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## Sample document

# Partnership Agreement

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SAMPLE

## Parties

Jane Doe of 565 Bourke Street, Melbourne, VIC 3000

John Smith of 565 Bourke Street, Melbourne, VIC 3000

## Background

The Partners agree to carry on the Business in a partnership on the terms and conditions of this Agreement.

## The Parties Agree

### A Length of Partnership

#### Start

1 The Partnership commences on the Commencement Date.

#### Ongoing until terminated

2 The Partnership continues until terminated under this Agreement. In relation to this:

- the Partnership will continue if there is a change in Partners of the Partnership provided the Partnership has at least 2 Partners at all times;
- in those circumstances, there will be no break in the continuity of the Partnership; and
- if a Partner dies, the Partnership continues with the deceased Partner's legal personal representative, subject to the terms of this Agreement.

### B The Partnership's name and business

#### Business Name for Partnership

3 The Business Name the Partnership will trade under:

- is set out in item 1 of Schedule 1; and
- may be changed by agreement between the Partners.

#### Compliance with Business Names law

4 The Partners must ensure that the use of the Business Name, or the use of any other business names in connection with the Partnership, complies with the law.

#### Business of Partnership

5 The purpose of the Partnership is to:

- conduct the Business; and
- engage in such other activities as agreed between the Partners at any time.

## **C Partners' interests and duties**

### **Partners' proportional interest in Partnership**

6 As at the Commencement Date, the Partners agree that the assets of the Partnership belong to the Partners in the Proportion.

### **Changing the Partners' Proportions**

7 The Partners may only change the Proportion by:

- admitting a new Partner and executing a Deed of Accession in accordance with clause 41; or
- recording the change in a Unanimous Resolution.

### **General duties of Partners**

8 Each Partner must:

- be just and faithful to the other Partners in all transactions relating to the Partnership;
- at all times give to the other Partners a just and faithful account of all information relating to the Business and the Partnership;
- devote all necessary time and attention to the Business and the Partnership;
- not engage either directly or indirectly in any other business which may be in competition or conflict with the Business;
- pay all cash, cheques and any other negotiable instruments received on account of the Business or the Partnership into the Partnership Account;
- contribute their proportion of any debt or liability incurred by one or more Partners on behalf of the Partnership and acting within their authority as a Partner; and
- indemnify the other Partners and the Partnership on demand for any and all debts or liabilities incurred by the indemnifying Partner acting on their own behalf or beyond their authority as a Partner, and not on behalf of the Partnership.

### **Partners duties as to the Partnership Bank Account**

9 The Partners must:

- open the Partnership Account as soon as possible after the Commencement Date;
- use the Partnership Account for making all payments by the Partnership; and
- pay all moneys received on account of the Business or the Partnership into the Partnership Account.

## **D Partners' Decision Making**

### **Decisions bind Partners**

10 The resolutions of the Partners, and any exercise of power by the Partners in accordance with this Agreement (whether or not in meeting), bind all the Partners.

### **Decision making without meetings**

- 11 If this Agreement states that a particular decision must be made by Unanimous Resolution, then that is the only way that decision may be made. However, the Partners may also make other decisions by passing an Ordinary Resolution at a meeting held and conducted in accordance with clause 13 to 17.
- 12 The Partners are to make sure that as soon as a Unanimous Resolution is executed, it is annexed to this Agreement.

### **Partners' Meetings: right to attend, frequency, notice, quorum and chair**

- 13 Each Partner is entitled to attend meetings of the Partners.
- 14 The Partners will meet as often as required.
- 15 Any Partner may give notice of a meeting by providing not less than 5 Business Days written notice to all other Partners — unless the Partners agree to a shorter notice period.
- 16 A quorum for each meeting is 2 Partners.
- 17 The Partners will appoint a Partner to act as chair of each meeting.

### **Partners' Meetings: voting**

- 18 The chair will not have an additional vote if an equal number of votes are cast for and against a motion — whether on a show of hands or on a poll.
- 19 At any meeting of the Partners, an Ordinary Resolution put to the vote will be decided on a show of hands — unless a Partner demands a poll. A Partner may make that demand before or after the result of the show of hands is declared.
- 20 On a show of hands, each Partner is entitled to one vote.
- 21 On a poll, each Partner is entitled to one vote for each percentage (rounded to the nearest whole number) of the relevant Partner's Proportion.

### **Partners' Meeting: Resolving a deadlock**

- 22 If a resolution receives an equal number of votes for and against it at any 2 consecutive meetings of Partners, then the Partner proposing the resolution may give notice to the meeting that they require the resolution to be passed as a Unanimous Resolution within 30 days after the date of the second meeting.
- 23 If the resolution referred to in clause 22 is not passed within that 30 day period, then the Partner may (within 7 days after that period) give notice that a dispute under clause 81 has arisen.

### **Partners to appoint Nominees**

- 24 If a Partner is a corporation, or is made up of two or more individuals acting as trustee, then the Partner must at all times have appointed a person to act as that Partner's Nominee.
- 25 The names and address of the Partner's Nominees as at the Commencement Date are listed in item 7 of Schedule 1.
- 26 A Partner can replace its nominee by notice in writing to the other Partners.

- 27 The actions of a Partner's Nominee bind the Partner that appointed that nominee.
- 28 A Partner's Nominee may, in respect of the Partnership:
- exercise any power or right; or
  - take any action or meet any obligation.
- 29 A Partner is taken to have acted personally when the Partner's Nominee, in respect of the Partnership:
- exercises any power or right; or
  - takes any action or meets any obligation.

## **E Assets, Records, Custodian, Capital, Loans, New Partners, Accounts, Profits, Losses and Drawings**

### **Assets Jointly Held**

- 30 The Partnership Assets must be and are held by the Partners jointly. However, the Partners may appoint a Custodian to hold assets on their behalf under clause 33.

### **Partnership's Assets**

- 31 The Partnership Assets comprise all assets acquired by the Partners using the funds of the Partnership or otherwise accruing or contributed to the Partnership.

### **Records of Partnership Assets**

- 32 The Partners must record the details of any assets acquired as contemplated by clause 31 in the Partnership's books immediately after the acquisition.

### **Appointment of Custodian over assets**

- 33 The Partners may appoint one or more Partners to hold one or more Partnership Assets as Custodian on behalf of the Partnership. The interests of the Partners in any Custodial Assets are held jointly by the Partners.

### **Directions from Partners to Custodian**

- 34 The Custodian must comply with all directions the Partners give to it, and all restrictions the Partners place on it.

### **Information**

- 35 As soon as the Custodian receives a notice or other document in respect of the Custodial Assets, the Custodian must provide copies to all Partners.

### **Capital of Partnership**

- 36 The capital of the Partnership is made up of:
- the Initial Capital; and
  - any other amount the Partners advance as capital.

### **Partners' Contribution to Partnership**

37 Any amounts the Partners advance under clause 36 must be recorded and shown in the Capital Account.

### **Loans from Partners to Partnership**

38 A Partner may make a loan to the Partnership.

39 Each Loan must be recorded in the Loan Accounts

40 All Loans advanced by a Partner will bear interest at the rate of 10% a year compounding monthly in arrears — unless the Partners agree otherwise in writing.

### **New Partners joining the Partnership**

41 The Partners may admit a person as an additional Partner at any time as long as the additional partner and the other Partners sign a Deed of Accession, see Schedule 2. The Deed of Accession must record:

- the new Proportion which applies on admission of the new Partner;
- any change to the Capital Accounts on admission of the new Partner; and
- if the Partner is a corporation, or more than one person acting as trustee, then that Partner's Nominee.

### **Proper annual accounts**

42 While the Partnership continues (and when the Partnership terminates), the Partners must ensure that proper accounts are prepared in respect of the Partnership by or on behalf of the Partners as soon as practicable after 30 June in each year.

### **True and Fair View in accounts**

43 The Partners must ensure that the documents prepared under clause 42 give a true and fair view of the Partnership's financial position at the time and include:

- a profit and loss statement (and a statement of the Partnership Profits, if any); and
- a balance sheet.

### **Division of Partnership Profits and fixed drawings**

44 The Partners must divide any Partnership Profits available for distribution between the Partners in the Proportion. However, the Partners may agree to pay a fixed amount of the Partnership Profits to one or more Partners. The amount of any such payments will:

- reduce the amount of Partnership Profits available for distribution under this clause 44; and
- be an entitlement of the Partner receiving it in addition to their entitlement under this clause 44.

## **Losses to be borne in Proportions**

45 If the Partnership Profits and the Capital are insufficient to cover the Partnership Losses or expenses, then the Partners will bear any of those Partnership Losses or expenses in the Proportion.

## **Drawings**

46 The Partners may draw out for their own use the amount of the Partnership Profits as agreed between the Partners.

## **F Transferring a Partner's Interest**

### **Transfer By Agreement**

47 The Partners may agree by Unanimous Resolution that a Partner may transfer its interest in the Partnership to one or more Partners, or to a third party.

48 Clause 47 applies to any interest a Partner (or the Partner's legal personal representative) has after completion of the process set out in Parts G (Retirement from Partnership), H (Transfer after a Partner's Death or Incapacity) or I (Partner Default).

## **G Retirement from Partnership**

### **Retirement**

49 Any Partner may retire from the Partnership by giving notice in writing to all other Partners. If a Partner gives that notice, then their retirement takes effect 120 days after the date the notice is received by the last Partner. The Partners may agree a shorter notice period by Unanimous Resolution.

50 If a Partner gives a notice under clause 49, then doing so constitutes an offer by that Partner for the other Partners to purchase the Retiring Partner's interest on a pro-rata basis (that is in accordance with the Proportions, excluding the Retiring Partner's Proportion).

51 If a Partner retires from the Partnership, then the remaining Partners have the right, to buy the Retiring Partner's interest either:

- on a pro-rata basis (that is in accordance with the Proportions, excluding the Retiring Partner's Proportion); or
- in such other proportions as the remaining Partners agree but subject to the provisions of this Part G.

52 For the remaining Partners to exercise their right under clause 51 to buy the Retiring Partner's interest, they must give written notice to the Retiring Partner within 30 days after the retirement of the Retiring Partner as set out in clause 49.

### **Partners may agree the value of the Retiring Partner's interest**

53 The value of the Retiring Partner's interest may be agreed by Unanimous Resolution. However, if by the Retirement Date the Partners (including the Retiring Partner) have not

agreed by Unanimous Resolution on the value of the Retiring Partner's interest, then they are to appoint a Qualified Valuer to value it.

54 If the Partners cannot agree within a reasonable period of time on a Qualified Valuer, then the accountants to the Partnership are to appoint a Qualified Valuer.

### **Qualified Valuer's Valuation**

55 The following rules apply to a valuation by a Qualified Valuer:

- The Retiring Partner and the other Partners may make written submissions to the Qualified Valuer;
- The Qualified Valuer acts as expert and not as arbitrator;
- The Qualified Valuer's determination is binding on the parties in the absence of manifest error; and
- The costs of the valuation are to be met as a Partnership expense.

### **Costs to be borne by Retiring Partner**

56 The following costs etc. that arise as a result of the change in Partnership are to be calculated and deducted in full from the net amount payable to the Retiring Partner:

- any transfer, break, refinance or other fees, costs or charges payable to a wholesaler banner group, financier, landlord or otherwise payable (but not the costs of any Qualified Valuer); and
- any increase in fees, costs or charges.

### **Completing the sale**

57 The sale of the Retiring Partner's interest must be completed by:

- if the Partners agree the value of the Retiring Partner's interest by Unanimous Resolution, then the Retirement Date; and
- otherwise, within 60 days after the receipt of the valuation referred to in clause 53.

58 If the sale of the Retiring Partner's interest is not completed on time, then clause 78 applies.

## **H Transfer after a Partner's Death or Incapacity**

### **Notice to other Partners**

59 As soon as a Partner becomes aware of the death or permanent incapacity or disablement of another Partner, they must notify all the other Partners immediately.

### **Partners may require transfer after a Partner's Death or Incapacity**

60 If a Partner, or a Partner's Nominee, dies or becomes permanently incapacitated or disabled, then the other Partners may:

- acquire that Partner's interest in the Partnership; or
- compel that Partner (or its legal personal representative) to sell its interest in the Partnership to a third party approved unanimously by the other Partners.

- 61 To do that, they must give notice to the relevant Partner (or their legal personal representative) within 30 days after the Partner receives notice in accordance with clause 59.
- 62 If any one or more Partners are acquiring that Partner's interest under clause 60, then they may do so either:
- on a pro-rata basis (that is in accordance with the Proportions, excluding that Partner's Proportion); or
  - in such other proportions as the other Partners agree but subject to the provisions of this Part H.

### **Partners may agree the value for the deceased or incapacitated Partner**

- 63 The Defaulted Partner's interest may be valued by Unanimous Resolution (where the Defaulted Partner is represented by its legal personal representative). However, if by the expiration of the period referred to in clause 60, the Partners have not agreed on the value of the Defaulted Partner's interest by Unanimous Resolution, then a valuation must be conducted by a Qualified Valuer agreed by the legal personal representative for the Defaulted Partner and the other Partners. If the Partners cannot agree within a reasonable period of time on a Qualified Valuer, then the accountants to the Partnership are to appoint a Qualified Valuer.

### **Qualified Valuer's Valuation**

- 64 The following rules apply to a valuation by a Qualified Valuer:
- the legal personal representative of the Defaulted Partner and the other Partners may make written submissions to the Qualified Valuer;
  - the Qualified Valuer acts as expert and not as arbitrator;
  - the Qualified Valuer's determination is binding on the parties in the absence of manifest error; and
  - the costs of the valuation are to be met as a Partnership expense.

### **Costs to be borne by Defaulted Partner**

- 65 The following costs etc. that arise as a result of the change in Partnership are to be calculated and deducted in full from the net amount payable to the Defaulted Partner:
- any transfer, break, refinance or other fees, costs or charges payable to a wholesaler banner group, financier, landlord or otherwise payable (but not the costs of any Qualified Valuer); and
  - any increase in fees, costs or charges.

### **Completing the sale**

- 66 Completion of the sale is to occur as soon as practicable after the value of the Defaulted Partner's interest in the Partnership is determined. If the Non-Defaulting Partners have approved a third party under clause 60, they must cause the third party to comply with this Part H.

- 67 If the Partner has died, then the sale must be completed:
- within the period prescribed by any relevant legislation for the holding of interests in the Partnership by the estate of the Defaulted Partner; or
  - within 6 months of the date on which the last Partner was notified of the death of the Partner, if there is no such period prescribed.
- 68 If the Partner has become permanently incapacitated or disabled, then the sale must be completed within 6 months of the last Partner being notified.

## **I Partner Default**

### **Partners can require transfer after a Partner's default**

- 69 If any one or more Default Events occurs in respect of a Partner or Partner's Nominee, then the Non-Defaulting Partners have the right to:
- buy the Defaulting Partner's interest, either:
    - on a pro-rata basis (that is in accordance with the Proportions, excluding the Defaulting Partner's Proportion);
    - in such other proportions as the Non-Defaulting Partners agree but subject to the provisions of this Part I; or
  - compel the Defaulting Partner to sell its interest in the Partnership to a third party approved unanimously by the Non-Defaulting Partners.
- 70 For the Non-Defaulting Partners to exercise their right under clause 69, they must give written notice to the Defaulting Partner within 30 days after the Default Event.

### **Partners may agree the value for the Defaulting Partner's interest**

- 71 The Defaulting Partner's interest may be valued by Unanimous Resolution. However, if by the Retirement Date the Partners have not agreed on the value of the Defaulting Partner's interest by Unanimous Resolution, then a valuation must be conducted by a Qualified Valuer agreed by the Defaulting Partner and the Non-Defaulting Partners. If the Partners cannot agree within a reasonable period of time on a Qualified Valuer, then the accountants to the Partnership are to appoint a Qualified Valuer.

### **Qualified Valuer's Valuation**

- 72 The following rules apply to a valuation by a Qualified Valuer:
- the Defaulting Partner and the Non-Defaulting Partners may make written submissions to the Qualified Valuer;
  - the Qualified Valuer acts as expert and not as arbitrator;
  - the Qualified Valuer's determination is binding on the parties in the absence of manifest error;
  - the Qualified Valuer is to be instructed to take into account any adverse effect the Default Event has had or may have on the value of the Business; and
  - the costs of the valuation are to be met as a Partnership expense.

### **Costs to be borne by Defaulting Partner**

- 73 The following costs etc. that arise from the default of the Defaulting Partner are to be calculated and deducted in full from the net price payable to the Defaulting Partner:
- any transfer, break, refinance or other fees costs or charges payable to a wholesaler banner group, financier, landlord or otherwise payable (but not the costs of any Qualified Valuer); and
  - any increase in fees costs or charges.

### **Completing the sale**

- 74 The sale of the retiring Partner's interest must be completed — even if the full price is not yet paid, see 75:
- if the Partners agree the value of the Defaulting Partner's interest in the Partnership by Unanimous Resolution, then within 60 days after the date of that resolution; and
  - otherwise, within 60 days after the Partners receive the valuation from the Qualified Valuer.
- 75 Where the Non-Defaulting Partners have approved a third party under clause 69, they must cause the third party to comply with this Part I.
- 76 The terms of sale are to provide that, even if the sale is complete, the Non-Defaulting Partners have 210 days after the date on which the sale is completed to pay the net price for the Defaulting Partner's interest in the Partnership.
- 77 The Defaulting Partner ceases to be a Partner from the date the sale is completed.

## **J Termination of Partnership**

### **Termination**

- 78 The Partnership may be terminated:
- at any time by a Unanimous Resolution;
  - by any Partner on notice to all other Partners, if the sale of a Retiring Partner's interest is not completed on time under clause 57;
  - by any Partner (including the legal personal representative of a Partner) on notice to all other Partners, if a Partner has died and the sale of that Partner's interest is not completed on time under clause 67; or
  - if any Partner has become permanently incapacitated or disabled, by Unanimous Resolution of the other Partners by notice to the Defaulted Partner (or its legal personal representative) if the Defaulted Partner's interest is not acquired on time under clause 68;
  - by Unanimous Resolution of the Non-Defaulting Partners by notice to the Defaulting Partner, if the Defaulting Partner's interest is not acquired on time under clause 74.

## **Consequences of Termination**

79 If the Partnership is terminated then all Non-Defaulting Partners or a person appointed by all Non-Defaulting Partners must:

- take a general account of the Partnership Assets and its liabilities;
- realise all Partnership Assets on behalf of the Partners; and
- apply the funds generated under this clause 79 on behalf of the Partnership under this clause in the following order of priority:
  - discharge all liabilities to any persons who are not Partners;
  - pay costs and expenses of winding up;
  - repay to each Partner (pro rata if applicable) any Loans;
  - pay to each Partner (pro rata if applicable) their Current Account; and
  - divide the balance (if any) among the Partners in the Proportions so that when paid each Partner will have been paid all amounts owing to them in respect of the Partnership (including in respect of the balance of their Capital Account).

## **Rights and Obligations on Termination**

80 If the Partnership is terminated, then (in addition to and without prejudice to any other rights, powers or remedies provided by law):

- each party is released from its obligations to perform this Agreement further; and
- each party retains the rights it had against the other party in respect of any past breach.

## **K Dispute Resolution by Expert**

### **Dispute Notice**

81 If a dispute arises concerning this Agreement, any of the parties may serve a dispute notice on the other parties. The dispute notice must state that a dispute has arisen and briefly identify the matter in dispute.

### **Appointment of Expert**

82 The parties may appoint an expert to determine the dispute after service of the dispute notice. If the parties cannot agree on the expert, any of the parties may request the President of the Law Institute of Victoria or nominate another person to appoint an expert.

### **Legal Representation**

83 Each party is entitled to legal representation during the dispute resolution proceedings.

### **Role of Expert**

84 The parties must instruct the expert to:

- seek any information and conduct investigations as the expert thinks fit and without

- being bound by the rules of natural justice;
- act as expert and not as an arbitrator;
- determine the dispute, including liability to pay legal costs, as the expert thinks fit; and
- advise the parties in writing of the determination.

### **Determination Binding**

85 The determination of the expert is binding on the parties.

### **Costs of Expert**

86 The parties to the dispute must pay the expert's costs and expenses equally, unless the expert determines otherwise.

## **L Confidentiality**

### **Confidentiality Security and Reproduction**

87 Each Partner must:

- keep Confidential Information confidential;
- take reasonable steps to ensure that any people employed for the Business do not disclose Confidential Information to a third party;
- maintain proper and secure custody of Confidential Information; and
- not use or reproduce in any form any Confidential Information without the written consent of all the other Partners or as required by law.

### **Delivery or Destruction of Confidential Information**

88 A Partner, Retiring Partner, Defaulting Partner or former Partner must immediately on receipt of a request from all the other Partners:

- deliver all Confidential Information and all changes to, reproductions of, extracts from and notes regarding that Confidential Information, in any form; or
- destroy the Confidential Information and, if it is the form of computer software, erase it from the magnetic media on which it is stored so that the Confidential Information is incapable of being revived; and
- provide a statutory declaration to all the other Partners that all Confidential Information has been delivered or destroyed in accordance with this clause 88.

## **M General**

### **Amendment**

89 This Agreement may only be varied or replaced by a document duly executed by the parties.

## **Entire Understanding**

90 This Agreement contains the entire understanding between the parties as to the subject matter contained in it. This Agreement replaces all previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter. They have no effect.

## **Further Assurance**

91 Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

## **Legal costs and expenses**

92 Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and the documents referred to in it – unless otherwise expressly stated.

## **Waiver and Exercise of Rights**

93 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

94 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

## **Assignment**

95 A party must not:

- sell, transfer, delegate, assign, licence any right or obligation under this Agreement to any person; or
- mortgage, charge or otherwise encumber any right or obligation under this Agreement.

## **Time of the Essence**

96 Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

## **N Notices**

### **Service of Notice**

97 A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- personally on the person;
- by leaving it at the person's current address for service;

- by posting it by prepaid post addressed to that person at the person's current address for service; or
- by facsimile to the person's current number for service.

### Particulars for Service

- 98 The particulars for service of each Partner are as set out on page 1 of this Agreement under the 'Parties' heading.
- 99 Any party may change the address or facsimile number for service by giving notice to the other party.
- 100 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

### Time of Service

- 101 A notice or other communication is deemed served:
- if served personally or left at the person's address, on service;
  - if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 7 Business Days after posting;
  - if served by facsimile, subject to the following sub-paragraph, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile; and
  - if received after 6.00 pm in the place of receipt or on a day which is not a Business Day, at 9.00 am on the next Business Day.

## O Definitions

102 In this Agreement, unless expressed or implied to the contrary:

<b>Agreement</b>	means this agreement between the Partners — including all Schedules.
<b>Business</b>	means: <ul style="list-style-type: none"> <li>• a business of the type specified in item 2 of Schedule 1, operated by the Partners through the Partnership under the Business Name from the Business Premises; and</li> <li>• any other business operated from time to time by the Partnership.</li> </ul>
<b>Business Day</b>	means Monday to Friday excluding public holidays in Victoria.
<b>Business Name</b>	means the name of the Partnership, as set out in item 1 of Schedule 1.
<b>Business Premises</b>	means the address of the Partnership, as set out in item 1 of Schedule 1.
<b>Capital</b>	means the capital of the Partnership as recorded in the Capital Account.

<b>Capital Account</b>	means the account kept by the Partners in respect of the Partnership showing the amount, adjusted from time to time, subscribed by a Partner by way of capital pursuant to clause 36.
<b>Current Account</b>	means the amount, adjusted from time to time, by which a Partner's entitlement to a share of the Partnership Profits varies from their drawings.
<b>Commencement Date</b>	means the date specified in item 3 of Schedule 1.
<b>Confidential Information</b>	means all information and materials, in any form, which comes into a Partner's possession concerning the Business or the Partnership under, or as a result of or in performance of, this Agreement. However, it does not include information: <ul style="list-style-type: none"> <li>• which at the time of its first disclosure or observation was in the public domain;</li> <li>• which, after disclosure or observation, comes into the public domain otherwise than by disclosure in breach of this Agreement;</li> <li>• which is received by a Partner from a third party who has the right to provide the information;</li> <li>• which was already in the receiving Partner's possession or knowledge without restriction prior to its disclosure or observation; or</li> <li>• which the disclosing Partner is required by law to disclose.</li> </ul>
<b>Custodial Assets</b>	means those assets of the Partnership held by the Custodian in accordance with clause 33.
<b>Custodian</b>	means the Partner or Partners appointed in accordance with clause 33.
<b>Deed of Accession</b>	means a deed by which a prospective Partner agrees, on admission, to be bound by the terms of this Agreement in the form set out in Schedule 2 and drawn in accordance with clause 41.
<b>Default Event</b>	means when a Partner or the Partner's Nominee: <ul style="list-style-type: none"> <li>• suffers an Insolvency Event;</li> <li>• commits a breach of this Agreement or of any other obligations at law and one of the other Partners gives notice of the breach and requires rectification within 14 days of the date of the notice, and the Defaulting Partner does not rectify the breach in that time period;</li> <li>• commits a breach of this Agreement or of any other obligations including those at law, which breach is not capable of rectification;</li> <li>• is sentenced to a term of imprisonment; or</li> </ul>

	<ul style="list-style-type: none"> <li>• does or suffers any act or omission which would be grounds for termination of the Partnership by a court.</li> </ul>
<b>Defaulted Partner</b>	means a Partner who has died or become permanently incapacitated or disabled.
<b>Defaulting Partner</b>	means a Partner in respect of whom a Default Event occurs.
<b>Initial Capital</b>	means the initial capital contributed by the Partners to the Partnership as set out in item 4 of Schedule 1.
<b>Insolvency Event</b>	means any of the following events: <ul style="list-style-type: none"> <li>• a party, being an individual, commits an act of bankruptcy;</li> <li>• a party becomes insolvent;</li> <li>• a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to a party or a party enters into a scheme of arrangement with its creditors or is wound up;</li> <li>• a party assigns any of its property for the benefit of creditors or any class of them;</li> <li>• the holder of an encumbrance over the assets of any party takes any step towards taking possession of, or takes possession of, any assets of a party or exercises any power of sale; or</li> <li>• the party has a judgment or order given against it for more than \$10,000 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after it is given.</li> </ul>
<b>Loan</b>	means a loan made by a Partner in accordance with clauses 38, 39 and 40.
<b>Loan Account</b>	means the account kept by the Partnership showing the amount (adjusted from time to time) advanced by a Partner as a loan to the partnership.
<b>Non-Defaulting Partner</b>	means a Partner who is not the Defaulting Partner.
<b>Ordinary Resolution</b>	means a resolution of the Partners requiring the approval of a simple majority of the Partners or by proxy and voting in the manner set out in clause 19.
<b>Partners</b>	means the partners in the Partnership from time to time.
<b>Partner's Nominee</b>	means each person nominated by a Partner in accordance with clauses 24 to 29 and, as at the Commencement Date, means those persons listed in item 7 of Schedule 1.
<b>Partnership</b>	means the partnership formed by the Partners under this Agreement to carry on the Business.

<b>Partnership Account</b>	means a bank account in the name of the Partnership opened in accordance with clause 9, with the bank specified in item 6 of Schedule 1.
<b>Partnership Assets</b>	means all assets of the Partnership, as set in clauses 31 and 32.
<b>Partnership Losses</b>	means all losses of the Partnership and whether on capital or income account or otherwise.
<b>Partnership Profits</b>	means any after tax profits of the Partnership including profits generated by the Business or any other investments.
<b>Proportion</b>	means the interest or share in the assets of the Partnership allocated to each Partner under clause 6.
<b>Purchase Price</b>	means the value of the share of the Partnership owned by the Defaulting Partner as at the later of: <ul style="list-style-type: none"> <li>• the date of the profit and loss account and balance sheet of the Partnership prepared for the financial year immediately before the financial year in which the relevant Partner became a Defaulting Partner; and</li> <li>• the most recent management accounts prepared before the date on which the relevant Partner became a Defaulting Partner.</li> </ul>
<b>Qualified Valuer</b>	means a professional valuer of businesses of a similar type to the Business with not less than 5 years experience valuing such businesses in the jurisdiction.
<b>Retirement Date</b>	means the date on which a Retiring Partner's retirement takes effect under clause 49.
<b>Retiring Partner</b>	means a Partner who retires from the Partnership under clause 49.
<b>Schedule</b>	means a schedule to this Agreement.
<b>Unanimous Resolution</b>	means a written resolution signed and dated by all the Partners.

## **P Interpretation**

### **Governing Law and Jurisdiction**

103 This Agreement is governed by and is to be construed in accordance with the laws stated in item 8 of Schedule 1. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction and waives any right to object to proceedings being brought in those courts.

### **Persons**

104 In this Agreement, a reference to:

- a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- a person includes the legal personal representatives, successors and permitted assigns of that person; and

- any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

### **Joint and several**

105 If a party consists of more than one person, then this Agreement binds them jointly and each of them severally.

### **Legislation**

106 In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

### **This Document, Clauses and Headings**

107 In this Agreement:

- a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Agreement all of which are deemed part of this Agreement;
- a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- if an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- if the expression 'including' or 'includes' is used it means 'including but not limited to' or 'including without limitation'.

### **Severance**

108 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, then that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

109 If it is not possible to read down a provision as required in this clause, then that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

### **Counterparts**

110 This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

### **Currency**

111 In this Agreement, a reference to '\$' or 'dollars' is a reference to Australian dollars.

**Business Day**

112 If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, then the payment or act must be made or done on the next following Business Day.

**Number and Gender**

113 In this Agreement, a reference to:

- the singular includes the plural and vice versa; and
- a gender includes the other genders.

SAMPLE

**Signing Page**

**Executed** as an agreement.

Dated: \_\_\_\_\_

**Signed sealed and delivered by**  
Jane Doe:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of individual

\_\_\_\_\_  
Name of witness (please print)

**Signed sealed and delivered by**  
John Smith:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of individual

\_\_\_\_\_  
Name of witness (please print)

## Schedule 1

1. **Business name and address:** Sample document of 565 bourke street, melbourne, VIC 3000
2. **Type of business:** Sample document
3. **Commencement Date:** 18 November 2015
4. **Initial Capital:**

Partner	Initial capital
Jane Doe	\$10000
Partner's facsimile: Fax 0386842053	
John Smith	\$10000
Partner's facsimile: Fax 0386842053	
5. **Proportion:**

Partner	Proportion
Jane Doe	50%
John Smith	50%
6. **Bank:** NAB
7. **Name of Partners' Nominees:**

Partner	Partner's Nominee
"Nil"	"Nil"
8. **Jurisdiction:** Victoria

**Schedule 2**

**Deed of Accession**

SAMPLE

Date / /2015

## **Sample document**

### **Deed of Accession**

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**The existing Partners**

and

**The New Partner**

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Dated        /        /

## Parties

[##Names and addresses of Partners]

(Partners)

[##Name and address of New Partner]

(New Partner)

## Background

1. The Partners conduct a Sample document business as partners.
2. The Partnership is governed by the terms of the Partnership Agreement with a Commencement Date of 18 November 2015.
3. The parties have agreed that:
  - the New Partner will be admitted as a Partner in the Partnership and;
  - the New Partner's Proportion will be ##%.
4. The parties have entered into this Deed to give effect to their common intentions.
5. This Deed is supplemental to the Partnership Agreement.

## This Deed Witnesses

### A Admission of New Partner

- 1 By this Deed, and with effect from the Effective Date, the Partners admit the New Partner as a Partner of the Partnership.
- 2 The Partners and the New Partner agree that, with effect from the Effective Date:
  - each will participate in the Partnership in the New Proportion; and
  - the proportions of interest held between the Partners together with the New Partner will be adjusted accordingly.
- 3 The Partners and the New Partner:
  - agree that all relevant requirements of the Partnership Agreement concerning the subject matter of this Deed have been satisfied; and
  - jointly and severally waive any rights which they may otherwise have had in respect of any non-compliance with the Partnership Agreement.

### New Partner Acknowledgements

- 4 The New Partner:
  - confirms that it has been supplied with a copy of the Partnership Agreement;

- represents to the parties that it has read, understood and agrees with the terms of the Partnership Agreement (including to the extent varied by this Deed); and
  - has been given the opportunity to obtain advice with regard to the Partnership Agreement.
- 5 The New Partner agrees to observe, perform and be bound by all the terms and conditions of the Partnership Agreement, as varied by this Deed, so that the New Partner is deemed from the Effective Date to be a Partner in the Partnership.
- 6 The New Partner represents and warrants to the parties that, if it is a company:
- it is a company duly registered and validly existing under the laws of Australia;
  - it has the corporate and other powers to enter into and perform its obligations under this Deed and to carry out the transactions and obligations contemplated by this Deed and the Partnership Agreement; and
  - it has taken all necessary corporate and other action to authorise the entry into and performance of this Deed and to carry out the transactions contemplated by this Deed and the Partnership Agreement.
- 7 Neither the execution nor performance by the New Partner of its obligations under this Deed and the Partnership Agreement will violate in any respect any of the provisions of:
- its constituent documents; or
  - any other document, agreement or other arrangement binding upon it.

### **Particulars for service**

- 8 The particulars for service of the New Partner are as set out on page 1 of this Deed under the 'Parties' heading.

### **Application of Partnership Agreement**

- 9 The parties acknowledge and agree that the Partnership Agreement continues to bind the parties in respect of the Partnership except:
- To the extent varied by this Deed; and
  - To the extent that the Partnership Agreement is inconsistent with this Deed, in which case the provisions of this Deed prevail to the extent of the inconsistency.

## **B General**

### **Amendment**

- 10 This Deed may only be varied or replaced by a document duly executed by the parties.

### **Entire Understanding**

- 11 This Deed contains the entire understanding between the parties as to the subject matter contained in it. This Deed replaces all previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter. They have no effect.

## Further Assurance

- 12 Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.

## Legal costs and expenses

- 13 Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Deed and the documents referred to in it – unless otherwise expressly stated.

## Waiver and Exercise of Rights

- 14 A single or partial exercise or waiver of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.
- 15 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

## Assignment

- 16 A party must not:
- sell, transfer, delegate, assign, licence any right or obligation under this Deed to any person; or
  - mortgage, charge or otherwise encumber any right or obligation under this Deed.

## Time of the Essence

- 17 Time is of the essence as regards all dates, periods of time and times specified in this Deed.

## Notices

- 18 All notices in respect of this Deed must be served in accordance with the terms of the Partnership Agreement.

## C Definitions

- 19 Terms in this Deed take their meaning from the Partnership Agreement and unless expressed or implied to the contrary:

<b>Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Deed</b>	means this Deed of Accession.
<b>Effective Date</b>	means the date of this Deed.
<b>New Proportion</b>	means: <ul style="list-style-type: none"><li>• as to ##% - New Partner;</li><li>• as to ##% - #each Partner and their Proportion</li></ul>
<b>Partners</b>	means ##names of partners.

**Partnership** means the partnership conducted by the Partners in respect of the Business.

**Partnership Agreement** means the Partnership Agreement, with a Commencement Date of 18 November 2015, by which the Partnership was established.

## **D Interpretation**

### **Governing Law and Jurisdiction**

20 This Deed is governed by and is to be construed in accordance with the laws stated in item 8 of Schedule 1 of the Partnership Agreement. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction and waives any right to object to proceedings being brought in those courts.

### **Persons**

21 In this Deed, a reference to:

- a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- a person includes the legal personal representatives, successors and permitted assigns of that person; and
- any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

### **Joint and several**

22 If a party consists of more than one person, then this Deed binds them jointly and each of them severally.

### **Legislation**

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- headings and sub-headings are inserted for ease of reference only and do not

affect the interpretation of this Deed;

- if an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
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### **Severance**

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### **Counterparts**

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### **Number and Gender**

30 In this Deed, a reference to:

- the singular includes the plural and vice versa; and
- a gender includes the other genders.

## Signing page

**Executed** by the parties as a deed

*[##Note: signing clauses must be included for each of the existing Partners as well as for the New Partner]*

SAMPLE

**Schedule 3**

**Pro-forma for unanimous resolution**

**Sample document  
(Partnership)**

**Unanimous Resolution** of the Partners of the Partnership, pursuant to clause 6.1 of the Partnership Agreement for the Partnership:

<b>[##insert subject of resolution]</b>	<b>Noted</b> by the Partners that [#subject of proposed resolution]
	<b>Resolved</b> unanimously by the Partners that the following resolution would be passed:  • [#insert wording of resolution]
<b>Date of effect of Resolution</b>	This resolution takes effect from the date on which the last Partner or Partner's Nominee signs this resolution.

*[##Note: insert signing clause for each Partner and date each party signed]*