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**PARTNERSHIP DEED**

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DATED: THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

# PARTNERSHIP DEED

**THIS DEED OF PARTNERSHIP** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**BETWEEN** each of the persons named and described in Part A of Schedule One and collectively called the “**Partners**”.

## RECITALS:

- A. The Partners have agreed to carry on the Business (as defined) in the Partnership constituted by this Deed.
- B. The Partners have entered into this Deed to set out their respective rights and obligations to each other as Partners of the Partnership and to set out how the Business is to be conducted by the Partners in the Partnership.

## THE PARTIES AGREE AS FOLLOWS:

### 1 DEFINITIONS

1.1 These words and phrases have the following meanings:

“**Accounts**” means the Balance Sheet and Profit and Loss Accounts of the Partnership for each Financial Year.

“**Accountant**” means Jason Johnson or such other qualified person as the Partners may by Partnership Decision decide is to be the Accountant in his or her place.

“**Act**” means the *Partnership Act* of the State of Territory in which the Partnership conducts the Business.

“**Advance**” means an amount to be contributed by each Partner to the Fund simultaneously with the execution of this Deed being the amount set out in Part C of Schedule One opposite each Partner’s name.

“**Appointment Deed**” means the deed that must be executed by a New Partner in order to become a Partner.

“**Assets**” means the assets of the Partnership (including goodwill) at any relevant time and includes the Assets set out and described in Part B of Schedule Two.

“**ATO**” means the Australian Taxation Office.

“**Bank**” means any bank at which the Partnership has its operating accounts or has any of its funds on deposit or invested.

“**Business**” means the business described in Part A of Schedule Two to this Deed and includes any other business or enterprise which the Partners resolve by Partnership Decision to carry on together in Partnership.

“**Capital**” means the total capital in the Fund of the Partnership from time to time made up of Advances made by the Partners to the Fund and all other monies, property and Assets which are of a capital nature and which form part of the Fund.

“**Chairperson**” means a Partner appointed by a majority in number of the Partners at a Partners’ Meeting to act as Chairperson of the Partners’ Meeting. The Partners may by a Partnership Decision appoint a Partner as a standing Chairperson who shall chair all Partners’ Meetings until he or she resigns, dies or is removed by Partnership Decision from the position of Chairperson.

“**Corporate Representative**” means an individual appointed by a company that is a Partner to attend and vote at Partners’ Meetings that corporate Partner’s Share and do all things on its behalf as a Partner. Such appointment may be a standing appointment.

“**Deed**” means this Deed of Partnership.

“**Drawings**” means as from the date of this Deed, the amount each Partner may draw as set out opposite the name of each Partner in Part C of Schedule Two provided that at any time the Partners may, by Partnership Decision, change the Drawings of Partners generally or of any particular Partner. In the case of New Partners and Non Capital Partners, any reference to Drawings shall be a reference to the Drawings agreed to be taken by that New Partner or Non Capital Partner.

“**Financial Year**” means in respect of the current year, the period from the date of this Deed up to and including the next 30<sup>th</sup> June and thereafter means the year commencing 1<sup>st</sup> July in one year and finishing on 30<sup>th</sup> June in the next year provided that the last year shall mean the year commencing on 1<sup>st</sup> July and finishing on the date the Partnership is terminated.

“**Firm Name**” means Example Partnership and such other or further name or names under which the Business of the Partnership is at any time conducted whether or not that name is registered under any applicable legislation for the registration of business names.

“**Fund**” means collectively the total of all Advances made by Partners to the Fund together with all other Assets, money and property of a Capital nature of the Partnership.

“**GST**” means the Goods and Services Tax.

“**Legislation**” means all Acts, statutes, codes and regulations that in any way apply or regulate the Partnership and/or the Business.

“**Liability**” means any liability or obligation of whatsoever kind or nature of the Partnership at any time, including but not limited to all Debts.

“**New Partner**” means any person who after the date of this Deed becomes a Partner.

“**Non Capital Partner**” means any person approved by Partnership Decision as a Non Capital Partner. A Non Capital Partner is not a Partner but is bound by all the obligations in this Deed as if he, she or it were a Partner.

“**Partners**” means the persons named and described in Part A of Schedule One, all of whom are the Partners of the Partnership as at the date of this Deed, together with all persons who after the date of this Deed become New Partners of the Partnership.

“**Partners’ Meeting**” means a meeting of Partners properly convened and with a Quorum present.

“**Partnership**” means the Partnership constituted by this Deed.

“**Partnership Decision**” means a decision made by not less than a majority in number of the Partners that collectively hold fifty percent (50%) of the Shares in the Partnership either at a Partners’ Meeting or by a written decision signed by that majority collectively holding that same minimum percentage Shares in the Partnership.

“**Quorum**” means a majority of Partners who collectively hold Fifty point One percent (50.1%) of the Shares in the Partnership.

“**Share**” means a percentage share in the Partnership and in respect of the Partners that are parties to this Deed, the percentage Share set out next to their respective names in Part B of Schedule One.

“**Unanimous Partnership Decision**” means a Partnership Decision passed unanimously by a resolution at a Partners’ Meeting or a Partnership Decision signed by all Partners.

1.2 Any reference to a Partner in this Deed shall be a reference to that Partner’s assignees and lawful successors in title. Where a Partner is an individual any reference to that Partner shall include his or her legal personal representatives. Where any Partner is a company, any reference to that Partner shall, where applicable, include any controller appointed to that company with the meaning of that term as defined in the *Corporations Act 2001 (Cth)*.

1.3 Headings are included in this Deed for convenience only and shall not effect the interpretation or construction of any clause of this Deed.

1.4 Any reference to Legislation shall also include all amendments to that Legislation and where applicable shall include all amendments to all regulations, ordinances, by-laws, rules or codes of practice made pursuant to that Legislation.

## **2 FORMATION OF THE PARTNERSHIP**

2.1 The Partners agree to carry on in common the Business as Partners from the date of this Deed and on these terms and conditions.

2.2 Each Partner shall be entitled to take part in the management of the Partnership and to vote on all Partnership Decisions. Each Partner shall have the percentage of votes on any Partnership Decision as equals his/her/its Share in the Partnership at that time.

2.3 The death, retirement or removal of a Partner shall not bring the Partnership to an end unless there is a Partnership Decision to terminate the Partnership.

2.4 Any Partner may by written notice to the other Partners retire from the Partnership in accordance with the terms of this Deed.

## **3 PARTNERSHIP NAME**

3.1 The Business shall be carried on under the Firm Name. The Partners shall ensure that the Firm Name is registered pursuant to any Legislation for the time being in force with regard to the registration of businesses or business names.

3.2 The Partners may at any time change the Firm Name by a Partnership Decision.

3.3 The Partners may in the conduct of the Business register such trading names and logos as they may deem appropriate under the *Trade Marks Act 1995* (Cth).

## **4 PARTNERSHIP PREMISES**

4.1 The Business shall be conducted by the Partners at 1 Sydney Street, Sydney, 2000 and at such other places as the Partners shall from time to time by a Partnership Decision determine.

4.2 All Partners shall have full and unfettered access to all Partnership premises where the Business is carried on.

## **5 SHARES AND CAPITAL**

5.1 Each Partner shall immediately on the execution of this Deed contribute as an initial Advance that amount of Capital as is shown opposite that Partner's name in Part C of Schedule One, which shall form that Partner's contribution to the Capital of the Partnership.

5.2 The Partners may by a Partnership Decision decide to increase the Capital of the Fund. Each Partner agrees to contribute additional advances from time to time according to

that Partner's Share at that time and to contribute such further Advances. Where there is a Partnership Decision to reduce Capital, each Partner shall be entitled to that portion of such reduction as equals that Partner's Share at that time.

- 5.3 Each Partner has at the date of this Deed the percentage Share in the Partnership as is set out as that Partner's Share opposite the Partner's name in Part B of Schedule One.
- 5.4 If a Partnership Decision is to increase the Capital and thereby to require the Partners to contribute additional Capital and a Partner does not or is not able to contribute his/her or its portion thereof within twenty-one (21) days of the date such contribution is required to be made then that Partner's Share shall be proportionately diluted to a Share equal to his/her/its percentage of the Capital as increased after other contributions have been made by other Partners.
- 5.5 Each Partner shall be entitled to interest on any Advance made by that Partner until that Capital has been repaid. The rate of interest will be the lowest bank rate for overdrafts offered by the Bank to its customers at the time the Advance is made. This interest is to be calculated monthly in arrears and paid on 30 June in each Financial Year.

## **6 BALANCE SHEETS AND ACCOUNTS**

- 6.1 The Partners shall at least once each Financial Year prepare a Balance Sheet of the Assets and Liabilities of the Partnership as at the date upon which the Accounts have been prepared. The Accounts must show a true and fair view of the Accounts of the Partnership for that Financial Year. The Partners may delegate the preparation of the Accounts to the Accountant.
- 6.2 The goodwill of the Partnership shall be valued by the Accountant and form part of the Assets.
- 6.3 Any Partner holding one hundred percent (100%) Share or any Partners collectively holding that percentage of Shares may by written notice to the other Partners require the Accounts to be audited by the Accountant. Upon receipt of such notice the Partners must by Partnership Decision promptly instruct the Accountant to carry out an audit of the Accounts. The Accountant shall be given full and complete access to all the financial records, bank statements, bank account records and other accounting books and materials as he or she may reasonably require in order to carry out such audit. All Partners must co-operate, render all assistance and provide all information required by the Accountant to carry out the audit.

- 6.4 The Partners must ensure that proper books of Account and records are at all times kept by the Partnership in a form recommended from time to time by the Accountant. It shall be the responsibility of each Partner to ensure that full particulars of every financial transaction entered into on behalf of the Partnership is duly recorded and entered in the Partnership books of account and records. The Partnership books and records must be kept at the place of Business of the Partnership provided however that the Accountant may for the purposes of carrying out any audit or the purposes of preparing any Accounts take possession and control of the said books and records.
- 6.5 Each Partner has the right at any time to access all books and records and is entitled to take such copies thereof as he or she or it may require.

## **7 LOANS MADE BY PARTNERS TO THE PARTNERSHIP**

- 7.1 Over and above all Advances of Capital to the Fund made by Partners, a Partner may if requested by Partnership Decision, make a loan or loans to the Partnership. Such loan shall be made on such terms as the lending Partner and the other Partners by a Partnership Decision agree and shall be recorded in a loan agreement signed by the lending Partner and all other Partners who voted in favour of the Partnership Decision to borrow such monies.
- 7.2 The loan agreement shall set out the amount of the loan, the term of the loan, the rate of interest per annum and how that interest is calculated. The loan agreement must also set out all rights and obligations of the parties to the loan agreement. Notwithstanding that a Partner may not have signed the loan agreement, all Partners shall be liable for the repayment of the loan to the lending Partner as Partners of the Partnership.
- 7.3 The lending Partner may require as a condition of making the loan that the Partners, or the Partnership provide security for the repayment of the loan and all interest thereon.
- 7.4 Unless permitted under the loan or consented to by the lending Partner, all profits of the Partnership shall first be applied, if the loan is then due and outstanding, in the repayment of the loan.
- 7.5 Where any loan is made by a lending Partner and is repayable on demand then such demand must be in writing and addressed to the Partners as a whole. Such demand may be served on the Partners at the place of Business of the Partnership.

7.6 Unless all Partners by Unanimous Partnership Decision agree, there shall be no return of Advances of Capital until all loans made by Partners have been repaid in full, together with all interest thereon.

7.7 All loans made by Partners to the Partnership shall on winding-up rank equally with all other Liabilities of the Partnership.

## **8 SHARE IN PROFITS AND LOSSES**

8.1 The net profit or loss of the Partnership in any Financial Year after the payment of all outgoings and expenses shall be determined, confirmed by Partnership Decision and then divided amongst the Partners according to each Partner's Share as at 30<sup>th</sup> June in each Financial Year.

8.2 The amount of each Partner's Share in profits shall be credited to that partner's account in the Partnership and must be set off against all drawings taken by that Partner during the Financial Year or Financial Years. A Partner is entitled at any time to take any amount standing to his, her or its credit as profits in that Partner's account.

## **9 OUTGOINGS AND LOSSES**

9.1 All Partners must contribute to all outgoings losses and expenses in the same proportion as they hold Shares in the Partnership.

9.2 All expenses, liabilities and outgoings of the Partnership including all interest on loans and/or on Advances and all Partnership losses shall be payable in the first instance out of any profits of the Partnership; secondly, out of the Advances of Capital made by the Partners to the Partnership and thirdly, in the case of any remaining deficiency by the Partners making contributions in proportion to the Shares they each hold in the Partnership at that time.

## **10 ACCOUNTANT**

10.1 The Partners shall instruct the Accountant to prepare and finalise the Accounts for each Financial Year and prepare the annual Partnership return of income for submission to the ATO in each Financial Year during the Partnership.

10.2 The Accountant shall provide each Partner with a copy of the Accounts and the return of Partnership income to be lodged with the ATO. The Accounts as so prepared, in the absence of manifest error, shall be binding on the Partners as the Accounts of the Partnership for that Financial Year.

- 10.3 The Partners may at any time by Partnership Decision remove the Accountant and appoint a person who is a Chartered Accountant or certified public accountant as the new Accountant for the Partnership.
- 10.4 The Accountant shall from time to time review and oversee the Partnership's compliance with all tax and revenue laws and report to the Partners about any material matters concerning such compliance including, but without limitation, the lodgment of all BAS, the payment of all GST, payroll tax (if applicable) and statutory superannuation.

## **11 THE BANK**

- 11.1 The Partnership shall open and maintain a trading account with the Bank and shall deposit all monies (including Capital) not immediately required on investment deposit with the Bank.
- 11.2 The Partners may by a Partnership Decision change the Bank or change where or with whom surplus funds of the Partnership are invested. The Partners may use several Banks and have several trading accounts at different Banks. The Partners may deposit surplus funds with other Banks or financial Institutions.
- 11.3 Except where the Partnership has its own fireproof safe, all security and title documents of the Partnership shall be deposited in a safe custody box at the Bank. Such security and title documents may be withdrawn only if there is a Partnership Decision to that effect.
- 11.4 All cheques, bills of exchange and other negotiable instruments drawn on the Bank account must be drawn in the Firm Name and must be signed by at least Two (2) Partners. Every Partner shall be entitled to be a signatory on the Bank accounts of the Partnership.

## **12 PARTNERS DRAWINGS**

- 12.1 Unless otherwise agreed by Partnership Decision, each Partner shall be entitled to take drawings against his/her/its entitlements to his/her/its share in the profits of the Partnership in the amounts opposite their respective names in Part C of Schedule Two under the heading 'Drawings' and at the times dated therein for the taking of drawings.
- 12.2 At the end of each Financial Year if the drawings of any Partner in that Financial Year exceed the Partner's Share in the Profits of the Partnership for that Financial Year then

that Partner must immediately refund the excess to the Partnership and make payment of such excess into the Partnership Bank account.

- 12.3 If a Partner fails to make such refund of any excess of drawings that he, she or it has taken then that Partner's Share of any profits shall first be applied to meet such excess and until that excess has been fully re-paid that Partner shall not be entitled to be paid any Share of profits which that Partner would otherwise be entitled to take. On any distribution of Capital or repayment of any loan made by a Partner, if there is an excess of drawings outstanding and owing by that Partner to the Partnership, that excess may be satisfied by setting it off against that Partner's entitlement to a return of Capital or set-off against the amount owing to that Partner by way of loan.

### **13 DUTIES OF PARTNERS**

- 13.1 Unless otherwise agreed by Partnership Decision, every Partner must, during the continuance of the Partnership, work on a full-time basis in the Business. Where a Partner is not an individual, a representative of that Partner acceptable to the Partners (by Partnership Decision) must work full-time in the Business.
- 13.2 Each Partner must in all dealings with other Partners relating to the Business act in good faith, honestly and in the best interests of the Partnership as a whole.
- 13.3 Each Partner stands in a fiduciary relationship with each other Partner and in particular, must as a fiduciary:
- 13.3.1 Not make a personal profit directly or indirectly from any opportunity offered to the Partnership, except out of that Partner's entitlement to share in the profits of the Partnership or where the Partners have by Unanimous Partnership Decision consented to that Partner exploiting that opportunity for his/her/its personal profit;
  - 13.3.2 Not compete directly or indirectly with the Business;
  - 13.3.3 Not use any information that is confidential to the Partnership to gain a personal advantage for himself/herself/itself or any third party;
  - 13.3.4 Not disparage the Partnership or any Partner or by act or omission cause deliberate harm to the Business or to the Partnership;
  - 13.3.5 Not withhold any information about any opportunity, fact or circumstance that might benefit the Partnership as a whole; and
  - 13.3.6 Not neglect or place at risk any of the Assets of the Partnership.

- 13.4 Each Partner must at all times remain solvent and be able to pay his/her/its debts as and when they fall due. In the event of a Partner becoming insolvent that Partner must promptly notify the other Partners of the circumstances giving rise to that Partner's insolvency. A Partner who becomes insolvent may be required by Partnership Decision to resign from the Partnership and if that Partner fails to promptly resign from the Partnership, the Partners may by Partnership Decision expel that Partner.
- 13.5 Each Partner in his/her/its dealings with the other Partners must at all times co-operate and act reasonably having regard to the best interests of the Partnership as a whole.
- 13.6 A Partner must not unreasonably exercise any right that Partner might have under this Deed if the exercise of that right would deprive another Partner of his/her/its legitimate and proper benefits under the Partnership. Provided that this does not apply in respect of any benefits of a Partner who is in breach of the Partnership, is insolvent, or where a Partner exercising such rights, is enforcing his/her/its right to be repaid any loan.

#### **14 RESTRICTIONS ON PARTNERS**

- 14.1 No Partner shall, without the prior consent of the Partners given by Partnership Decision and after full disclosure to the Partners:
- 14.1.1 Directly or indirectly carry on, be involved, or have any interest in any other business other than the Business;
- 14.1.2 Lend or agree to lend any money on behalf of the Partnership to a third party;
- 14.1.3 Grant credit to any customer of the Business or other third party for goods or services provided by the Business to that customer or third party beyond any permitted limits or on different terms than those usually offered by and in the ordinary course of the conduct of the Business;
- 14.1.4 Purchase any personal asset using as credit for such purchase the Partnership or any Asset of the Partnership;
- 14.1.5 Borrow any money purportedly on behalf of the Partnership for his/her/its own personal requirements or use or grant any mortgage, charge or other security over any Partnership property or Asset to secure any personal borrowing, undertaking or obligation;
- 14.1.6 Grant any release, discharge or agree to waive any obligation to pay any debt or liability or obligation owed by any third party to the Partnership unless any such debt, liability or obligation has been fully satisfied;

- 14.1.7 Commence any litigation in any Court in the name of the Partnership;
  - 14.1.8 Enter into any agreement or contract on behalf of the Partnership other than in the ordinary and proper course of the Business and within the scope of any authority given by a Partnership Decision to that Partner;
  - 14.1.9 Incur any expense in the name of the Partnership that does not relate to the legitimate and proper interests of the Business or the Partnership;
  - 14.1.10 Employ any individual as an employee of the Partnership without the prior authority of the Partners given by Partnership Decision to that Partner;
  - 14.1.11 Dispose of or sell any major Asset on behalf of the Partnership;
  - 14.1.12 Engage under contract any contractor or consultant without the prior authority of the Partners given by Partnership Decision;
  - 14.1.13 In any way attempt to make any other person a Partner in the Partnership;
  - 14.1.14 In any way attempt to grant any interest or right in respect to the Business to any third party without the Partners' prior authority given by a Partnership Decision, and
  - 14.1.15 Mortgage or in any way charge or encumber or grant any interest over his/her/its Share to any third party.
- 14.2 A Partner must not do or omit to do anything that would result in the Partnership or any Partner being in breach of any Legislation.
- 14.3 A Partner must not in the course of the Partnership or in conducting the Business engage in any conduct that is misleading or deceptive or which is likely to mislead or deceive any person.

## **15 PARTNERSHIP DECISIONS**

- 15.1 A Partnership Decision may be passed by Partners collectively holding the required majority in number and percentage of Shares signing a document that sets out the Partnership Decision and stating that those Partners signing are in favour of the decision being a Partnership Decision of the Partnership.
- 15.2 A Partnership Decision may be passed by Partners collectively holding the required majority in number and percentage of Shares being present in person and in the case of a Partner that is a company, by a Corporate Representative or by a proxy voting in favour of the proposed decision at a properly convened Partners' Meeting. A minute signed by the Chairperson of that Partners' Meeting shall be conclusive evidence of the Partnership Decision set out in that minute having been so passed in all

circumstances except where a Partner has within seven (7) days of a copy of that signed minute being sent to him, her, or it objected to the accuracy of the minute setting out the Partnership Decision. Such obligation must be given by notice in writing to all Partners setting out in full his/her/its objection.

- 15.3 Where there is such objection, the Partners shall by Partnership Decision made within a further twenty-eight (28) days declare whether or not the objection is sustained or rejected. In the event of no Partnership Decision being made in that time rejecting the objection, then the objection shall for all purposes be deemed sustained and the Partnership Decision, the subject of the objection, shall for all purposes be void and of no effect as a Partnership Decision.

## **16 PARTNERS' MEETINGS**

- 16.1 The Partners shall meet at least once in every month. A Partners' Meeting shall be held at one place at which quorum of Partners are physically present. Alternatively if all Partners have given their written consent, which consent may be a standing one, a Partners' Meeting may be held by using any form of technology consented to by all Partners whereby all Partners can hear what is being said by all other Partners. Any Partner may by giving a reasonable period of written notice to the other Partners withdraw his, her or its consent to Partners' Meetings being held using technology. A 'reasonable period' shall be deemed to be 14 clear days unless the Partners otherwise by Partnership Decision decide.
- 16.2 A Partners' Meeting may be called by any Partner giving written or electronic notice of the proposed Partners' Meeting to all other Partners. Such a notice may be sent by facsimile, email, post or given by hand. If sent by facsimile, email or given by hand, it shall for all purposes have been given on that day. If sent by post, it shall for all purposes be deemed given three (3) days after the date of posting.
- 16.3 At least ten (10) days prior notice must be given of a Partners' Meeting unless at least three-quarters ( $\frac{3}{4}$ ) in number and Shares consent to the Partners' Meeting being held notwithstanding that less notice has been given.
- 16.4 A notice of a Partners' Meeting must identify the Partner sending the notice, the place, date and time of the proposed Partners' Meeting and the general nature of all agenda items for consideration at the Partners' Meeting. Where there are any proposed Partnership Decisions to be put to the Partners at that meeting, those proposed Partnership Decisions must be fully set out in the notice.

- 16.5 The Partners shall, as the first item at any Partners' Meeting, elect a Partner to act as Chairperson of the Partners' Meeting. The Chairperson must, before any business is transacted at the Partners' Meeting, determine whether a Quorum is present. If a Quorum is not present then the Partners' Meeting must be adjourned to a date and time not less than seven (7) days after and not more than twenty-one (21) days after the original date of that Partners' Meeting. All Partners including Partners that were not present at the Partners' Meeting must be given notice of the new date, time and place of the adjourned Partners' Meeting. At that adjourned Partners' Meeting a Quorum shall be one hundred percent (100%) in number of the Partners present collectively holding more than one hundred percent (100%) of the Shares.
- 16.6 Minutes must be taken by the Chairperson or by a Partner appointed by the Chairperson to take such minutes. Those minutes should summarise all business conducted at the Partnership Meeting. Those minutes must show a true and fair view of all items discussed at the Partners' Meeting. All minutes of Partners' Meetings must set out:
- 16.6.1 Every proposed Partnership Decision;
- 16.6.2 A statement as to whether that proposed Partnership Decision was passed by the required majority and if passed as a Unanimous Partnership Decision, a statement to that effect;
- 16.6.3 The Chairperson shall check the accuracy of all minutes and if satisfied that those minutes correctly reflect the Partners' Meeting the Chairperson shall sign such minutes as a correct record thereof and promptly cause a copy to be sent to all Partners. Such copy may be sent electronically, by facsimile, by post or given by hand to each Partner;
- 16.6.4 All minutes of Partners' Meetings and all signed Partnership Decisions shall be placed in the Partnership minute book.

## **17 RETIREMENT OR REMOVAL OF A PARTNER**

- 17.1 Any Partner may retire from the Partnership after the 30 June 2020 by giving not less than six months prior notice in writing to the other Partners to that effect. Such notice may be given by email or facsimile, sent by post to each Partner's postal address or served by hand. Any notice sent electronically by email or facsimile or served by hand shall be deemed served on that day on that Partner. Any notice sent by post will be deemed served three (3) days after the date of posting, not including the day of

posting. Such retirement shall, unless otherwise agreed by Partnership Decision, take effect on 30 June next occurring after the notice has been served. Unless the notice period has not expired, in which event the Partners may by Partnership Decision waive that requirement or if not so waived, the requirement shall take effect on 30 June in the next calendar year.

- 17.2 Upon being served with any notice from another Partner to the effect that that Partner wishes to retire, the Partners may by Partnership Decision decide to terminate the Partnership effective simultaneously with the date of retirement of the retiring Partner.
- 17.3 A Partner shall automatically cease to be a Partner of the Partnership upon the happening of any of the following events:
- 17.3.1 a Partner being declared bankrupt;
  - 17.3.2 a Partner being convicted of an offence involving dishonesty or fraud;
  - 17.3.3 a Partner being found guilty of a crime and being given a custodial sentence;  
or
  - 17.3.4 a Partner being a corporation has a controller appointed to it under the *Corporations Act 2001 (Cth)*.
- 17.4 The Partners may by a Partnership Decision remove any person as a Partner in the following circumstances:
- 17.4.1 where a Partner fails to take or ceases to take an active interest in the Business without lawful or reasonable excuse;
  - 17.4.2 where a Partner has been requested to refund monies representing excess drawings and that Partner fails to do so within twenty-one (21) days of being requested so to do by any other Partner;
  - 17.4.3 upon a Partner committing a breach of any of the terms of this Partnership agreement and failing to remedy that breach within twenty-one (21) days of being requested so to do by any other Partner;
  - 17.4.4 a Partner becoming of unsound mind or suffering from any other illness or incapacity which prevents the Partner from being able to take an active role in the Partnership and that condition continues for a period of three (3) months or more; or
  - 17.4.5 a Partner failing to attend three (3) consecutive Partnership Meetings without reasonable excuse.

- 17.5 Where a Partner ceases to be a Partner either because of retirement or removal or death that Partner (**the “Outgoing Partner”**) shall be entitled to be paid by all Partners for his, her or its Share in the Partnership. The amount to be paid to such Partner or that Partner’s legal, personal representative shall be determined by agreement or by the Accountant valuing that Partner’s Share in the Partnership immediately prior to his, her or its retirement, death or removal. In the absence of manifest error, the value of the Share of the retiring, dead or removed Partner by the Accountant shall be binding and conclusive on all Partners including the Outgoing Partner. The valuation must take into account all Assets and all Liabilities of the Partnership at the retirement, death or removal date.
- 17.6 The remaining Partners must indemnify the Outgoing Partner for all Liabilities of the Partnership provided the Outgoing Partner undertakes not to compete with the Business directly or indirectly for a period of six months which is a 100 kilometre radius of the place or places where the Business is conducted.

## **18 NEW PARTNERS AND NON CAPITAL PARTNERS**

- 18.1 The Partners may by Partnership Decision admit a person as a New Partner on such terms as the Partners may by that Partnership Decision decide. The New Partner must enter into an Appointment Deed with the other Partners, accepting all the terms of this Deed. The Appointment Deed must also set out whether the New Partner is:
- 18.1.1 to have a Share, what that percentage Share will be and what Advance (if any) that New Partner must make; or
- 18.1.2 to be a Non Capital Partner, what his, her or its Drawings will be and such other terms as might apply to that Non Capital Partner provided that they must not be inconsistent with any of the terms of this Deed.
- 18.2 The Partners may by Partnership Decision appoint persons as Non Capital Partners. A Non Capital Partner has no entitlement to participate in the Capital and has no Share. A Non Capital Partner only has an entitlement to such share of profits as may be agreed in his, her or its Deed of Appointment or which the Partners may subsequently decide. A Non Capital Partner has no right to vote on any Partnership Decision but has the right to attend Partners’ Meetings but shall not be included for the purposes of determining any quorum. A Non Capital Partner’s participation in a Partnership Meeting shall be subject to any decision by the Chairperson. A Non Capital Partner is

bound by the terms of this Deed any by the terms of his, her or its Deed of Appointment.

- 18.3 The resignation, retirement or removal of a Non Capital Partner shall not dissolve or bring to an end the Partnership. Subject to any term in any agreement between the Partners and a Non Capital Partner, a Non Capital Partner may be removed by Partnership Decision to that effect.

## **19 SALE OF THE BUSINESS**

- 19.1 The Partners may by Partnership Decision decide to sell the whole or part of the Business on such terms the Partners may by Partnership Decision decide and at such price as the Partners may by that Partnership Decision decide.
- 19.2 Where the whole of the Business is sold, the Partners must unless there is a Unanimous Partnership Decision to the contrary wind up the Partnership and distribute and realise all of the Assets and divide the proceeds thereof amongst the Partners according to their Share in the Partnership at that time. Where a Partner takes an Asset of the Partnership as part of his, her or its Share then the value of that Asset must first be agreed by Partnership Decision or determined by an independent valuer.

## **20 GENERAL PROVISIONS FOR WINDING UP**

- 20.1 Where the Partnership comes to an end because it is a partnership for a particular term or purpose or because the Business has been sold or there has been a Partnership Decision to terminate the Partnership, a general account shall be taken of the Assets and Liabilities of the Partnership and the Assets shall be realised as soon as is conveniently possible.
- 20.2 The Partners shall by Partnership Decision appoint a Partner or a committee of Partners to be in charge of the winding up of the Partnership. That Partner or committee of Partners shall have full authority to do all things reasonably required in order to realise all the Assets, pay all the Liabilities and otherwise close down the Partnership. The Partner or committee of Partners shall be at liberty to retain lawyers, selling agents, brokers, accountants and valuers in order to realise, sell, value or dispose of the Assets and in order to payout, compromise or negotiate Liabilities and then apply the net balance as set out in clause 20.3.
- 20.3 After the discharge and full payment of all Liabilities and the payment of all expenses incurred in the realisation of the Partnership Assets, the net balance of Capital shall be applied in the following order of priority:

- 20.3.1 Firstly, in repayment of all loans (if any) made by the Partners to the Partnership;
- 20.3.2 Secondly, in payment of all outstanding interest (if any) on any such loans;
- 20.3.3 Thirdly, in repayment of all Advances;
- 20.3.4 Fourthly, in payment of any outstanding interest (if any) on such Advances;
- 20.3.5 Fifthly, in payment to each Partner of any unpaid share of profits;
- 20.3.6 Sixthly, by paying the balance (if any) remaining after all the above amounts have been paid in full to the Partners according to their Shares in the Partnership.
- 20.4 The Partners promise that they shall all co-operate with each other and with any Partner or committee of Partners appointed for the purposes of winding up the Partnership and render to that Partner or committee of Partners all reasonable assistance to bring about the prompt winding up of the Partnership for the least amount of expense.
- 20.5 The Partners promise that they shall each execute all deeds and documents and do all such things as shall be reasonably required by any Partner to facilitate the winding up of the Partnership, the sale or closure of the Business, the realisation of any Assets, the payment of any Liabilities and the distribution of the net proceeds in accordance with clause 20.3.
- 20.6 Where there are insufficient funds available to pay in full all Liabilities, winding up expenses and all loans by Partners then such shortfall shall be calculated by the Accountant and the Partner or the committee of Partners in charge of the winding up and upon such calculation each Partner promises to contribute and must contribute his, her or its portion thereto, which portion will equal his, her or its percentage Share in the Partnership immediately before the winding up of the Partnership commenced.
- 20.7 Non Capital Partners shall have no obligation or liability to contribute to any shortfall in the balance of Capital available to meet Liabilities, winding up expenses and loans by Partners and shall be indemnified by all of the Partners jointly and separately against any liability to any third party creditor of the Partnership where such liability arises out of the conduct of or any thing done in the course of the Partnership Business. A Non Capital Partner shall not be liable to any Partner for any loan or Advance made by that Partner to the Partnership or any interest thereon.

- 20.8 The winding up of the Partnership shall commence upon the Partnership Decision to wind up the Partnership or such other event that triggers the winding up of the Partnership as set out in clause 20.1. The Partners may by a Partnership Decision declare another date to be the date upon which the Partnership's winding up commenced.
- 20.9 Where the Business has not been sold before the winding up of the Partnership, the Business shall continue during the winding up of the Partnership until it is sold by a Partnership Decision or is closed down.
- 20.10 Non Capital Partners shall only be entitled to receive any untaken Drawings due to them. Otherwise Non Capital Partners have no entitlement to participate in any part of the realised Assets of the Partnership.

## **21 SALE OF BUSINESS**

- 21.1 Where the Partnership is wound up in accordance with the provisions of clause 20 the Business, if it has not already been sold, including all the goodwill of the Business shall be sold on a going concern basis. If not sold on a going concern basis, the Partners must by a Partnership Decision decide to close the Business down. Where the Business is sold as a going concern each Partner, except any Partner who may be the purchaser of the Business, shall enter into a joint and several covenant with the purchaser of the Business (including a Partner who is purchasing) that they shall not for a period of one (1) years from completion of the sale of the Business, directly or indirectly, hold any interest in, or carry on, or be employed in any competing business to that of the Business within a radius of one hundred (100) kilometres from each of the places where the Partnership carried on the Business immediately before the commencement of the winding up of the Partnership.
- 21.2 On such winding up, where the Business is not sold as a going concern, each Partner after the Partnership is dissolved shall be entitled to carry on any similar business to the Business either alone or in partnership with others, provided that such new business does not use any business names or trade names the same as or identical to or similar to the Firm Name or any other name used in the conduct of the Business. In such circumstances, all Partners shall be entitled to circulate and solicit former customers, employees, customers and clients of the dissolved Partnership provided that there is no representation by that Partner of carrying on the new business as the successor of the dissolved Partnership.

## **22 DISSOLUTION OF PARTNERSHIP**

- 22.1 Unless the Partners by a Partnership Decision decide otherwise, the Partnership is dissolved immediately and simultaneously with the cessation of the Business or completion of its sale, whether such cessation or sale is during or simultaneously with the winding up of the Partnership.
- 22.2 Where the Partnership is so dissolved, a letter signed by all Partners and former Partners (where applicable) shall be sent to all persons with whom the Partnership has had dealings with during the course of the Business informing those persons that the Partnership has been dissolved. All the Partners shall consent to the insertion of an advertisement in the form of a public notice in accordance with the provisions of any *Partnership Act* or any other Legislation for the time being in force, and/or required by any Legislation relating to the registration of Businesses or Business names to the effect that the Partnership has been dissolved.
- 22.3 The Partnership is not dissolved only by the death, bankruptcy, retirement or removal of a Partner unless the other Partners by Partnership Decision decide to wind up the Partnership.

## **23 APPOINTMENT OF A RECEIVER TO THE PARTNERSHIP**

- 23.1 Where a Partner dies, retires or is removed and the remaining Partners do not offer to purchase that Outgoing Partner's Share then the Outgoing Partner, or his/her/its legal personal representative, shall be entitled after a period of ninety (90) days from date of such death, retirement or removal to appoint a receiver to the Partnership for the purpose of selling so much of Partnership Assets as will fully satisfy the amount which must be paid to that Partner for his, her or its Share in the Partnership.
- 23.2 The receiver appointed under clause 23.1 shall be entitled to continue for a period of up to ninety (90) days the conduct of the Business for the purposes of selling it as a going concern but only for so long as it is solvent and not making (after all expenses including the receiver's costs) a loss. The receiver shall have all the powers and authority of the Partnership to conduct the Business and shall do so as agent for the Partners as a whole.
- 23.3 For the purpose of determining the value of the Outgoing Partner's Share the receiver may request the Accountant to value that Share as provided in clause 17.5.

**EXECUTED** by all the Parties as a Deed on the day and year first mentioned.

**SIGNED AS A DEED BY** )  
**Company Pty Ltd** )  
**ACN 111 222 333** pursuant to )  
Section 127 of the *Corporations Act* 2001 )  
in the presence of:

\_\_\_\_\_  
Director  
Print Name:

\_\_\_\_\_  
Signature of Witness  
Print Name:

\_\_\_\_\_  
Director/Secretary  
Print Name:

**SIGNED AS A DEED BY** )  
**John Smith** )  
in the presence of:

\_\_\_\_\_  
Signature of Witness  
Print Name:

\_\_\_\_\_  
Signature  
Print Name:

**SAMPLE ONLY**  
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU  
PROVIDE THROUGH THE BUILDING PROCESS

## SCHEDULE ONE

### PART A: THE PARTNERS

Name of Partner	Address of Partner
Company Pty Ltd ACN 111 222 333	1 Sydney Street, Sydney, 2000

Name of Partner	Address of Partner
John Smith	1 Brisbane Street, Brisbane, 7000

### PART B: SHARES IN PARTNERSHIP

Name of Partner	Share of Partnership
Company Pty Ltd ACN 111 222 333	

Name of Partner	Share of Partnership
John Smith	

### PART C: ADVANCES

Name of Partner	Advances
Company Pty Ltd ACN 111 222 333	

Name of Partner	Advances
John Smith	

## SCHEDULE TWO

### PART A: THE BUSINESS

The Partnership is engaged in the marketing, manufacture and distribution of widgets throughout Australia

### PART B: ASSETS

Description of Asset	Model No./Registration No.

### PART C: DRAWINGS

Name of Partner	Share	Drawing per Week/per Month
Company Pty Ltd ACN 111 222 333		

Name of Partner	Share	Drawing per Week/per Month
John Smith		