

DATED / 2011

**DRAFT**

## **SHAREHOLDERS' AGREEMENT**

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Relating to

**[COMPANY LTD]**

between

**Mr. [X]**

and

**Mr. [Y]**

and

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**City, Country**

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**THIS AGREEMENT** is made the 00 day of [month] 2011,

**BETWEEN:-**

Mr. [X] (**GUM**)

full address

of the First Part;

AND

Mr. [Y] (**FCE**)

full address

of the Second Part;

AND

The Agreement regulates the terms and conditions between the Parties and their involvement and investment in **[COMPANY LTD] (MCL)**, to be established, and follows as a consequence of the **Letter of Intent** entered into on October 00<sup>th</sup> 2011. All figures are nominated in Euros/Pounds/Dollars, and the Euro figures will when appropriate be changed into US\$ at the exchange rate valid on the time of the transaction.

**WHEREAS:**

The Company has an authorised share capital of £/€//\$ 0,0 million divided into 000,000,000 shares with a par value of €/£/\$ 0.01 each

A. The current shareholders (and their shareholdings) in the Company are as follows:

<u>Name</u>	<u>Number</u>
[Y]	000,000,000
[X]	000,000,000
[Z]	000,000,000

B. The parties to the agreement have agreed to regulate their respective interests in the Company in the manner hereinafter appearing.

**NOW IT IS HEREBY AGREED** as follows:-

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 DEFINITIONS**

Definitions in this Agreement the following expressions have, except where the context otherwise requires, the following meanings:

**“affiliated company”**

in relation to any body corporate any subsidiary or the company of that body corporate or any other subsidiary of its holding company.’

**“the Accounting Date”**

means the Date when the year ends and the books are closed.

**“this Agreement”, “herein”, “hereof”, “hereunder”**

or other like words means this Agreement as originally executed and as varied, amended, supplemented or modified from time to time.

**“Articles”**

the articles of association of the Company as the same may be amended from time to time (and any reference to and “Article” shall be a reference to that article of the said articles of association).

**“Board”**

the board of directors of the Company.

**“the Business”**

means the business of running and operating the company.

**“the Company”**

means “[COMPANY LTD]”.

**“Completion”**

the performance by the parties of the obligations assumed by them respectively under clause 4 hereof.

**“Directors”**

the directors appointed from time to time by the Shareholders in accordance with the Articles.

**“Law”**

means and includes:-

- (i) any applicable law having a binding effect on either party;
- (ii) any statute, decree, constitution, judicial decision, legislation, ordinance, regulation, order or other legislative measure of any Governmental Entity.
- (iii) any present or future directive, regulation, request or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of Persons to whom such directive, regulation, requirement or request is addressed); and
- (iv) any treaty, pact, compact, or other agreement to which any Governmental Entity is a signatory or party;

**“NDA”**

means the None Disclosure Agreement issued on behalf of the Company.

**“the Shares”**

means the ordinary shares held by the Shareholders in the Company.

**“the Warranties”**

means the warranties representations and undertakings set out in Part A of the Agreement.

### 1.2 INTERPRETATION

Except where the context otherwise requires:

- (1) references to clauses, paragraphs, sub-paragraphs or Appendices are, unless otherwise specified, references to clauses, paragraphs, and sub-paragraphs of, and Appendices to, this Shareholders’ Agreement;
- (2) reference to any statute or other legislative provision shall be read to include any statutory or legislative modification or re-enactment thereof, or any substitution therefore;
- (3) the Agreement forms part of this Shareholders’ Agreement and shall have the same force and effect as if expressly set out in the body of this Shareholders’ Agreement and any reference to this Shareholders’ Agreement includes the Agreement;
- (4) reference to an "agreement" includes a concession, contract, deed, instrument, franchise, licence, treaty or undertaking (in each case, whether oral or written);
- (5) "indebtedness" includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money; and

### 1.3 HEADINGS

Clause and other headings are for ease of reference only and shall not affect the construction or interpretation of this agreement

### 1.4 CONSTRUCTION

- (1) Where the context so admits, words importing the singular number only shall include the plural and vice versa, and words importing neuter gender shall include the masculine or feminine gender.
- (2) In the case of conflict between the provisions of the Articles and the provisions of this Shareholders’ Agreement, the provisions of this Shareholders’ Agreement shall prevail.
- (3) In this Shareholders’ Agreement any reference to a document being “in the agreed terms” means in the terms agreed between the Shareholders and for the purpose of identification signed on behalf of each of the Shareholders (whether by their respective solicitors or other persons) or such other terms as may be agreed in writing by or on behalf of the parties in substitution for or in variation of those terms.

## 2. OBJECTS OF THE COMPANY

The primary purpose of the Company shall be to undertake the business of building and selling Super Mega Yachts based on the drawings, models and descriptions exclusively held by the company, and provided by GUM as his IP.

## 3. THE SHAREHOLDERS CONTRIBUTION

Each of the founding parts has agreed to contribute with the following resources;

### 3.1 MR. [Y];

is bringing with him an International network and the necessary funding requirements to fulfil the project.

3.1.1 The total Project requirement is according to the agreed Business Plan, **€ 26 million**.

3.1.2 The distribution of the funds is agreed as follows (ref § 21).

**€1.0 million** is paid to GUM as a consequence of signing this Agreement. The amount is meant to cover initial costs according to GUM's approved budget.

**€ 25.0 million** is paid into an escrow account. The funds placed in the account will serve as Proof of Funds in connection with the application to GIEK.

**€ 16.0 million** equivalent to 20% of the total building contract with Bergen Group Fosen (the shipyard) will be paid to the Shipyard after the BOD's approval of the Building Contract. It is anticipated that the process may last up to six months.

**€ 4.0 million** will be released to cover cost in connection with organising sales of the Part Ownership At Sea Program, all after the approval from the BOD, and according to agreed process plan.

**€ 2.0 million** will be released to Mr. [X]'s accountant, Mr. JD upon signing the Building Contract. The funds will in its entirety be used to pay participants according to the approved records kept in the [Compan], to the project prior to FCE entry to the Project.

**€ 3.0 million** will serve as a reserve for operational cost in the first year after delivery of Princess I. The funds shall only be released if requested by the Management and approved by the BOD.

### 3.2 MR. [X];

is bringing with him a wealth of experience as to build, sell and market Super Mega Yachts. He will be heading the Business Development and take full responsibility to provide all necessary services to the Company. As a part of this he will introduce and bring in the persons who have been vital to the project development and will act as part of management. The IP (Intellectual Property) which GUM possesses will serve as his part of the equity valued at € 1.0 million. All IP rights (drawings, know how, agreements, funding abilities – up to 80% - Euro 64.0 mill ) will in its entirety be transferred to ABC Ltd.

### 3.3 THE PRODUCTS;

Initially the product is the Princess (option of five vessels), but the project may be prolonged to encompass GUM's Giga yachts as well.

### 3.4 BUILDING THE COMPANY WITHOUT FURTHER INVESTORS

If the Parties decide to build and sell only the Princess, with an option of five boats, no further investments will be necessary, ref Clause 11, and this shall be the way forward.

### 3.5 BRINGING IN NEW OWNER(S)

If the Parties decide to seek for additional equity in the form of New Owner(s), the following shall be agreed;

3.5.1 each Party shall either give up the same number of shares to the New Investor or take the same out watering if a New Issue will be the preferred instrument to bring in the New Owner(s).

- 3.5.2 The Founding Partners shall unless unanimous agreed, never give up more than 49% of the total shareholding.
- 3.5.3 The initial attempt shall be to try to raise the amount needed and as decided and agreed in the Companies Business Plan, for between 33% and 40% of the Companies Equity.
- 3.5.4 This will give the following structure of the company's ownership;

<b>Name</b>	<b>Number</b>
[Y]	33.5%
[X]	33.5%
New Owner	33.0%

This scenario is meant as an example and is not binding in any way.

- 3.5.5 Any Investment may be given as a loan, repayable or with convertible rights. The Founding Parties will by unanimous decision agree on terms and condition for such an instrument.

## **4. COMPLETION**

- 4.1 Subject to the provisions of this Shareholders' Agreement, Completion shall take place and at such time as the parties consider to be as soon as practical after the last of the conditions precedent detailed in Clause 22 of the Agreement shall have been satisfied (or duly waived) or at such other place or on such other date as may be agreed by the parties.
- 4.2 On Completion the acts described in Clause 22 to the Agreement shall be executed.
- 4.3 If any party hereto fails to comply fully with the obligations imposed upon it hereunder the other parties shall not be obliged to comply with the obligations (other than the obligations referred to in clause 3 hereof) imposed upon them hereunder until the defaulting party has remedied the default in complying with the obligations as aforesaid.
- 4.4 If such remedy has not been carried out within three -3- months the Party defaulting shall offer the reminding Party all or parts of its holdings determined as to how severe the default is.

## **5 APPOINTMENT OF DIRECTORS**

- 5.1 The maximum number of directors holding office at any time shall be five unless expressly agree in writing by all of the Shareholders. It is acknowledged and agreed by the Shareholders that each shareholder shall have the right to appoint one director to represent that Shareholder on the Board. A director need not also be a shareholder in the Company. The Shareholders agree that save, with the unanimous consent of all of the Shareholders, a Sole Director shall not be appointed to administer the affairs of the Company.
- 5.2 The quorum required for meetings of the Board shall be three directors. In the case of an equality of votes at any meeting of the Board or of any failure to achieve unanimity neither the President nor any other director shall be entitled to a casting vote.
- 5.3 The Board of Directors shall appoint the Auditors under the terms of a auditors agreement to be prepared in Agreed Form.

## **6. CONDUCT OF THE AFFAIRS OF THE COMPANY**

- 6.1 The Shareholders shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (insofar as they are able by the exercise of such rights and powers) that at all times during the term of this Shareholders' Agreement:-
- 6.1.1 the business of the Company consists exclusively of the Business;

- 6.1.2 the accountant of the Company shall be DEF Limited or any such accountants as the parties hereto shall agree upon, such agreement not to be unreasonably withheld or delayed;
  - 6.1.3 the Company shall comply with the provisions of its Memorandum and Articles of Association;
  - 6.1.4 The Memorandum and Articles of Association will not be altered and no further articles or resolutions inconsistent therewith will be adopted or passed unless the terms of such articles or resolution have been previously approved in writing by a majority of the Shareholders;
- 6.2 The day to day management of the business of the Company shall be carried on by the CEO (subject to the terms of the agreement to be entered into in Agreed Form). All matters which are not of a routine nature (i.e. outside the ambit of the normal business to be conducted pursuant to the management agreement) shall be referred to the Board for approval.

## **7. REPRESENTATIONS AND WARRANTIES**

### **7.1 REPRESENTATIONS AND WARRANTIES OF THE SHAREHOLDERS**

- 7.1.1 Each of the Shareholders acknowledges that the other party to this Shareholders' Agreement have entered into this Shareholders' Agreement in full reliance on representations by each of the Shareholders in the terms of the Warranties. Each of the Shareholders now warrant to the other parties that the statements contained in the Warranties (so far as the Shareholder is aware) are at the date hereof, and on the Completion Date will be, true and accurate; and for the avoidance of doubt the Warranties shall be separate and independent and save as expressly provided shall not be limited by reference to any other clause or anything in this agreement.
- 7.1.2 Each of the Shareholders undertake with the other parties that they shall procure that no act or omission shall occur before the Completion Date which would constitute a breach of any of the Warranties (if they were given at the Completion Date) or which would make any of such Warranties inaccurate or misleading (if they were so given).
- 7.1.3 Each of the Shareholders undertake with the other parties that they will immediately disclose in writing to the other party any event or circumstance which may arise or become known to either of them after the date of this Shareholders' Agreement and prior to the Completion Date which is inconsistent with any of the Warranties or which had it occurred on or before the date of this Shareholders' Agreement would have constituted a breach of the Warranties.

### **7.2 SURVIVAL**

The representations and warranties contained in Clause 7.1 shall survive the Completion Date.

## **8. DIVIDENDS AND DISTRIBUTIONS**

Each of the Shareholders agree that insofar as the Company has profits available for distribution, no dividends shall be paid until all amounts outstanding on the Capital Accounts have been repaid to the Shareholders.

- 8.1 Once all amounts have been repaid to the Shareholders in respect of the Capital Accounts, insofar as the Company has profits available for distribution, all dividends shall be paid in accordance with the Articles.

## **9. TRANSFER OF SHARES**

Save as hereinafter provided no shares shall be transferred except in accordance with the provisions of this clause 9:

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- 9.1 Any Shareholder proposing to transfer any of the shares registered in its name ("the Proposing Transferor") shall give notice ("the Transfer Notice") to the Company that it wishes to transfer such shares.
- The Transfer Notice shall specify the number of shares that the Proposing Transferor wishes to transfer and the price per share at which it is prepared to sell the shares ("the Offer Price"). At the same time the Proposing Transferor shall deliver to the Company its share certificates for the total number of shares referred to in the Transfer Notice.
- The Transfer Notice shall constitute the Company the agent of the Proposing Transferor for the sale of the shares to any of the Shareholders of the Company willing to purchase ("the Purchasing Members") at the Offer Price or, if the Purchasing Member states on its application that it is not prepared to accept the Offer Price, at the fair value to be fixed by the auditors for the time being of the Company or, if no auditors are appointed, such independent accountant as the Company shall appoint for that purpose. A Transfer Notice shall not be revocable but may be withdrawn in accordance with clause 9.2 or 9.3.
- 9.2 In the event that the Offer Price specified from a Transfer Notice served under clause 9.1 shall be more than the fair value fixed by the auditor of the Company, the Proposing Transferor may, within seven days of receipt of the auditor's certificate of fair value, withdraw the Transfer Notice by notice in writing to the Company, failing which the Proposing Transferor shall be bound to transfer the shares comprised in the Transfer Notice at the Offer Price for each such share where the Purchasing Member has stated it is prepared to accept the Offer Price, or at the fair value for each such share where the Purchasing Member has required a fair value to be fixed;
- 9.3 In the event that the Company shall not find purchasers for all the shares comprised in the Transfer Notice the Proposing Transferor may, within seven days of notice of that fact, withdraw the Transfer Notice by notice in writing to the Company failing which the Proposing Transferor shall be bound to transfer the shares in respect of which acceptance(s) has/have been received at the Offer Price or fair value for each share as the case may be.
- 9.4 On receipt by the Company of a Transfer Notice it will, subject as hereinafter provided, within seven days offer, by notice in writing, the shares comprised in the Transfer Notice to the other members in proportion to the number of shares held by them respectively. The offer shall be open for acceptance in whole within twenty-eight days from the date of its despatch. In accepting the offer the Purchasing Member shall state in respect of all of the shares whether the Purchasing Member is prepared to accept the Offer Price or require a fair value to be fixed by the auditor as aforesaid.
- 9.5 At the expiration of the twenty-eight day period under clause 9.4 the directors of the Company shall allocate the shares comprised in the Transfer Notice to each Purchasing Member in the proportion to which they were entitled under the offer.
- 9.6 Within seven days of the expiry of the twenty-eight day period referred to in clause 9.4 the Company shall notify the Proposing Transferor and the Purchasing Member of the details of the acceptances received and the allocations made under clause 9.5.
- 9.7 If any Purchasing Member states in his acceptance of the offer that it is not prepared to accept the Offer Price, the Company shall request that the auditor certify in writing the sum which, in his opinion, is the fair value of a share and such sum shall be deemed to be the fair value. In so certifying, the auditor shall be considered to be acting as an expert and not an arbitrator.
- 9.7.1 The cost of obtaining the auditor's certificate shall be borne by these Purchasing Members who have required a fair value to be fixed.
- 9.7.2 A copy of the auditor's certificate shall be delivered to the Proposing Transferor and to each of the Purchasing Members.

- 9.8 The Proposing Transferor shall be bound, upon payment of the Offer Price or the fair value (as the case may be) for each share allocated to the Purchasing Member, which payment shall be made within ten days of receipt of the notification referred to in clause 9.6, to transfer the shares that have been so allocated to each Purchasing Member.
- 9.8.1 If after having become so bound the Proposing Transferor makes default in transferring the shares, the Company may receive the purchase money from the Purchasing Member and the Proposing Transferor shall be deemed to have appointed any one of the directors of the Company to act as its agent to complete, execute, date and deliver transfers of the shares to the Purchasing Member, and, upon such completion, execution, dating and delivery of the transfer, the Company shall hold the purchase money on trust for the Proposing Transferor. The receipt of the Company for the purchase money shall be a good discharge to a Purchasing Member.
- 9.9 If all the shares comprised in the Transfer Notice are not accepted by a Purchasing Member (or Purchasing Members), the Proposing Transferor may, if it shall have exercised its right to withdraw the Transfer Notice pursuant to clause 9.2 or 9.3, within six months of the date on which he received the notification referred to in clause 9.6 or, in the case of a Purchasing Member not accepting the Offer Price, within six months of the receipt by the Proposing Transferor of the auditor's certificate of fair value, transfer all (but not some) of the shares comprised in the Transfer Notice to any person or persons on a bona fide sale at a price per share not less than the higher of the Offer Price or the price specified in the auditor's certificate of fair value per share.
- 9.10 **PROVIDED ALWAYS** that the provisions of this Clause 9 shall not apply to a transfer of shares by a Shareholder, being a body corporate, to another body corporate which is a affiliated company of that member or a subsidiary of that member or which is another subsidiary of such holding company.

## **10. DEED OF ADHERENCE**

Any person (who is not already a party) acquiring any legal or beneficial interest in any Shares (whether by allotment or transfer or transmission) shall not be allotted those shares or be registered as their holder unless and until they have entered into and delivered a Deed of Adherence in a legally binding manner and any party which transfers and Shares shall procure the transferee (if not already a party) shall by the time of transfer, enter into and deliver a Deed of Adherence.

## **11. MATTERS REQUIRING UNANIMOUS CONSENT**

The Shareholders shall exercise all voting rights and other powers of control available to them so as to procure that the Company shall not, save with the unanimous consent of the Shareholders:

- 11.1 enter into any transaction except those contemplated by this Shareholders' Agreement;
- 11.2 create any Security Interest over the whole or any part of the undertaking, property or assets of the Company;
- 11.3 borrow any sum in excess of \$ 10,000 except as contemplated by this Shareholders' Agreement;
- 11.4 sell, transfer, lease, assign, or otherwise dispose or offer to dispose of any part of the undertaking, property and/or assets of the Company;
- 11.5 make any loan or advance or give credit in excess of \$ 10,000;
- 11.6 issue any un-issued shares or create or issue new shares;
- 11.7 alter any rights attaching to any class of shares in the capital of the Company;
- 11.8 consolidate, subdivide or convert any of its share capital or in any way alter the rights attaching thereto;

- 11.9 enter into any arrangement with creditors generally or do or permit or suffer to be done any act or thing whereby the Company may be wound up (whether voluntarily or compulsorily);
- 11.10 issue any debentures or other securities convertible into shares or debentures or any share warrants or any options in respect of shares;
- 11.11 hold any meeting of Shareholders or purport to transact any business at any such meeting unless there shall be present duly authorised representatives or proxies for each of the Shareholders;
- 11.12 carry on any part of the Business except through the Company;
- 11.13 appoint (except for the reappointment of the existing auditors) or remove its auditors;
- 11.14 adopt any new accounting policy or practice or make any material change to any of the accounting policies and practices of the Company or the Accounting Date, except as required by law or to comply with a new accounting standard;
- 11.15 make any material change to any of the insurance policies maintained by the Company;
- 11.16 commence or settle any litigation or arbitration proceedings;
- 11.17 enter into discussions or negotiations with a view to carrying on a new business or changing any business materially, disposing of any substantial part of its assets and/or business, purchasing the assets, business or share capital, wind up any company, list any share capital on any stock exchange or refinance any of its borrowings; and
- 11.18 Materially amend or terminate the Management Agreement.

## **12. COSTS**

All costs and expenses incurred by or on behalf of the parties to this agreement including all fees of representatives solicitors and accountants employed by any of the parties in connection with the negotiation preparation and execution of this agreement shall be borne solely by the party who shall have incurred the same and the other parties shall have no liability in respect of such costs and expenses.

## **13. EXERCISE OF CONTROL OR VOTING RIGHTS**

Each Shareholder undertakes with the other Shareholders to exercise all voting rights and powers of control available to it so as to give full effect to the terms and conditions of this Shareholders' Agreement including, where appropriate, the carrying into effect of such terms and conditions as if they were embodied in the Company's Memorandum and Articles of Association.

## **14. NON-DISCLOSURE OF INFORMATION**

None of the parties hereto shall divulge or communicate to any person (other than those whose province it is to know the same and with proper authority) or use or exploit for any purpose whatever any of the confidential knowledge or information or financial or trading information relating to the business and affairs of the Company or the other parties. This restriction shall apply for the duration of this Shareholders' Agreement and for a period of three years after the date of termination of this Shareholders' Agreement, but shall cease to apply to information or knowledge which:

- 14.1 may properly come into public domain through no fault of the relevant Shareholder; or
- 14.2 is required to be disclosed by law, or by the rules of any applicable stock exchange, or by governmental or state body, or any administrative or regulatory body; or
- 14.3 which was lawfully in the possession of a party prior to disclosure to it by a party to this Shareholders' Agreement; or

- 14.4 which is required to be disclosed for the purposes of providing a bona fide purchaser with information in the event of a sale of the Company (provided that the prior written consent of all Shareholders has been obtained).
- 14.5 each Shareholder or representative of a Shareholder shall sign the Company's NDA. A signed copy from all Parties shall act as Attachments to this agreement.

## **15. NO PARTNERSHIP**

None of the provisions of this Shareholders' Agreement shall be deemed to constitute a partnership between the Shareholders and none of them shall have the authority to bind the other in any way.

## **16. ASSIGNMENT**

None of the parties shall assign or transfer or purport to assign or transfer any of its rights or obligations hereunder without the prior written consent of the other Shareholders.

## **17. SEVERABILITY**

The provisions and restrictions of this Shareholders' Agreement are considered by the parties to be reasonable in all the circumstances, but if any of those provisions or restrictions are adjudged to go beyond what is reasonable for the protection of the legitimate interests of the Shareholders but would be adjudged reasonable if certain words were deleted or the period or the area of application reduced then such provision shall apply with such modification to make it valid and effective.

- 17.1 If any provision of this Shareholders' Agreement is found by an arbitrator, court, or other competent authority to be void and unenforceable, such provision shall be deemed to be deleted from this Shareholders' Agreement and the remaining provisions of this Shareholders' Agreement shall continue in full force and effect. Notwithstanding the foregoing the parties hereto shall thereupon negotiate in good faith to agree the terms of a mutually satisfactory provision or restriction to be substituted for the provision so found to be void or unenforceable.

## **18. SUPREMACY OF THIS AGREEMENT**

Where the provisions of the Articles conflict with the provisions of this Shareholders' Agreement the parties other than the Company agree that these provisions shall prevail, to the intent that the Shareholders shall, if so required, procure the amendment of the Articles to the extent required to enable the Company to be administered as provided in this Shareholders' Agreement.

## **19. ENTIRE AGREEMENT**

For the purposes of any additional conditions or variation of the conditions contained in this Shareholders' Agreement which are agreed in correspondence between the parties (or their solicitors with their authority) where the correspondence makes express reference to this clause are deemed to be incorporated in this Shareholders' Agreement and it is hereby acknowledged that this Shareholders' Agreement (with the incorporation of any such additional conditions or variation) constitutes the entire contract between the parties and supersedes all prior agreements understandings or arrangements (both oral and written) relating to the subject matter of this Shareholders' Agreement.

- 19.1 This Shareholders' Agreement can be varied at any time by the parties. No amendment, change, or addition to this Shareholders' Agreement shall be effective or binding on any party unless reduced to writing and executed by all parties.

## **20. FURTHER PROVISIONS**

### **20.1 NOTICES**

- (i) All notices relating to this Agreement shall be in writing and in English and shall not be effective unless given by personal delivery, registered mail, e-mail, telex or facsimile transmission if confirmed in writing to the respective addresses or to such other address, telex or telephone number as may be notified to the other party in writing and in the case of posting any such notice shall be deemed duly served at the expiration of seven (7) Business Days after the time of posting and in the case of personal delivery, telex or facsimile transmission, on the Business Day immediately following the date of delivery or transmission.

### **20.2 GOVERNING LAW**

- 20.2.1 This Shareholders' Agreement, regardless of where executed, shall be subject to, governed by and construed in accordance with the laws of England and Wales.?
- 20.2.2 For the benefit of the Shareholders, the parties agree that the courts of England and Wales are to have jurisdiction to settle any disputes (including claims for set-off and counterclaims) which may arise in connection with the legal relationship established by this Shareholders' Agreement or otherwise arising in connection with this Shareholders' Agreement.
- 20.2.3 The Shareholders and the Company hereby irrevocably waive any objection on the grounds of venue or forum non convenience, lis alibi pendens or similar grounds, and consent to service of process by mail or in any other manner permitted by applicable Law.

### **20.3 COUNTERPART DOCUMENT**

This Shareholders' Agreement may be signed in three or more counterparts, each of which shall be an original and together shall constitute one and the same document.

### **20.4 TIME OF THE ESSENCE**

Time shall be of the essence of this Shareholders' Agreement both as regards the dates and periods specifically mentioned and as to any dates and periods which may by agreement in writing between or on behalf of the parties be substituted for them.

### **20.5 NO WAIVER OF RIGHTS**

No failure or delay by any party in exercising any claim, remedy, right, power or privilege under this Shareholders' Agreement shall operate as a waiver nor shall any single or partial exercise of any claim, remedy, right, power or privilege preclude any further exercise of any other claim, right, power or privilege.

## **21. THE WARRANTIES**

The Warranties and undertakings referred to in Clause 7 are as follows except as provided for in this agreement:

### **21.1 CORPORATE MATTERS**

- 21.1.1 The Company will be incorporated on [Month] the 0<sup>st</sup> 2011, as a consequence of entering into this agreement.
- 21.1.2 The Company has an authorised share capital of € 2,0 million divided into 200,000,000 shares with a par value of €0.01 each.

- 21.1.3 The register of members and all other statutory books and minute books of the Company has been properly kept and are up-to-date and contain true full and accurate records of all matters required to be dealt with in them.
- 21.1.4 No allotment of capital has been made in contravention of the relevant International Business Companies Act.
- 21.1.5 The Companies has not at any time acquired or taken a charge over any of its own shares.
- 21.1.6 No unlawful distribution has been made by the Company.
- 21.1.7 The Company has properly and punctually made and filed all returns particulars resolutions and documents required by the International Business Companies Act or any other legislation to be filed with the registrar of companies or any other governmental or local authority and all such filings were and are correct. In particular all charges created by or in favour of the Company have (if appropriate) been registered in accordance with the provisions of the International Business Companies Act.

## **21.2 BORROWINGS AND LENDING**

Other than the loans due from it to the Shareholders details of which are shown in Clause 3 the Company has no outstanding borrowings due from it nor has it any outstanding loans due to it.

## **21.3 EMPLOYEES**

The Company has no employees as of today.

## **22. COMPLETION ACTS**

- 22.1 The Shareholders shall transfer the cash sums required to complete payment of the Capital Contributions to the Company referred to in Clause 3 to an account designated for this purpose by the Company;
- 22.2 The Company shall present evidence that the Capital Accounts have been opened in the books of the Company to reflect the Capital Contributions made by the Shareholders;
- 22.3 The Shareholders shall procure that a meeting of the Board of Directors of the Company shall be held whereat:-
  - 22.3.1 the appointments of the directors chosen by the Shareholders will be confirmed;
  - 22.3.2 The terms of the Management Agreement between the Company and the Audit Company shall be approved.
  - 22.3.4 The NDA's are signed.

**THE COMMON SEAL** of [COMPANY LTD] was affixed hereto in the presence of:

Signed as a Deed by \_\_\_\_\_  
**Mr. [X]**

Witnessed by: \_\_\_\_\_  
Name

Signed as a Deed by \_\_\_\_\_  
**Mr. [Y]**

Witnessed by: \_\_\_\_\_  
Name