Company to such Shareholders, should they require the same.

- 6.9.2. The provisions shall only apply if all details, including all terms and conditions of the proposed sale referred to herein, have been duly and fully disclosed and attached to the notice in respect of the Shareholders meeting.
- 6.9.3. No Shareholder shall be entitled to cede, pledge or otherwise encumber any shares in or claims against the Company held by it from time to time other than the sale thereof in accordance with the provisions of this Agreement.

7. ALIENATION OF SHARES UPON DEATH OR DISABILITY OF A SHAREHOLDER

- 7.1. Upon the death of a Shareholder, the executor of the estate of the deceased Shareholder shall offer the shares in and loan account against the Company of such Shareholder to the remaining Shareholders ("**the Remaining Shareholders**") to purchase at a purchase price equal to the value of the shares as valued in terms of this agreement (*Valuation of shares*), plus the deceased Shareholder's loan account against the Company at book value, which offer shall remain open for a period of 20 (TWENTY) days after it has been received by the Remaining Shareholders by means of a written notice at the addresses contemplated in this Agreement. Should any of the Remaining Shareholders not accept such offer, the executor shall offer the shares not accepted to the Remaining Shareholders who have accepted the offer, which second offer shall remain open for a further period of 20 (TWENTY) days. Should the executor's second offer for the sale of the shares in and loan account against the Company, or any portion thereof, of the deceased Shareholder not be accepted by the Remaining Shareholders within the mentioned respective periods of 20 (TWENTY) days, the executor shall be entitled to transfer to the heir or heirs of the deceased Shareholder, or to sell to any third party, the remaining part of the shares in and loan account against the company of such deceased Shareholder.
- 7.2. Should any of the Shareholders become permanently, physically or mentally unfit or disabled to perform his duties to the Company, either as shareholder, director or as employee of the

Company, the provisions of this clause shall apply *mutatis mutandis* as in the event of the death of a shareholder, and any reference to the executor of the estate of the deceased shareholder shall apply and refer to the Shareholder being so unfit or disabled, or his curator, depending on the relevant circumstances

- 7.2.1. All the Shareholders shall take out policies on each other's lives having reasonable life and disability cover, the amount of which the Shareholders shall decide upon on a meeting of Shareholders, at a life insurance company and subject to such further terms and conditions as the Shareholders may approve, which policies must be maintained, for the duration of this Agreement, by the Shareholders respectively and must be taken out as soon as possible after the decision by the Shareholders to take out the said policies has been taken;
- 7.2.2. the Shareholders shall annually reconsider and adjust the amounts of cover provided by the policies, taking into consideration the projected determination of the purchase price which the policies should finance as calculated in terms of this agreement (*Valuation of shares*);
- 7.2.3. the policy contracts shall be endorsed to give effect to the relevant provisions of this agreement, together with all other relevant documentation, shall be provided for safe keeping to the auditors of the Company who shall only deal therewith in accordance with the provisions of this Agreement;

8. RESTRAINT OF TRADE AND CONFIDENTIALITY

- 8.1. The Shareholders signing this Agreement, acknowledge that in the course of being involved in the Business of the Company, whether as employees, shareholders or directors of the Company, each Shareholder has or will gain access to clients, service providers and business associates of the Company, and will have the opportunity to have access to and become acquainted with the operational techniques and methods, trade secrets, and other private, sensitive and confidential information of the Company, and will furthermore obtain and have access to documentation containing such information (collectively hereinafter termed, the "**Confidential Information**").
- 8.2. Each Shareholder hereby accordingly undertakes, for the duration of this Agreement as well as after the termination thereof, not to directly or indirectly, utilize, disclose or make public to any person, business, body or organization the Confidential Information and to keep the Confidential Information confidential and secret at all times, unless –
 - 8.2.1. the disclosure is made to business associates of the Company directly involved in the provisioning of services to clients of the Company and such services relate to the Confidential Information and the Shareholder has assured himself that such business associates are in a reasonable position of trust *vis-à-vis* the Company and that such

disclosure is necessary for the Company to carry on its Business; or

- 8.2.2. the disclosure is made to clients to which services are provided which relate to the Confidential Information and the provisioning of such services is not possible without the relevant Confidential Information being disclosed; and
- 8.2.3. at all times with the understanding that any disclosure of Confidential Information as contemplated in this agreement should be restricted to that which is reasonably necessary to be disclosed in order to allow the Shareholder to perform his duties and obligations in terms hereof, or to provide services relating to the Confidential Information to clients of the Company, or to allow business associates of the Company to render the necessary services relating to the Confidential Information to clients of the Company, on a need to know basis.
- 8.3. Each Shareholder hereby acknowledges that all Intellectual Property Rights pertaining to the Confidential Information shall vest in the Company or the business associates of the Company as the case may be, and each Shareholder undertakes to protect the Intellectual Property Rights of the Company and its business associates at all times.
- 8.4. Each Shareholder undertakes to deliver all documentation, whether in electronic, hardcopy or other format, provided to, or acquired or developed by him/her pursuant to his involvement in the Business of the Company upon him or the trust represented by him, if any, is ceasing to be a shareholder of the Company, or upon him ceasing to be a director and/or employee of the Company, whichever is occurring first, and not to retain any copy in his possession at any time thereafter.
- 8.5. Each Shareholder undertakes that for the duration of this agreement that no Shareholder will open and/or conduct the same type of business as this company elsewhere, more specifically in the _____ Province.
- 8.6. Each Shareholder undertakes that if one or more Shareholder decide to sell or terminate their shares in the Company, that Shareholder, in order to protect the goodwill of the business and the interest of the Purchaser in the goodwill of the business, agrees and undertakes in favour of the Purchaser and the business that it will not within the areas referred to in clause 8.7 and for a period of 2 (two) years after the effective date, either as adviser, principal, representative, shareholder, director, employee, financier, consultant or in any other like or similar capacity, directly or indirectly be associated or concerned with, interested or engaged in any business, company or other association of persons which carries on a business or activity similar to the business carried on by the Shareholder that sold or terminated the shares on the effective date.

8.7. The areas covered by these restraints are- the _____ province and more specifically the _____ District;

8.8 The Shareholder that terminated and/or sold his shares agrees that-

8.8.1 The restraint imposed upon it in terms of this clause are reasonable as to subject matter, area, duration, documentation, trade secrets, sensitive information and are reasonably necessary in order to preserve and to protect the goodwill of the business;

8.8.2 Each of the clauses in clause 8, notwithstanding the manner in which the restraints are grouped together or linked geographically, constitutes a separate and independent restraint.

9. JURISDICTION

The Parties consent to the jurisdiction of the Magistrates Court with regard to any matter which may be referred to a court of law in terms of this Agreement.

10. BINDING NATURE OF THIS AGREEMENT AND ENDORSEMENT OF SHARE CERTIFICATES

10.1. No transfer of shares in the Company shall be effected before such transferee binds himself in writing to the terms and conditions of this Agreement.

10.2. This Agreement binds the Shareholders and the Company and shall remain binding, notwithstanding any change in each of the Shareholders respective shareholding in the Company, after Signature Date.

11. GOOD FAITH

The parties shall in their dealings with each other display good faith.

12. BREACH

This Agreement may not be cancelled or terminated by any Party and will endure with respect to each Shareholder (for so long as that person or entity is a Shareholder) and the Company indefinitely or until terminated by the Shareholders in writing.

Thus done and signed at _____ on this ____ day of _____.

As witnesses:

1. _____

2. _____

FIRST PARTY
who warrants her authority hereto

Thus done and signed at _____ on this ____ day of _____.

As witnesses:

1. _____

2. _____

SECOND PARTY
who warrants her authority hereto

Thus done and signed at _____ on this ____ day of _____.

As witnesses:

1. _____

2. _____

THIRD PARTY
who warrants his authority hereto

Thus done and signed at _____ on this ____ day of _____.

As witnesses:

1. _____

2. _____

FOURTH PARTY

who warrants his authority hereto