

JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT is made the _____ day of _____ 200X

BETWEEN:

and

and

(together, the “**Participants**”)

RECITALS

- A. The Participants have agreed to join together as a joint venture to conduct and operate (name) of the Business
- B. The Participants have agreed to record their respective rights, duties and obligations with and the terms and conditions of the Joint Venture by this Agreement.

OPERATIVE PART

1. **DEFINITIONS AND INTERPRETATION**

- 1.1. In this Agreement including the Recitals unless the context otherwise requires the following terms shall have the following meanings:

“**Agreement**” means this Agreement including the schedules and annexures as amended from time to time;

“**Board**” – Clause 3.1;

“**Board Members**” – Clause 3.2;

“Business” means the business of carrying on activity together with any other business conducted by the Joint Venture from time to time;

“Chairperson” – Clause 3.3;

“Covenantors” means each person named as such in Schedule Item 1;

“Encumber” means to mortgage, pledge, charge, assign by way of security or otherwise encumber.

“Interest” means in relation to a Participant that Participant’s undivided right, title and interest at that time in:

- (a) the Joint Venture Assets including but not limited to the Business; and
- (b) all the Participant’s rights, title, obligations and interest into and under this Agreement; and

may be expressed as a percentage of the aggregate of all the Participants’ interests referred to above at that time.

“Joint Venture” means the association constituted by this Agreement.

“Joint Venture Assets” at any time means all the assets of the Joint Venture whether real or personal

“Participant” means each of the persons holding an interest under this Agreement from time to time and their successors and permitted assigns.

“Related Corporation” means in relation to a Participant a related body corporation of that Participant as defined by the Corporations Act 2001 (Cth).

“Roles” – Clause 5.1;

“Simple Majority” – Clause 4.2;

“Transfer” means to sell, assign, transfer, convey or otherwise dispose of:

- 1.2. In this Agreement unless the contrary intention appears:
- (a) A reference to this Agreement or another Instrument includes any variation or replacement of either of them;
 - (b) The singular includes the plural and vice versa;
 - (c) The word person includes a firm, a body corporate and unincorporated association or an authority;
 - (d) A reference to a person includes a reference to the persons executors, administrators, successors, substitutes and assigns;
 - (e) The period specified and the dates from a given day or the date of an act or event, will be calculated exclusive of that day;
 - (f) A reference to a recital, annexure, attachment or schedule is a reference to a recital, annexure, attachment or schedule to this Agreement. A reference to this Agreement includes a recital, annexure, attachment or schedule. A reference to "dollar" is a reference to Australian currency.
- 1.3. Headings are inserted for convenience and do not affect interpretation of this Agreement.
- 1.4. A reference to any legislation or any provision of any legislation includes any modification or re-enactment of the legislation or any legislative provisions substituted for, and all legislation statutory instrument and regulation issued under, for legislation.
- 1.5. Where any work or phrase is given a definite meaning in this Agreement any part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning.
- 1.6. If a party is or includes a Trustee, the Trustee is bound by the provisions of this Agreement both as Trustee and in its own right.

2. JOINT VENTURE

- 2.1. The Participants hereby form and agree to associate for the purpose of carrying on the Business.
- 2.2. The respective interests of the Participants are, subject to this Agreement as set out in the Schedule Item 1.

3. MANAGEMENT STRUCTURE

Board of Management

- 3.1. A board of management ("**Board**") shall be formed to undertake the daily conduct of the Business pursuant to this Agreement under the supervision of the Participants.
- 3.2. The Covenantors shall make up and constitute the Board at all times during the continuance of this Joint Venture subject only to the appointment by each of the Covenantors of an alternate Board member for each of them ("**Board Members**").

Chairperson

- 3.3. The Board may elect a Chairperson ("**Chairperson**") by way of simple majority vote by the Board Members.
- 3.4. No person elected as a Chairperson of the Board shall be entitled to have a casting vote either by a show of hands or on a poll of Board Members unless all the Board Members agree in writing that any such person shall be entitled to any such casting of votes to which agreement may be in general or specific terms.

Board Meetings

- 3.5. The Board Members will convene a meeting ("**Board Meeting**") on or about the 1st day of each calendar month (or as otherwise agreed) for the purposes of discussing and implementing strategies and decisions for the running of the Business.
- 3.6. There must be at least twelve (12) Board Meetings held in any financial year.

- 3.7. Any additional Board Meeting must be convened following any written request of any two Board Members made to the other Board Member.
- 3.8. Board Meetings must be held at any venue agreed at any time by the Unitholders or in the absence of any agreement, at the XXXXX principle place of business.
- 3.9. Any Board Meetings may be conducted by written resolution, telephone conference, video conference or any similar means of audio or audio-visual communication.
- 3.10. Each Board Member must receive prior written notice of any Board Meeting at least 2 Business Days before that meeting, except where otherwise agreed by all Board Members.
- 3.11. The agenda for any Board Meeting must be decided by the Chairperson or, in the case of a meeting convened at the request of any two Board Members, by those Board Members.

Meeting quorum

- 3.12. A quorum for any Board Meeting is created by the attendance, in person or by alternate, of all 2,3,4 (choose number) Board Members.

4. VOTING AND DECISION MAKING

- 4.1. The Board has full powers of management and control of the Business on and subject to the further provisions of this Agreement and the Contract.
- 4.2. Subject to the further provisions herein, all decisions by Board Members shall be made, voted, resolved or passed by simple majority vote of Board Members. (ie with the prior consent of at least two (2) Board Members (**“Simple Majority”**)).

5. RUNNING THE BUSINESS

- 5.1. The respective roles of the Participants with respect to the conduct and operation of the Business are set out in Schedule Item 2 (**“Roles”**).

6. DECISIONS REQUIRING UNANIMOUS CONSENT

6.1. Notwithstanding anything else contained herein, the Board Members have agreed that the following Business decisions of the Board shall require the unanimous consent of all Board Members:

- (a) any changes to the Participant's Roles as set out in Schedule Item 2;
- (b) raising capital or funding and / or the structure of any future funding of the Business;
- (c) the borrowing of any money in the name of the Business or in the name of the Joint Venture;
- (d) any decision involving the lease of new premises;
- (e) Any single purchase in excess of \$xx,000;
- (f) the raising of any debt or liability on behalf of the Joint Venture in excess of \$xx,000.

7. TERM OF THE JOINT VENTURE

7.1. The Joint Venture shall be deemed to have commenced on the signing hereof and shall continue until terminated pursuant to the provisions of this Agreement.

7.2. The Joint Venture shall terminate in any of the following events;

- (a) By mutual consent of all the Participants;
- (b) On termination of the Contract or any renewal thereof;
- (c) If agreed by the Participants on completion of the sale or realisation of the whole of the Joint Venture Assets.

7.3. On the termination of the Joint Venture all Joint Venture Assets remaining shall be distributed to or held for the benefit of the Participants in such a manner as the Participants may agree or failing agreement may be sold on behalf of the Participants.

- 7.4 In the event of a sale of the Joint Venture Assets the net proceeds (if any) shall be divided amongst the Participants on a pro-rata basis in accordance with their respective Interest, and any deficiency shall be contributed by the Participants in the same proportions on demand.

8 THE JOINT VENTURE RELATIONSHIP

- 8.1 The Participants have entered into this Agreement with the intention that it shall operate between them with fairness and without the detriment to the interest of any of them on the basis of a relationship involving mutual trust, good faith and confidence and on the understanding that subject to this Agreement each one has the rights to participate in the management, control and conduct of the Joint Venture and the right to participate in the profits (if any) of the Joint Venture in proportion to its Interest from time to time.

- 8.2 The Participants agree that:

- (a) The Business shall be conducted as a commercial venture in accordance with good commercial practice;
- (b) The relationship between the Participants shall be one of joint venturers and limited to carrying out the Business so that nothing contained in this Agreement shall constitute either of them as agent or partner of any other of them or create any agency or partnership for any purpose whatsoever;
- (c) Except as otherwise specifically provided in this Agreement a Participant shall not have authority to act for, or to create or assume any responsibility or obligation on behalf of, any other Participant.

- 8.3 Each Participant covenants and agrees with the other Participants;
- (a) To refer to the Joint Venture all work which may be carried out by the Joint Venture;
 - (b) To diligently observe and perform its obligations and commitments in respect of the Joint Venture and pursuant to this Agreement.
 - (c) Not to engage (whether alone or in association with the others) in any activity in respect of the Business except as provided and authorised by this Agreement;
 - (d) To make available for the purposes of the Business the interest owned or controlled by it in the Joint Venture Assets.
 - (e) Not to give any credit and/or lend any money on behalf of the Joint Venture to any person, firm, company or entity other than in the ordinary course of business of the Joint Venture conducted in a normal and proper manner: not without the consent of the other Participants borrow or raise any money or incur any debt on account of the Joint Venture;
 - (f) Not to compound, release or discharge any debt which shall be due or owing to the Joint Venture without receiving the full amount thereof other than the ordinary course of the business of the Joint Venture conducted in a normal and proper manner;
 - (g) Not to be a party to the doing of any act, matter or thing whereby the good will, commercial reputation of or image of any of the Participants and/or the Joint Venture may be prejudicially affected.

8.4 No Participant is empowered or authorised to do anything whatsoever with the Joint Venture Assets or to bind the Participants unless provided for in this Agreement. Without limiting the generality of the foregoing no Participant shall Encumber the Joint Venture Assets or its Interest without the prior consent of all Participants.

8.5 Each Participant hereby indemnifies the other Participants jointly and severally from and against any loss or damage of any kind whatsoever suffered sustained or incurred by any other Participant arising from a breach of default in the performance or observance of any duties or obligations by such Participant under this Agreement. This indemnity shall continue for the benefit of the other Participants notwithstanding termination of the Joint Venture and shall not be released by any waiver, indulgence, neglect or forbearance on the part of the other Participants or any of them nor expire with the effluxion of time, nor be effected by any variation of this Agreement lack of capacity or due execution by any party hereto or by any other act, matter or thing which but for this clause would have the effect of modifying or abrogating the obligations of any indemnifying party under the law relating to sureties.

8.6 Save as otherwise provided in this Agreement until termination of this Joint Venture unless the Participants otherwise agree no Participant shall be entitled to call for any return of any capital contributed and no Participant shall be entitled to call for a transfer to it of the Joint Venture Assets or part thereof or any specific asset of the Joint Venture or part thereof.

9 PROFITS AND LOSSES

9.1 The net profit (if any) of the Joint Venture after payment of all operating expenses in each year shall be applied to the Business the following year or held as a capital reserve for the use of the Business.

9.2 Each Participant shall bear and be liable for an amount proportionate to interest of all losses (if any) arising from and throughout the course of the Joint Venture.

9.3 Profits and losses shall be calculated using normal accounting principles and practice.

10 **ACCOUNTS**

10.1 The Board shall procure that accurate and proper books of accounts and records of all income received and expenditure incurred in connection with the Joint Venture and shall retain all documents and reporting and evidencing entries in such books and records. Such books of account and records shall be available at all times during the business hours for inspection by any Participant or its authorised representatives.

10.2 The Directors shall if requested by notice given by a Participant at any time and in any event as soon as practicable after 30 June in each year cause an account to be taken of all monies received and disbursed in connection with the Joint Venture during the immediately preceding year ended 30 June and a profit and loss account for such period and balance sheet as at such date to be prepared and forwarded to all Participants by 30 September that year. The Participants shall be bound by each profit and loss account and balance sheet unless some manifest error is discovered within 60 days of receipt in which case the error shall be rectified.

11 **TRANSFERS**

11.1 Participants shall not transfer the whole or any portion of its Interest to any third party (other than a Related Corporation) without the unanimous consent of all Participants.

12 **DEFAULT**

12.1 If a Participant:

- (a) Is placed in liquidation (whether compulsory or voluntary, otherwise and for the purpose of reconstructions or amalgamation) or has a Receiver or Receiver and Manager or Official Manager appointed in respect of its business generally, or any part thereof, or compromises or attempts to compromise generally with any class of creditors;
- (b) Has any distress or execution levied against any of its assets and fails to have such distress or execution set aside or satisfied within 30 days;

- (c) Suffers a judgment in excess of \$1,000.00 which remains unpaid or has noted an Appeal within the period of 30 days or an Appeal having been noted as withdrawn or disallowed and the judgment is not satisfied within 30 days.

then such Participant (the Defaulting Participant) shall thereupon be deemed to have transferred to the other Participants (the Non-Defaulting Participants) the entire Interest of the Defaulting Participant on a pro-rata basis in accordance with the Non-Defaulting Participants' respective Interest.

13 COVENANTORS INDEMNITY AND GUARANTEE

- 13.1 Each Covenantor hereby guarantees to the other parties in this Agreement and each of them the prompt payment of and due and punctual performance and observance by the Participant appearing opposite his name in the Schedule and by himself of all monies and obligations on their part to be paid, performed or observed pursuant to this Agreement and hereby indemnifies each or such other parties jointly and severally from and against all and any loss or damage of any kind whatsoever suffered, sustained or incurred by any of the other parties arising from a breach or default by such Participant or Covenantor. This indemnity shall continue for the benefit of the other parties notwithstanding termination of the Joint Venture and shall not be released by any waiver, indulgence, neglect or forbearance on the part of the parties or any of them nor expire with the effluxion of time, nor be effected by any variation of this Agreement, lack of capacity or due execution by any party hereto or by any other act, matter or thing which but for this clause would have had the effect of modifying or abrogating the obligations of any indemnifying party under the law relating to sureties.

14 ACKNOWLEDGMENTS AND WARRANTIES

- 14.1 Each party to this Agreement which is a company represents and warrants to all the other parties that it is a company duly incorporated and validly existing and has all requisite powers to enter into this Agreement and perform and observe the obligations hereunder.
- 14.2 Each party to this deed severally represents and warrants to and for the benefit of each other party that this deed has been validly executed and delivered and that it constitutes a valid, binding and enforceable obligations of it in accordance with its terms.

15 CONFIDENTIALITY

- 15.1 The Participants agree to keep this Agreement and anything done in pursuance of it confidential except as required by law and with the consent of the others.

16 WAIVER

- 16.1 No failure, delay or omission by any party to this Agreement to exercise any power or right conferred under this Agreement will operate as a waiver of that power or right, nor will single exercise of any such power or right preclude any other or future exercise of the power, or the exercise of any other power or right under this Agreement. To be effective, any waiver of a provision of this Agreement must be in writing and signed by the party or parties whose rights are being waived, and is effective only to the extent to which it is given.

17 NOTICES

- 17.1 Every notice required or permitted to be served (Notice) by any party (Sender) on another party (Recipient) pursuant to this Agreement must be in writing.

17.2 Subject to clause 19.3 a Notice will be deemed to have been effectively served:

- 17.2.1 If sent by prepaid post to the Recipient at the address of the Recipient as set out in this Agreement on the third business day following the date of postage by the sender

17.2.2 If hand delivered on the date of delivery to the Recipient's address as set out in this agreement unless such deliver occurs after 5.00pm or at any time on a day which is not a business day, in which case the Notice will be deemed to have been effectually served on the next business day.

19.3 A party to this deed may change its address of facsimile number for the receipt of notices by giving a notice to the other party or parties.

18 GENERAL

20.1 This Agreement may be executed in any number of counterparts (and without limitation may be delivered by facsimile) and all such counterparts when executed and taken together will constitute this Agreement

20.2 This Agreement comprises the entire agreement between the Participants in relation to the subject matter in no earlier agreement, understand their representation, oral or written, in relation to any matter dealt with in this Agreement will have any effect from the date of this Agreement

20.3 Each party to this Agreement must do or cause to be done or refrain from doing all such acts or things necessary to give effect to this Agreement.

20.4 This Agreement may not be amended or varied except in writing signed by all parties.

20.5 If all or part of any clause of this Agreement is illegal or unenforceable that part or clause shall be severed from this Agreement and will not effect the continued operation of the remaining provisions of this Agreement.

EXECUTED AS A DEED:

EXECUTED by

Director _____

Full Name

Usual Address

Director /Secretary _____

Full Name

Usual Address

EXECUTED by

Director _____

Full Name

Director / Secretary _____

Full Name

Usual Address

SIGNED, SEALED AND DELIVERED by

xxxxxx in the presence of: _____

Witness _____

Print Name of Witness _____

SIGNED, SEALED AND DELIVERED by

xxxxxxx in the presence of: _____

Witness _____

Print Name of Witness _____

SCHEDULE ITEM 1

PARTICIPANTS	INITIAL JOINT VENTURE INTEREST	COVENANTOR
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<i>Company name</i>	50%	person name
<i>Company name</i>	50%	person name

SCHEDULE ITEM 2

ROLES OF PARTICIPANTS		
<i>Company x</i>	<i>Company y</i>	
<ul style="list-style-type: none"> ○ list key roles here 	<ul style="list-style-type: none"> ○ list key roles here 	