

THIS **SHAREHOLDERS AGREEMENT** is entered into on

**BETWEEN**

- (1) whose principal place of business is at ("**Party 1**")
- (2) whose principal place of business is at ("**Party 2**")

**WHEREAS**

(A) Party 1 and Party 2 have agreed to form in a new jointly-owned company (the **Company**) which will acquire certain rights and assets, and otherwise be established and carry on business, in the manner set out in this Agreement.

(B) Party 1 and Party 2 have agreed that their relations as shareholders in the Company shall be governed by the terms of this Agreement.

**It is agreed** as follows:

**1. Interpretation**

**Definitions**

1.1 In this Agreement:

**Party 1 Director** means a director of the Company appointed by Party 1 pursuant to clause 4.1;

**Party 1 Shares** means Party 1 ordinary shares of each in the capital of the Company;

**Party 2 Director** means a director of the Company appointed by Party 2 pursuant to clause 4.1;

**Party 2 Shares** means Party 2 ordinary shares of each in the capital of the Company;

**Board** means the board of directors of the Company, or any duly appointed committee of it;

**the Business** means the business to be carried on by the Company as in accordance with the Business Plan as updated by the Board from time to time;

**Completion** means completion of the establishment of the Company in accordance with clause 2.2;

**Conditions Precedent** means the conditions precedent to establishment of the Company set out in clause 16;

**Company** means , the company to be incorporated pursuant to the terms of this Agreement;

**member of the Party 1 Group** means Party 1 and any company of which more than 50 per cent of the equity voting capital is owned or controlled, directly or indirectly, by Party 1;

**member of the Party 2 Group** means Party 2 and any company of which more than 50 per cent of the equity voting capital is owned or controlled, directly or indirectly, by Party 2;

**Memorandum and Articles** means the Memorandum and Articles of Association of the Company;

**parties** means Party 1 and Party 2.

### **Statutory Provisions**

1.2 Except where the context requires otherwise, references to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Agreement) from time to time.

### **Headings**

1.3 The headings in this Agreement do not affect its interpretation.

### **Agreed Form**

1.4 A reference to a document in this Agreement in the **agreed form** is to a document agreed by the parties and initiated by them or on their behalf for identification purposes.

### **Currency**

1.5 Any reference in this Agreement to an amount in shall include its market rate equivalent at the relevant time in any other currency or combination of currencies.

## **2. Establishment of Company**

### **Incorporation**

2.1 As soon as reasonably practicable after the date of this Agreement and in any event before Completion referred to in clause 2.2, the parties shall cause the Company to be incorporated in as a company limited by shares with the following characteristics:

- (a) its name shall be "" (or such other name as the parties may agree);
- (b) the Memorandum and Articles of the Company shall be substantially in the agreed form;
- (c) it shall have an authorised share capital of divided into Party 1 Shares and Party 2 Shares;
- (d) its registered office shall be at ;
- (e) the first auditors of the Company shall be .

### **Completion**

2.2 Completion shall take place on (or, if later, within ten (10) days after the Conditions Precedent are fulfilled or waived) when the following events shall take place, namely:

2.2 Completion shall take place on when the following events shall take place, namely:

(a) Party 1 shall subscribe unconditionally for Party 1 Shares in cash at par; it shall pay for the shares in cleared funds for the account of the Company;

(b) Party 2 shall subscribe unconditionally for Party 2 shares in cash at par; it shall pay for the shares in cleared funds for the account of the Company;

(c) the parties shall ensure that the Company allots and issues credited as fully paid:

(i) Party 1 Shares to Party 1 (including the initial shares subscribed for by Party 1 on incorporation of the Company); and

(ii) Party 2 shares to Party 2;

and that the names of Party 1 and Party 2 are entered in the Company's register of members as the respective holders of the shares subscribed by them and that share certificates are issued to Party 1 and Party 2 for those shares; and

(d) the following agreed form ancillary agreements shall be entered into, namely:

(i) the Asset Transfer Agreement between and the Company relating to the transfer of asset;

(ii) the Distribution Agreement between and the Company relating to the distribution of products;

(iii) the Technology Licence between and the Company relating to the licensing of technology;

(iv) the Intellectual Property Licence between and the Company relating to the licensing of intellectual property rights;

(v) the Supply Agreement between and the Company relating to the supply of materials;

(vi) the Services Agreement between and the Company relating to the provision of services to the Company as therein provided;

(vii) the Trade Mark Agreement(s) between and the Company relating to licensing of the use of the trade mark.

### **3. Capital, further finance and dividend policy**

#### **Share Capital**

3.1 The Company shall, in accordance with and following completion of the events and transactions referred to in clause 2, have an issued share capital of consisting of Party 1 Shares owned by Party 1 and Party 2 Shares owned by Party 2.

#### **Increase in Share Capital**

3.2 The share capital of the Company may be increased from time to time by such sum as the parties may agree but so that in any event (unless otherwise agreed) such increased share capital shall be held in the proportions of 50 per cent by Party 1 (or other member of the Party 1 Group) and 50 per cent by Party 2 (or other member of the Party 2 Group).

### **Further Finance**

3.3 (a) If the Board considers at any time that the Company requires further finance, the Company shall (without prejudice to clause 5) first approach its own bankers. The parties shall not be obliged to provide guarantees for the Company's liabilities in respect of such finance but, if they do so, they shall be given in equal proportions. The liabilities of the parties under any such guarantees shall be several and, if a claim is made under any such guarantee against a party, that party shall be entitled to a contribution from the other party such as to ensure that the aggregate liability is borne in equal proportions.

(b) If finance cannot be obtained from the Company's own bankers, neither party shall be obliged to provide any such further finance to the Company. Any such finance which the parties do agree to provide shall be provided by the parties in equal proportions (whether by way of subscription of share capital, loan stock or otherwise).

(c) The provisions of this clause 3.3 shall apply mutatis mutandis to any finance or guarantees provided for the benefit of any subsidiaries of the Company.

### **Party Ceasing as Shareholder**

3.4 Upon either party ceasing to be a shareholder in the Company, the other party shall procure that any finance provided by that party under clause 3.3 shall be repaid to it and that it shall be relieved of its obligations under any guarantees provided under clause 3.3 (provided that, notwithstanding the termination of this Agreement, a party ceasing to be a shareholder shall remain liable under any such guarantees for any claims arising in respect of any default by the Company occurring during the period during which that party was a shareholder in the Company).

### **Dividend policy**

3.5 The parties intend that in respect of each Financial Year the Company distributes fifty per cent (50%) (or such other percentage as the parties may agree from time to time in writing) of the consolidated profit (after taxation, minority interests and extraordinary items) of the Company Group as shown by the Company's financial statements for that Financial Year and available for distribution in accordance with applicable law.

## **4. Directors and management**

### **Board of Directors**

4.1 The business and affairs of the Company shall (subject to the Reserved Shareholders Matters set out in clause 5) be managed by the Board of the Company. The Board shall consist of the following persons of which:

(a) Party 1 shall be entitled to appoint and maintain in office Directors (and to remove any Director so appointed from office and to appoint another in the place of any Director so removed); and

(b) Party 2 shall be entitled to appoint and maintain in office Directors (and to remove any Director so appointed from office and to appoint another in the place of any Director so removed).

### **Appointments and Removals**

4.2 Every appointment and removal by Party 1 or Party 2 of a Director pursuant to its entitlement shall be notified in writing to the other party and the Secretary of the Company. Party 1 and Party 2 shall each use their respective votes in the Company to ensure that the Board of the Company is constituted by persons appointed in the manner set out in this Agreement.

### **Quorum**

4.3 The quorum for the transaction of business at any meeting of the Board shall be at least one (1) Party 1 Director (or his alternate) and at least one (1) Party 2 Director (or his alternate) present at the time when the relevant business is transacted.

### **Voting**

4.4 At any meeting of the Board, each Director shall be entitled to one vote. Any Director who is absent from any meeting may nominate any other Director to act as his alternate and to vote in his place at the meeting. If the parties are not represented at any meeting of the Board by an equal number of Party 1 Directors and Party 2 Directors (including alternates), then one of the Directors so present nominated by the party which is represented by the fewer Directors shall be entitled at that meeting to such additional vote or votes as shall result in the Directors so present representing each party having in aggregate an equal number of votes. The Chairman shall not have a casting vote.

### **Notice and Agenda**

4.5 At least 14 days written notice shall be given to each of the members of the Board of any meeting of the Board, provided always that a shorter period of notice may be given with the written approval of at least one (1) Party 1 Director and at least one (1) Party 2 Director. Any notice shall include an agenda identifying in reasonable detail the matters to be discussed at the meeting together with copies of any relevant papers to be discussed at the meeting.

### **Decisions of Board**

4.6 Party 1 and Party 2 agree to accept as binding upon them any decision affecting the Company, and/or the relationship of the Company with Party 1 or Party 2 (as the case may be), duly taken by the Board of the Company in which their respective nominated Directors (or their alternates) have concurred **except that** the Reserved Shareholder Matters covered by clause 5 shall require the prior approval of the parties.

## 5. Reserved shareholder matters

### Matters Requiring Approval of the Parties

5.1 The following matters (***Reserved Shareholder Matters***) shall require the prior approval of Party 1 and Party 2:

- (a) any issue of shares (or securities convertible into shares) of the Company other than an issue of shares to Party 1 and Party 2 in the proportions specified in clause 3.2;
- (b) any sale of the whole or any substantial part of the Company;
- (c) any alteration to the Memorandum and Articles;
- (d) any borrowing by the Company which would result in the aggregate borrowings of the Company being in excess of or such other amount as the parties shall from time to time determine;
- (e) approval of the annual budget and operating plan of the Company;
- (f) any expansion of the marketing territory of the Company beyond ;
- (g) any development of the business line of the Company beyond (as improved or enhanced from time to time);
- (h) any repayment by the Company of any loan made by a member of the Party 1 Group or the Party 2 Group;
- (i) filing by the Company for liquidation, receivership or reorganisation under any insolvency laws or any similar action;
- (j) the formation of any subsidiary of the Company;
- (k) the purchase by the Company of the shares or other securities, stock or debentures of any other company;
- (l) the commencement, settlement or abandonment of litigation or admission of liability by the Company involving a dispute in excess of (other than a claim against a member of the Party 1 Group or a member of the Party 2 Group);
- (m) the approval of, or any material change to, the service/employment contracts with the Managing Director or any executive director;
- (n) the appointment (and removal) and the terms of reference of the Managing Director;
- (o) the appointment (or removal) of the auditors of the Company;
- (p) the entry into of any contract or commitment by the Company having a value or likely to involve expenditure by the Company in excess of (or such other limit as the parties shall from time to time agree).

## Method of Approval

5.2 Approval for the purposes of clause 5.1 may be given by Party 1 and Party 2 either in writing or by unanimous resolution at a general meeting of the shareholders of the Company or by written resolution.

## Subsidiaries

5.3 The provisions of clause 5.1 shall apply equally to any matters undertaken by a subsidiary of the Company as if references therein to "the Company" included any such subsidiary.

## 6. Transfer of shares

### Transfer Notice

6.1 Each party hereby undertakes that, if at any time any member of its Group shall desire to sell or otherwise dispose of any of its shares in the Company other than to another member of its Group, then:

(a) the relevant party (***the Selling Party***) shall give notice in writing to the other party (***the Continuing Party***) of such desire and of its proposed price (in this clause referred to as a ***Transfer Notice***);

(b) within thirty (30) days after receipt of the Transfer Notice, the Continuing Party shall have the right by notice in writing (a ***Purchase Notice***) to inform the Selling Party that it wishes to purchase the shares included in the Transfer Notice (the ***Sale Shares***) at such price as may be specified in the Transfer Notice;

(c) if the Continuing Party so serves a Purchase Notice, the sale and purchase of the Sale Shares shall be completed accordingly; if not, either the Selling Party or the Continuing Party shall be entitled to request the Auditors of the Company (acting as experts and not as arbitrators) to determine the price (herein called the ***Fair Price***) representing in their opinion a fair selling value of the shares to be sold as between a willing buyer and a willing seller;

(d) upon the Fair Price being so determined, the Selling Party may give to the Continuing Party a further notice in writing (herein called a ***Second Transfer Notice***) offering to sell all of the Sale Shares at the Fair Price;

(e) if the Continuing Party serves notice within thirty (30) days of receipt of the Second Transfer Notice accepting such offer, the sale and purchase of the Sale Shares shall be completed accordingly; if not, the Selling Party or any other member of its Group shall thereafter be entitled to sell the Sale Shares at not less than the Fair Price to a third party purchaser within a period of sixty (60) days but not otherwise;

(f) if no such sale to such a third party purchaser is concluded within sixty (60) days (or such other period as the parties may agree in writing), then it is agreed that either party may by written notice request that the Company shall be put into liquidation forthwith and, in that event, the parties undertake to propose and support any resolution that may be necessary to liquidate the Company.

## **No Dealings in Beneficial Interest**

6.2 Neither Party 1 nor Party 2 (nor any member its respective Group) shall deal or attempt to deal with the beneficial interest in any share of the Company except by transfer of its shareholding permitted in accordance with this clause 6.

## **Undertaking by Transferee**

6.3 No transfer of shares of the Company shall be registered or become effective unless the transferee shall first have entered into an Agreement undertaking to be bound by this Agreement (including this clause 6) to the same extent as the transferor would have been bound had the transfer not been effected.

## **Minimum Period**

6.4 Neither party (nor any member of its respective Group) shall be entitled to serve a Transfer Notice under clause 6.1 prior to years from the date of this Agreement.

## **Shareholder Ceasing to be a Subsidiary**

6.5 Each of Party 1 and Party 2 respectively undertakes to procure that, if any member of its Group holding shares in the Company ceases at any time to be a subsidiary of that party, that subsidiary shall prior to so ceasing have transferred beneficially all its shares in the Company held by it at the time in question to the relevant party (or another member of its Group).

## **7. Confidentiality**

### **Confidentiality**

7.1 Each of the parties shall at all times use all reasonable endeavours to keep confidential (and to ensure that its employees and agents shall keep confidential) any information which it may acquire in relation to the Company and its subsidiaries or in relation to the clients, business or affairs of the other party (or any member of its respective Group) and shall not use or disclose such information except with the consent of the other party or, in the case of information relating to the Company or one of its subsidiaries, in the ordinary course of advancing the Business. The restriction in this clause 7.1 shall not apply to any information:

- (a) which is publicly available or becomes publicly available through no act of the first mentioned party;
- (b) which was in the possession of that party prior to its disclosure;
- (c) which is disclosed to that party by a third party which did not acquire the information under an obligation of confidentiality;
- (d) which is independently acquired by that party as the result of work carried out by an employee to whom no disclosure of such information had been made;
- (e) which is disclosed in accordance with the requirements of law, any stock exchange regulation or any binding judgment, order or requirement of any court or other competent



authority.

### **Employees, Agents etc**

7.2 Each party shall use all its respective powers to procure (so far as it is able) that the Company and its subsidiaries shall each use all reasonable endeavours to ensure that the officers, employees and agents of each of them shall observe a similar obligation of confidence in favour of the parties to this Agreement.

### **Survival after Termination**

7.3 The provisions of this clause 7 shall survive any termination of this Agreement.

## **8. Restrictions on the Parties**

Neither Party 1 nor Party 2 nor any member of its respective Group shall (either solely or jointly with any other person, firm or company and whether directly or indirectly) carry on or be engaged in or interested (except as the holder for investment of securities dealt in on a stock exchange and not exceeding 10 per cent in nominal value of the securities of any class) in any Competing Business during the period of this Agreement. For this purpose **Competing Business** means any business that competes with .

## **9. Term**

### **Term and Notice**

9.1 This Agreement shall continue for a minimum period of years and thereafter from year to year, provided that either Party 1 or Party 2 shall be entitled (without prejudice to the application of clause 6 (*Transfer of Shares*)) to terminate this Agreement by giving months' prior notice (to expire not earlier than years after the date of this Agreement) in writing served upon the other party.

### **Liquidation**

9.2 Upon, or as soon as practicable after, the termination of this Agreement pursuant to a notice under clause 9.1, the parties shall use their respective powers and votes to cause the Company to be placed in liquidation. The parties shall co-operate to ensure that all contracts entered into by the Company (or any subsidiary thereof) prior to such termination shall be duly completed subject to such arrangements as the parties may mutually agree.

### **Default and Insolvency**

9.3 A party (the Terminating Party) shall be entitled to terminate this Agreement forthwith by notice in writing to the other party if any of the events set out below shall occur in relation to the other party, namely:

(a) if that party shall commit any material breach of its obligations under this Agreement and shall fail to remedy the same (or implement plans to the reasonable satisfaction of the Terminating Party to prevent the recurrence of such breach) within sixty (60) days after being

given notice by the Terminating Party to do so (such notice to indicate the latter's intention to exercise its rights under this clause); or

(b) if that other party shall go into liquidation whether compulsory or voluntary (except for the purposes of a bona fide reconstruction or amalgamation with the consent of the other party, such consent not to be unreasonably withheld) or if a petition shall be presented or an order made for the appointment of an administrator in relation to that other party or if a receiver, administrative receiver or manager shall be appointed over any part of the assets or undertaking of that other party; or

If notice of termination is served under this clause 9.3, the Terminating Party shall have the right, exercisable by notice (a Purchase Notice) on the other party (the Affected Party) to be given within fourteen (14) days of the notice of termination, to require the Affected Party to sell all of its shares in the Company to the Terminating Party. The price payable for such shares shall be the Fair Price to be agreed between the parties or, failing agreement within fourteen (14) days, to be determined in the manner set out in sub-clause (c) of clause 6.1. Completion of the sale and purchase shall take place within seven (7) days after such determination. The parties shall exercise all voting and other rights available to them to ensure the implementation of this clause and the registration of any resulting transfer of any shares in the Company. If no such Purchase Notice is given by the Terminating Party, the Company shall be put into liquidation forthwith."

## **10. Supremacy of this agreement**

Party 1 and Party 2 shall each use their respective votes in the Company and all other means at their disposal so as (a) to ensure that this Agreement is duly performed and (b) to ensure that the provisions of the Memorandum and the Articles are not infringed (save that, in the event of any conflict between this Agreement and the Memorandum and the Articles, this Agreement shall prevail as between the parties).

## **11. Costs**

The costs of and incidental to the incorporation of the Company shall be borne and paid by the Company. Each of the parties shall pay its own costs incurred in the preparation and execution of this Agreement.

## **12. No partnership or agency**

Nothing in this Agreement shall be deemed to constitute a partnership between the parties, or constitute either party the agent of the other party for any purpose, or entitle either party to commit or bind the other party (or any member of its respective Group) in any manner.

## **13. Entire agreement**

This Agreement and any other Agreements entered into on Completion pursuant to clause 2.2 set out the entire agreement and understanding between the parties with respect to the subject matter of it. It is agreed that:

(a) neither party has entered into this Agreement in reliance upon any representation, warranty or undertaking of the other party which is not expressly set out in this Agreement;

(b) a party shall have no claim or remedy in respect of misrepresentation (whether negligent or otherwise) or untrue statement made by the other party;

(c) this clause shall not exclude any liability for fraudulent misrepresentation.

#### **14. Mutual Consultation and Goodwill**

The parties confirm their intention to promote the best interests of the Company and to consult fully on all matters materially affecting the development of the Business. Each party shall act in good faith towards the other party in order to promote the success of the Company.

#### **15. Assignment**

Neither of the parties (nor any member of its respective Group) shall be entitled to, nor shall they purport to, assign this Agreement or any of its rights or obligations hereunder nor grant, declare, create or dispose of any right or interest in it, except to a transferee of that party's shares in the Company in accordance with clause 6 of this Agreement.

#### **16. Conditions Precedent**

##### **Conditions**

16.1 Completion under clause 2.2 shall be conditional upon each of the following conditions having first been satisfied or waived:

##### **Non-fulfilment of conditions**

16.2 Each party shall use all reasonable endeavours to procure that the Conditions Precedent are fulfilled as soon as possible. If they shall not have been fulfilled (or waived) by , this Agreement (other than the provisions of clause 7 (*Confidentiality*)) shall, unless otherwise agreed, thereupon automatically cease and terminate and neither party shall have any claim of any nature whatsoever against the other party.

#### **17. Amendment**

17.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of the parties to it.

17.2 Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation, and the rights and obligations of the parties under or pursuant to this Agreement shall remain in full force and effect, except only to the extent that they are varied.

#### **18. No Rights of Third Parties**

A person who is not a party to this Agreement shall have no right to enforce any of its terms.

## **19. Dispute Resolutions**

## **20. Counterparts**

20.1 This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original, but all of which together constitute one and the same instrument.

## **21. Severance**

21.1 If and to the extent that any provision of this Agreement is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement. The parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Agreement not so affected) so as to re-establish an appropriate balance of the commercial interests of the parties.

## **22. Notices and service**

22.1 Any notice to be given by one party to the other under, or in connection with, this Agreement shall be in writing and signed by or on behalf of the party giving it. It shall be served by sending it by email to the address set out in clause 22.2, or delivering it by hand, or sending it by pre-paid recorded delivery, special delivery or registered post, to the address set out in clause 22.3 and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this clause 22). Any notice so served by hand, e-mail, fax or post shall be deemed to have been duly given:

- a. in the case of delivery by hand, when delivered;
- b. in the case of fax or electronic mail on a Business Day prior to 5.00 pm, at the time of receipt;
- c. in the case of prepaid recorded delivery, special delivery or registered post, at 10am on the second Business Day following the date of posting

provided that in each case where delivery by hand or by fax occurs after 5pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day. References to time in this clause are to local time in the country of the addressee.

22.2 The addresses of the parties for the purpose of clause 22.1 are as follows:

### **Party 1**

Address:

E-mail:

For the attention of:

### **Party 2**

Address:

E-mail:

For the attention of:

22.3 A party may notify the other party to this Agreement/ of a change to its name, relevant addressee, address or fax number for the purposes of this clause 22, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

22.4 All notices under or in connection with this Agreement shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

22.5 Service of any legal proceedings concerning or arising out of this Agreement shall be effected by causing the same to be delivered to the party to be served at its principal place of business as specified in this Agreement, or to such other address as may from time to time be notified in writing by the party concerned.

**As WITNESS** this Agreement has been signed by the duly authorised representatives of the parties the day and year above written.