

SHAREHOLDER AGREEMENT CHECKLIST

A. BACKGROUND

1. Names of Shareholders who are Parties to the Shareholder Agreement, Class and Number of Shares held by each:

Name	Class of Shares	Number of Shares
------	-----------------	------------------

- | | Yes | No |
|--|--------------------------|--------------------------|
| 2. Is the company to be a party to the shareholder agreement ? | <input type="checkbox"/> | <input type="checkbox"/> |
| If any shareholders are corporations, are principals of those shareholder corporations to be parties to agreement. If yes, will principals be required to: | <input type="checkbox"/> | <input type="checkbox"/> |
| a. retain control (51% of voting shares) of their shareholder corporations? | <input type="checkbox"/> | <input type="checkbox"/> |
| b. retain 100% ownership of their shares of the shareholder corporations? | <input type="checkbox"/> | <input type="checkbox"/> |
| c. keep their shares of the shareholder corporations free and clear of all encumbrances and security interests? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. When was company incorporated/amalgamated/continued? _____ | | |
| 5. Jurisdiction of incorporation/amalgamation/continued: Ontario/Federal/Other _____ | | |
| 6. Briefly describe the business of the company: _____ | | |
| _____ | | |

B. PURPOSE AND SCOPE

- | | | |
|---|--------------------------|--------------------------|
| 1. May agreement be signed by any party by facsimile? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Does chairman of directors meetings have a second, or casting vote in event of a tie? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Does chairman of shareholders meetings have a second, or casting vote in the event of a tie? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. What is the threshold for shareholders to terminate the agreement: | | |
| a. all shareholders | <input type="checkbox"/> | <input type="checkbox"/> |
| b. holders of _____% of voting shares? | <input type="checkbox"/> | <input type="checkbox"/> |

C. EQUITY INVESTMENT

- | | | |
|---|--------------------------|--------------------------|
| 1. Are Shareholders obligated to purchase additional shares pro rata if additional equity is determined to be required by the board of directors? | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|

D. FURTHER EQUITY PARTICIPATION

- | | | |
|--|--------------------------|--------------------------|
| 1. Is the right of the Company to issue shares subject to a pre-emptive right of the existing shareholders on a pro rata basis to acquire such shares? | <input type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|

H. **DIRECTORS/OFFICERS LIABILITY INSURANCE**

Yes No

- 1. Is company obligated to arrange directors and officers liability insurance?
- 2. Company may elect to arrange directors and officers liability insurance as determined by the board of directors?

I. **BOARD OF DIRECTORS**

- 1. Number of directors on board: _____
- 2. Each shareholder shall be a director or be entitled a nominee to the board
OR
- 3. Certain named shareholders to be directors or be entitled to appoint nominees
 - a. directors shall initially be as follows:

Name of Director	Nominee of
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- 4. Board of Directors to meet:
 - Annually
 - Quarterly
 - Monthly
 - As required

J. **OFFICERS**

- 1. Level of approval required for officers to be appointed by directors
 - Unanimous
 - Majority
- 2. Officers shall be as follows:
 - President: _____
 - Secretary: _____
 - Treasurer: _____
 - Other: _____

K. **EXERCISE OF AUTHORITY**

- 1. Shareholders agreements often provide for a list of matters which require the special consent of the directors or shareholders, either unanimous consent or special majority, usually in order to protect minority shareholders.

2. Threshold for special consent:

- a. Directors Unanimous Majority
- OR
- b. Shareholders Unanimous Holders of _____% of voting shares

- | | Yes | No |
|---|--------------------------|--------------------------|
| 3. Special consent for such matters may include the following: | | |
| a. any change in the number of members of the company's Board of Directors other than that provided in the shareholders agreement | <input type="checkbox"/> | <input type="checkbox"/> |
| b. any delegation of any power, right or duty of the directors | <input type="checkbox"/> | <input type="checkbox"/> |
| c. the creation of any subsidiaries by the company or any of its subsidiaries or the acquisition by the company or any of the subsidiaries of any shares or securities of any other company, unless for the purpose of short term investments of surplus funds | <input type="checkbox"/> | <input type="checkbox"/> |
| d. the creation or issuance of any shares, or any rights to acquire shares of the company or any subsidiary of the company | <input type="checkbox"/> | <input type="checkbox"/> |
| e. the redemption, purchase or other acquisition by the company of any outstanding shares of the company or of any subsidiary of the company | <input type="checkbox"/> | <input type="checkbox"/> |
| f. The taking of any proceedings with a view to the dissolution, winding up, or termination of the corporate existence of the company or any of its subsidiaries | <input type="checkbox"/> | <input type="checkbox"/> |
| g. The sale, lease or other disposition by the company or any of its subsidiaries of any of its assets in any one transaction or a series of related transactions not in the ordinary course of its business or with the granting of an option or other right in respect of a sale, lease or other disposition | <input type="checkbox"/> | <input type="checkbox"/> |
| h. i. The creation or assumption of any indebtedness of the company or any of its subsidiaries except for trade payables incurred in the ordinary course of its business | <input type="checkbox"/> | <input type="checkbox"/> |
| ii. except to each other (to be excluded from special consent?) | <input type="checkbox"/> | <input type="checkbox"/> |
| i. i. the creation or assumption of any mortgage, pledge, charge or other encumbrance on or the creation of any security in any of the assets of the company or any of its subsidiaries | <input type="checkbox"/> | <input type="checkbox"/> |
| ii. other than mortgages and security interests created to secure operating lines of credit with Canadian chartered banks or to secure the purchase price of property acquired by the company or any of its subsidiaries for purposes of carrying on its business from a third party dealing at arm's length with the company or such subsidiary (to be excluded from special consent?) | <input type="checkbox"/> | <input type="checkbox"/> |
| j. i. The creation or grant of any guarantee by the company or any of its subsidiaries to any other person or business entity | <input type="checkbox"/> | <input type="checkbox"/> |
| ii. Except in respect to each other (to be excluded from special consent?) | <input type="checkbox"/> | <input type="checkbox"/> |
| k. The establishment or change of any dividend policy or other policy with respect to the distribution of surplus and the declaration or payment of any dividend or other distribution of any class of shares | <input type="checkbox"/> | <input type="checkbox"/> |
| l. Any material change in the undertaking of any business or operation of the company or its subsidiaries | <input type="checkbox"/> | <input type="checkbox"/> |
| m. i. The making of agreements with any of the shareholders not in the ordinary course of business | <input type="checkbox"/> | <input type="checkbox"/> |
| ii. The making of agreements with any other person or business entity not in the ordinary course of business | <input type="checkbox"/> | <input type="checkbox"/> |
| n. Approval of annual plans for capital expenditures and any substantial variations thereof | <input type="checkbox"/> | <input type="checkbox"/> |

- | | Yes | No |
|--|--------------------------|--------------------------|
| o. The acquisition of all or substantially all of the assets of any other company or business entity of the entering into of any amalgamation, merger, partnership, joint venture or other combination with any other company or business entity by the company or any of its subsidiaries | <input type="checkbox"/> | <input type="checkbox"/> |
| p. The payment or declaration of any bonuses, shares of profit, retirement allowances or other such distributions to directors, officers or employees of the company | <input type="checkbox"/> | <input type="checkbox"/> |
| q. Any change in the salary to a named individual
If yes name him/her: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| r. Any change of the date on which the financial year of the company terminates in each year | <input type="checkbox"/> | <input type="checkbox"/> |
| s. The appointment or any change of the company's accountants or auditors | <input type="checkbox"/> | <input type="checkbox"/> |
| t. Any change of the location of registered office of the company | <input type="checkbox"/> | <input type="checkbox"/> |
| u. Any fundamental corporate change to the company or its subsidiaries including, without limitation, any amendment to the articles, the alteration, amendment or repeal of the by-laws, enactment of any new by-laws or continuation in another jurisdiction | <input type="checkbox"/> | <input type="checkbox"/> |

L. DIRECTORS APPROVAL ON OTHER MATTERS/QUORUM

1. Directors meeting require a quorum of _____ directors
2. Any particular director or nominee of a particular shareholder required to:
Be present to form a quorum
If yes list name of director: _____

M. SHAREHOLDER APPROVALS/QUORUM

1. Shareholder meetings require a quorum of _____ shareholders holding more than _____% of total voting shares
2. Any particular shareholder required to be present to form a quorum?
If yes list name of shareholders: _____
3. Shareholders to approve exemption from audit requirements for company in each fiscal year?

N. ACTIVITIES OF SHAREHOLDERS

1. Are any of the shareholders required to devote his or her full time and attention to the business and Affairs of the company
If yes: All shareholders
OR
Name him/her: _____
2. Approval required if a shareholder to devote less than full time attention to company
Directors: Unanimous Majority
OR
Shareholders: Holders of _____% of voting shares

O. **NON-COMPETITION AND NON-SOLICITATION**

Yes No

1. Are shareholders prohibited from competing with the company while they own shares?
2. Are shareholders prohibited from competing with the company for a specific period of time after they cease to be a shareholder within a defined geographical area
- If yes:
- a. length of time after ceasing to be a shareholder _____
- b. Geographic area restriction _____

P. **RESTRICTIONS ON TRANSFER OF SHARES**

1. Generally speaking, shareholders are prohibited from transferring their shares in the company unless transferred pursuant to the terms of the shareholder agreement. Are any of the following transfers to be considered permitted transfers which do not fall within the general prohibition?
- a. to a company wholly owned by a shareholder
- b. to a company controlled by a shareholder
- c. To a spouse of a shareholder
- d. to children of a shareholder
- e. to a family trust of a shareholder
- f. other: _____

Q. **SHARES AS SECURITY**

1. Generally speaking, shareholders are prohibited from pledging shares as security
2. Shareholders may be permitted to pledge their shares to a Canadian chartered bank provided notice of such pledge is given to company and other shareholders and notice of the shareholder agreement is given to the Chartered bank

R. **BUY – SELL ARRANGEMENTS**

1. Any shareholder may at any time after _____ initiate a transfer of securities among the shareholders by giving a notice to the other shareholders in which such shareholder offers either to purchase all of the securities of the company held by the other shareholders or, at the election of the other shareholders, to sell to such other shareholders all the securities of the company held by him/her at a price for the shares specified in the offering notice. The other shareholders are then obliged either to purchase all the securities of the shareholder giving such notice, or to sell all their securities to such shareholder.

OR

Yes No

2. At any time after _____, the holders of _____% or more of the voting shares of the company may agree in writing to require any shareholder (the departing shareholder) to sell all of the securities held by the departing shareholder at a price determined under valuation of the company

S. RIGHT OF FIRST REFUSAL

1. A "hard right of first refusal" provides that if a shareholder receives a bona fida offer from a third party to purchase his or her shares, the other shareholders would have a first right to purchase those shares from the shareholder on the same terms
2. A "soft right of first refusal" provides that if a shareholder desires to sell his shares, such shares would first be offered at a price selected by the selling shareholder to the other shareholders (without having a firm offer from a third party). If the offer is rejected the shares may then be offered for sale to third parties on no less favorable terms

T. PIGGY BACK PROVISION

1. Prohibition against the sale of a _____% of voting shares to a third party unless:
- a. all shareholders are given an opportunity to sell their shares to the third party on the same terms
- OR
- b. the third party is required to buy-out pro rata the other shareholder's shares (if the third party desired to purchase less than 100% of all the outstanding shares).

U. DRAG ALONG PROVISION

1. If a third party offers to buy all the shares of a company which shareholders holding _____% of shares wish to accept, the other shareholders would be either required to tender their shares to the third party or purchase the shares of those shareholders who desire to accept the third party offer on the same terms and conditions as the third party offer

V. TRANSFERS UPON DEATH

1. Company obliged to purchase securities on death of shareholder
- OR
2. Company may elect to purchase securities on death of shareholder
3. Company shall maintain life insurance on each shareholder
- OR
4. Company may elect to maintain life insurance on each shareholder
- OR
5. Option of surviving shareholders to purchase securities on death of a shareholder
- AND/OR
6. Option of estate of deceased shareholder to require surviving shareholders to purchase securities of deceased

- | | Yes | No |
|---|--------------------------|--------------------------|
| 7. Cross insurance to be maintained by each shareholder on the lives of the other shareholders
OR | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Securities of deceased may be transferred to estate and beneficiaries thereof | | |
| 9. If any shareholder becomes missing, such shareholder shall be conclusively presumed dead after he has been missing for 12 consecutive months
OR | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Shareholders may bequeath securities to their spouse and upon the death of a shareholder the securities are transferred to his/her spouse; the spouse has the option to sell the securities to the company and the company has the option to purchase the securities from the spouse. | <input type="checkbox"/> | <input type="checkbox"/> |

W. BANKRUPTCY, DEFAULT, DISABILITY OR TERMINATION OF EMPLOYMENT

- | | | |
|--|--------------------------|--------------------------|
| 1. In the event a shareholder: | | |
| a. becomes bankrupt | <input type="checkbox"/> | <input type="checkbox"/> |
| b. is in default under the Shareholders Agreement | <input type="checkbox"/> | <input type="checkbox"/> |
| c. becomes disabled | <input type="checkbox"/> | <input type="checkbox"/> |
| d. is terminated without cause from the employment of the company | <input type="checkbox"/> | <input type="checkbox"/> |
| e. is terminated with cause from the employment of the company | <input type="checkbox"/> | <input type="checkbox"/> |
| The other shareholders shall have the option to purchase all of the securities owned by such shareholder | <input type="checkbox"/> | <input type="checkbox"/> |
| OR | | |
| The company shall have the option to purchase all of the securities owned by such shareholder | <input type="checkbox"/> | <input type="checkbox"/> |
| OR | | |
| The company shall have the first option and then the other shareholders shall have the second option to purchase all of the securities owned by such shareholder | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. In the case of 1b above where a shareholder is in default of the agreement, will the purchase price for such shareholder's shares be reduced by 50% or by _____% | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. In the case of 1e above where a shareholder is terminated with cause from the employment of the company, will the purchase price for such shareholder's shares be reduced by 50% or by _____% | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Do the same provisions in #1 above apply to an individual who owns shares of a corporate shareholder of the company | <input type="checkbox"/> | <input type="checkbox"/> |

X. FAMILY LAW ACT

- | | | |
|--|--------------------------|--------------------------|
| 1. In order to deal with a divorce in which shares of a particular shareholder may be ordered to be transferred to the spouse of such shareholder in the course of equalization of family property, a domestic contract shall be required by each of the shareholders stating that the share in the company are not to be considered family property | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. If any shares may be the subject of a dispute by a spouse or dependent of a shareholder the remaining shareholders shall have an option to buy the shares | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If any shares may be the subject of a dispute by a spouse or dependent of a shareholder the company shall have an option to buy the shares | <input type="checkbox"/> | <input type="checkbox"/> |

- | | Yes | No |
|---|--------------------------|--------------------------|
| 4. Upon a shareholder being obliged by court order to transfer property to a spouse (other than securities of the company), with a value less than the value of his or her securities of the company, such shareholder shall transfer to the spouse property other than securities of the company | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Upon shares of the company being transferred to spouse of a shareholder pursuant to a court order, that shareholder shall have the option to purchase the shares from the former spouse. If option not exercised, other shareholders shall have option to buy former spouse's shares of the company. | <input type="checkbox"/> | <input type="checkbox"/> |

NOTE: this alternative required each spouse of the shareholders to sign an agreement to that effect and obtain independent legal advice.

Y. VALUATION OF AND PAYMENT FOR SECURITIES

1. A specific valuation is usually set for the sale of shares in the events described above. There are a number of methods of valuating the shares including, but not limited to, fair market value, book value, adjusted book value, a value set on an annual basis by the shareholders or a value determined by a recognized valuator

VALUATION METHOD _____

- | | | |
|---|--------------------------|--------------------------|
| 2. The purchase price in the event of a sale of securities of the company shall be paid: | | |
| a. in full immediately upon closing | <input type="checkbox"/> | <input type="checkbox"/> |
| b. over time | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If purchase price paid over time, what are payment terms: | | |
| a. 25% paid on closing, remainder in three equal annual installments | <input type="checkbox"/> | <input type="checkbox"/> |
| b. other (specify) _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| c. on death, proceeds of life insurance payable on closing – any balance due over time as specified in 3a or 3b | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Is interest payable on outstanding unpaid balance | <input type="checkbox"/> | <input type="checkbox"/> |
| If yes : interest payable _____% | | |

Z. NOTICES

1. The name and address for service for each party to the agreement is as follows:
- a.
 - b.
 - c.