

# High-touch Legal Services® for Startup and Early-stage Companies

## SAMPLE MEDIATION, ARBITRATION AND BUYOUT PROVISIONS

Provided by [Dana H. Shultz, Attorney at Law](#) – Founder of the [Bay Area Business Attorneys Network \(BABAN\)](#)

21.1. Dispute Resolution. Any action to enforce or interpret this Agreement, or to resolve disputes with respect to this Agreement as between the Company and a Member, or between or among the Members with respect to this Agreement, will be submitted to mediation administered by the American Arbitration Association in accordance with its Commercial Mediation Procedures.

If the matter is not resolved by mediation, it will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Any party may commence arbitration by sending a written demand for arbitration to the other parties. Such demand will set forth the nature of the matter to be resolved by arbitration. The Manager will select the place of arbitration. The substantive law of the State of California will be applied by the arbitrator to the resolution of the dispute. The parties will share equally all initial costs of arbitration. The prevailing party will be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration. All decisions of the arbitrator will be final, binding, and conclusive on all parties. Judgment may be entered on any such decision in accordance with applicable law in any court having jurisdiction thereof. The arbitrator (if permitted under applicable law) or such court may issue a writ of execution to enforce the arbitrator's decision.

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### 11. Buyout Provisions

11.1. Purchase Right. Each Shareholder has the right to notify the other Shareholders of his or her intent to purchase all of the other Shareholders' interests in the Corporation. If there are more than two Shareholders, two or more Shareholders may give a joint notification of their intent to purchase to the other Shareholders. If there are multiple notifications, the first notification given shall take precedence.

11.2. Notice of Purchase. The notice (the "Purchase Notice") shall be made in writing by the purchasing Shareholder (referred to herein as a "Purchasing Shareholder") to the other Shareholder(s) ("Selling Shareholder(s)") of the Purchasing Shareholder's intent to purchase all of the outstanding Shares of the Corporation held by the Selling Shareholder(s), the per Share purchase price, and the terms of payment therefor ("Purchase Notice").

11.3. Option. The Selling Shareholder(s) shall have 90 days following receipt of the Purchase Notice to consider the offer. The Selling Shareholder(s) may take one of the following actions:

- a. Accept the offer by an affirmative written response to the Purchasing Shareholder;
- b. Accept the offer by failing to notify the Purchasing Shareholder in writing within 90 days of Selling Shareholder's receipt of the Purchase Notice; or
- c. Notify the Purchasing Shareholder in writing on or before 90 days following the receipt of the Purchase Notice that the Selling Shareholder(s) intend(s) to purchase the Purchasing Shareholder's entire interest in the Corporation on the same terms and conditions set forth in the Purchase Notice.

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11.4. Closing. The closing of any transaction under the provisions of this Section 11 shall occur 120 days following receipt of the Purchase Notice by the Selling Shareholder(s).

11.5. Selling Shareholders' Failure to Close. If the Selling Shareholder(s) elect(s) to acquire the Purchasing Shareholder's interest in the Corporation under Section 11.3(c), but fails to close on the purchase of the Purchasing Shareholder's interest in the Corporation within the prescribed time limit, then the Purchasing Shareholder shall have the right to close the purchase of the Selling Shareholders' interest in the Corporation under the terms and conditions of the Purchase Notice, within 60 days after the scheduled closing date under Section 11.4.

11.6. Purchasing Shareholder's Failure to Close. If the Selling Shareholder(s) accept(s) the Purchasing Shareholder's Purchase Notice under Sections 11.3(a) or (b), but the Purchasing Shareholder fails to close within 120 days after the Selling Shareholders' receipt of the Purchase Notice, then the Purchase Notice shall, except for purposes of Section 11.7, be void.

11.7. Limit. An individual Shareholder may utilize this provision only once in any consecutive 12-month period.

***This document does not constitute legal advice. If you need legal advice, please contact an attorney directly.***

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