SHAREHOLDER AGREEMENT - FACT FINDER

To help to ensure that we have the necessary background information to prepare this agreement, please complete as much of the information sought in the checklist on page 2 of this fact finder as you are able prior to your meeting with us.

PRIMARY COMPANY DETAILS *(please print)*

Name of Company _____

Trading Name (if different) _____

Registered Office or

Postal Address _____

ACN _____

Contact Person _____

Contact Nos (Business) _____ (Home) _____

(Fax) _____ (Mobile) _____

Email address _____

Capital

Class of Share	Total On Issue

Preferred address for drafts: ☐ Email address or ☐ Postal address

Annual client update (complimentary) ☐ Yes ☐ No

Documents - Preferred storage ☐ Own arrangements ☐ With ALG

Details of person who referred you to ALG

name, address & email *(for on-forwarding copies of documents)*

_____

_____

_____

Other Agreement(s) Needed? If yes, please provide instructions and indicate type of agreement.	**Yes/No**
Funded Business Succession or "buy-sell" agreement between Principals, ie dealing with the departure of a principal issues due to ill-health or death and funded by insurance or other financial resources	
Employment agreement between the business and a related person	
Loan agreement between the business and a related entity/person	
Service agreement between the business and a related entity/person	
Estate planning documents, eg Wills	

company/shareholderagreements/checklist/fact finder

SHAREHOLDER DETAILS *(please print)*

1ST SHAREHOLDER _____

Registered Office or

Postal Address _____

ACN (if company) _____

No. Directors to sign documents, ie 1 or 2 _____

Contact Person _____

Contact Nos (Business) _____ (Home) _____

(Fax) _____ (Mobile) _____

Is this person the person who controls the shareholder: ☐ Yes ☐ No

(if not, provide details of controller, if any) _____

Email address _____

Preferred address for drafts ☐ Email address ☐ Postal address

Shares in company:

Currently held or yet to be issued?: _____

No. & class of shares held (or to be held) in Company ☐ Held ☐ To be issued

Percentage of total issued shares held (or to be held) _____

Director(s) on Board of Company name and address of 1st shareholder's nominee director(s) on the board of the Company (if none, say so): _____

2nd SHAREHOLDER _____

Registered Office or

Postal Address _____

ACN (if company) _____

No. Directors to sign documents, ie 1 or 2 _____

Contact Person _____

Contact Nos (Business) _____ (Home) _____

(Fax) _____ (Mobile) _____

Is this person the person who controls the shareholder: ☐ Yes ☐ No

(if not, provide details of controller, if any) _____

Email address _____

Preferred address for drafts ☐ Email address ☐ Postal address

Shares in company:

Currently held or yet to be issued?: _____

No. & class of shares held (or to be held) in Company ☐ Held ☐ To be issued

Percentage of total issued shares held (or to be held) _____

Director(s) on Board of Company name and address of 1st shareholder's nominee director(s) on the board of the Company (if none, say so): _____

ACCESS LAW GROUP

3rd SHAREHOLDER _____

Registered Office or

Postal Address _____

ACN (if company) _____

No. Directors to sign documents, ie 1 or 2 _____

Contact Person _____

Contact Nos (Business) _____ (Home) _____

(Fax) _____ (Mobile) _____

Is this person the person who controls the shareholder: ☐ Yes ☐ No

(if not, provide details of controller, if any) _____

Email address _____

Preferred address for drafts ☐ Email address ☐ Postal address

Shares in company:

Currently held or yet to be issued?: _____

No. & class of shares held (or to be held) in Company ☐ Held ☐ To be issued

Percentage of total issued shares held (or to be held) _____

Director(s) on Board of Company name and address of 1st shareholder's nominee director(s) on the board of the Company (if none, say so): _____

4th SHAREHOLDER _____

Registered Office or

Postal Address _____

ACN (if company) _____

No. Directors to sign documents, ie 1 or 2 _____

Contact Person _____

Contact Nos (Business) _____ (Home) _____

(Fax) _____ (Mobile) _____

Is this person the person who controls the shareholder: ☐ Yes ☐ No

(if not, provide details of controller, if any) _____

Email address _____

Preferred address for drafts ☐ Email address ☐ Postal address

Shares in company:

Currently held or yet to be issued?: _____

No. & class of shares held (or to be held) in Company ☐ Held ☐ To be issued

Percentage of total issued shares held (or to be held) _____

Director(s) on Board of Company name and address of 1st shareholder's nominee director(s) on the board of the Company (if none, say so): _____

DOCUMENTS NEEDED FOR PREPARATION OF AGREEMENT

For company and each shareholder: Copies of share or unit registers or ASIC records, any existing agreements and copies of family and unit trust deeds (the approval of appointors is often needed in these agreements)

CHECKLIST OF INFORMATION & YOUR COMMENTS

The following is a checklist of issues that may be utilised when reviewing or implementing a shareholders agreement:

Capital	**Answers**
Number and class of shares to be held by each shareholder (if no details on prior pages) 1 Note: state amount to be paid for shares. If any 2 Shareholder is to receive shares for some other consideration 3 eg; expertise or transfer of intellectual property – specify detail 4	Shareholder Name Class No. $/consideration
Provide details of ownership of key assets pre and post exit, eg; the intellectual property a principal might have brought into the business and might want to lease or licence to the business, rather than hand over to the business.	
Options (if relevant) Number and class of shares subject to options (if no details on prior pages) 1 2 3 4	Shareholder Name Class Number
Terms of exercise of options (if relevant) – specify	
Board Composition	
Min. number of directors	
Max number of directors	
• Quorum for meetings (number of directors) • Must any particular shareholder(s) be a compulsory part of the quorum	
Are alternate directors allowed	☐ Yes ☐ No
Is every shareholder entitled to a representation on the board?	☐ Yes ☐ No
If not, what is the qualification to have board representation, eg; more than 10% of issued ordinary capital	_____ %
Are there to be now (or in the future) independent board members, ie; one or more directors who do not represent a particular shareholder	☐ Yes ☐ No If so, how many?
Should agreement include procedures and rules for calling and conducting board meetings	☐ Yes ☐ No

Board Resolutions	
What is the board voting requirement; • Majority vote carries resolution ? or Unanimous vote to carry resolution ? • Does any one or more director have a veto vote, if so, on all or only some issues? If some only, what are they? [1] • Alternatively, are there any issues which require a particular shareholder's nominated director to agree to, before it can be carried? If so what issues[2] • Does the chairperson have a casting vote?	☐ Majority ☐ Unanimous ☐ Yes ☐ No Who _____ ☐ Yes ☐ No Tick issues on attached list ☐ Yes ☐ No
Shareholder Resolutions Are all resolutions on all issues to be resolved by the same majority or do some issues require a special majority ? If some issues require special resolution, identify those issues by reference to attachment "A". If special resolutions are required, what constitutes a special resolution? In calculating a majority (simple or special), are the number of shares held by each shareholder to be taken into account in calculating the required majority, or do shareholders get one vote each regardless of number of shares held? Does one vote per share only apply for limited issues, otherwise it is one vote per shareholder? If Yes, please identify the issues requiring one vote per share by reference to attachment "A".	☐ same majority for all issues ☐ some issues require special majority **Special Resolutions** ☐ % of all shareholders eg; 60%, specify: _____, or ☐ Unanimous ☐ one vote per shareholder ☐ one vote per share ☐ varies (see next question) ☐ Yes ☐ No
Should agreement include procedures and rules for calling and conducting shareholder meetings	☐ Yes ☐ No
Principal's Role **(ie; shareholder or controller of shareholder)**	
• Name of principals who are to work in business and details of their work role, duties, work hours etc • Are all principals to sign an employment agreement • Do principals own their shares	1 2 3 4 ☐ Yes ☐ No ☐ Yes ☐ No If no, which company / trust / person owns their shares Name of Principal Name of Shareholder 1 2 3 4

[1] See appendix A for possible issues
[2] See appendix A for possible issues

Capital / Loan contributions of principals.	
• Who has to put in what capital at commencement	Name Capital Amount Loan Amount 1 2 3 4
• What is the future obligation to provide money to fund operation: • Long funds as preferred method • Capital injection as preferred method • Must provide guarantees for company borrowings • Is obligation to provide money in proportion to percentage of shares held or other basis	☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No Other: specify:
• Is interest payable on moneys lent • At what rate (eg; same as bank OD rate)	☐ Yes ☐ No Rate:
• What happens if one shareholder lends more money than its required amount • Is <u>excess</u> to be treated as a loan to the company or to be treated as a loan to the other shareholders • Is the <u>excess</u> repayable in advance of other money lent by shareholders • Are loans to be recorded in a written agreement	☐ Company ☐ Other shareholders ☐ Yes ☐ No ☐ Yes ☐ No
Restrictions on other business interests. • Can principals work elsewhere or must they dedicate all their time to the business • Can they be involved in another competing or similar business	☐ Dedicate all time to company ☐ No restriction ☐ Other (specify): ☐ Yes ☐ No
Restraint upon leaving company • Are parties to be restrained from working for competing business on departure • If yes	☐ Yes ☐ No Where: For how long:
Profit Distribution • Policy • Will <u>all</u> profits be distributed and if part is required for working capital, then re-lent to company • Will part of profits be retained for working capital purposes. • If part of profits are to be retained each year for	☐ Yes ☐ No or ☐ Yes ☐ No ☐ Set threshold ☐ At director's discretion

working capital will there to be a set minimum percentage of profit which must be distributed or will it be left to discretion of directors to determine	____ % of profit
Sale of Shares	
Is a principal's right to hold shares in the company dependent upon his/her continued employment by the company.	☐ Yes ☐ No
If an existing shareholder leaves must he/she offer to sell their shares; • back to the company, or to the other shareholders • If to other shareholders, proportionately to all remaining shareholders in accordance with their % of shares already held (read next question first) • does one/some shareholder(s) have greater right to acquire them ?	☐ Company ☐ Other shareholders ☐ Proportionately, or ☐ Other (specify): ☐ Yes ☐ No If yes, specify:
In what circumstances are remaining shareholders compulsorily required to purchase a departing shareholders shares and when is it optional ? • Upon death • Upon total and permanent disability • Trauma event • Upon retirement • Upon voluntary departure for any reason • Upon expulsion by remaining shareholders for breach of agreement or other good reason What price is to be paid - full value or at a discount? At what discount?	<u>If purchase at what price</u> ☐ Compulsory ☐ Optional / ☐ full price ☐ discount price ☐ Compulsory ☐ Optional / ☐ full price ☐ discount price ☐ Compulsory ☐ Optional / ☐ full price ☐ discount price ☐ Compulsory ☐ Optional / ☐ full price ☐ discount price ☐ Compulsory ☐ Optional / ☐ full price ☐ discount price ☐ Compulsory ☐ Optional / ☐ full price ☐ discount price Applicable discount: _____ % of full value
Expulsion / compulsory exit of shareholder / principal Events that may trigger compulsory departure of a shareholder: • Unremedied breach of shareholder agreement • Insolvency • Conviction of an indictable criminal offence which may adversely affect the business • Death • Mentally incapacity	☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No

• Employment with company ends for any reason • Other (specify)	☐ Yes ☐ No ☐ Yes ☐ No

Funding payment for departing shareholder's shares
• Wish to fund full /part value by insurance
  • Death
  • Total and permanent disability
  • Trauma
 	
With respect to payments not funded by insurance when must purchaser(s) pay for shares.
	☐ Yes ☐ No
	☐ Yes ☐ No
	☐ Yes ☐ No
	
	a) Initial payment:-
	____ % of purchase price within ____ days (eg; 60)
	
	b) Balance of purchase price :-
	☐ by ____ equal monthly instalments over _____ months (eg 12, 24, 36), or
	☐ lump sum within ____ months (eg 12, 24, 36), or
	☐ other (specify):

Method of determining share value	Determining value of goodwill of company as an asset where necessary:
	☐ use agreed formula
	  ☐ No
	  ☐ Yes (specify):
	☐ to be determined by company accountant
	☐ to be determined by ____ (1, 2 or 3) independent accountants
	☐ Other (specify):
	
	Determining value of shares being disposed of:
	☐ use agreed formula
	  ☐ No
	  ☐ Yes (specify):
	☐ to be determined by company accountant
	☐ to be determined by ____ (1, 2 or 3) independent accountants
	☐ Other (specify):

If remaining shareholders opt not to purchase departing shareholders shares • Can departing shareholder nominate a 3rd party buyer • If yes, must buyer satisfy minimum financial and other requirements to qualify • Must remaining shareholders act reasonably in deciding to accept/refuse a 3rd party • If remaining shareholders refuse to allow a	☐ Yes ☐ No ☐ Yes ☐ No If yes, specify any special requirements: ☐ Yes ☐ No ☐ Yes ☐ No

new buyer in, should there be a deadlock breaking method to allow departing person to get their capital out. • If yes, what method? For example, if remaining partners wont buy and wont allow a suitable 3rd party purchaser in should company be wound up?	☐ Forced sale of business and wind up of company ☐ Other (specify):
Majority Sale If a majority of shareholders want to sell the whole business or all the company shares to a purchaser do you wish to be able to force a minority of shareholders who oppose the sale to join in? If yes, what majority of share shareholders should be able to force such a sale?	☐ Yes ☐ No ☐ simple majority ☐ special majority (eg: 70%) specify:- _____
Employee share option plan Do you wish to make provision for an employee share option plan?	☐ Yes ☐ No

Appendix A

(a) the adoption by the Board of any Annual Operating Plan, or Business Plan;

(b) subject to any express automatic right, the appointment or removal of any Directors (including the Chairman);

(c) remuneration or other compensation payable to the Chairman, all Directors and the top executives, and any changes to this remuneration or compensation;

(d) the issue of any new Shares, options or other securities in the Company including employee share incentive plans (unless that issue is specifically contemplated in the Business Plan current at that time);

(e) any amendment to the rights of existing Shares or any change to the capital structure of the Company;

(f) any borrowing by the Company (unless the borrowing is specifically contemplated in the Annual Operating Plan current at that time);

(g) the Company granting any mortgage, charge or other encumbrance over all or any of its assets (unless that mortgage, charge or other encumbrance is specifically contemplated in the annual Operating Plan current at that time);

(h) any transaction or dealing where the value exceeds $___;

(i) the acquisition or disposal by the Company of securities in any other Entity;

(j) the Company entering into or terminating any joint venture or strategic alliance (unless that course of action is broadly contemplated in the Business Plan current at that time);

(k) the merger or amalgamation of the Company or any of its related bodies corporate with any other Entity;

(l) the adoption of the annual accounts of the Company;

(m) any material change to the accounting principles applied in the preparation of the accounts of the Company or its related bodies corporate;

(n) the winding up or appointment of a controller, receiver or administrator to the Company or any of its related bodies corporate;

(o) the commencement or settlement of any litigation, arbitration or other legal proceedings to which the Company or any of its related bodies corporate is a party and which is material to the business of the Company or any of its related bodies corporate;

(p) the provision of any loan, guarantee or indemnity by the Company or any of its related bodies corporate;

(q) the adoption or amendment of any employee incentive scheme which involves shares in the capital of the Company or options;

(r) the cessation of any material aspect of the business of the Company or any other material change to the business of the Company;

(s) other than expressly provided for in this Agreement, any amendment to the Constitution.

Note: Under the Corporations Act, shareholders have very little control over the day-to-day activities of the board. Their rights are mainly limited to hiring and firing directors and other limited rights exercisable at AGM's or Extraordinary General Meetings.

In two principal ways a shareholders agreement can override those restrictions and provide shareholders a more direct say in what occurs.

First: to allow all or certain shareholders to nominate and change directors

Second: to require certain issues to be approved only with the (effective) consent the shareholders or an agreed majority of them. It is dangerous to pass the actual decision making to shareholders as it involves them in board activities and could give rise to responsibilities/liability attaching to directors. The same thing can be achieved however by requiring that an resolution of the board include the vote of the nominated directors of a majority of the shareholders (calculated by reference to an agreed majority for this purpose; it may be a bear majority in number or may be a majority by reference to shares held) This appendix lists a sample of the type of issues which may be made to such control. This list can be expanded or varied to suit your requirements..