

GUIDANCE NOTES FOR USE WITH THE BASIC SHAREHOLDER AGREEMENT - NO SHARE ISSUE ATTACHED WITH LEAVER PROVISIONS ADDED.

This **Basic Shareholder Agreement - No Share Issue** with leaver provisions added includes the following clauses:

Parties: Please complete the names of the existing shareholders. Adding the Company as a party is optional and the document "Shareholders' Agreement Notes" should be read for more information.

Note that the parties to a shareholders' agreement will usually be individuals or private limited companies (although they can also be any other type of legal entity, for example, partnerships, but this is less common). The parties may be solely individuals, solely companies or a combination of the two and often the principal parties will wish to hold their interest in the Company through a specifically created vehicle. Whoever the parties are should not alter the drafting of the contract, however more thought may need to be given to certain clauses below, for example the transfer provisions if corporate entities are involved.

Recitals: Since the Companies Act 2006 abolished the concept of "authorised share capital" from 1st October 2009, the issued share capital is of less importance. At Recital A, the number of shares issued should be inserted.

1. **Definitions and Interpretation:** Several definitions will need to be defined, for example, a specific geographical area for the, "Restricted Area".
2. **Administration:** This Clause specifies certain details about the Company. Some of it is administrative, for example who the company secretary (if the Company has one). A description of the Business also needs to be added.
3. **Finance:** This clause deals with further financing of the Company. The shareholders are not under any obligation to provide any further finance and the Company will endeavour to borrow any money it requires using its bank facility. If this is not possible, then the loans or loan notes/debentures can be issued.
4. **Financial Information:** This Clause requires the shareholders to procure that the Company keeps adequate financial records.
5. **Issue of Shares:** This Clause gives the current shareholders pro rata pre-emption rights if the Company wishes to issue new shares.
6. **Transfer of Shares:** This Clause places restrictions on the transfer of shares by shareholders. If a shareholder wishes to transfer his shares, he must first offer them to the other shareholders who will then have an option to buy the shares pro rata to their shareholdings. The time periods should be specified at Sub-Clauses 6.2.2 and 6.2.3. There are optional provisions at Sub-Clauses 6.4 and 6.5 whereby a shareholder will be deemed to have served an automatic notice if it is a company and it goes into liquidation, administration or receivership; if the shareholder breaches the Shareholder Agreement for a specified number of days; or if the shareholder dies.
7. **Good Leaver Bad Leaver:** This agreement specifically includes leaver provisions within the transfer provisions in a separate clause. This is known as a good leaver/ bad leaver clause. The essence of this Clause 7 is that any shareholder who is an employee of the Company and subsequently leaves the Company's employment, is described as either a "Good Leaver" or a "Bad Leaver". A bad leaver is defined in this agreement as anyone who is not considered to be a good leaver, i.e. anyone who leaves the Company's employment otherwise than through retirement, disability, redundancy or unfair dismissal. The definitions can be altered as required to suit the circumstances that need to be achieved. A bad leaver is obliged to sell his shares on exit to the other shareholders, whereas a good leaver has the option but not the obligation to sell their shares on exit. This Clause sets out the terms on which these share

transfers are achieved.

8. Valuation of Shares: This is an optional Clause that should only be used if Clauses 6.4, 6.5 and/or Clause 7 are included. The Clause allows for the shares to be valued by the Company's auditor or accountant if there is a deemed transfer notice or sale by a Good or Bad Leaver. This will ensure that the shares are transferred at a fair value.
9. Shareholder Meetings: This Clause follows the prescribed procedure for shareholder meetings under the Companies Act 2006. There is no longer a requirement for companies to hold an Annual General Meeting but the last sentence of Clause 9.3 and Clause 9.4 should be retained if AGMs will continue to be held.
10. Company Communications: The Companies Act 2006 allows companies to communicate with its shareholders via electronic means provided that each shareholder has consented. This Clause places the shareholders under a contractual obligation to consent to receive communications electronically if the Company chooses.
11. Management: This brief Clause states that the Board will run the affairs of the Company within the terms of the Annual Business Plan.
12. Reserved Matters: This Clause provides a list of matters that the Shareholders wish to prevent the Company doing and which might otherwise damage their interest in the Company. Some of the matters listed require unanimous approval of the shareholders and some require a 75% majority. More information can be found in the document "Shareholders Agreement Notes".
13. Restrictions on the Shareholders: This Clause imposes a series of restrictions on each Shareholder to the effect that he or she will not, at any time when he or she is a Shareholder, and for a specified period of time after he or she ceases to be a Shareholder, carry on any other business that competes with the business of the Company or entice away customers, employees or keep suppliers of the Company.
14. Anti-corruption: this is an optional Clause and refers to the Bribery Act 2010. It will not be relevant to many companies but may protect the parties and the Company if there are perceived to be risks of corrupt practices.
15. Dividend Policy: This Clause provides that a particular percentage of the Company's profits available for distribution in any year will be paid out as dividends. The Company may distribute more if it so wishes but shareholders may be assured of at least some income.
16. Winding Up: This Clause places an obligation on the shareholders to cooperate in a winding up.
17. Confidentiality: This Clause protects the parties' confidential information.
18. Conflict with the Articles: This Clause provides that the Shareholder Agreement will prevail over the Articles in the event of an inconsistency.
19. Duration: This provides for the Shareholder Agreement to last until the Company is wound up.
20. Notices and Service: This Clause provides standard wording (known as "boilerplate") for the service of notices under the Shareholder Agreement. Clause 20.3 should be deleted if the Company is not a party to the Shareholder Agreement.
21. No Partnership or Agency: This is another boilerplate Clause that prevents an agency or partnership relationship being created.
22. No Waiver: Under English law, a delay or failure to enforce a right can be viewed by the court as a waiver of that right. This Clause prevents that situation from occurring.

23. Severance: Another boilerplate clause that allows the court striking out the whole Shareholder Agreement as invalid or unenforceable. The court will be able to strike out the whole agreement or the parties to follow the enforceable part (a practice known as the “blue pencil” rule).

24. Entire Agreement: A boilerplate clause that states that the Shareholder Agreement supersedes any prior agreements and prevents them from relying on any statements or other evidence.

25. Non-Assignment: A boilerplate clause that prevents the parties from assigning, mortgaging or otherwise transferring their rights under the Shareholder Agreement except where they are permitted to do so under the terms of the Shareholder Agreement.

26. Further Assurance: A boilerplate clause that requires the parties to do everything required to fulfil the obligations under the Shareholder Agreement.

27. Costs: This Clause requires the parties to pay the costs of drawing up the Shareholder Agreement.

28. Applicable Law and Jurisdiction: This Clause states that the Shareholder Agreement will be governed by the law of England and Wales, either exclusive or non-exclusive jurisdiction. If non-exclusive jurisdiction is chosen, this opens up the possibility of a court in another country hearing the dispute, which may be a costly and time-consuming process.

Schedule 1: Loans – Any agreed terms and conditions can be deleted if no loans are to be made.

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SHAREHOLDER AGREEMENT (FOR PROVISIONS ADDED)

THIS AGREEMENT is made the << Day >> << Month >> << Year >>

BETWEEN:

- (1) <<Name of Shareholder>> <<Address of Shareholder>> ("Shareholder A");
- (2) <<Name of Shareholder>> <<Address of Shareholder>> ("Shareholder B");
- (3) <<Name of Shareholder>> <<Address of Shareholder>> ("Shareholder C");
- (4) <<Name of Shareholder>> <<Address of Shareholder>> ("Shareholder D");
- (5) [**<<Name of Company>>** incorporated in <<Insert Country of incorporation>> under No. <<Insert Company Number>> whose registered office is at <<Insert Registered office of Company>>].

WHEREAS:

- A. At all material times the Company has been and is a duly incorporated company and at the date of this Agreement has an issued share capital of £<< amount >> divided into << number >> shares of £<< amount >> each.
- B. At all material times the Shareholders have been and are the registered and beneficial holders of the following number of shares of the Company as fully paid:

Shareholder A: << number of shares owned >>;

Shareholder B: << number of shares owned >>;

Shareholder C: << number of shares owned >>;

Shareholder D: << number of shares owned >>.
- C. The parties to this Agreement have agreed to regulate their relations between themselves and the affairs of the Company in accordance with the provisions of this Agreement subject to the conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Act" means the Companies Act 2006;

"Annual Business Plan" means the business plan for each Financial Year of the Company prepared by the directors of the Company at the end of each Financial Year of the Company setting out the proposed objectives of the Company for the following Financial Year, containing cash flow

projections and an operating budget for that Financial Year;

“Articles”	means, the Articles of Association of the Company as may be amended from time to time;
“Auditors”	means, the auditors (as constituted from time to time) of the Company or, if none are appointed, the accountants acting for the Company from time to time;
“Bad Leaver”	means an Employee who becomes an Outgoing Employee in circumstances where he is not a Good Leaver or not designated as a Good Leaver at the sole discretion of the Board;
“Board”	means, the board of directors (as constituted from time to time) of the Company;
“Business”	the business of the Company as set out in Clause 2 of this Agreement;
“Business Day”	means, any day (other than Saturday and Sunday) which is not a bank or public holiday, on which ordinary [clearing] banks are open for [their full range of normal] business in <<London>>;
“Business Hours”	<<Insert normal business hours of Company>>;
“Clear days”	in relation to a period of notice, means, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
“Company”	<<Name of Company>>, a company incorporated in <<Insert Country of incorporation>> under No. <<Insert Company number>> whose registered office is at <<Insert Registered office of Company>>;
“Confidential Information”	means, in relation to each party to this Agreement (“the Recipient”) any information which is disclosed to that party by another party (“the Informant”) pursuant to or in connection with this Agreement, whether orally or in writing or any other medium, and whether the information is expressly stated to be confidential or marked as such, provided that such information shall not include any information that is in the public domain other than by the breach of the confidentiality obligations contained in this Agreement;

“Employee”

“Encumbrance”

“Financial Year”

“Good Leaver”

“Ordinary Shares”

“Outgoing Employee”

“Reserved Matters”

“Restricted Area”

“Shares”

“Shareholders”

“Share Transfer Provisions”

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who is, or has been, a director of the Company;

equity of any person (including a right of pre-emption) or any charge, lien, assignment, mortgage, interest, title, retention or any other arrangement, whether

g reference period of the Financial Year in accordance with Chapter 3 of the Companies Act 2006;

who becomes an Outgoing Employee;

permanent disability or permanent severe ill-health; or a condition defined in the Employment Contract; or a decision of the Company which is determined by an independent tribunal or at a court of law, the decision of which there is no right of appeal, unfair, wrongful or constructive; or any other reasons that may be relevant to the determination;

other reasons that may be relevant to the determination;

value of <<Insert value of a share>> of the Ordinary Shares of the Company;

who ceases to be a director and/or shareholder of the Company;

as referred to in Clause 12;

graphical area>>;

es;

A, Shareholder B, Shareholder C and any person to whom they may assign the Shares as permitted pursuant to the Share Transfer Provisions;

s of the Articles relating to the Share Transfer Provisions and expressions defined in those provisions shall have the same meaning in this Agreement;

“Year”

- 1.2 Unless the context requires otherwise, any reference in this Agreement to:
- 1.2.1 “writing”, and any reference to any document in writing, includes a reference to any document in any form, whether handwritten, typed, printed, facsimile transmission,] email or otherwise;
 - 1.2.2 a statute or regulation includes a reference to that statute or regulation as in force at the relevant time;
 - 1.2.3 “this Agreement” includes this Agreement and any other agreement or document referred to in this Agreement or such other agreement or document as supplemented, modified or novated from time to time; and
 - 1.2.4 Clauses and Schedules of this Agreement refer to Clauses and Schedules of this Agreement and to Sub-clauses and Paragraphs of Clauses and Schedules of this Agreement, unless the reference appears otherwise.
- 1.3 In this Agreement:
- 1.3.1 all agreements entered into by the parties to the Agreement which shall be joint and several;
 - 1.3.2 any reference to a person includes a reference to their respective successors in title and permitted assignees;
 - 1.3.3 any reference to a company includes any body corporate, unincorporated association, partnership or other legal entity;
 - 1.3.4 words importing the plural and vice versa; and
 - 1.3.5 words importing any other gender.
- 1.4 The headings in this Agreement are for convenience only and shall not affect its interpretation.

2. Administration

Unless otherwise agreed by the Company:

- 2.1 the Business of the Company shall be the Business of the Company as described in the Company’s Memorandum of Association and Articles of Association or such other description of business of the Company as may be determined from time to time in accordance with the Memorandum of Association and Articles of Association;
- 2.2 the directors of the Company shall be the persons whose names shall be entered in the Register of Directors of the Company as the directors of the Company; and
- 2.3 the chairman of the Company shall be the person whose name shall be entered in the Register of Directors of the Company as the chairman of the Company;
- 2.4 [the secretary of the Company shall be the person whose name shall be entered in the Register of Directors of the Company as the secretary of the Company;]

- 2.5 the registered office << Address >>;
- 2.6 the Auditors of the Company << name of auditors >>;
- 2.7 the accounting reference period << date >> in each Year; and
- 2.8 the Company's bankers << name of bankers >>.

3. Finance

- 3.1 No Shareholder shall be required to provide any further funding to the Company for any shares agreed to be subscribed for and funding agreed to be provided for this Agreement.
- 3.2 Any finance required by the Company shall be borrowed by way of bank facility from the Company or from other normal market sources upon terms agreed to by the Shareholders.
- 3.3 To the extent that such finance is not possible or is not available for any reason, any funds advanced by any Shareholder in the form of a loan to the Company shall be in accordance with the provisions contained in Schedule 1.
- 3.4 If any finance required by the Company is to be raised by the issue of loan notes or debentures, such notes or debentures shall be offered to the Shareholders pro rata in accordance with their holdings from time to time.
- 3.5 Any guarantees or other obligations of the Company shall be agreed to by all the Shareholders and shall be given severally by each Shareholder.
- 3.6 Any cash and surplus funds of the Company shall be placed on deposit with banks or other financial institutions approved by the Board.

4. Financial Information

- The Shareholders shall provide the following information:
- 4.1 maintains adequate books and other records relating to the conduct of its business;
- 4.2 permits all directors and auditors to have full access to the financial and accounting records of the Company on reasonable notice during Business Hours.

5. Issue of Shares

- 5.1 If the Company wishes to issue Shares [for cash] the parties shall procure that it shall issue the Shares to the Shareholder stating the number of Shares to be issued and the price per Share to be subscribed for (the "Company's Notice").
- 5.2 Each Shareholder shall have the option to subscribe for that proportion of the Shares proposed to be issued which his proportion of Shares held by him bears to the total issued shares of the Company. This option may be exercised by giving its notice. This option may

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holders shall be entitled to resolve
shareholders.

- ...determined by a show of hands of those
...in the resolution, unless a poll vote
...by:

- from time to time;

- Vote on the resolution;

- one tenth of the share capital
essentially all Shareholder resolutions.

- such time or times as may be determined by the Board of Directors or Shareholders. Unless otherwise determined by the Shareholders, at least 14 Clear days prior to the meeting, the Shareholders entitled to attend and vote shall specify in as great a detail as possible the business to be transacted at the meeting. [This provision

- meeting Yearly and in any event
 on the date of one annual general
 next. Unless otherwise agreed in
 'Clear Days' notice in writing shall
 to attend and vote at the annual
 as great a detail as is practicable
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- holder meeting shall be as set out
present within thirty minutes of the
the meeting shall be adjourned to
y following the original meeting. If
present within thirty minutes from
rned meeting shall be dissolved.

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shareholders, such use to be at the

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Administration and management of Annual Business Plan.

12. Reserved Matters

- 12.1 The Shareholders shall not take any action contemplated by this Agreement in relation to the Company shall require the passing of a unanimous resolution at a meeting of the Shareholders or the written consent of all of the Shareholders:
- 12.1.1 alter its Articles of Association;
 - 12.1.2 subject to the Company's Articles of Association, any resolution for the winding up or liquidation of the Company;
 - 12.1.3 pass any resolution to convert the Company into a public company;
 - 12.1.4 create or grant any charge over the whole or any part of its assets;
 - 12.1.5 lend, advance money to or guarantee the indebtedness of any person, firm or corporation;
 - 12.1.6 change the nature of the Company's business or undertake any business other than that specified in the Company's Articles of Association;
 - 12.1.7 instigate any legal proceedings in the ordinary course of business;
 - 12.1.8 have as its financial year any period other than a period of 12 months and any date other than the anniversary of the commencement of its financial year <<Insert current financial year>>.
- 12.2 The Shareholders shall not take any action contemplated by this Agreement in relation to the Company shall require the passing of a special resolution approving the action at a Shareholders Meeting and obtaining the prior written consent of not less than 75% of the total voting rights of eligible Shareholders:
- 12.2.1 appoint or remove any director of the Company;
 - 12.2.2 other than in the ordinary course of business, dispose of or otherwise dispose of the whole or any part of the business or undertaking of the Company whether by one transaction or by a series of transactions;
 - 12.2.3 acquire any long term contract or commitment or investment with a value in excess of <<Insert amount>> save in respect of machinery, plant and equipment required in the ordinary course of the business of the Company of which the Shareholders have a beneficial interest;
 - 12.2.4 purchase or lease any land or tenancy or otherwise acquire or dispose of a substantial part of the Company's state or interest;
 - 12.2.5 engage any director, officer, employee or consultant or agent for a period of more than <<Insert amount>> per annum or increase or agree to increase the remuneration of <<Insert amount>> per annum the Company's directors, officers, employees, consultants or agents;
 - 12.2.6 acquire or dispose of any shares, debentures, debenture stock or other securities in any company or entity.

12.2.7 allow the a
Company to
12.2.8 in respect of
Shareholder
distribution of

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way of dividend, bonus or other

13. Restrictions on the Share

13.1 Except with the prior
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Board, no Shareholder shall, whilst
or for <<Insert number of months
eholder:

13.1.1 carry on or b
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13.1.2 deal with a
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2 months, a client or customer of

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14. [Anti-Corruption¹

14.1 Each party underta
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¹ Only include this clause if it is relevant to the c

size and likelihood of anti-corruption practices.

14.1.2 shall maintain
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cedures designed to prevent any
d in the Bribery Act 2010) from
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14.2 The undertakings in
and apply to action
whether directly or
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by each party to each other party
Shareholder in any capacity and
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15. Dividend Policy

A minimum of <<Insert p
Section 736 of the Act) o
derived from the audited a
as dividends to the Shareh
months after delivery of th
approval and the Shareho
members of the Company t

distributable profits (as defined in
Financial Year of the Company
for such period will be distributed
Insert number of months e.g. 3>>
the directors of the Company for
r respective rights and powers as
is done.

16. Winding Up

16.1 If at any time an ob
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Company arises the Shareholders
to secure the timely winding up of
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ates at a board meeting to approve
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16.2 The Shareholders
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17. Confidentiality

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where such obligations, required to

under appropriate confidentiality or entity to whom any party is information by law;

17.1.3 not use any contemplated

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17.1.4 not to make any Confidential

any way or part with possession of

17.1.5 ensure that done by that 17.1.1 to 17.1.4

or advisors does any act which, if of the provisions of Sub-clauses

17.2 The provisions of their terms, notwith

continue in force in accordance with of this Agreement for any reason.

18. Conflict with the Articles

Insofar as any provision of the Articles the provisions of require the Shareholders to the provisions hereof.

conflict with any provisions of the prevail. If any Shareholder shall so articles are amended to agree with

19. Duration

This Agreement shall continue in effect and shall bind each of the Shareholders accordingly registered member in respect of the commencement of the Company

effect and shall bind each of the be the beneficial owner and/or the Company until the date of

20. Notices and Service

20.1 All notices to be given shall be delivered personally or by email and shall be deemed duly served

shall be in writing and shall either by email and shall be

20.1.1 in the case of

onally, at the time of delivery;

20.1.2 in the case of Business Day

by first class prepaid post, 2 Clear Day; and

20.1.3 in the case of the time of then on the copy is sent next Business Day

g normal Business Hours then at outside normal Business Hours Day provided that a confirmatory post or by hand by the end of the

20.2 Any notice to a Shareholder as set forth in the Shareholder may have

to the address of such Shareholder or to such other address as such to this Clause.

20.3 [Any notice to the Company or to such person pursuant to this Clause

to the registered offices of the Company may have designated

21. No Partnership or Agency

- 21.1 This Agreement shall not be construed as to create a partnership or joint venture between and among the parties.
- 21.2 Nothing in the Agreement shall be construed so as to constitute any of the parties the agent of another party.

22. No Waiver

No failure or delay by either party in exercising its rights under this Agreement shall be deemed to be a waiver by either party of a breach of any provision of this Agreement or to be a waiver of any subsequent breach of the same or any other provision.

23. Severance

If any provision of this Agreement is held by a court or other competent authority to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be valid and enforceable to the maximum extent permitted by law, and the affected provision shall be deemed to be amended so as to conform to applicable law.

24. Entire Agreement

- 24.1 This Agreement constitutes the entire agreement between the parties and supersedes and replaces all previous agreements and understandings between the parties.
- 24.2 Each party acknowledges that, in entering into this Agreement, it is not relying on any representation or warranty made by the other party, except as expressly stated in this Agreement.
- 24.3 Without limiting the remedies available at law, neither party shall have any remedy in respect of a breach of this Agreement made to him upon which he may rely, and a party's only remedy is for breach of contract. This Agreement purports to exclude liability for any fraud or negligent misstatement.

25. Non – Assignment

This Agreement is personal to the parties and neither party may assign, mortgage, charge, sub-license or sub-license [or] charge (otherwise than as expressly provided hereunder, or sub-contract any of its obligations hereunder, except in accordance with the provisions of this Agreement.

26. Further Assurance

Each party shall from time to time and at its expense (before and after its termination) do all such things as may be reasonably necessary in order to give effect to the provisions of this Agreement.

27. Costs

The costs and expenses (including legal and accountancy expenses) of

the preparation, negotiation and execution of this Agreement and associated documentation shall be borne by the party who has caused this Agreement to be prepared.

this Agreement and associated

28. Applicable Law and Jurisdiction

28.1 This Agreement shall be governed by the laws of England and Wales.

construed in accordance with the

28.2 The parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

ve] [non-exclusive] jurisdiction of

IN WITNESS WHEREOF this Agreement has been executed and signed in the presence of the witnesses before written

executed the day and year first

SIGNED by

<<Name of Shareholder A>>

In the presence of

<<Name & Address of Witness>>

SIGNED by

<<Name of Shareholder B>>

In the presence of

<<Name & Address of Witness>>

SIGNED by

<<Name of Shareholder C>>

In the presence of

<<Name & Address of Witness>>

SIGNED by

<<Name of Shareholder D>>

In the presence of

<<Name & Address of Witness>>

SIGNED by

<<Insert name of person signing for and on behalf of <<Insert Company Name>>>

In the presence of

<<Name & Address of Witness>>

Name of Shareholder		Amount of Loan	
		£	
<<	>>	<<	>>
<<	>>	<<	>>
<<	>>	<<	>>
<<	>>	<<	>>
<<Insert terms and conditions for loan in this Agreement>>			

SAMPLE

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Share Issue

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