SAWTOOTH
VALUATION ADVISORY LLC

BUY-SELL AGREEMENT REVIEW GUIDE

Key Points to Consider	Observations
1. WHO are the buyer(s)?	
a) Are the other shareholders the buyers, the company, or both subject to right of first refusal? b) Are the tax and nontax implications understood?	
2. WHEN is the buy-sell agreement triggered?	
a) Common triggering events are death, disability, divorce, bankruptcy, voluntary and involuntary employment termination, retirement. b) Are the terms of the buy-sell agreement dependent on the nature of the triggering event?	
3. On what DATE is the valuation determined?	
a) Is the valuation of the determined beforehand (e.g., by board declaration), or as of the triggering event date? b) If the former, does the buy-sell agreement allow for an update as of the triggering event date?	

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4. Are the DEFINITIONS of key terms clear and used consistently?	
a) Are the triggering events defined? E.g., is "disability" used that same way as in a disability buyout policy? b) "Value" can mean different things. Standards of value include "fair market value", "fair value", or "investment value". Premises of value refer to the context; that is, on a going concern or liquidation basis. c) Are the definitions used consistently? If not, is the inconsistency intentional and for what reason?	
5. Is the PROCESS for determining the valuation clearly specified?	
a) **Fixed price agreements** 1) How will the price be set and what's the process to set it? 2) Will the price be updated periodically? If so, how often and by what process? 3) What happens if the price is not updated?	

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b) **Formula agreements** 1) How will the formula be set? Will all the terms be defined? 2) Will accounting numbers be based on recent results or an average? Will these accounting results be adjusted in any way? 3) How often will the formula be recalculated and by whom? 4) What happens if there is a dispute in how the formula is calculated?	
c) **Appraisal-based process** 1) Definitions of standard of value, premise of value and level of value are specified. 2) Date of valuation is specified. 3) Does the process involve single appraiser, or does it involve two or three appraisers? 4) Are the appraiser qualifications specified? 5) Who selects the appraiser(s)? 6) When is the appraiser(s) engaged, before or after the triggering event? 7) What is the process timeline? How is information shared between the transacting parties and multiple appraisers? How will due diligence interviews be conducted? 8) What happens if the transacting parties disagree with the result? What happens if the two appraisals are too far about? Does a third appraiser act as judge or performs a binding valuation? 9) Who bears the cost of appraisals?	

6. What are the PAYMENT terms and what is the funding source(s)?

a) Is the payment for the ownership interest made in full at close or in installments? b) For installment payments: 1) Is interest payable? If so, is it at a market rate and how is that determined? 2) Is the obligation secured? Is the selling owner required to subordinate in favor of a current and/or future lender? If so, does subordination call for an increase in the interest rate? 3) What happens in the event of default? c) How will the purchase be funded? 1) Insurance (life and/or disability). 2) Corporate assets (e.g., excess cash). 3) Credit line (existing or reserved for buy-sell purposes). 4) Promissory note to seller.	