# Shareholders' agreement: company business is joint venture

Agreement between shareholders for the regulation of

[Company name]

Dated: [date]

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Schedule 1 Intellectual Property owned by shareholder Schedule 2 ownership of assets used by the Company

Schedule 3 Letter of instruction to accountants for valuation

This	agreement is dated:	[date]
The (	Company is:	[company name] (the "Company")
The (	Company's registered offic	e is: [company r/o]
The S	Shareholders are:	
[ABC	] Pty Limited, ■ ■ ■ ■ ■ ■ ■	
	] ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■	■ ■ [under ACN [number]] ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
The b	packground to this agreem	ent is:
1.	The shareholders have con	ne together to form the
2.	The Company   [date].	■ ■ ■ ■ ■ ■ ■ ■ ■, ACN [1234567], ■ ■ ■ ■ ■ ■
3.	The parties • • • • • • •	
Thes	e are the terms of the agree	ement:
1.	Definitions	
	These definitions apply unle	ess the context = = = = = = = = = = = = = = = :
	"Act"	means the Corporations Act 2001 and any subsequent additions,
	"Venture"	means the venture of / joint venture [ • • • • • • • • • • • • • • • • • •
	"Confidential Information"	means all information about the Company and the other parties to this agreement but does not include information that it is reasonably necessary to disclose to any person in the usual course of business so far as that information is disclosed in those circumstances. It includes among other things: information about staff, their personal

contact information, businesses,

"Constitution" means the constitution of the Company

"Director" means a director of the Company.

"Fair Price" means the price of Sale Shares or Transfer

Shares certified by the auditor of the Company or by independent accountant instructed for the purpose of such

"Intellectual Property" means intellectual property of every sort, whether

or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today; and including, among others, patents,

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"Sale Notice" means a notice given by a shareholder to the

 $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare .$ 

"Sale Price" means the price specified in a Sale Notice.

"Sale Shares" means the shares offered for sale by a ■ ■ ■ ■

.............

"Transfer Date" means the date when a shareholder transfers the

#### 2. Interpretation

In this agreement unless the context otherwise requires:

2.1 a reference to a person includes a human individual, a corporate entity and any organisation

-----.

Rela	ationship of parties
	■.
2.10	this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or
2.9	a reference to an act or regulation includes new law of substantially the same
2.8	a reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information,
	from this = = = = = = = = = = = = = = = = = = =
2.7	[except where stated otherwise,] any obligation of any person arising
0	an obligation not to allow some
2.6	any agreement by any party not to do or omit to do something includes
2.5	unless the context requires otherwise, words importing the singular include the plural and vice versa, and pronouns importing a
	agreement are inserted ••••••••••••••••••••••••••••••••••••
2.4	the headings to the paragraphs and schedules (if any) to this
2.3	a references to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context • • • • • • • • • • • • • • • • • • •
	whom rights and obligations are transferred or pass as $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$
2.2	a reference to a person or party includes reference to that person's successors, legal representatives, permitted assigns and any person to

Nothing in this agreement shall create a partnership or agency or the relationship of employer and employee between any of the  $\blacksquare$   $\blacksquare$   $\blacksquare$  ,  $\blacksquare$ 

3.

3.2	This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties. Each party acknowledges that, in entering into this agreement, it does not					
	3.2.1	business plan to carry	out the venture;			
	3.2.2	[other documents]				
Issı	uance c	of shares				
4.1		completion of this agreer  O] divided into [000] ordin		•		
4.2	2 Each shareholder will subscribe for the number of ■ ■ ■ ■ ■ ■ ■ ■					
	Name of	shareholder	number of shares	price per share		
	[Fill in this table]					
Cor	npletio	n				
The ¡	oarties agr	ree to give effect to this i	•••••	•••••		
5.1	to conduct such business of the Company and sign such resolutions and minutes as may be necessary and to instruct the [company secretary] to write up the					
5.2	each shareholder shall receive such number of shares as is set out against his name in paragraph 4 • • • • • • • • • • • • • • • • • •					
5.3	The Company shall not be obliged to issue shares to a shareholder unless payment of the specified price is made					

# 6. Company's use of money

	The (	Company will use the	ne money from the shares (with other money) ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ .				
7.	App	ointment and	I removal of Directors				
	7.1	The maximum nu	mber of directors shall ■ ■ ■ [ ■ ■ ■ ].				
	7.2	Each shareholder shall appoint [two / equal ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ .					
	7.3	A shareholder may remove or replace any number of directors nominated by it by requiring that the Company shall call a general meeting.					
		7.3.1 provide	sufficient representation to constitute a quorum, and				
		7.3.2 subject	to there being a quorum, abstain from voting or ■ ■ ■				
	7.4	The party removing any claim ■ ■ ■	ng a Director shall indemnify the Company against				
	7.5	All of the shareho	olders shall agree to change the Constitution of the				
8.	Dut	es of Directo	rs				
	8.1	•	of this agreement, the Company shall immediately ce contract with each Director				
	8.2	The Directors of t ■:	he Company and their				
		[ABC representat	ive director's name], will be responsible for				
		[DEF representat	ive director's name], will be responsible for				

### 9. Company's obligations

	hareholders shall take whatever steps are necessary to compel the any to comply with its legal • • • • • • • • • • • • • • • • • • •
The C	company undertakes with the each ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ :
9.1	carry on the Venture efficiently;
9.2	ensure that any decision reasonably likely to affect the Venture (apart from day to day administration) is taken ••••;
9.3	maintain insurances appropriate and usual for •••••••••••••••••••••••••••••••••••
9.4	deal at all times and in all circumstances at the best price • • • • •
9.5	keep accurate accounts and records of the Company and the Venture and to make all information of every sort available to the Directors, ■ ■
	;
9.6	provide each shareholder within 4 weeks of the end of each calendar month
9.7	deliver to each shareholder as promptly as reasonably practicable such additional financial or other information as may be requested • • • • • • • • • • • • • • • • • • •
9.8	prepare such accounts in respect of each accounting reference period as are required by statute and procure that such accounts are audited and submitted to each

#### 10. Financial information for shareholders

The Company will:

- 10.2 within [60] days after the end of each financial year, provide to each shareholder the annual audited consolidated financial statements of the Company for the immediately preceding financial year and the previous

		,; ];
10.3	calenda	to each shareholder within [2 weeks] of the end of each month, the monthly internal, unconsolidated • • • • • • • • ;
10.4		to each shareholder as promptly as reasonably practicable ditional financial or other information as
Sha	rehold	ers' obligations
11.1	The sha	reholders agree to exercise their powers in relation
11.2		areholder undertakes with each of the other parties hereto that remains
	••••	,
Acti	ions re	quiring shareholder consent
12.1		owing matters require the consent of
		:
	12.1.1	to change <b>= = = = = = = = = = = = = = = = = = =</b>
	12.1.2	adopt a constitution • • • • • • • • • • • • • • • • • • •
	12.1.3	to pass any resolution for voluntarily winding-
	12.1.4	in any way to change the quantity, structure, value, ■ ■ ■ ■

	12.2		wing matters require = = = = = = = = = [ = = = / = = = = = =
		12.2.1	to change financial year of the
		12.2.2	to permit the registration (
		12.2.3	to capitalise, repay or distribute money • • • • • • • • • • • • • • • • • • •
		12.2.4	to factor or • • • • • • • • • • • • • • • • •
		12.2.5	to sell, transfer, lease,
		12.2.6	otherwise than in the normal course ••••, •••
		12.2.7	[Add other matters]
13.	Dea	dlock	
	13.1	A deadlo	ck will occur if one of
	13.2	Following	g terms apply if a deadlock occurs:
	.0.2	13.2.1	the shareholder who has objection will issue a   (" = = = = ") = = = = = = = = = = = = = =
		13.2.2	the shareholders agree that after issuing of Deadlock

		13.2.3	If the parties fail to resolve the
		13.2.4	if no agreement can be reached, the parties shall
14.	Divi	dend p	olicy and procedure
	14.1	Dividend	Is shall be = = = = = = = = = = = = = = = = = =
	14.2		to the law, the Directors shall declare a
	OR/A	ND	
	14.3		end shall be paid until the annual accounts • • • • • • • • • • • • • • • • • • •
	14.4	If the Dir	ectors act in good faith, they do not incur any liability
15.	Tax	matter	S
	15.1	The Con	npany shall not apply to • • • • • • • • • • • • • • • • • •
	15.2		ny taxable supply for GST purposes is made under this ent

# 16. Existing Intellectual Property

		(the "IP shareholder") owns = = = = = (" = = = ") = = = = = = = = = = = = = = =
16.1		pany and its Directors
16.2		sence of any other documented licence agreement between pany and the IP shareholder,
16.3	The IP sh	nareholder may terminate
16.4	customer	course of business, the Company has permitted any client or to use any SHIP which may have become incorporated
16.5	In the circ	cumstances of •••••:  Schedule 1 of this agreement ••••••••••
	16.5.2	nothing in this agreement shall prevent an IP shareholder
	16.5.3	nothing in this agreement shall prevent a

# 17. New Intellectual Property

17.1		areholder understands that whilst associated with the y, it may discover or
	17.1.1	do its utmost to •••••;
	17.1.2	inform the Company
	17.1.3	provide to the Company whatever full code, passwords, specification,
		••••
17.2		this effective each shareholder now undertakes to do
	•••	
17.3		etual Property owned by a shareholder and used by the y with his permission, is incorporated into ■ ■ ■ ■ ■ ■ ■ ■ ■
	••••	,
17.4	This para	agraph does not apply to Intellectual Property created by
Ass	ets intr	oduced by a shareholder

	18.1	This paragrap	h c	loes no	t appl	v to	Intel	lectual	Property	١.
--	------	---------------	-----	---------	--------	------	-------	---------	----------	----

	2
18.2	The assets listed under the

18.3		agraph applies to those assets and also
18.4		clear intention of gift
18.5		areholder, who has permitted its assets of any description
	18.5.1	is limited to <b></b> ;
	18.5.2	prohibits reproduction • • • • • • • • • • • • • • • • • • •
	18.5.3	shall terminate at any
Con	fidentia	ality
Each	of <b>■ ■ ■</b>	:
19.1	divulge o	or disclose to any person (and that includes = = = = = = = = = = = = = = = = = = =
19.2	allow any	yone else to copy from any document, computer disk, ■ ■ ■
19.3	This para	agraph does not apply to disclosure:
19.3	This para	agraph does not apply to disclosure:  made with the consent of the proper
19.3	•	
19.3	•	

#### 20. Transfer of shares

Optio	on 1: = = =	•••
20.1	No party	shall assign, mortgage, charge, ■■■■■■■■■■ , ■■
20.2	A shareh	nolder may dispose of all or any of its shares,
Optio	n 2: use	this
20.3		eholder wishes to dispose of all or any of its share [
	•:	
20.4		ng shareholder (the " = = = = = = ") = = = = = = = = = = = =
20.5	The Sale 20.5.1	the number and classes of ••••• (•••••••••••••••••••••••••••••
	20.5.2	the Sale Price per share, being the price at which the
	20.5.3	whether any third party has indicated a willingness to buy the

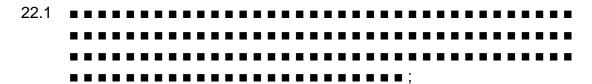
	20.5.4	the identity of any such third party and (
	20.5.5	a summary of the terms of purchase put forward
20.6		osing Shareholder asserts that the Sale Price   ,
20.7		Notice shall be
20.8	The Sale	Notice shall not be revocable except with the
20.9	Promptly	after the Sale Notice is received (or, if necessary, promptly
20.10	shall give	eholder wishes to accept any or all of the shares offered to it written notice
20.11	If such no	ice is not received by
20.12		f acceptance shall be irrevocable and shall give rise to   , , , , , , , , , , , , , , , , , ,
20.13	The Sale	Shares shall be sold free from all charges and with

	20.14	to • • • •	nge for the Sale Price, the Disposing Shareholder shall deliver
	20.15		posing Shareholder fails to comply with the
	20.16	-	ect of all or any Sale Shares the Disposing Shareholder 's ees or
	20.17	No transf	er shall be accepted to a third party by
21.	Prod	cedure	after transfer
	[Use to 2 ■ ■	this and t	he following = = = = = = = = = = = = = = ".]
	21.1	_	s and obligations of a former shareholder
		21.1.1	any right or obligation
		21.1.2	any right or obligation
	21.2	On or imi	mediately after • • • • • • • • • • • , • • • • • • •
		21.2.1	immediately resign as a director of the Company
			;

	21.2.2	immediately transfer to whoever the Company ■ ■ ■ , ■ ■
	21.2.3	not from that time represent to anyone
		;
	21.2.4	return to the Company without request all
		;
	21.2.5	
	21.2.6	,
21.3		,
21.5		
21.4	•••	

### 22. Restrictions on shareholder after transfer

Each shareholder agrees that:



```
22.2
 ....................................
 ...................................
 ...................................
 22.3
 .............
 22.4
 .....................................
 ............
 ------
 ...................
22.5
 ............
 ....................................
 .........................
 ....................................
```

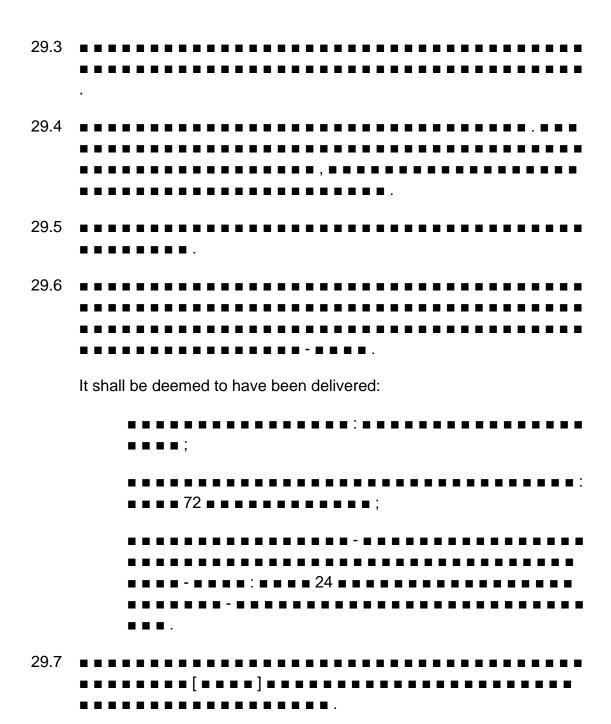
#### 23. Termination

23.1 This agreement shall continue until terminated:

```
23.1.1
   on [date]; or
23.1.2
    .............................
    ----:
23.1.3
    .............................
    .............................
    ..............................
    ..............................
    .... [30 ...] ...
    ................
23.1.4
    ............................
```

			; :	• • • •	• • • •		• • • •			
23.2					-					
23.3				• • • •						•
23.4								:::	••••	! !
Pro	cedure	after te	rmina	ation						
24.1	Upon ter	rmination o	of this ag	greemer	nt the Co	ompany	will:			
	24.1.1			• • • •	••••					
	24.1.2	pay all c	reditors;							
	24.1.3									•
	24.1.4									
24.2					••••	••••		•••		
Pub	licity									

26.	Conflict with the Constitution
	26.1
	26.2
27.	Dispute Resolution
28.	Severance and invalidity
	28.1
	28.2
29.	Miscellaneous matters
	29.1
	29.2



Signed by [full name], duly authorised on behalf of the Company

Signed by [full name], duly authorised on behalf of [ABC], a shareholder:

Signed by [full name], duly authorised on behalf of [DEF], a shareholder:

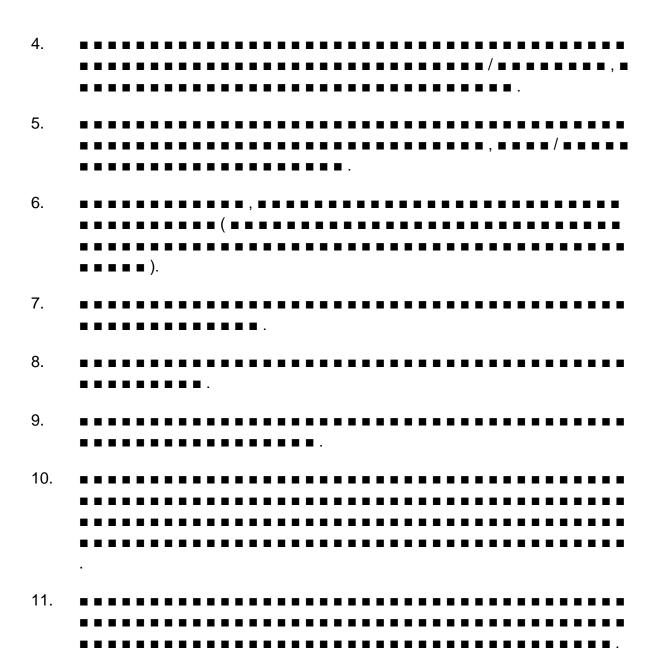
## Schedule 1: Intellectual Property owned by shareholder

[Provide the list of any intellectual property owned by shareholder being used by the company]

# **Schedule 2: ownership of assets used by the Company**

# Schedule 3: Letter of instruction to accountants for valuation

[On t	he letterhead of the company]
To: E	Bloggs accountants
Dear	Sirs
Shar	es valuation - this company
•••	
•••	
To as	ssist you we now enclose:
•	
•	details of the current and forward order book; budget for the next [two] years;
•••	
• • •	
•••	
OR	
Pleas	se make your valuation on the following assumptions:
1.	
2.	
۷.	•••••
3.	
J.	
	, [



Yours faithfully,

# **Explanatory notes:**

Shareholders' agreement: company business is joint venture

### **General notes**

1.	The shape of this document will depend to some extent on the description of the venture to be undertaken. The word "venture" has no legal meaning different from the everyday meaning of "a
2.	Most joint ventures are undertaken by two parties, but there may be a larger number. This agreement has been drawn on the assumption that there are two, but also provides for more. That means there are some
	••••
3.	Because it is expected that a venture will conclude within a specified time frame, the ventures may enter into it with a view to a specific end date. That is usually very important to one or more of them. The "exit strategy" is therefore very important. In this document, the exit strategy is not specified in detail, but we have
4.	Although all matters relating to the management, operation and structure of a company are regulated by statute, this agreement is comparatively unregulated. It is therefore open to the parties to make whatever arrangements they wish. The starting point for this agreement should therefore be a "wish list"
5.	We have kept the structure of the company simple in that there is provision for only one class of shares. Where there are two or more classes, complications arise not

# Paragraph specific notes

Notes following the numbered paragraphs

6. Definitions

It is our policy to limit the number of definitions to the bare minimum. Those that we use are always very important. In this agreement however, a number of the definitions apply to one two specific paragraphs: those dealing with sales and transfers of shares. If you delete those paragraphs, then of course, the relevant items in the
We do provide long definitions occasionally, not because they are important to the meaning of the document but so that anyone signing the agreement cannot later deny
Interpretation
There are some very important points here that affect many other parts of the document. Leave these items in place unless there is a good reason to edit or remove. We suggest that you read them a couple of times
!
Relationship of parties
This is a simple statement for the avoidance of doubt. Of course other documents may indeed create the relationships mentioned. For example, most directors will be employees. It is important
The second part provides for a list of relevant documents. We advise you to be sure that you include <b>* * * * * * * * * * * * * * * * * * *</b>
Issuance of shares
The price per share is usually the nominal value. If the shares are \$1 shares, then the price per share should be \$1. However, there is nothing to prevent an issuance at any price. If one party has contributed an existing business to the deal, it could be that others may have to contribute many ••••••••••••••••••••••••••••••••••••
Completion
The agreement does not of itself make things happen. So far as change must be made, it is likely to be through service contracts, minutes of meetings, and

8.

9.

## 11. Company's use of money For a company which is formed to complete a business venture it should be 12. **Appointment and removal of Directors** This paragraph provides a framework within which you can decide what you want for your business. Take Remember that the actual appointment or removal must take place within the framework of the Corporations Act, that is, by ............. 13. **Duties of Directors** The identity of the directors is an obvious requirement. It is good practice to specify areas of responsibility. The details of the terms $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ ........................ It is certain that shareholders will not see each other's roles in the same light. You may wish to set out precise -----. . . . . . It also prevents one shareholder-director from interfering in the **E E E E E** -------14. **Company's obligations** The company and the shareholders are parties. Although the company can act only through its directors, it does have a separate legal identity. It is the company that carries the legal responsibility for the items mentioned. It may 15. Financial information for shareholders We have provided a basic structure which ............ 16. Shareholders' obligations

By all means edit as you require.

#### 17. Actions requiring shareholder consent

This paragraph is most important. We have $\blacksquare \blacksquare \blacksquare$
<b>12.1:</b> This provision includes matters that require a special resolution with a 75% majority as a matter of law.
<b>12.2:</b> We have provided a list to include catch-all provisions. These matters do not require a specific percentage as a matter of law. Of course an ordinary resolution 51% majority is required to pass any <b>••••••••••••••••••••••••••••••••••••</b>
Note: If you choose to have same percentage for all matters listed in 12.1 ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
Deadlock
It is possible to set up elaborate provisions to deal with deadlock. We have avoided that because although they appear to be "clever", they do not work. ■
,
By all means edit as you require.
Dividend policy and procedure
Payment of a dividend must accord with tax law and the Corporations Act, section 254SA to 254W. The tax element relates in part to the availability of profit out of which a dividend may
Payment of a dividend must
We have not provided for an interim dividend because interim accounts are required in order
We recommend that you leave this paragraph substantially ■ ■ ■ ■ ■ ■ ■ , ■

This is a practical provision. By
Existing Intellectual Property
When a company is formed for a venture, it is usual, rather than exceptional, for it to use intellectual property owned by one of more of its new shareholders. That may be to exploit <b>*** *</b>
This paragraph provides a route through the maze. It is entirely optional and can = = = = = = = = = = = = = = = = = = =
New intellectual property
The scope and potential value of intellectual property is very wide. It is also difficult to track. The provisions in this agreement are therefore thorough. As long as we do not know today what intellectual property
Assets introduced by a shareholder
Over time, shareholders tend to introduce assets for use in the company. It might be a picture to hang on the office wall, or an old desk, or some graphic design or software. Later, arguments
•••••
This paragraph grants a formal licence to the
Confidentiality
It is for the parties to decide whether they think this provision is appropriate.  This happens where software, customer lists, and designs creep ■ ■ ■ ■ ■

22.

23.

The transfer of shares is another issue requiring careful thought and the editing of this document to suit your precise requirements. A shareholder may want "out" because the relationship with colleagues has deteriorated, or he has difficulties in his private life, or wishes to live elsewhere,
!
The important things are to make the provision fair and simple. It is likely that the constitution of the company do make some provision to cover such situations. They may be quite hopeless, or they may just fit your bill. We do therefore
We have provided two options.
We have provided in detail for a right of pre-emption in
We advise against deleting this paragraph unless • • • • • • • • • • • •
The draft $\blacksquare$
Procedure after transfer
Keep this and the
The extent of these provisions is a matter of choice. If colleagues fall   ,

The last two sub-paragraphs are intended to place the cost of leaving   21.3
Restrictions on shareholder after transfer
The carefully chosen wording of these restrictions is necessary to withstand the general proposition that an agreement "in restraint • • • • • • • • • • • • • • • • • • •
•.
Termination
Because you are engaged in a one-off venture, we assume that it is important to specify a termination date and provisions
It is also important for the other shareholder
You may choose to deal with this
Procedure after termination
These provisions simply

## 30. Publicity

29.

27.

28.

We have no comment.

31.	Conflict with the Constitution
	As stated = = = , = = = = = = = = = = = = = = =
32.	Dispute resolution
	There are many ways to settle a dispute. But an action in court is the least desirable because it takes a long
33.	Severance and invalidity
	This is = = = = = = = = = = = = = = . = = = =
34.	Miscellaneous matters
	A number of special points. We have identified each of these as important to
Letter	to accountant - valuers
	All good things come to an end. The " • • • • • • • • • • • • • • • • • •
	: :
35.	The valuation method = = = = = = = = . = = = = = = = = = =
36.	No matter what you put in the letter, or what valuation method you choose,

38.	Remember too, that there
	,
37.	Remember, you are instructing the

# **End of notes**