NZ-CPsha05

Shareholders' agreement: company business is joint venture

Agreement between shareholders for the regulation of

[Company name]

Dated: [date]

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This agreement is dated: [date]

The Company is: [company name] (the “Company”)

The Company’s registered office is: [company r/o]

The Shareholders are:

[ABC] Limited, a company incorporated in New Zealand [under company number [number]] and whose registered office is at [full address].

[DEF] Limited, a company incorporated in New Zealand [under company number [number]] and whose registered office is at [full address].

The background to this agreement is:

1. The [redacted], [redacted].

2. The Company is [redacted] [date].

3. The parties [redacted].

These are the terms of the agreement:

1. Definitions

These definitions apply unless the context requires a different interpretation:

“Act”	means the [redacted], [redacted].
“Confidential Information”	means all [redacted], [redacted], policies, suppliers and customers. [redacted], [redacted]

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	[redacted]
“Constitution”	means constitution of the Company
“Director”	means a director of the Company.
“Fair Price”	means [redacted], [redacted] Schedule 3.
"Intellectual Property"	means intellectual [redacted], [redacted].
“Sale Notice”	means a [redacted], [redacted].
“Sale Price”	means the price specified in a Sale Notice.
“Sale Shares”	means the shares offered for sale by a shareholder at any time.
“Transfer Date”	[redacted].
“Venture”	means the venture of / joint venture [state nature of venture concisely].

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 [redacted].

2.2 a reference to a person or party includes reference to that person’s successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as [redacted]

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[redacted] , [redacted] , [redacted] - [redacted] .

2.3 a references to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context [redacted] . [redacted] .

2.4 the headings to the paragraphs and schedules (if any) to this agreement are inserted [redacted] .

2.5 unless the context requires otherwise, words importing the singular include the plural and vice versa, and pronouns importing a [redacted] , [redacted] .

2.6 any agreement by any party not to do or omit to do something includes an obligation not to allow some [redacted] .

2.7 [except where stated otherwise,] any obligation of any person arising from this [redacted] .

2.8 a reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information, [redacted] .

2.9 a reference to an act or regulation includes new law of substantially the same [redacted] .

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 [redacted] , [redacted] .

3. Relationship of parties

3.1 Nothing in this agreement shall create a partnership or agency or the relationship of employer and employee between any of the [redacted] , [redacted] .

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 [redacted] , [redacted]

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[redacted]:

3.2.1 business plan to carry out the venture;

3.2.2 [other documents]

4. Issuance of shares

4.1 Before completion of this agreement the Company has a share capital of $ [000] divided into [000] ordinary shares of $ [1] [redacted], [redacted];

4.2 Each shareholder will be issued the number of [redacted]:

Name of shareholder	number of shares	price per share

[Fill in this table]

5. Completion

The parties agree to give effect to this [redacted]:

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 [redacted].

5.2 each shareholder shall receive such number of shares as is set out against his name in paragraph 4 [redacted].

5.3 The Company shall not be obliged to issue shares to a shareholder unless payment of the specified price is made [redacted].

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6. Company's use of money

The Company will use the money from shares (with other money) [redacted].

7. Appointment and removal of Directors

7.1 The maximum number of directors shall [redacted] [[redacted]].

7.2 Each shareholder shall appoint [two / equal [redacted]] [redacted].

7.3 A shareholder may remove or replace any number of directors nominated by it by requiring that the Company shall call a meeting. At [redacted]:

7.3.1 provide sufficient representation to constitute a quorum, and

7.3.2 subject to there being a quorum, abstain from voting or [redacted].

7.4 The party removing a Director shall indemnify the Company against any claim [redacted].

7.5 All of the shareholders shall agree to change the Constitution of the Company so as [redacted]

8. Duties of Directors

8.1 After completion of this agreement, the Company shall immediately enter into a service contract with each Director [redacted].

8.2 The Directors of the Company and their [redacted]:

[ABC representative director's name], will be responsible for . . . . . .

[DEF representative director's name], will be responsible for . . . . . .

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9. Company's obligations

The shareholders shall take whatever steps are necessary to compel the Company to comply with its legal [redacted].

The Company undertakes with the each [redacted]:

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 [redacted];

9.3 maintain insurances appropriate and usual for [redacted];

9.4 deal at all times and in all circumstances at the best price [redacted];

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, [redacted];

9.6 provide each shareholder within 4 weeks of the end of each calendar month [redacted];

9.7 deliver to each shareholder as promptly as reasonably practicable such additional financial or other information as may be requested [redacted]; [redacted]

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 [redacted] 3 [redacted].

10. Financial information for shareholders

The Company will:

10.1 keep proper, complete and accurate books of [redacted] [[redacted]];

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

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[redacted], [redacted] [[redacted]] [redacted];

10.3 provide to each shareholder within [2 weeks] of the end of each calendar month, the monthly internal, unconsolidated [redacted];

10.4 provide to each shareholder as promptly as reasonably practicable such additional financial or other information as [redacted].

11. Shareholders' obligations

11.1 The shareholders agree to exercise their powers in relation to the Company to procure that the Company complies with the [redacted].

11.2 Each shareholder undertakes with each of the other parties hereto that whilst it remains a party to this agreement it will not cast any of the voting rights exercisable [redacted], [redacted].

12. Actions requiring shareholder consent

12.1 The following matters require the consent of shareholders who together hold at least 75 % or high [redacted]:

12.1.1 to change the name of the Company;

12.1.2 adopt a constitution after registration and change or revoke [redacted];

12.1.3 approve a major transaction or amalgamation of the Company

12.1.4 to pass any resolution for winding-up the Company [redacted].

12.1.5 put into liquidation

12.2 The following matters require the consent of [both / [redacted] / [redacted]] [redacted]:

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12.2.1 to change financial year of the Company or make any principal change to the [redacted];

12.2.2 to permit the registration (upon issuance or transfer) of any [redacted];

12.2.3

12.2.4 in any way to change the quantity, structure, value, or rights of or attaching to, any share or security [redacted];

12.2.5 to factor or otherwise assign any book [redacted];

12.2.6 to sell, transfer, lease, licence or in any way dispose of [redacted];

12.2.7 otherwise than in the normal course of business, to sell or otherwise dispose [redacted].

12.2.8 [Add other matters]

13. Deadlock

13.1 A deadlock will occur if one of the shareholders fails to give its consent in respect [redacted].

13.2 Following terms apply if a deadlock occurs:

13.2.1 the shareholder who has objection will issue a notice ("Deadlock Notice") including its reasons and concerns [redacted];

13.2.2 the shareholders agree that after issuing of Deadlock Notice they shall call a meeting of Directors and refer [redacted] [[redacted]/[redacted]].

13.2.3 If the parties fail to resolve the dispute as set out above then the parties shall [redacted]; [redacted]

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13.2.4 if no agreement can be reached, the parties shall pass a resolution for winding-up the Company, without prejudice [redacted].

14. Dividend policy and procedure

14.1 Dividends shall be [redacted].

14.2 Subject to the law, the Directors shall declare a [redacted], [redacted] [5] [redacted].

OR/AND

14.3 No dividend shall be paid until the annual accounts [redacted] [[redacted]] [redacted].

14.4 If the Directors act in good faith, they do not incur any liability [redacted]-[redacted].

15. Tax matters

15.1 The Company shall not apply [redacted].

15.2 Where any taxable supply for GST purposes is made under this agreement [redacted], [redacted].

16. Existing Intellectual Property

If a shareholder (the “IP shareholder”) owns [redacted] (“[redacted]”) [redacted], [redacted], [redacted].

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16.1 The Company and its Directors [redacted] .

16.2 In the absence of any other documented licence agreement between the Company and the IP shareholder, [redacted] .

16.3 The IP shareholder may terminate [redacted] [3] [redacted] .

16.4 If, in the course of business, the Company has permitted any client or customer to use any SHIP which may have become incorporated [redacted] , [redacted] - [redacted] .

16.5 In the circumstances of [redacted] , [redacted] :

16.5.1 Schedule 1 of this agreement [redacted] .

16.5.2 nothing in this agreement shall prevent an IP shareholder [redacted] .

16.5.3 nothing in this agreement shall prevent a [redacted] .

17. New Intellectual Property

17.1 Each shareholder understands that whilst associated with the Company, it may discover or [redacted] . [redacted] :

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17.1.1 do its utmost to [redacted];

17.1.2 inform the Company [redacted];

17.1.3 provide to the Company whatever full code, passwords, specification, [redacted], [redacted], [redacted].

17.2 To make this effective each shareholder now undertakes to do whatever is [redacted].

17.3 If Intellectual Property owned by a shareholder and used by the Company with his permission, is incorporated into [redacted], [redacted], [redacted], [redacted].

17.4 This paragraph does not apply to Intellectual Property created by [redacted].

18. Assets introduced by a shareholder

18.1 This paragraph does not apply to Intellectual Property.

18.2 The assets listed under the [redacted] 2 [redacted].

18.3 This paragraph applies to those assets and also [redacted], [redacted].

18.4 Unless a clear intention of gift [redacted], [redacted].

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18.5 Each shareholder, who has permitted its assets of any description [redacted], [redacted]. [redacted]:

18.5.1 is limited to [redacted];

18.5.2 prohibits reproduction [redacted], [redacted];

18.5.3 shall terminate at any [redacted].

19. Confidentiality

Each of [redacted]:

19.1 divulge or disclose to any person (and that includes [redacted]) [redacted].

19.2 allow anyone else to copy from any document, computer disk, [redacted].

19.3 This paragraph does not apply to disclosure:

19.3.1 made with the consent of the proper [redacted].

19.3.2 of information or knowledge which [redacted].

19.3.3 as may be [redacted].

20. Transfer of shares

Option 1: [redacted]

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20.1 No party shall assign, mortgage, charge, [redacted] .

20.2 A shareholder may dispose of all or any of its shares, [redacted] . [redacted] .

Option 2: use this [redacted] - [redacted]

20.3 If a shareholder wishes to dispose of all or any of its share [[redacted] / [redacted]], [redacted] , [redacted] :

20.4 The selling shareholder (the " [redacted] ") [redacted] ;

20.5 The Sale Notice must specify:

20.5.1 the number and classes of [redacted] ([redacted]);

20.5.2 the Sale Price per share, being the price at which the [redacted] ([redacted] , [redacted]);

20.5.3 whether any third party has indicated a willingness to buy the [redacted] 3 [redacted] ;

20.5.4 the identity of any such third party and ([redacted]) [redacted] ([redacted]) [redacted] ; [redacted]

20.5.5 a summary of the terms of purchase put forward [redacted] .

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20.6 If the Disposing Shareholder asserts that the Sale Price [redacted], [redacted] / [redacted].

20.7 The Sale Notice shall be [redacted].

20.8 The Sale Notice shall not be revocable except with the [redacted].

20.9 Promptly after the Sale Notice is received (or, if necessary, promptly after [redacted]) [redacted].

20.10 If the shareholder wishes to accept any or all of the shares offered to it shall give written notice [redacted] [21] [redacted]. [redacted].

20.11 If such notice is not received by [redacted] [21] [redacted], [redacted].

20.12 A notice of acceptance shall be irrevocable and shall give rise to [redacted], [redacted].

20.13 The Sale Shares shall be sold free from all charges and with [redacted].

20.14 In exchange for the Sale Price, the Disposing Shareholder shall deliver to [redacted] ([redacted]) [redacted].

20.15 If the Disposing Shareholder fails to comply with the [redacted], [redacted].

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20.16 If in respect of all or any Sale Shares the Disposing Shareholder 's offer lapses or [redacted], [redacted].

20.17 No transfer shall be accepted to a third party by [redacted].

21. Procedure after transfer

[Use this and the following [redacted] 2 [redacted] – “ [redacted] ”.]

21.1 The rights and obligations of a former shareholder [redacted], [redacted]:

21.1.1 any right or obligation [redacted];

21.1.2 any right or obligation [redacted].

21.2 On or immediately after [redacted], [redacted]:

21.2.1 immediately resign as a director of the Company [redacted]; [redacted]

21.2.2 immediately transfer to whoever the Company [redacted], [redacted]; [redacted]

21.2.3 not from that time represent to anyone [redacted]; [redacted]

21.2.4 return to the Company without request all [redacted]; [redacted]

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21.2.5 delete all Confidential Information [redacted] ; [redacted]

21.2.6 not contact or communicate [redacted] , [redacted] ; [redacted]

21.3 Whenever a shareholder disposes of its shares, whether intentionally or by operation of law, there shall [redacted] .

21.4 If it fails to comply with any provision of this paragraph where compliance could be achieved by the signing of some document or doing of [redacted] , [redacted] ([redacted]).

22. Restrictions on shareholder after transfer

Each shareholder agrees that:

22.1 after the Transfer Date to continue to acknowledge the ownership [redacted] ;

22.2 it will not within [three] years of the Transfer Date directly or indirectly, advise, instruct, [redacted] ;

22.3 the restrictions imposed by the last [redacted] [[redacted]];

22.4 it will not within [three] years of the Transfer Date directly or [redacted] , [redacted] , [redacted] , [redacted]

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[redacted];

22.5 it will not within [three years] of transfer, directly or indirectly, [redacted];

22.6 the provisions of this [redacted].

23. Termination

23.1 This agreement shall continue until terminated:

23.1.1 on [date]; or

23.1.2 [redacted] [[redacted]]; [redacted]

23.1.3 [redacted] [30 [redacted]] [redacted]; [redacted]

23.1.4 [redacted]; [redacted], [redacted], [redacted]; [redacted]

23.2 [redacted].

23.3 [redacted].

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23.4 [redacted].

24. Procedure after termination

24.1 Upon termination of this agreement the Company will:

24.1.1 [redacted]/[redacted], [redacted];

24.1.2 pay all creditors;

24.1.3 [redacted];

24.1.4 [redacted].

24.2 [redacted].

25. Publicity

[redacted].

26. Conflict with the Constitution

[redacted], [redacted]:

26.1 [redacted], [redacted];

26.2 [redacted].

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27. Dispute Resolution

[redacted].

28. Severance and invalidity

28.1 [redacted], [redacted], [redacted].

28.2 [redacted], [redacted], [redacted], [redacted].

29. Miscellaneous matters

29.1 [redacted], [redacted].

29.2 [redacted], [redacted].

29.3 [redacted].

29.4 [redacted]. [redacted], [redacted].

29.5 [redacted].

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29.6 [redacted].

It shall be deemed to have been delivered:

[redacted]:[redacted];

[redacted]:[redacted]72[redacted];

[redacted]-[redacted]:[redacted]24[redacted]-[redacted].

29.7 [redacted].

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:

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Schedule 1: Intellectual Property owned by shareholder

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

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Schedule 2: ownership of assets used by the Company

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Schedule 3: Letter of instruction to accountants for valuation

[On the letterhead of the company]

To: Bloggs accountants

Dear Sirs

Shares valuation - this company

[redacted]. [redacted] [redacted] [redacted]% [redacted].

To assist you we now enclose:

- [redacted], [redacted];
- [redacted];
- details of the current and forward order book;
- budget for the next [two] years;

[redacted].

[redacted], [redacted]

OR

Please make your valuation on the following assumptions:

1. [redacted].

2. [redacted].

3. [redacted], [redacted %].

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4. [redacted] / [redacted], [redacted].

5. [redacted], [redacted] / [redacted].

6. [redacted], [redacted] ([redacted]).

7. [redacted].

8. [redacted].

9. [redacted].

10. [redacted].

11. [redacted].

Yours faithfully,

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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 ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ". ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

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 [redacted] . [redacted] , [redacted] - [redacted] .

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 [redacted] .

7. 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 [redacted] , [redacted] !

8. 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 [redacted] , [redacted] .

The second part provides for a list of relevant documents. We advise you to be sure that you include [redacted] .

9. 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 [redacted] . [redacted] , [redacted] .

10. 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 so on. It is therefore important [redacted] .

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11. Company's use of money

For a company which is formed to complete a business venture it should be made clear as ■ !

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 Companies Act, that is, by resolution of the shareholders ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

This paragraph is most important. We have ■ ■ ■

This is a practical provision. By [redacted].

21. 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 [redacted].

This paragraph provides a route through the maze. It is entirely optional and can [redacted].

22. 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 [redacted].

23. 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 [redacted].

This paragraph grants a formal licence to the [redacted].

24. Confidentiality

It is for the parties to decide whether they think this provision is appropriate. This happens where software, customer lists, and designs creep [redacted].

25. Transfer of shares

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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, [redacted] ; [redacted] . [redacted] . [redacted] . [redacted] !

The important things are to make the provision fair and simple. It is likely that the constitution of the company does make some provision to cover such situations. They may be quite hopeless, or they may just fit your bill. We do therefore [redacted] . [redacted] , [redacted] , [redacted] .

We have provided two options. [redacted] .

We have provided in detail for a right of pre-emption in [redacted] . [redacted] . [redacted] - [redacted] .

We advise against deleting this paragraph unless [redacted] !

The draft [redacted] .

26. Procedure after transfer

Keep this and the [redacted] . [redacted] .

The extent of these provisions is a matter of choice. If colleagues fall [redacted] , [redacted] . [redacted] , [redacted] .

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The last two sub-paragraphs are intended to place the cost of leaving [redacted] 21 . 3 [redacted] , [redacted] .

27. Restrictions on shareholder after transfer

The carefully chosen wording of these restrictions is necessary to withstand the general proposition that an agreement "in restraint [redacted] " [redacted] . [redacted] . [redacted] .

28. Termination

Because you are engaged in a one-off venture, we assume that it is important to specify a termination date and provisions [redacted] . [redacted] - [redacted] , [redacted] . [redacted] " [redacted] " [redacted] . [redacted] , [redacted] !

It is also important for the other shareholder [redacted] . [redacted] .

You may choose to deal with this [redacted] . [redacted] , [redacted] .

29. Procedure after termination

These provisions simply [redacted] . [redacted] .

30. Publicity

We have no comment.

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31. Conflict with the Constitution

As stated [redacted] , [redacted] .

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 [redacted] . [redacted] . [redacted] . [redacted] " [redacted] ". [redacted] .

33. Severance and invalidity

This is [redacted] . [redacted] .

34. Miscellaneous matters

A number of special points. We have identified each of these as important to [redacted] . [redacted] , [redacted] . [redacted] , [redacted] . [redacted] .

Letter to accountant - valuers

All good things come to an end. The " [redacted] " [redacted] . [redacted] , [redacted] . [redacted] :

35. The valuation method [redacted] . [redacted] .

36. No matter what you put in the letter, or what valuation method you choose, [redacted] . [redacted] , [redacted] . [redacted] . [redacted] .

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37. Remember, you are instructing the [redacted]. [redacted], [redacted].

38. Remember too, that there [redacted].

End of notes

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