

UNANIMOUS SHAREHOLDER AGREEMENT QUESTIONNAIRE

(CORPORATION)

A. PARTIES TO THE UNANIMOUS SHAREHOLDER AGREEMENT

1. Please provide/confirm the name and address of each shareholder in the Corporation, and the number and class of shares held by each.

Shareholder's name and address

Number and class of shares

2. If any shareholder of the Corporation is itself a corporation (or other non-individual entity), please provide the name and address of the principal(s) of such corporate shareholder. Ordinarily a person who exercises control or direction over a corporate shareholder would be considered a principal of that shareholder. The identity of such principal(s) is important since several of the provisions of a typical USA may be applicable to the principals of corporate shareholders.

Corporate shareholder

Principal(s) name and address

3. Please provide the name and address of every shareholder of each corporation (or other non-individual entity) that is itself a shareholder of the Corporation, and the number and class of shares (or other representation of ownership interest) in such corporation (or other non-individual entity) held by each. This relates to the issue raised in Item 2 above, namely the identification of the principals of any corporate shareholders of the Corporation to whom certain provisions of the USA might apply.

Shareholder's name and address

Number and class of shares

4. Are there any other persons who should also be made parties to the USA, such as a key employee, a director or spouse who is intended to have their rights affected by the agreement? If so, please provide their names and addresses and the reasons why each such person should be made party to the USA.

Person's name and address

Reason to include in USA

5. A USA will often prohibit any transfer or encumbrance of shares unless specifically permitted under the terms of the agreement. Is this general, all-encompassing prohibition (which would extend to pledging shares as security for a loan) appropriate?

Yes _____

No _____

6. What exceptions to a general prohibition against transfers/encumbrances are warranted (if any)?

One type of transfer that is sometimes expressly permitted is a transfer of shares to a corporation or other entity that is owned or otherwise controlled by the transferring shareholder. Should a shareholder of the Corporation be permitted to transfer its shares to a corporation or other entity that is owned or otherwise controlled by such shareholder?

Yes _____

No _____

B. FINANCING THE CORPORATION

7. Shareholder loans:

Many non-public companies are financed to a significant extent by means of loans advanced by their shareholders. To the extent that a shareholder's interest in a corporation lies not only in their shares but also their shareholder loans, it is prudent to address the treatment of such loans in a USA.

a) Are shareholder loans expected to be the Corporation's primary source of financing (or a significant source of financing)?

Yes _____ No _____

b) Are shareholder loans only to be accepted by the Corporation if credit cannot be obtained on commercially reasonable terms from outside lenders?

Yes _____ No _____

c) Are shareholder loans expected to be made in proportion to the respective number of shares held by such shareholder?

Yes _____ No _____

If not, what other formula should be used to determine funding responsibilities?

d) Confirm that any such expectation with respect to shareholders loans is to be made a binding requirement of the USA.

Yes _____ No _____

e) How is a "cash call" arising out of the shareholder loan requirement to be made? Who determines whether such call is necessary, and if necessary the amount(s) required to be advanced?

- f) What happens if a shareholder is required under the USA to make a shareholder loan, but is unable or refuses to do so?

- g) If a shareholder loan is made, are the terms of repayment to be established in the USA or at the time the loan is made?

- h) If the terms of shareholder loans are to be established in the USA, what are those terms?

- I) Will shareholder loans bear interest?

Yes _____ No _____

If yes, at what rate? _____

- j) Will the Corporation grant security for the repayment of shareholder loans?

Yes _____ No _____

8. Bank Financing:

- a) If the Corporation requires additional financing, is a bank or other traditional lender to be the preferred source? Or is "outside" credit from a traditional lender to be sought only when the necessary funds cannot be raised via shareholder loans or the sale of additional shares?

9. Personal guarantees:

a) Are the shareholders prepared to grant personal guarantees on behalf of the Corporation?

Yes _____ No _____

b) If yes, are the guarantees to be limited according to the relative proportions of shares held by each shareholder? If a lender will not accept limited guarantees, will the shareholders indemnify one another for any payment that a shareholder is required to make that is in excess of their respective proportions?

Yes _____ No _____

c) Will the Corporation pay shareholders a fee in respect of the granting of any personal guarantees?

Yes _____ No _____

C. DIRECTORS AND OFFICERS

Subject to the terms of a USA, the directors are responsible for managing the business and affairs of a corporation. Whether or not it interferes with this general managerial responsibility by removing some of the discretion otherwise enjoyed by directors (see Section D below), a USA will typically specify the composition of the board of directors, either by naming the specific individuals who are to be the directors or by prescribing the manner in which shareholders will be entitled to nominate or appoint directors.

10. Please provide the names and addresses of the persons who are intended to be directors of the Corporation at the time that the USA is executed.

11. For each person named in Item 10 above, please provide the shareholder for whom such person would be considered a nominee.

12. Consider any conflict of interest issues that may arise among the shareholders and the Corporation as a result of cross-management.

13. Will any shareholder be granted an absolute right to nominate or appoint one or more directors? If so, will such entitlement be conditional on such shareholder continuing to hold some specified number of shares (preferably expressed as a percentage of the total number of outstanding shares)? Consider the mechanics of the director appointment process generally.

14. Officer appointments are ordinarily the prerogative of the board of directors. A USA may, however, specify who the officers of the Corporation will be, as well as the remuneration to be paid to each officer (or some maximum limit). If you wish to codify this information in a USA, please provide the name of each officer, the office(s) to be held by such person, and particulars of any limits on remuneration.

D. DECISION-MAKING

In the absence of a USA, day-to-day management of a corporation's business and affairs is left to the board of directors (and the officers it appoints). This would include such things as hiring employees, entering into agreements, borrowing money, pledging the corporation's assets as security, issuing additional shares, and paying dividends. Shareholder approval is generally limited to (i) the election of directors and the appointment of auditors of the corporation and (ii) certain fundamental changes relating to the corporation, such as changing the articles of incorporation or selling all or substantially all of the corporation's assets.

A USA can take responsibility for any or all decisions relating to the business and affairs of a corporation away from the directors and officers and vest such authority in the shareholders directly, thereby giving a shareholder who is not also a director some control over the day-to-day operations of the corporation.

15. Following are some examples of decisions over which the shareholders may wish to assume responsibility/control under a USA. Please consider whether the shareholders or directors should be responsible for making these decisions. Please also consider whether the decision, in order to be approved, should require majority approval (50.1%), unanimous approval (100%) or some other percentage.

| DECISION | Directors (% votes required) | Shareholders (% votes required) |
|---|---|--|
| a) To divert any of the business or assets of the Corporation to any other person | _____ | _____ |
| b) To enter into any agreement with any person not dealing at arm's length with the Corporation for any sale or lease of the Corporation's assets | _____ | _____ |
| c) To make capital expenditures in excess of specified limits (individually and/or in any year) | _____ | _____ |

- d) To make, amend or repeal any By-Laws of the Corporation _____
- e) To alter the Corporation's share structure in any way _____
- f) To appoint directors to fill vacancies _____
- g) To declare or pay dividends on any shares _____
- h) To borrow money on the credit of the Corporation. To grant a security interest in or otherwise encumber the Corporation's assets _____
- i) To give a guarantee on behalf of the Corporation to secure the performance of any obligation of any other person _____
- j) To enter into any agreement or series of agreements which would result in the aggregate financial commitments of the Corporation exceeding \$ _____
- k) To encumber any or all assets of the Corporation, except as may be necessary to secure loans permitted under USA _____
- l) To hire to dismiss senior employees and/or officers of the Corporation _____
- m) To approve the transfer of any shares other than those transfers permitted by the USA _____
- n) To approve the issuance of shares or grant options to acquire shares to any party, including the shareholders, from the unissued shares of the Corporation _____
- o) To approve the issuance of shares or grant options to acquire shares to any party, including the shareholders, from the unissued share of the Corporation _____

16. If only a majority is required to decide any of the above matters, is the Chairman or President of the Corporation entitled to a second or casting vote in the event of a tie?

Yes _____ No _____

17. The following matters are decisions that, in the absence of a USA, must be approved by at least a majority (50.1%) of the shareholders. The USA can require a higher percentage (or even unanimous consent). Please identify what percentage will be required to approve the following matters:

% of Shareholder
votes required

- a) The election of directors (annually) _____
- b) The removal of a director _____
- c) The appointment of auditors _____

18. Waiving the appointment of an auditor requires unanimous consent of all voting and non-voting shareholders. Will the appointment of a auditor be waived?

Yes _____ No _____

19. The following matters are decisions that, in the absence of a USA, must be approved by at least two-thirds of the shareholders. The USA can require a higher percentage (or even unanimous consent). Please identify what percentage will be required to approve the following matters.

% of Shareholder
votes required

- a) Amendment of the Articles of Incorporation (e.g., change Corporation's name; add or change restriction on the business of the Corporation; a change of rights or restrictions on existing shares; make new classes of shares; change the minimum or maximum number of directors; and add or change the restrictions on the transfer of shares) _____
- b) The winding-up or dissolution of the Corporation _____
- c) The sale of all or substantially all the Corporation's assets other than in the normal course of business _____
- d) Merger or amalgamation with another corporation _____

20. Consider whether there are any other matters not specifically identified above which should be made subject to shareholder approval and what the threshold for such approval should be.

21. Pre-emptive/participation rights:

A pre-emptive right (sometimes called a participation right) gives existing shareholders the right to purchase, on a pro rata basis, any new shares issued by the corporation before such new shares are offered to a third party. A pre-emptive right can be restricted to holders of a certain class of shares.

USAs involving shareholders with equal interests often contain a general prohibition against issuing new shares unless all shareholders agree. In such circumstances, a pre-emptive right may not be necessary. Accordingly, a pre-emptive right may only be applicable in circumstances where: (i) there is no general prohibition on new share issues and (ii) there are minority shareholders who seek to restrict the ability of the majority shareholders to dilute the shareholdings of the minority shareholders by causing the corporation to issue new shares.

Please note that even if a pre-emptive right exists to protect a minority shareholder, the minority shareholder must still have the funds to purchase new shares at the time they are offered to him or her.

Will shareholders be given a pre-emptive right under the USA?

Yes _____ No _____

E. CONFIDENTIALITY/NON-COMPETITION

USAs are often adopted by the shareholders of closely-held corporations in circumstances where the shareholders have decided to embark upon a business enterprise in part because of the personal services to be provided to the corporation by one or more of the shareholders. In such circumstances, the need for confidentiality of corporate information and a reasonable prohibition against competition with the corporation can take on added importance.

22. While the shareholders are in business together (and for some reasonable period of time thereafter), is it important that:

a) None of the shareholders disclose information about the Corporation's business to anyone else?

Yes _____ No _____

b) None of the shareholders compete with the Corporation in another business which is the same as or similar to the business of the Corporation?

Yes _____ No _____

23. Should the confidentiality and non-competition covenants extend to all or only certain shareholders? If they should not apply to all of the shareholders, please identify those to whom they should apply.

24. How long after a former shareholder ceases to be a shareholder should the non-competition covenant extend?

25. Should the duration of the non-competition period vary depending on the nature of the shareholder's departure from the Corporation?

26. Please provide a reasonably comprehensive description of the Corporation's business.

27. For purposes of any non-competition covenant to be included in the USA, please describe the geographic area in which a former shareholder should be prohibited from competing with the Corporation.

28. In addition to a non-competition covenant, it may be desirable to prohibit any shareholder whose personal services to the corporation are considered integral to the success of such corporation from devoting any material portion of his or her time and attention to any other business (whether competitive or not) other than the business of the corporation. This employment-like covenant is often included in USAs involving key personnel who are also shareholders.

Please indicate the name(s) of any such employee-shareholder(s).

F. SHARE VALUATION ISSUES

Several of the items discussed elsewhere in this checklist contemplate the compulsory purchase by the Corporation or by one or more of the shareholders of the shares of another shareholder.

In such circumstances, a value must be assigned to the share being purchased so as to determine the purchase price to be paid. There is no restriction on the manner in which

such value is to be determined. The value can be fixed in advance, or a valuation formula can be agreed to by the shareholders. Different valuation criteria may be prescribed for transfers occasioned by different events or occurring at Different times.

If a valuation formula is to be prescribed in the USA, consider such things as
i) whether goodwill should be included or excluded from the formula, ii) whether “book value” or “fair market value” measures should be used and iii) whether any figures to be derived from financial statements should be based on audited or unaudited statements or the most recently completed fiscal period of the corporation or some average of prior fiscal periods.

If the shareholders are unable to agree upon a set of valuation criteria at the time a USA is entered into, consider including in the USA a provision requiring the shareholders to annually agree themselves what the value of the shares will be for the following year. If they are unable to agree, the corporation’s auditors/accountant (or, if the corporation’s auditor/accountant is unable or refuses to decide, an accounting firm with valuation experience as agreed to by the shareholders or appointed by a court in the absence of such agreement) will determine value based on generally accepted accounting principles.

29. Consider what valuation method should be prescribed in the USA.

G. SHOTGUN CLAUSE

A typical "shotgun" clause under a USA permits a shareholder to make an offer to purchase all of the shares of the other shareholders for a specified price and on specified terms. This thereby compels the other shareholders to, at their option, either: (i) sell their shares to the offering shareholder for the price and on the terms set out in the shotgun offer or (ii) purchase the shares of the offering shareholders for the same price and on the same terms set out in the shotgun offer.

A shotgun provision is frequently included in a USA as a dispute resolution mechanism to resolve deadlock or a falling out between shareholders (if invoked, the result will likely be the departure of one of the disputants from the corporation). Shotgun provisions are not, however, without complication. Where there are more than two shareholders and a

shotgun offer is made to multiple shareholders, complications may arise as to who is obligated to purchase what shares, particularly if the receiving shareholders are not all of the same view with respect to accepting or rejecting the shotgun offer. A shotgun clause is also generally inappropriate as between shareholders having significantly different shareholdings and/or abilities to raise the funds necessary to purchase shares under the shotgun provisions. If, for example, a significant shareholder with considerable financial resources invokes the shotgun procedure and offers to purchase the shares of smaller shareholders at a discounted price, such other shareholders are faced with the prospect of either selling their shares at the low price or buying out the significant shareholder at what may be a large aggregate cost. If the smaller shareholders lack the resources to purchase the significant shareholder's position, then the shotgun will effectively force them to sell their interests at the discounted offer price.

30. In the particular circumstances of the Corporation and its shareholders, is some kind of shotgun clause appropriate?

Yes _____ No _____

31. Assuming that a shotgun clause is thought to be generally appropriate for inclusion in the USA, should it apply as between all of the shareholders, or only certain of them?

H. PURCHASE OPTION ON A DISPOSITION EVENT

A number of events may occur in relation to a shareholder (the "disposing shareholder") that may: (i) by ordinary operation of law, cause legal or beneficial title in the shares held by the disposing shareholder to pass to a third party or (ii) result in the other shareholders wishing to remove the disposing shareholder from the corporation. By including appropriate provisions in a USA, the occurrence of such events ("disposition events") can give rise to an option on the part of the corporation, certain other shareholders and/or all of the other shareholders to purchase the shares of the disposing shareholder. This acquisition right is typically framed as an option rather than an obligation.

Following is a representative list of events in relation to a shareholder (or, as appropriate, the principal of a corporate shareholder) which could be made to constitute a disposition event under the USA (please note that certain of these events could, by operation of law, result in the disposing shareholder's shares becoming controlled by a third party):

- i) bankruptcy/insolvency,

- ii) seizure of the shares for payment of any judgment or order,
- iii) exercise of a security interest in respect of the shares,
- iv) death or mental incapacity,
- (v) divorce,
- (vi) court order purporting to deal with the shares under matrimonial property legislation,
- (vii) prolonged disability,
- viii) ceasing to be employed by the corporation (as applicable),
- ix) substance abuse,
- x) criminal charges,
- xi) reaching a certain age,
- xii) a change of control of a corporate shareholder, and
- xiii) material breach of the USA (possibly after a cure period).

This list is not exhaustive.

32. In the particular circumstances of the Corporation and its shareholders, is some kind of purchase option on the occurrence of specified events appropriate?

Yes _____ No _____

33. If a purchase option on the occurrence of specified events is thought to be generally appropriate for inclusion in the USA, are any exceptions warranted for certain shareholders?

34. Consider precisely what events should constitute disposition events under the USA. In this regard, please indicate whether: (i) any of the events listed above are considered inappropriate to include as disposition events in the particular circumstances of the Corporation and its shareholders; or (ii) any other events should be included as

disposition events under the USA.

35. Option arising on the occurrence of a disposition event may be granted to one or more of the Corporation, certain other shareholders and/or all of the other shareholders. Please indicate which parties should be entitled to exercise this acquisition right, and the relative paramountcy among them in the event that more than one party exercises the purchase option (e.g., if the Corporation elects to repurchase the shares of the disposing shareholder, then no other elections shall be valid).

36. Consider whether a party may elect to purchase only some specified portion of the shares of the disposing shareholder, or must be willing to purchase all such shares.

37. The price at which shares of a disposing shareholder are sold pursuant to the purchase option arising on the occurrence of a disposition event is ordinarily that resulting from the valuation rules specified in the USA (see Section F above). Consider whether any extraordinary valuation rules should apply in case of certain disposition events (e.g, the valuation of shares sold following a shareholder's death may differ from the valuation of shares sold following the dismissal of an employee-shareholder for just cause).

38. Shareholders sometimes agree in their USA to purchase life insurance in respect of certain shareholders, with the corporation or the other shareholders, as appropriate, named as beneficiary. In the event that an insured shareholder dies, the insurance proceeds would be used to finance the purchase by the corporation or the other shareholders, as the case may be, of the deceased shareholder's shares. Consider whether this kind of arrangement is appropriate in the particular circumstances for the Corporation and its shareholders. Please note that there are tax issues relating to the manner in which shares are acquired from a deceased shareholder's estate using the proceeds of life insurance.

I. PUT OPTION

In addition to the call option that is given to the corporation, certain other shareholders or all of the other shareholders in the case of a disposition event, a USA may also grant to a shareholder who wishes to withdraw from and cease its involvement in the corporation a put option by which it may voluntarily sell all of its shares to the corporation, to certain other shareholders or to all of the other shareholders.

39. In particular circumstances of the Corporation and its shareholders, is some kind of put option appropriate for a shareholder wishing to withdraw from the corporation?

Yes _____ No _____

40. If a put option is thought to be generally appropriate for inclusion in the USA, should it be available to all of the shareholders, or only certain of them?

41. Consider whether the put option should only be available against the Corporation or only certain of the shareholders.

42. Consider whether the price at which shares of a withdrawing shareholder are sold pursuant to the put option arising should be determined according to the valuation rules specified in the USA (see Section F above). Should different valuation rules be applied in the case of voluntary withdrawals?

J. RIGHT OF FIRST REFUSAL

A right of first refusal ("ROFR") provision in a USA allows a shareholder (the "seller") to find a third party buyer for its shares. If the third party is firm in its commitment to purchase the seller's shares, then the seller is required to give notice to the corporation and/or other shareholders. The notice typically must specify the price and terms of the proposed sale to the third party, and will constitute an offer by the seller to sell its shares to the other shareholders at the same price and on the same terms on which the third party is willing to purchase them. Under the ROFR provisions, the third party sale can proceed only if the other shareholders (or the corporation, if applicable) decline to purchase all of the seller's shares at the same price and on the same terms specified in the notice.

Please note that if a ROFR is triggered and the remaining shareholders (or the corporation, if applicable) cannot afford to match the purchase price on the terms offered by the third party buyer, then the third party sale may ordinarily proceed and the third party will become a shareholder. Accordingly, consider whether the USA should provide a means by which a third party may become a shareholder without the express consent of the remaining shareholders (as is the case under a typical ROFR). In doing so, please also consider the impact of a typical "tag along" provision as described in Section K below.

43. In the particular circumstances of the Corporation and its shareholders, is some kind of ROFR appropriate?

Yes _____ No _____

44. A ROFR may be granted to one or more of the Corporation, certain other shareholders and/or all of the other shareholders. Please indicate which parties should be entitled to exercise the ROFR, and the relative paramountcy among them in the event that more than one party exercises the ROFR (e.g., if the Corporation exercises the ROFR, then no other elections shall be valid).

K. TAG ALONG RIGHTS

A typical “tag along” right arises when a ROFR has been triggered and the remaining shareholders do not elect to purchase the seller’s shares under the ROFR but instead want the third party to purchase their own shares as well as those of the seller. The third party sale is permitted to proceed only if the third party commits itself to purchase not only the original seller’s shares but also the shares of all shareholders who elected to exercise their tag along rights.

45. In the particular circumstances of the Corporation and its shareholders, are some kind of tag along rights appropriate?

Yes _____ No _____

46. The USA can be drafted so that tag along rights arise whenever the ROFR arises, or in a narrower set of circumstances where certain additional conditions (in addition to those giving rise to ROFR) must also apply before the tag along rights become available. Consider whether additional conditions should be specified for the tag along rights over and above the conditions necessary to give rise to ROFR.

L. DRAG ALONG RIGHTS

A typical “drag along” right enables some specified majority of the shareholders to enter into an agreement, as agent for and on behalf of the corporation and all of the other shareholders, providing for the sale of all of the shares of the corporation. A modified drag along provision may also be included in a USA to address the possibility of a third party acquisition by way of a sale of all or substantially all of the assets of the corporation rather than a purchase of all the outstanding shares.

47. In the particular circumstances of the Corporation and its shareholders, are some kind of drag along rights appropriate?

Yes _____ No _____

48. What threshold of majority approval should be necessary in order to invoke drag along rights under the USA?

M. TERMS OF SALE

Because a USA will often provide for the purchase and sale of shares pursuant to various provisions thereof, it is appropriate to include in the USA some general terms and conditions that would apply to any such purchase and sale transaction arising there under (unless otherwise specifically provided for elsewhere in the agreement). These provisions would address such matters as the time and place of closing, the delivery of duly endorsed share certificates and the delivery of written representations and warranties as to good and marketable title to the shares being sold and the absence of any encumbrances thereon.

49. Consider whether the purchase price payable in connection with any transaction of purchase and sale among shareholders or between the Corporation and a shareholder arising under the USA can be paid by way of promissory note. If so, consider what the terms of such a promissory note should be (number and frequency of periodic payments, interest rate, etc.).

50. Consider also the repayment of shareholder loans owing to shareholders who sell all of their shares pursuant to the provisions of the USA. Especially if a shareholder involuntarily ceases to be a shareholder as a result of the exercise of the purchase option arising on a disposition event or the triggering of the shotgun clause, consider requiring as a condition to the closing of the purchase of such shareholder's shares a requirement that the buyer also purchase the seller's outstanding shareholder loans at their face value.

51. Any other conditions or clauses deemed necessary to add to the USA?
