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DOVER



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# The DOVER GUIDE TO CO-OWNERSHIP AGREEMENTS, PARTNERSHIPS & ASSOCIATESHIPS

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## The Dover Guide to Co-Ownership Agreements, Partnerships and Associateships

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### Introduction

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The Dover Guide to Co-Ownership Agreements, Partnerships and Associateships has been developed to help accountants and financial planners understand the different legal structures for sharing ownership in a business or investment. It contains numerous practical tips and advice, and identifies the main issues connected to the onus of responsibility for liability within the relationship, in order to assist with successfully running a co-owned business.

This guide explains the benefits of co-ownership agreements, what a partnership is, what an associateship is, and how they differ from each other. It explains what a practitioner needs to do to ensure the correct legal consequences occur.

The Dover team trusts this guide is of some interest to you and please do not hesitate to contact our legal team if you need assistance with co-ownership agreements or any other commercial law matter. The Dover legal team has decades of experience in acting for accounting and financial planning practices and has encountered most problems that can arise, and has worked out how to solve them. The Dover legal team can help you run a better and more efficient accounting or financial planning practice.

## CO-OWNERSHIP AGREEMENTS

A co-ownership agreement is a legally binding document that governs the relationship between the owners of a practice. It will be in writing, and may vary from a 2 or 3 page letter, to a 50 page legal masterpiece, bound nicely and signed and witnessed by all concerned.

Co-ownership agreements protect minority interests, and create rights and entitlements that may not otherwise be in place. The agreement reduces the scope for dispute in the practice by setting out processes for dealing with potentially contentious matters. The co-ownership agreement can be varied by consent, so the owners are not locked into the agreement: if they can think of something better there is no reason why they cannot do it. The co-ownership agreement provides a fall back document for guidance other options are not apparent.

Partners will be surprised to hear they are deemed to a partnership agreement if they do not have a separate written agreement. The various state Partnership Acts provide a statutory agreement that applies to any partnership that does not have a written agreement. The deemed contract provides for equal profit share: this may be completely inappropriate and against the wishes of the partners. But if there is no written partnership agreement then the law says profits are distributed equally.

Whatever its form, an effective co-ownership agreement will include rules for

- profit share arrangements;
- cash distributions (cash being different to profit);
- decision making processes, including tie-breaker clauses;
- employment of staff and the engagement of other individuals;
- expulsion for inappropriate behavior or poor performance;
- hours spent in the practice;
- absence from the practice due to leave or illness;
- restrictive covenants on leaving the practice;
- the process for an owner leaving the practice;
- the process for a new owner joining the practice;
- mediation and possibly arbitration processes;
- capital expenditure provisions; and
- owners’ meetings and decision making processes.

The precise form of the co-ownership agreement depends on the precise form of the practice’s ownership. The options are set out in the attached table:

Legal structure	Type of co-ownership agreement
Associates	Associate agreement
Partners	Partnership agreement
Unit Trust or Hybrid Trust	Unit-holders’ agreement
Company	Shareholders’ agreement

Some practices will need more than one agreement. For example, in a four owner practice where the individuals are partners and use a unit trust as a service trust, the individuals will need a partnership agreement and the unit-holders will need a unit-holders’ agreement.

Examples of co-ownership agreements are set out in [appendix 1](#) at the end of this guide.

These include a partnership agreement, an associate agreement and combined unit-holder/shareholder agreement. These agreements are draft agreements that have been used by individuals before. They are intended to give an idea of what the agreements should look like and we stress that:

- (i) they may not suit your practice;
- (ii) no responsibility is taken for any error or omission; and
- (iii) each owner should get specific independent legal advice before proceeding with a co-ownership agreement.

### Features of a co-ownership agreement

The following table sets out and describes the main clauses in a co-ownership agreement and comments on what other practices have done.

Summary and Comment on Main Clauses in a Co-Ownership Agreement	
Clause	Comments
The parties	The parties will differ in each case and will usually be the individuals or their companies or trusts. If a party is not the individual consider whether the individual should be asked to guarantee the performance of the party, or be a second party to the contract. Each party or guarantor should sign the agreement.
Recitals or Preamble	These clauses briefly describe the history of the matter and include background materials to help explain the document.
Nature of the relationship	This clause confirms that the relationship is one of associate or partnership, as the case may be. It may go on to exclude other types of arrangements (e.g. "...This is a partnership and is not an associateship...")
Profit share rules	These clauses include a technical description of how profit and cash are to be distributed to the owners. It's a good idea to include a worked example based on a real month, so that everyone knows exactly what the arrangements are. These rules differ greatly from practice to practice. Common combinations include: <ul style="list-style-type: none"> <li>• equal profit share;</li> <li>• profit share equal to billings less an equal share of costs; and</li> <li>• profit equal to the individual's billings as a percentage of the individuals' billings times total profit.</li> </ul> How will ex-practice income (example division income or assisting income) be dealt with? After hours income?
Decision making processes	These clauses will set out rules regulating meetings and how decisions are to be made, for example, on a 50% majority, or perhaps on a 75% majority for more serious decisions. Authority for smaller decisions may be delegated to an individual individual for expediency's sake. Consider who will sign cheques. Consider whether a "managing partner" or a management committee is needed.
Employment of	Smaller practices will tend to have a 100% rule for hiring or firing decisions, so that

staff and engagement of individuals	any one owned can block a decision. Larger practices may need a smaller % to make the process more efficient.
Expulsion of owners	These rules will include requirements to maintain professional standards/qualifications/licences, and may also include more subjective criteria regarding professional deportment and presentation. Need a review process to be effective.
Hours spent in the practice	It's a good idea to include minimum hours, and even a proposed roster (perhaps in a schedule) so that all are aware of what is expected. Some practices will have a cap on maximum hours.
Absence from practice due to recreational leave	We recommend a minimum of four weeks. Many practice will have six weeks. Some will have more. Some practices forfeit unused weeks (intended as an incentive to take a break and freshen up!) Some practices will allow for longer leave, with the individual taking the longer leave subsidising costs while absent from the practice. Some practices allow older partners to take more leave. Timing of leave? Who gets school holidays? Does unused leave lapse or accumulate? Can unused leave be sold?
Sabbatical leave	Quite common to allow, say, one month after five years of continuous service
Sick leave, parental leave	Varies from practice to practice. We counsel generosity, but often observe stinginess. May need mandatory income continuance insurance. Does a sick/injured/disabled owner have to leave after a specified period of absence? How are costs treated? Maximum period?
Process for leaving the practice not on retirement or death	Normally a notice period of between one and six months (may be reduced by consent, and often is). Need to set out what payments will be made, if any, to a departing partner. Often includes a process for offering the ex-owner's interest to the remaining owners, or for the remaining owners to OK the purchaser (ie their new co-owner).
Process for leaving the practice on retirement or death	Consider whether there should be a compulsory retirement age (and whether the retiree can continue at the practice in a difference capacity). Consider whether a small amount of life insurance is needed to cover payments to a deceased owner's estate on premature death, for goodwill.
Process for expelling an owner	Needed in case of serious professional misconduct and possibly serious personal misconduct or financial malfeasance (e.g. bankruptcy)
Restrictive covenant	These are enforceable, provided they are reasonable and are in the public interest. What is reasonable will differ from practice to practice. More likely to be reasonable when goodwill is greater. What geographic area? How many years?
Process for a new owner joining the practice	Consider whether a trial period or a view period is appropriate. Consider what & majority decision is needed. Consider what payment, if any, a new owner should make. Consider whether a new owner should assume a % responsibility for liabilities, and what form the contract should take.

Mediation and arbitration processes	Should be mandatory. Should include a mandatory preliminary process involving face to face meetings to settle matters of concern. If external mediation is necessary it is quite likely someone should be leaving the group. Alternative dispute resolution processes are strongly encouraged over court based processes. This is for privacy reasons and cost reasons.
Capital expenditure provisions	We suggest a majority is needed for any costs exceeding, say, \$5,000 in a year.
Amendment	Normally the agreement can be amended by a further deed, if all owners or the required percentage of owners agree in writing to do so.
Other details	Which bank? Which account? Which accountant? Which accounting system? What about owners' personal deductible costs? How formal should decision making processes be? Professional indemnity insurance? Other insurances? Monthly accounts Employment of a practice manager? Full time or part time? Form and address of legal notices?

### Ending Co-ownership Agreements

It is often said that practices partnerships are like marriages. They should not be. Marriages are forever and intensely personal (or should be) while practices are by their nature transitory and impersonal (or should be).

It is a good idea not to become too emotional about the practice. After all, it's just a practice. It was never meant to last forever, and was only going to work while it suited all concerned. It was not meant to be "until death do us part", but more like "until something better comes along".

This does not mean co-owners should go into a practice flippantly, without a sense of purpose, or with the right attitude to co-owners. These ideas are explored more fully in an Australian Individual article written in August 2010 and reproduced in appendix 2 at the end of this guide.

## PARTNERSHIPS AND ASSOCIATESHIPS

### What is a partnership?

The common law defines a partnership as "a combination of persons carrying on a business with a view to profit. Each of the states' Partnership Acts defines "partnership" in similar terms. For example, the NSW Partnership Act defines a partnership as "the relation which exists between persons carrying on a business in common with a view to profit".

It follows that a medical partnership involves two or more Individuals (or their nominees, commonly a trust or a company) combining in a business to provide medical services to patients for a profit. Each partner is both the principal and agent of each other partner, and has the authority to bind the other partners in respect of the partnership's business.

Each partner has a duty of trust, confidence and utmost good faith to each other partner: this is the highest duty imposed by the law. It means each partner must put the interests of the other partners ahead of his own interests.

A partnership is not a separate legal entity. Each partner deals with patients on both his own account, and the account of his partners. Each partner is therefore equally responsible for the actions of the other partners. This responsibility is joint and several, which means a patient who complains about the actions of a partner may take action against any one or all of the Individuals in the partnership. Each practitioner in the partnership has unlimited responsibility for the actions of each other practitioner in the partnership.

Up to fifty Individuals can be partners in a medical practice partnership (compared to only 20 in a non-professional partnership). But normally there are only three or four. We do not know of any medical partnerships even getting close to fifty partners. Partnerships are not a separate taxable entity for tax purposes.

A partnership will usually be controlled by a written partnership agreement. If there is no written partnership agreement the law may deem the partners to be bound by a partnership agreement under the relevant state's Partnership Act. (This deemed agreement will rarely be appropriate for a medical partnership, and is one of the reasons why a written partnership agreement is recommended.)

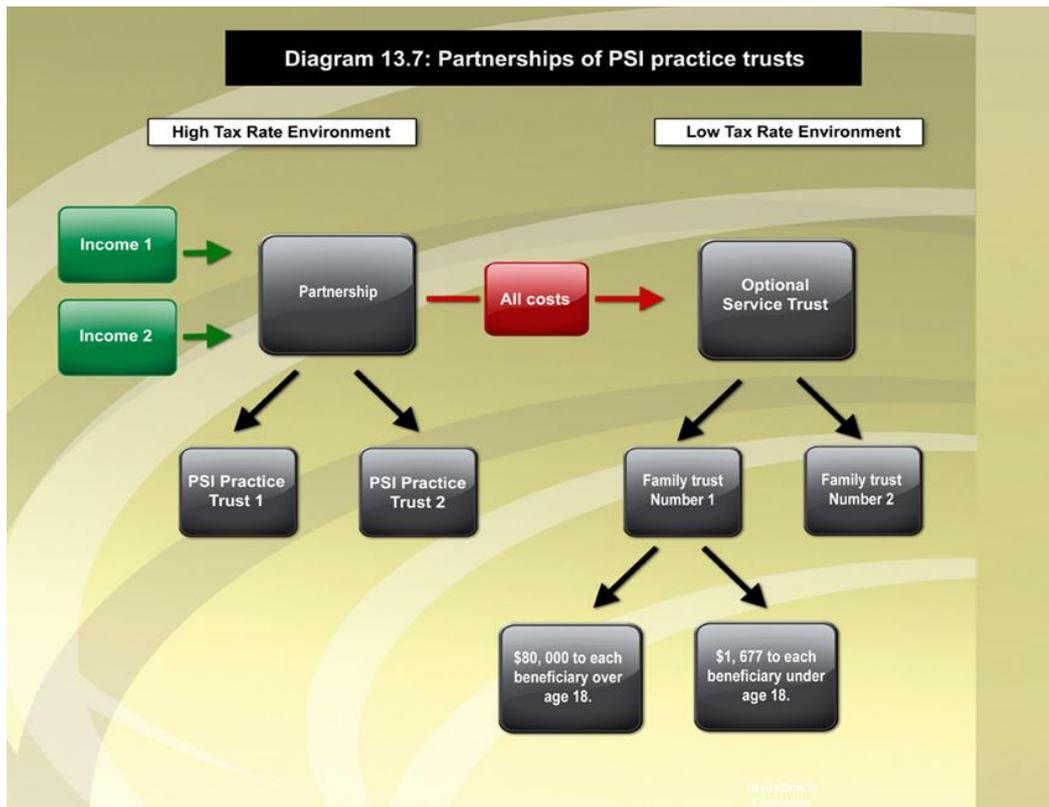
### **Partnership Agreements**

The Partnership Act deems partners to have adopted a standard partnership agreement if they do not have a written agreement. This standard partnership agreement may not be the agreement the partners would choose for themselves. This is a very good reason to have a written partnership agreement that reflects the preferences of the Individuals who own the practice and not the preferences of a statutory draftsman.

Most partnership agreements will provide rules concerning the following matters:

- (i) procedures for sharing profits and losses;
- (ii) procedures for admitting new partners (normally all partners must agree);
- (iii) procedures for partners to retire;
- (iv) procedures for changing the profit share proportions (normally all partners must agree);
- (v) procedures for changing the partnership agreement;
- (vi) procedures for ending the partnership;
- (vii) procedures for the death or serious illness of a partner;
- (viii) procedures for owning business names and similar assets;
- (ix) restrictive covenants;
- (x) bankruptcy of a partner;
- (xi) practice management and borrowings;
- (xii) dispute resolution and valuation procedures;
- (xiii) interest on partners' capital and current accounts.

The diagram below depicts a common partnership arrangement:



### What is an associateship?

The concept of an “associateship” is not defined at law. Associateships are strange legal relationships that are only encountered in the health profession context, principally medicine and dentistry, but sometimes in allied health professions too.

The NSW AMA defines an associateship as follows:

*“An Associateship exists where there are two or more medical Individuals sharing expenses such as those associated with the premises, staff and equipment. The medical practice of each practitioner remains autonomous, in that Individuals keep their own patients and do not share their income with each other.”<sup>1</sup>*

The Queensland AMA defines an associateship as follows:

*“An associateship is an industry specific term for a business relationship where two or more individuals operate their medical practices from a single site and agree to sager the costs of their practices, for example, staff, rent, utilities etc.”<sup>2</sup>*

Associates run their own practices, derive their own fees and pay their own costs. These costs will commonly include a management fee, probably between 40% and 45% of billings, payable to a service entity that is beneficially owned by the associateships, via their family trusts.

Associates are not joint and severally liable for each other’s negligent acts or omissions, and normally are only liable for their own individual negligent acts or omissions. (We say “normally” because litigation is a

<sup>1</sup> Source [http://amansw.com.au/media/File/fag\\_business\\_struct\\_ml.pdf](http://amansw.com.au/media/File/fag_business_struct_ml.pdf). We question whether associates “keep their own patients”, particularly in general practice.

<sup>2</sup>Source [http://www.gplinks.org.au/content/Document/General%20Practice%20resources/2010\\_05\\_17%20Medical%20Records%20%20AMAQ.pdf](http://www.gplinks.org.au/content/Document/General%20Practice%20resources/2010_05_17%20Medical%20Records%20%20AMAQ.pdf)

complex area and it is possible for individuals who believe they were not joint and severally liable for each other's negligent acts or omissions, to in effect be so liable. For example, because they have both seen the same patient or even because the court believes they are partners even though they believed they are not.)

Both associateships and partnerships are easy to set up, although complex capital gains issues can arise where one wishes to vary a partnership.

**Associate Agreements**

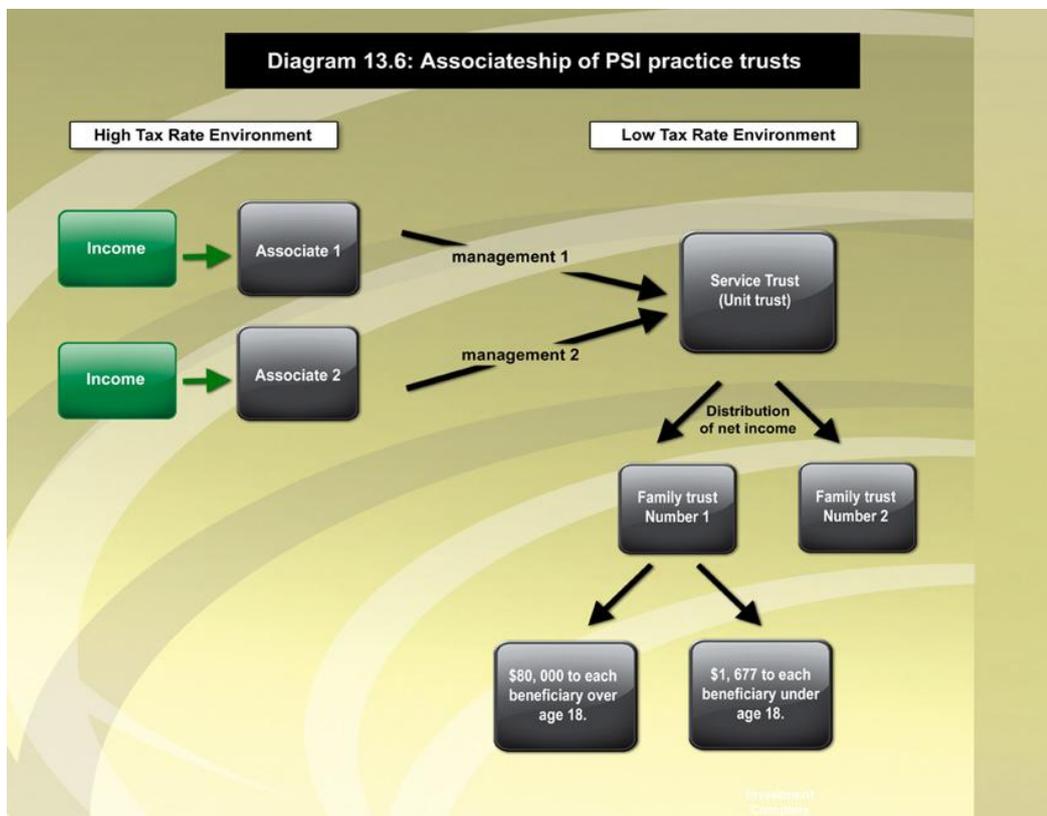
Associates run their own practices and do not combine with other Individuals in a business.

The associates will share the cost of services and facilities used by their practices, such as rent, receptionists, telephones and so on, and will (normally) co-operate with each other and help each other professionally. But they will not run a business together. Associates do not owe each other a duty of trust, confidence and utmost good faith. Associates are not jointly and severally liable for each other's actions, whether with patients or otherwise.

Most associates regulate their relationship with a written agreement. These agreements tend to look like partnership agreements except the word "associate" is used in lieu of the word "partner". The matters discussed are essentially the same as those listed at (i) to (xiii) above. There is normally a provision saying the Individuals are not partners, are not jointly and severally responsible for each other and can't bind each other in any way.

Most associate agreements mimic partnership agreements, with the nomenclature changed as appropriate to avoid creating a partnership. The associates then act as if they are partners. As a result it is often very hard to see what the real difference is between an associateship and a partnership.

The diagram below depicts a common associateship arrangement:



## Partnerships and Associateships Compared

Criteria	Partnership	Associateship
Bank account	Shared bank account	Separate individual bank accounts (ideal)
Profit sharing	Share profit, rather than costs.	Keep their own income and only share costs
Loss sharing	Share losses	No loss sharing
Fiduciary relationship	Yes. Partners owe each other a duty of utmost good faith	No
Joint and severally liable	Yes	No, but take great care here
Documents	Partnership agreement needed	Associateship agreement needed
Can individuals bind each other?	Yes	No
Can they sell their practice?	No. Can only sell their fractional interest in the partnerships assets, which include the practice	Yes
Do they individually own goodwill?	No. They only own a fractional share of the partnership's goodwill	Yes
Right of access to partnership accounts and records	Yes	No. There is no correlating right unless specifically created by contract
Notice at reception	Not needed	Explanatory notice needed at reception
Stationery	Group stationery may be used	Group stationery should be minimised and should specifically state that the individuals are not partners and run separate practices
Right of indemnity	Yes	correlating right unless specifically created by contract
Partner's liability	Unlimited	No correlating concept
Joint and several liability	Yes	No correlating concept
Liable for debts incurred in connection with practice	Yes	No (except incurred by the associate personally)
Trade Practices Act complications	Low risk (ACCC takes the view that a legal partnership comprised of individuals is not subject to competition laws)	High risk. Associates cannot cooperate on prices and may breach collective bargaining rules and other competition laws regulated by the ACCC
Use of business name	Yes. Possible	Yes. Possible
Tax returns	Partnership tax return required.	No. Associate tax return required. Associates prepare and lodge their own returns
Assignment	Must be in writing	May be oral. But normally will be in writing.

### Tax returns

A partnership must lodge an income tax return each year but, normally, will not pay tax itself. Instead each partner is required to include a share of net partnership income (or loss) in the partner's own taxable income computation. The amount of tax paid will depend on each partner's overall tax profile.

A partnership is required to pay GST as if it is a separate entity.

An associateship is not required to lodge a tax return. Instead the individual associates lodge their own tax returns, showing their gross income as assessable income, and claiming the deductions they incurred in producing that income.

### **Profit sharing arrangements**

It sometimes seems individuals are capable of inventing an infinite number of ways for profits to be shared between partners. These can be complex and sometimes a High Court judge, or an Excel spreadsheet expert, will be needed to understand how each mechanism works (although somehow the individuals never seem to miss a cent!).

Despite this complexity and diversity, two basic concepts can be identified. These are:

- (i) proportionate profit sharing, i.e., each individual is entitled to a fixed percentage of the profit each year. If there are two individuals they will get half each, and so on;
- (ii) cost sharing, i.e., each individual keeps his own fees and pays a share of the costs each year. This may be a fixed percentage (e.g. 50% if there are two individuals) or it may be a variable percentage, calculated by taking the individual's gross fees as a percentage of the all the individual's gross fees and multiplying this proportion by the amount of total costs. (Hybrid arrangements are possible.)

Partnerships may share profits under either of these methods, since it is possible to have rules in effect allocating partnership net income in accordance with the formula described in sub-paragraph (ii) above.

However, associates will only share costs, under one of the two methods noted here, or a hybrid of the two.

### **Which is better, associateship or partnership?**

There is no easy answer to this question. It depends on the circumstances of each case and the preferences of the individuals. Of course, in many cases the dice is cast, and it can be hard to change from one to the other without engendering an adverse capital gains tax result. Certainly, advice regarding the specific circumstances of each practice, should be sought before changing from one to the other.

It is not what name is given that is important; but how the practice(s) are conducted.

Individuals who call themselves associates, may still be held to be partners, if they hold out in any way that they are in business together. This did happen recently to a group of doctors in South Australia, with surprising results for all concerned. Associates should therefore take care with matters such as signage, stationery, accounts, banking procedures and advertising, to avoid creating an impression of partnership.

Many advisors incorrectly tell Individuals that partners can be jointly and severally liable for each other's actions in all areas, not just the partnership. They say, for example, partner A can be liable for partner B's investment loan. This is not right. The partners can only be jointly and severally liable for actions of other partners within the partnership. This is a basic common law principle and is reinforced by the Partnership Act of each state. Partners are not liable for each other's private debts.

### **Further assistance or information**

Please do not hesitate to contact the Dover legal team should you have any questions or concerns about your partnership or associate arrangements.

Appendix 1

# Associateship Agreement

**MCMASTERS'**  
**ACCOUNTANTS, SOLICITORS & FINANCIAL PLANNERS**  
**71 TULIP ST CHELTENHAM VIC 3192**  
**TELEPHONE: 03 9583 6533**  
**FACSIMILE: 03 9583 6733**  
**EMAIL: [terry@mcmasters.com.au](mailto:terry@mcmasters.com.au)**

**THIS AGREEMENT** is made on the 16th day of February 2009.

## **PARTIES**

1. Dr Name 1 of address ("Dr Name 1"); and
2. Dr Name 2 of address ("Dr Name 2")

## **BACKGROUND**

The parties intend to carry on their respective practices in association (but not as partners) at the Simple Medical Centre, 10 Simple Road, Simple, Queensland, 4000 ("the Practice"). The parties agree to operate separate medical practices but wish to associate for mutual convenience and in order to share certain facilities.

### **1. ASSOCIATESHIP**

- 1.1 The Associates will commence and remain associates in the practice of medicine on the terms of this Agreement.
- 1.2 Within 30 days of the Commencement Date, Dr Name 2 will commence monthly payments of \$1,000.00, for a duration of 15 months, (totalling \$15,000.00), representing the "Buy-in Amount" being a sum equivalent to the Purchase Price.
- 1.3 In consideration of receipt of the Purchase Price, Dr Name 1 will contribute the existing plant, equipment and Business Goodwill to the Associateship and will continue making all payments under any existing purchase agreements relating to the said plant and equipment.

### **2. TERM OF ASSOCIATESHIP**

The Associateship will commence for a period of five (5) years from the Commencement Date and will automatically be renewed for a further period of five (5) years unless the Associateship has been terminated:

- a) by an Associate giving at least three (3) months written notice to the other Associates;
- b) according to the terms of this Agreement; or
- c) by mutual agreement in writing.

### **3. BUSINESS NAME**

#### **Business Name**

- 3.1 The Associates will carry on their respective practices in Associateship under the Business Name.

## **No Partnership**

- 3.2 Nothing in this Agreement shall create a partnership between the parties. Unless expressly provided for in this Agreement, no party shall enter into any engagement or make any representation or warranty on behalf of or pledge credit or otherwise bind or oblige the other parties;
- 3.3 The Associates understand that they are independent general Individuals **and not partners**;
- 3.4 Letterhead used by the Associateship may bear a statement providing that the practice is 'An associateship of independent general medical Individuals'; and
- 3.5 A notice may be displayed in the waiting room of the Business Premises to the effect that the 'Simple Medical Centre is an independent association of general medical Individuals'.

## **4. BUSINESS PREMISES**

- 4.1 The Associates agree to carry on their practices at the Business Premises or at any other location(s) the Associates agree from time to time.

## **5. INCOME**

- 5.1 The Associates must render accounts to patients under their individual names, the name of their Principal or their Business Name.
- 5.2 Each Associate is fully entitled to the income generated by its own practice.
- 5.3 Fees received in respect of each individual practice will be paid into the relevant Associate's bank account.

## **6. EXPENSES**

- 6.1 Unless agreed otherwise by the Associates in writing, each Associate shall bear and pay for:
- a) an equal share with the other Associate of all expenses involved in running the medical practice. These expenses shall include (but are not limited to) the rent of the Business Premises pursuant to a lease entered into by the Associates, costs for shared use of equipment, insurance premiums, charges for cleaning and maintenance of equipment and Business Premises and utility and telephone charges;
  - b) a proportionate share of their medical materials and supplies, wages (including superannuation payments) of assistant staff (for example administrative staff and practice nurses);
  - c) motor vehicle expenses and leasing and other payments for their personal equipment;

- d) Other personal expenses (for example, continuing professional education).
- 6.2 The contribution to the proportionate share of expenses referred to in paragraph 6.1(b) will be varied on a pro-rata basis in the event that an Associate(s) or their Principal(s) do not work approximately the same average number of hours per week.
- 6.3 A joint bank account will be opened for the purpose of paying ongoing expenses of the practice. This account shall be opened within fourteen (14) days of the Commencement Date. At the beginning of each month, each Associate will pay their share of expenses outlined in paragraphs 6.1(a) and 6.1(b) into this account. These expenses will be calculated from the actual expenses if known or from an average of the relative expenses from the previous financial year.

## 7. **INDEMNITY, INSURANCE AND MEMBERSHIP**

- 7.1 Each Associate must indemnify the other Associate against any loss, damage or liability (including legal costs on a solicitor and own client basis) for or in relation to any claims on the other Associate arising from:
  - a) the allegedly negligent act or mission of an Associate; or
  - b) an allegation that the Associates or the Principals operate the Associateship as a partnership, or are otherwise jointly and severally liable.
- 7.2 During the term of the Associateship, the Principals (or where applicable, the Associates) must:
  - a) remain registered as a legal practitioner with the Medical Board of Queensland;
  - b) hold and maintain professional indemnity insurance through a reputable insurer agreed by the Associates; and
  - c) (Insert any other professional requirements).

## 8. **RECORDING OF WORK**

- 8.1 Each Associate is responsible for recording work done by it or its Principals and for its own patients or those of its Principals.
- 8.2 Each Associate will own the tangible property and copyright in the medical records of its patients.
- 8.3 If an Associate or its Principal (herein "first named Associate") treats a patient under clauses 9 or 10, that is a patient of another Associate or its Principal (herein "second named Associate"), the first named Associate vests the tangible property and copyright in the medical records it makes in the course of such treatment in the second named Associate.

9. **TRANSFER OF PATIENTS**

- 9.1 An Associate will not influence or induce any patient usually treated by another Associate without prior consent.
- 9.2 During holidays and other absences, the Associates will co-operate in covering each other's patients.

10. **TEMPORARY ABSENCES**

- 10.1 In the event that an Associate is temporarily absent due to illness or accident for a period not exceeding ten (10) working days, the remaining Associate will use his or her best efforts to ensure the practice is carried on under the instructions of the absent Associate until their return to the practice.
- 10.2 In the case of any shortfall, the other Associate may engage a suitable locum at the expense of the absent Principal.

11. **HOLIDAYS AND LEAVE**

- 11.1 Holidays will be arranged for individual Associates (or their Principals) with the approval of all Associates, so that the efficient conduct of each of their practices is not adversely affected. This approval shall not be unreasonably withheld.

12. **WORK CARRIED OUT ON BEHALF OF AN ASSOCIATE**

- 12.1 If an Associate is required to carry out work for patients of another Associate due to illness or holidays or special work at the request of another Associate, the work will be charged to the patient by the Associate who completed the work.
- 12.2 Regarding any work carried out by an Associate under clause 12.1, the patient will remain at all times, a patient of the Associate on whose behalf the work was performed.

13. **ASSISTANTS**

- 13.1 No Associate will be entitled to engage employees without the consent of the other Associate.

14. **MANAGEMENT AND VOTING**

- 14.1 Each Associate will have equal rights in the management and control of the Associateship. The following will require a **unanimous** vote:
- a) Changing the nature or location of the business;
  - b) Mortgaging, pledging or charging any property of the Business or Associateship;
  - c) Disposing of any capital item owned jointly by the Associateship;
  - d) Selling the Business; and

e) Acquiring another Business.

15. **NEW ASSOCIATES**

15.1 A new Associate may be admitted to the Associateship with the consent of all Associates.

15.2 The new Associate will pay a joining fee to be determined by the Associates. This fee will be distributed to the existing Associates on a pro-rata basis.

15.3 The new Associate will execute an Associate Agreement substantially similar to this form of Agreement.

16. **RETIRING OR EXITING ASSOCIATE**

16.1 An Associate may retire or exit from the Associateship by giving the remaining Associate not less than six (6) months notice.

16.2 The cessation of treating patients does not, by itself, constitute retirement or exit from the Associateship.

16.3 Upon the exit or retirement of an Associate or an Associate's Principal, the continuing Associate(s) has the option of purchasing:

- a) the retiring or exiting Associate's share in the goodwill of the Associateship for a price calculated under clause 17.4;
- b) the retiring or exiting Associate's interest in jointly owned equipment (in proportion to their own share or otherwise if the remaining Associate agrees but excludes the book debts of the retiring or exiting Associate or its solely owned equipment);
- c) the retiring or exiting Associate's Individual Goodwill for a price calculated under clause 17.5; and/or
- d) the assets of the retiring or exiting Associate's (insert type) Practice.

16.4 The continuing Associate(s) has ninety (90) days from the date of retirement or exit to exercise the option in clause 16.3. This option must be exercised in writing and delivered to the address of the retiring or exiting Associate(s).

16.5 Should the option in clause 16.3 be exercised, the continuing Associate(s) must pay the retiring or exiting Associate the Purchase Price within sixty (60) days of exercising the option.

16.6 If the remaining Associate(s) chooses not to exercise their right under clause 16.3, the retiring or exiting Associate may sell the practice to a third party with prior consent of the remaining Associate.

16.7 The remaining Associate(s) may reject a sale to any third party provided they justify their refusal on reasonable grounds. Such grounds may include that the terms offered to the third party were more favourable and/or the third party had refused to enter into an Associateship Agreement similar to this form of Agreement.

16.8 The treatment of the Associate's practice upon death or total and permanent disability is to be dealt with by a separate Agreement.

## 17. VALUATIONS

### ASSETS

17.1 The valuation of any assets, unless otherwise specified, must be the actual value of that asset.

17.2 If the value of an asset(s) cannot be agreed by the parties, the value will be determined by an Approved Valuer.

### GOODWILL

17.3 The value of goodwill of the Associateship will be as agreed by the Associates in writing from time to time and in the absence of agreement \$100.00.

## 18. GOODWILL ELECTION

18.1 A retiring or exiting Associate may elect not to sell his Individual Goodwill and/or tools of the trade and equipment to the continuing Associate.

18.2 Upon making an election under paragraph 18.1, the exiting or retiring Associate must, at the same time, make a further election to either:

- a) forfeit its interest in the goodwill of the Associateship, in which case clause 19 will have no application; or
- b) not forfeit his interest in the goodwill of the Associateship, and be bound by clause 19.

18.3 The elections specified in clauses 18.1 and 18.2 must be made in writing to the continuing Associate(s) at the time of giving notice of exit or retirement.

## 19. RESTRICTIVE COVENANT

19.1 Each Associate and Principal agrees that it or he will not directly or indirectly, without previous consent in writing from the other Associate(s), be concerned or interested or employed, manage or operate or participate in the management, operation or marketing of any medical practice within a five (5) kilometre radius of the Business Premises for a period of two (2) years from the date of sale or forfeiture of the Associate's practice/interests in the Associateship.

19.2 Should a retiring or exiting Associate breach clause 19.1, he acknowledges that:

- a) damages alone will not be adequate compensation to the remaining Associate(s) for his breach; and
- b) the remaining Associate(s) has the right to seek an injunction.

## 20. **DISPUTE RESOLUTION**

- 20.1 In the event of a dispute relating to this Agreement, a party (or the parties) shall not commence any court proceedings relating to the dispute unless it has complied with this clause.
- 20.2 The affected party must give written notice to the other parties specifying the nature of the dispute.
- 20.3 Upon receipt of the notice in clause 20.2, the parties must endeavour in good faith to resolve the dispute expeditiously and if requested by the other parties, shall commence mediation.
- 20.4 In the event of mediation, the parties must appoint a mediator and agree on the mediator's remuneration. Should the parties fail to agree on the appointment of a mediator, one will be appointed by the President of the Law Society of Queensland or the President's nominee.
- 20.5 During mediation, the parties must observe the mediator's instructions regarding the conduct of the mediation.
- 20.6 Should the dispute fail to resolve within ten (10) days after the appointment of the mediator (or any other time which the parties agree to in writing), the mediation will cease.
- 20.7 The costs of the mediation will be shared equally between the parties and each party agrees to indemnify the mediator against liability in respect of mediation of the dispute.
- 20.8 If the dispute is resolved, the terms of the resolution are binding on the parties and override the terms of this Agreement to the extent that there is any conflict.
- 20.9 The mediation, including any discussions between the mediator and the parties and between the parties themselves during or before the mediation (including accompanying written statements prepared for mediation) are **confidential** and cannot be used in any legal proceedings.

## 21 **ASSIGNMENTS**

- 21.1 This assignment shall be binding upon and endure for the benefit of the successors in title of the parties but shall not be assignable by any party without the written consent of all Associates (or their Principals).

### **GOVERNING LAW**

- 21.2 This Agreement shall be governed in accordance with the laws for the time being in force in the state of Queensland, Australia and the parties agree to submit to the jurisdiction of the Courts and Tribunals of that state.

### **DEFAULT**

- 21.3 If an Associate (or his or her Principal) becomes bankrupt or calls a meeting of its creditors for the purpose of making any arrangement with them or grossly neglects his practice or does any act whereby he may be liable to be deprived of the privilege of practicing as a medical practitioner in Queensland or is guilty of any flagrantly immoral conduct which may injure his practice of the

practice of the other Associate(s), the other Associate(s) will be entitled to demand the offending Associate forfeit his interest in the Associateship.

- 21.4 The demand referred to in 21.3 must be in writing and the offending Associate will vacate the Business Premises within fourteen (14) days of receipt of the notice.
- 21.5 Clause 16 shall apply as if the offending Associate has retired on the date of forfeiture of his interest except that the remaining Associate must purchase his interest in the Associateship assets on the same basis as if the offending Associate had elected to retain his Individual Goodwill.
- 21.6 Clause 19 will not apply if an Associate forfeits his interest in the Associateship pursuant to this clause.

## **OPERATIVE PROVISIONS**

### **21. DEFINITIONS AND INTERPRETATION**

#### **21.1 DEFINITIONS**

In this deed:

**“Associates”** means Dr Name 1 and Dr Name 2 and Associate means any one of them;

**“Associateship”** means the association of the Associates under this agreement;

**“Approved Valuer”** means a person agreed by the Associates and failing agreement, a person who is a member of the Australian Institute of Valuers and or equivalent body from time to time and who has at least (five) 5 years experience in valuing the goodwill of medical (insert if different types of practice) practices;

**“Business Goodwill”** means the goodwill brought into the Associateship by Dr Name 1 but not including any Individual Goodwill;

**“Business Name”** means the business name (“Simple Medical Centre”);

**“Business Premises”** means the premises at 1410 Simple Road, Simple, Queensland, 4122 and other such location(s) the Associates agree upon to conduct the business in Associateship;

**“Commencement Date”** means (insert date);

**“Individual Goodwill”** means the goodwill attaching to an individual Associate or to an Associate’s Principal as distinct from his interest in the goodwill of the Associateship and includes his patient list;

**“Principal”** means the legal representative(s) of the Associate(s) (only applies if the individual is operating out of an entity)(enter directors or trustees of trusts and companies);

**“Purchase Price”** means the total sum paid by the continuing Associate(s) to any exiting or retiring Associate(s) according to the following method:

Where  $P = A/B$

P = purchase price to be calculated;

A = net value of assets of the Associateship including goodwill as calculated in accordance with clause 20.2(b)

B = number of Associates

**EXECUTED AS AN AGREEMENT BY THE PARTIES ON THE (DATE OF THE AGREEMENT**

**SIGNED BY**

<b>Party</b>	<b>Capacity</b>	<b>Signature</b>
Dr Name 1	Individual	
Dr Name 2	Individual	

**PARTNERSHIP AGREEMENT  
BETWEEN**

**AND**

**AND**

**Terry McMaster & Co Pty Solicitors and Consultants  
71 Tulip Street Cheltenham VIC 3192  
Telephone: 03 9583 6533 Facsimile: 03 9583 6733  
e-mail: [terry@mcmasters.com.au](mailto:terry@mcmasters.com.au)**

## Partnership Agreement

1	<b>THE PARTNERSHIP</b>
2	<b>NET INCOME FROM THE PARTNERSHIP</b>
3	<b>CASH DRAWINGS</b>
4	<b>PARTNERS' OBLIGATIONS</b>
5	<b>RETIREMENT OF A PARTNER</b>
6	<b>APPOINTMENT OF REMAINING PARTNERS AS ATTORNIES</b>
7	<b>RELEASE AND INDEMNITY</b>
8	<b>SALE OF BUSINESS PREMISES</b>
9	<b>NET PARTNERSHIP INCOME AND NET INCOME</b>
10	<b>FORMATION OF NEW PARTNERSHIP</b>
11	<b>DEATH OF A PARTNER</b>
12	<b>EXPULSION OF A PARTNER</b>
13	<b>SICKNESS AND DISABILITY</b>
14	<b>PROMOTION OF PARTNERSHIP</b>
15	<b>NON-COMPETITION AND RESTRICTIVE COVENANT</b>
16	<b>INSURANCES</b>
17	<b>TRANSFER TO A RELATED PARTY</b>
18	<b>ARBITRATION</b>
19	<b>GENDER AND NUMBER</b>
20	<b>HEADINGS</b>
21	<b>CURRENCY</b>
22	<b>SEVERABILITY</b>
23	<b>ENTIRE AGREEMENT AND UNDERSTANDING</b>
24	<b>AMENDMENT</b>
25	<b>WAIVER</b>
26	<b>PROPER LAW</b>
27	<b>ASSIGNMENT</b>
28	<b>CONSENTS AND PERMISSIONS</b>
29	<b>DEFINITIONS</b>
30	<b>SCHEDULE</b>
31	<b>SIGNING CLAUSE</b>

## **Partnership Agreement**

**THIS AGREEMENT** is made on the Signing Date specified in the Schedule.

**BETWEEN** the Parties specified in the Schedule as the Partners (“the Partners”).

### **1 The Partnership**

- 1.1 From the Commencement Date specified in the Schedule (“Commencement Date”) the Partners shall conduct the Business stated in the Schedule (“Partnership Business”) as partners.
- 1.2 The Partners shall be entitled to all income derived from the Business in the Partnership Proportions.
- 1.3 The Partners shall be responsible for all losses and outgoings incurred by the Business in the Partnership Proportions.

### **2 Net Income from the Partnership**

- 2.1 By 30 September following the end of each Year, or as otherwise agreed by the Partners, the Partners will prepare a profit and loss statement and a balance sheet for the Partnership.
- 2.2 The profit and loss statement shall clearly state the Net Income of the Partnership and the Share of Partnership Net income of each Partner.
- 2.3 The Share of Net Partnership Income of each Partner each Year shall be an amount equal to the Net Partnership Income of the Partnership calculated under the provisions of the Tax Act dealing with partnership income times the Partner's Proportion.

### **3 Cash drawings**

- 3.1 Each Partner may draw cash from the Partnership as agreed in writing by the Partners from time to time.
- 3.2 A Partners cash drawings in a Year may not exceed the Partner's Share of Partnership Net Income less the Partner's share of any Capital Outgoings, computed under the preceding clause without the written consent of each other Partner.

### **4 Partners' obligations**

- 4.1 Each Partner shall arrange for a suitable motor vehicle to be available to the Partner when the Partner attends the Premises and when the Partner is on call for the business. The Partner shall be responsible for all costs connected to the maintenance and operation of this motor vehicle.
- 4.2 Each Partner shall maintain any appropriate professional memberships and insurances required to run the business. The Partner shall be responsible for all costs connected to these memberships and insurances.
- 4.3 Each partner shall give the other Partners full information and explanation of all matters connected to the Business when asked to do so by another Partner.

- 4.4 No Partner shall without the previous written consent of the other Partners:
- (i) employ any moneys, property or effects belonging to the other Partners or contract any debt on account of the other Partners.
  - (ii) give any security or promise for the payment of money on account of the other Partners without their prior consent; and
  - (iii) engage or discharge any consultant or employee engaged in the conduct of the Business without the prior written consent of the other Partners.
- 4.5 Each Partner shall conduct itself in a professional manner at all times and shall do all things appropriate to maintain and improve the reputation of the Business.

No Partner shall permit itself to become bankrupt, insolvent or enter into any arrangement with its creditors.

- 4.6 Any Partner committing a breach of any of the conditions set out in this clause shall, in addition to any other obligation created by this Agreement, indemnify the other Partners against all losses and expenses resulting from that breach.

## **5 Retirement of a Partner**

- 5.1 A Partner ("the Retiring Partner") may retire from the Partnership on giving the other Partners ("the Remaining Partners") three months written notice ("the Retirement Notice"). The notice period may be shorter if agreed to by each Partner.
- 5.2 Where a Retirement Notice is given by a Retiring Partner to the Remaining Partners under that above sub-clause, the Remaining Partners may purchase the Retiring Partner's Partnership Share as at the Retirement Date.
- 5.3 The purchase price for the Retiring Partner's Partnership Share under clause 5.2 of this Agreement shall be as agreed in writing by the Retiring Partner and the Remaining Partners.
- 5.4 If the Retiring Partner and the Remaining Partners cannot agree on the value of the Retiring Partner's Partnership Share the retiring Partner's Partnership Share shall be valued by an accountant appointed by the Partners.
- 5.5 If the option to purchase the Retiring Partner's Partnership Share is not exercised by the Remaining Partners the Retiring Partner may sell its Partnership Share to another person ("the Purchaser") provided the Purchaser:
- (a) agrees in writing to be bound by this Agreement; and
  - (b) is approved of by each Remaining Partner.
- 5.6 The Remaining Partners' approval of the Purchaser shall not be unreasonably withheld. A Remaining Partner who does not approve of a Purchaser shall give detailed written reasons for doing so within 14 days of being asked to do so in writing by the Retiring Partner.
- 5.7 The purchase price for the Retiring Partner's Partnership Share shall be payable three months after the Retirement Date or as otherwise agreed in writing by the Partners.

## **Partnership Agreement**

5.8 The Retiring Partner shall do all acts and sign all documents required to give effect to the retirement of the Partner. This shall include an obligation to:

- (i) sign any documents for the change in ownership of the Partnership Name;
- (ii) sign any lease documents relating to the Partnership Premises;
- (iii) sign any direction or instruction to the Partnership's bank in relation to authorities to sign or endorse bills of exchange including cheques and to otherwise operate any bank account relating to the Partnership or an Administrative Entity; and
- (iv) sign any direction or instruction to any other person, consultant or organisation with which the Partnership conducts business regarding authorities for payment, the ordering of clinical services and similar matters.

5.9 The Remaining Partners shall allow the Retiring Partner or the Retiring Partner's nominee to inspect all Partnership Documents that relate to a time when the Retiring Partner was a Partner or which are relevant to any act done or decision made by the Partners during the time when the Retiring Partner was a Partner.

5.10 The Retiring Partner or the Retiring Partner's nominees shall be entitled to photocopy the Partnership Documents referred to in the preceding clause. The Remaining Partners shall pay for the cost of these photocopies.

## **6 Appointment of Remaining Partners as Attornies**

6.1 The Retiring Partner irrevocably appoints the Remaining Partners to be its attorney for the purposes of signing all documents required to give effect to the general intention of this Deed other than the documents required to transfer any interest in the Business Premises.

6.2 This appointment is conditional on the Remaining Partners forwarding to the Retiring Partner a copy of each document signed by the Remaining Partners under this Power of Attorney by registered mail within forty-eight hours of signing such document.

## **7 Release and Indemnity**

7.1 The Remaining Partners jointly and severally release the Retiring Partner from all actions, claims, accounts and demands on the Retiring Partner from third parties arising in connection with the Partnership after the Retirement Date.

7.2 The Remaining Partners jointly and severally indemnify the Retiring Partner against all costs, claims, expenses incurred in respect of any actions, claims, accounts, and demands on the Retiring Partner from third parties arising in connection with the Partnership after the Retirement Date. These costs, claims and expenses shall include the cost of legal advice and legal representation irrespective of whether such matters are resolved in the Retiring Partner's favour or otherwise.

## **8 Sale of Business Premises**

8.1 This clause only applies if the Partners or related entities co-own the Business Premises and is subordinate to any other written agreement between the Partners or

## **Partnership Agreement**

related entities relating to the Business Premises.

- 8.2 The Retiring Partner will arrange for the sale of any interest in the Business Premises owned by the Retiring Partner or the Retiring Partner's nominee to the Remaining Partners or their nominees.
- 8.3 The consideration for this sale shall be equal to the market value of the Retiring Partner's or the Retiring Partner's Nominee's interest in the Business Premises. A deposit of 10% of this amount will be paid within thirty days of the Retirement Date and the balance shall be payable within six months or as otherwise agreed in writing by the Partners.
- 8.4 The Retiring Partner shall be entitled to a market rent for the Retiring Partner's interest in the Business Premises until the balance of all purchase monies are paid.

### **9 Net Partnership Income and Net Income**

- 9.1 The Retiring Partner shall be entitled to the Retiring Partner's share of net partnership income of the Partnership calculated under generally accepted accounting principles and the provision of the Tax Act up to the Retirement Date.
- 9.2 Any dispute regarding the amount of net income of the Partnership shall be referred to the Business Accountant for determination.

### **10 Formation of New Partnership**

- 10.1 The Remaining Partners agree to form a new partnership ("the New Partnership") from the Retirement Date.
- 10.2 The New Partnership shall operate under the Partnership Name from the Partnership Premises and shall otherwise be bound by the terms of this Agreement or such other agreement as the Retiring Partners may agree to sign.
- 10.3 The Retiring Partnership shall have no interest in the New Partnership.

### **11 Death of a Partner**

- 11.1 This clause applies on the death of a Partner or, in the case of a Partner that is a company, the death of the majority beneficial shareholder in that company (who shall be treated as a Partner for the purposes of this clause).
- 11.2 The deceased Partner and the personal legal representative of the deceased Partner shall be deemed to be a Retiring Partner.
- 11.3 The date of death shall be deemed to be the Retirement Date.
- 11.4 The other parts of this Agreement relating to the retirement of a Partner apply as if the deceased Partner has retired and as if the surviving Partners are Remaining Partners.
- 11.5 In the event of the death of a Partner the surviving Partners shall use their best efforts to ensure the proper conduct of the Business and shall do all things reasonable to ensure that the deceased Partner's Partnership Share retains its capital value.

## **Partnership Agreement**

### **12 Expulsion of a Partner**

- 12.1 Should a Partner ("the Default Partner") breach this Agreement the other Partners may serve a written notice ("the Default Notice") on the Default Partner requiring it to:
- (i) rectify the breach within 14 days of service of the Default Notice; and
  - (ii) refrain from any further breaches of this Agreement.
- 12.2 Each Partner other than the Default Partner must sign the Default Notice.
- 12.3 Should the Default Partner not comply with the Default Notice then the other Partners may resolve in writing to expel the Default Partner by serving on the Default Partner a written notice in writing stating that the Default Partner has been expelled from the Partnership ("the Expulsion Notice").
- 12.4 Each Partner other than the Default Partner must sign the Expulsion Notice.
- 12.5 The expulsion of Partner shall be deemed to be the retirement of a Partner for the purposes of this Agreement. The date of expulsion shall be deemed to be the Retirement Date.
- 12.6 The other parts of this Agreement relating to the retirement of a Partner shall apply as if the expelled Partner is the Retiring Partner and the continuing Partners are the Remaining Partners, including the parts of this Agreement that limit a Retiring Partner's ability to compete with the Business.
- 12.7 A Partner shall not be expelled from the Partnership due to sickness or disability.

### **13 Sickness and Disability**

- 13.1 In the event a Partner is not able to discharge its duties as a Partner on account of sickness or disability for a period of more than one month the Partner shall arrange for an assistant to be engaged by the Partnership.
- 13.2 The sick or disabled partner shall pay the assistant's costs and related costs.

### **14 Promotion of Partnership**

- 14.1 Each Partner shall use their best efforts to promote the interests of the Business.
- 14.2 Each Partner shall refrain from conduct likely to damage the interests of the Business.

### **15 Non-Competition and Restrictive Covenant**

- 15.1 Partners shall not compete directly or indirectly with the Business.
- 15.2 No Partner shall, whether as an agent, employee, partner, consultant or otherwise, have any direct or indirect interest in any entity or business which competes directly or indirectly with the Business.
- 15.3 Each Partner agrees and undertakes that all information, trade secrets or industrial or intellectual property ("Information") created or held in relation to the Business shall be kept confidential at all times.

## **Partnership Agreement**

- 15.4 Each Partner agrees and undertakes not to at any time disclose to any other person (other than as required by law), any Information or to use nay such information in any manner which may cause damage to the Business or to another Partner.
- 15.5 This clause shall not apply to any information in the public domain (other than as a result of breach of this clause).
- 15.6 The preceding parts of this clause are reasonable and go no further than is required to protect the goodwill and value of the Business and each Partner's Partnership Share.
- 15.7 The preceding provisions of this clause shall survive the end of this Agreement

## **16 Insurances**

- 16.1 The Partners shall arrange for appropriate insurance policies on the plant and equipment used in the business.
- 16.2 The Partners shall arrange appropriate public liability insurance policies and general insurance policies on the Premises.

## **17 Transfer to a Related Party**

- 17 A Partner may at any time by giving written notice to the other Partners of its intention to transfer its Partnership Share to a Related Party provided the Related Party agrees to be bound by this Agreement. A New Partnership shall be formed on the transfer of a Partner's Partnership Share to a Related Party. This Agreement shall govern the New Partnership as if the Related Party was a party to this Agreement.

## **18 Arbitration**

- 18.1 If a dispute arises between the Partners regarding the meaning of this Agreement then one Partner may give to each other Partner a notice in writing of such dispute.
- 18.2 If in thirty days the dispute has not been resolved by the Partners the dispute shall be submitted to the Institute of Arbitrators and Mediators Australia who shall appoint an arbitrator ("the Arbitrator") to determine the dispute.
- 18.3 The arbitration shall accord with the law relating to arbitration except that:
- (i) the Arbitrator shall observe the rules of natural justice and the rules of evidence and other rules regulating the conduct of judicial proceedings;
  - (ii) a solicitor or other representative may represent a Partner;
  - (iii) the Arbitrator may include in the arbitration award his findings on material questions of law and of fact, including references to the evidence on which the findings of fact were based; and
  - (iv) the Partners shall give any necessary consent to any appeal to the Supreme Court of Victoria on a question of law arising in the course of the arbitration or arising out of the arbitration award.

## **Partnership Agreement**

### **19 Gender and Number**

19 Any reference in this Agreement to a gender or sex shall include the opposite gender or sex. Any reference in this Agreement to the singular number only shall include the plural number. Any reference in this Agreement to a plural number shall include the singular number.

### **20 Headings**

20.1 The division of this Agreement into clauses and sub-clauses and the insertion of headings and captions to describe those clauses and sub-clauses are for convenience or reference only.

20.2 The division of this Agreement into clauses and sub-clauses and the insertion of headings and captions to describe those clauses and sub-clauses shall not affect the interpretation of this Agreement or of any matter relating to this Agreement.

### **21 Currency**

21 All references in this Agreement to Currency are references to payments in the currency of Australia.

### **22 Severability**

22 Any part of this Agreement which is unenforceable shall be severed from this Agreement and be ineffective only to the extent of such unenforceability. The severing of an unenforceable part shall not affect the other parts of this Agreement.

### **23 Entire Agreement and Understanding**

23.1 This Agreement constitutes the entire agreement and full understanding between the Partners relating to the subject matter of the Agreement.

23.2 This Agreement supersedes all agreements, understanding, negotiations and discussions, whether oral or written, between the partners that existed prior to the execution of this Agreement.

23.3 There are no representations, warranties, conditions or other agreements, expressed or implied, statutory or otherwise, between the Partners in connection with the subject matter of this Agreement, except as specifically set out in this Agreement.

23.4 This Agreement was negotiated through joint and open discussions and deliberations by the Partner's and each Partner had proper and adequate access to competent legal advice and counsel and to other appropriate advice and counsel as may have been required by that Partner.

23.5 This Agreement shall be construed in accordance with its fair meaning and having regard to its intention and substance.

### **24 Amendment**

24.1 No modification or amendment of, addition to or deletion from any of the provisions of this Agreement shall be binding on the Partners or otherwise be of any effect.

## Partnership Agreement

24.2 This is unless that modification, amendment, addition or deletion has been made in writing and has been properly signed by each of the Partners to this Agreement.

### 25 Waiver

25.1 Any waiver or forbearance in regard to the performance of any provision of this Agreement shall only be valid to the extent that it is in writing and has been properly signed and executed by the Partners who are to be bound by it.

25.2 Any such waiver or forbearance shall not be binding on any Partner who has not expressly consented in writing to be bound by it.

### 26 Proper Law

26.1 This Agreement shall be governed by the laws of Victoria and the laws of the Commonwealth of Australia that apply to contracts made in Victoria.

26.2 The Partners consent to the jurisdiction of the Courts of the State of Victoria and of the Commonwealth of Australia.

### 27 Assignment

27 A Partner may not assign or purport to assign any rights or obligations under this Agreement or any other agreement relating to the Business Premises or the Administration Entity without the prior written consent of each other Partner.

### 28 Consents and Permissions

Wherever a consent or permission from a Partner is required under any provision of this Agreement that consent or permission shall not be unreasonably withheld.

### 28 Definitions

In this Agreement the following words have the following meanings:

"**Agreement**" means this Agreement and all instruments in amendment or confirmation of it;

"**Business**" has the meaning given to this term in the Schedule;

"**Business Accountant**" means the accountant responsible for the accounts and income tax returns of the Partnership;

"**Business Expenses**" means the expenses of the Business according to generally accepted accounting principles;

"**Business Premises**" means the premises specified as the Business Premises in the schedule and any other premises used in connection with the business;

"**Capital Outgoings**" means losses and outgoings incurred in connection with the Business that comprise capital items for the purposes of the Tax Act including expenditure on plant and equipment;

## **Partnership Agreement**

**"Laws"** means all status, rules, regulations, municipal by-laws, judicial or administrative or ministerial or regulatory judgments, orders, rulings or awards, guidelines, or any other provision of such laws, including general principles of common law and equity binding on or affecting the Person referred to in the context to which such word is used, and "Law" means any of the foregoing. Any reference to any Law shall include a reference to such Law as amended, re-enacted or superseded;

**"Net Partnership Income"** has the meaning given to this term in the Tax Act;

**"New Partnership"** means a partnership formed under clause 10 of this Agreement;

**"Partners"** means the persons specified as the partners in the Schedule and in the case of an incorporated partner includes the person who beneficially owns the shares in the incorporated partner;

**"Partners' Expenses"** means expenses incurred by a Partner which are not Partnership Expenses including:

- (i) motor vehicle costs;
- (ii) disability, income continuation, and life insurance premiums;
- (iii) superannuation contributions;
- (iv) all income taxes, fringe benefits taxes and similar imposts payable by a Partner or a person related to a partner; and
- (v) other costs agreed in writing by each Partner to be Partner's Expenses;

**"Partnership Expenses"** means all losses and outgoings incurred in connection with Partnership Income, other than Partner's Expenses;

**"Partnership Income"** means the income of the Partnership;

**"Partnership"** means the partnership formed under the Agreement and known under the Partnership Name;

**"Partnership Documents"** includes all documents and computer files created by the Partnership or a Partner to record the actions and decisions of the Partnership. It includes all letters, facsimile messages, e-mail messages received by or sent to a Partner or an employee, accountant, or solicitor engaged by the Partnership. It also includes all financial records created by the Partnership or a Partner or by any employee or consultant to the Partnership;

**"Partnership Name"** means the name specified as the Partnership Name in the Schedule and any other name the Partnership trades under;

## **Partnership Agreement**

**"Related Party"** means in the case of a Partner who is a natural person, a company beneficially owned by the Partner whether or not that company acts as trustee of a trust and, in the case of a partner that is a company, means the person who beneficially owns the shares in that company;

**"Remaining Partners"** has the meaning given in clause 6 of this Agreement;

**"Retirement Date"** means the date a Retiring Partner retires from the Business under Clause 6 of this Agreement;

**"Retirement Notice"** has the meaning given in clause 6 of this Agreement;

**"Retiring Partner"** means any Partner who has given notice of an intention to retire from the Partnership under clause 6 of this Agreement;

**"Signing Date"** means the day nominated as the Signing Date in the Schedule;

**"Tax Act"** means the Income Tax Assessment ACT 1936 as amended;

**"Share of Partnership Net Income"** has the meaning given in the Tax Act;

**"Year"** means the financial year ending 30 June each year or such other period as agreed in writing by the Partners.

**30 Schedule**

30 The Schedule shall form part of this Agreement and should any provision in it be inconsistent with the other parts of this Agreement the provision in the Schedule shall take priority to the extent of the inconsistency.

**31 Signing Clause**

31.1 In witness of the above the Partners have signed this Agreement as a deed on the Signing Day.

**EXECUTED AS A DEED ON THE SIGNING DATE**

**SIGNED** by )  
in the presence of: ) .....

.....  
Witness

**SIGNED** by )  
in the presence of: ) .....

.....  
Witness

**SIGNED** by )  
in the presence of: ) .....

.....  
Witness

**SCHEDULE**

**Partners**

**Partnership Name**

**Partner's Proportions**

One-third

One-third

One-third

**Business Premises**

**Business**

Medical practice

**Commencement Date**

**Signing Date**

2006

**The Price**

As agreed each year between the Partners

**Proper Law:**

The State of Victoria and the Commonwealth of Australia

## DRAFT UNIT-HOLDERS' AGREEMENT

**Name of Trustee**

**Name of Trust**

**SIGNING DATE**

**McMasters' Solicitors Pty**

**Solicitors and Consultants**

**71 Tulip Street, Cheltenham, Victoria, 3192**

**Telephone 03 9583 6533**

**[www.mcmasters.com.au](http://www.mcmasters.com.au)**

*THIS AGREEMENT is made on Signing Date set out in the Schedule between the Unit-holders described in the Schedule to this Agreement.*

# RECITALS:

- A. The Company specified in the Schedule runs the enterprise described in the Schedule ("the Enterprise").
- B. The Company runs this enterprise as the trustee of the trust named in the Schedule ("the Trust").
- C. The Trust is owned by the persons named as the Unitholders in the Schedule.
- D. The Unitholders agree to be bound by this agreement.

**NOW IT IS AGREED** as follows:

## 1. INTERPRETATION

### 1.1 Defined Terms

"**Agreement**" means this Agreement including the Schedule;

"**Company**" means the company that acts as the trustee of the Trust;

"**Enterprise**" means the enterprise described in the Schedule;

"**Permitted Transferee**" means a Unitholders' spouse or child and any trust or company in which the Unitholder has an interest or an expectancy;

"**Premises**" means the premises described in the Schedule;

"**Shares**" means shares in the Company;

"**Shareholders**" means the shareholders named in the Schedule;

"**Trust**" means the trust named in the Schedule as the Trust;

"**Units**" means the units issued in the Trust; and

"**Unit-holders**" mean the unit-holders named in the Schedule.

### 1.2 Gender and Number

A reference to a gender includes the other gender and a reference to a singular number includes the plural and vice versa.

### 1.3 Headings

The use of clauses and sub-clauses and the use of headings and captions shall not affect the interpretation of this Agreement.

### **1.5 Severability**

Any provision which is unenforceable shall be severed from this Agreement and be ineffective to the extent of such unenforceability.

### **1.6 Conflict**

If there is conflict between this Agreement and any other document this Agreement shall prevail to the extent permitted by the law.

## **2 ENTIRE AGREEMENT**

- (a) This Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement.
- (b) This Agreement supersedes all prior agreements or understandings.

## **3. AMENDMENT**

This Agreement may be amended provided it is in writing and signed by each Unitholder.

## **4. SHARE OWNERSHIP AND RESTRICTIONS ON TRANSFERS**

### **4.1 Restriction on Transfer**

A Unitholder shall not transfer Units except as permitted by this Agreement.

### **4.2 Permitted Transfers**

A Unitholder may transfer Units to a Permitted Transferee provided the Permitted Transferee agrees to be bound by this Agreement.

## **5. TRANSFERS TO UNRELATED PARTIES**

A Unitholders may only transfer Units to an unrelated party with the prior written consent of each other Unitholder.

## **7. NON-COMPETITION**

### **7.1 Restriction**

- (a) No Unitholder shall have an interest in any enterprise that competes with the Trust or conducts a similar enterprise without the prior written consent of each other Unitholder.
- (b) Once a Unitholder transfers Units to a person other than a Permitted Transferee that Unitholder shall not:

- (i) compete with the Trust directly or indirectly as a principal, as a partner, an employee or otherwise; or
  - (ii) contact any patient, client or employee of the Trust or try to persuade that person to not deal with the Trust or to deal with any other person,
- within the area or for the period specified in the Schedule.

- (c) This Clause is not unreasonable, is not a restraint of trade and is required to protect the Company's interests.

## **7.2 Confidential Information**

- (a) All information, trade secrets or intellectual property ("Company Information") in relation to the Enterprise shall be kept confidential.
- (b) A Unitholder will not disclose Company Information to any person or use Company Information in a way that may damage the Company.
- (c) This clause shall not apply to any information that is in the public domain (other than as a result of breach of this clause).

## **7.3 Survival**

- (a) This clause is reasonable and protect the Trust's value and goodwill.
- (b) This clause shall survive this Agreement.

## **8. RELATIONSHIP AND OBLIGATIONS OF THE UNITHOLDERS**

### **8.1 No Authority to Bind Other Unitholders**

A Unitholder may not commit another Unitholder to any other agreement without the written consent of that other Unitholder.

## **9. DISPUTE RESOLUTION**

- (a) If a Dispute occurs between the Unitholders they shall meet in good faith within a reasonable time to resolve the Dispute.
- (b) If the Dispute is not resolved within ten days Unitholder may refer the matter to the Australian Commercial Disputes Centre Limited ("ACDC") or a similar body for assistance to resolve the matter.
- (c) The Unitholders will be bound by the decision of the Arbitrator

## **10. DURATION**

This Agreement shall apply from the Signing Date until each Unitholder agrees in writing to terminate it.

## **11. ACCESS TO INFORMATION**

Each Unitholder has access to all Trust records, including all correspondence between the Trust and the Unitholders and all correspondence between the Trust and any other person.

## **12. DISTRIBUTION OF NET INCOME AND CAPITAL**

- (a) The Trustee shall distribute the Trust's net income in accordance with the Trust Deed unless each Unit-holder otherwise agrees in writing.
  
- (b) Notwithstanding sub-clause (a), the Unit-holders agree that the Trustee shall distribute the Trust's net income in accordance with the net income distribution rules set out in the Schedule.

## **13. NOTICES**

Any notice given under this Agreement shall be in writing and shall be posted, couriered, e-mailed or facsimiled to the Unitholder at the Unitholder's usual home address or place of business.

## **14. EXPENSES**

All costs and expenses connected to this Agreement shall be paid by the Trust.

## **16. ASSIGNMENT**

The rights hereunder shall not be transferred without each Unitholder's, except as provided under this Agreement.

## **17. SECURITY FOR UNITHOLDER'S LOANS**

A Unitholders shall not use Units as security for any loans or similar obligations without each Unitholder's prior written agreement.

## **18. CHANGES TO CONSTITUTION**

The Directors shall not allow any change to the Company's constitution of the Trust's deed without each Unitholder's prior written permission.

## **19. THE COMPANY'S ASSETS AND LIABILITIES**

The Unitholders acknowledge the Company does not have any liabilities except as disclosed in writing by the Trust to the Unitholders.

**20. INTELLECTUAL PROPERTY**

(a) The Trust owns all intellectual property connected with the enterprise that is in the possession of the Trust or the Unitholders.

(b) No payment will be made by the Trust to any Unitholder for intellectual property.

**21. JURISDICTION**

This Agreement shall be subject to the laws of the state nominated in the Schedule and the Commonwealth of Australia and that this Agreement shall only be enforced under the laws of the state nominated in the Schedule and the Commonwealth of Australia.

**22. STAMP DUTY AND OTHER COSTS**

The Trust shall pay the costs connected to issuing and transferring Units.

**23. BORROWINGS**

The Trust shall not borrow without each Unitholder's prior written consent.

**24. DISPOSAL AND ENCUMBRANCE OF ASSETS**

The Trust shall not dispose of or encumber any asset with a value more than the value set in the Schedule without each Unitholder's prior written consent.

**25. REASONABLENESS**

If a written consent is required under this Agreement it shall not be unreasonably withheld.

**26. SPECIAL CONDITIONS**

This Agreement shall include any special conditions set out in the Schedule.

**27. Majority**

Any decision made by the Unitholders shall be determined by the majority specified in the Schedule.

**28. SIGNING**

**EXECUTED AS A DEED ON THE SIGNING DATE**

The company seal of )  
Pty Ltd was attached in )  
accordance with its constitution )

.....

Director

.....

Secretary

The company seal of Pty Ltd )  
was attached in )  
accordance with its constitution )

.....

Director

.....

Secretary

The company seal of )  
Pty Ltd was attached in )  
accordance with its constitution )

.....

Director

.....

Secretary

# **SCHEDULE**

**Company**

**Trust**

**The Unitholders**

**Signing Date**

**Jurisdiction**

**Premises**

**The Enterprise**

Various activities determined by the Unit-holders from time to time connected to the practice located at the Premises and such other enterprises nominated in writing by the Unit-holders.

**Net Income and Capital Distribution Rules**

**Restrictive covenant distance**

**Restrictive covenant time period**

**Limit of value**

**Majority**

**Special clauses**

## Appendix 2

### Dollar Notes: August 2010: Breaking Up is Hard to Do

A individual rang the other morning, mildly distressed. He wanted to leave his practice. He had done the right thing and flagged his intentions at a partners meeting, but the reaction was mixed, and his partners were unhappy and concerned about lower future profits. They said no, he could not leave.

It looked like another day in the office.

Many say partnerships are like marriages: this is the line trotted out at all the lawyers' seminars. The reality is medical partnerships are not like marriages (unless you have either a very strange marriage or a very strange partnership) and are by their nature transient, changing, and hopefully, much less emotional. Medical practices are getting bigger and bigger and more GPs come and more GPs go. I reckon the average stay is about ten years. So if there are four partners that's a change in the partnership every two and a half years.

What's the big deal about a partner leaving? Why is breaking up hard to do? Please keep perspective. This relationship was never going to be forever. It was a commercial relationship, not a personal relationship, and it was made to end one day. That day is here, and that's not going to change, so be reasonable and put yourself in the other person's shoes and, above all, stay friends. Or at least do not become enemies.

Every practice should have a co-ownership agreement, more specifically a partnership agreement, an associate agreement, a shareholders' agreement or a unitholders' agreement, depending on the legal form of the practice's ownership. The co-ownership agreement will set out the relationship's critical terms. These include cash withdrawals, decision-making processes, dispute resolution processes and, of course, departure processes.

The departure processes will usually include a set notice period, say, three months (to be shortened with consent), a valuation process (not that goodwill is much these days), and a transfer process often involving the identification of a new owner to replace the departing owner. The new owner relationship is complex: the new owner will contract with the departing owner to take over his or her interest in the practice, but will have an ongoing relationship with the remaining owners. The ongoing relationship is the more important one. So it makes sense for the remaining owners to negotiate with the new owner, and for the departing owner to deal with whoever they introduce to the sale transaction.

Hopefully the co-ownership agreement's departure processes will be completely ignored and the owners will instead do something more suited to the specific circumstances they face. In my client's circumstances the remaining partners, coincidentally, had a potential owner waiting in the wings, ready, willing and able to join the practice. So the three-month notice period was shortened by consent. A small amount of goodwill was paid to my client, which was all he expected, and he was more than happy to sell to the new owner instead of the remaining owners as was required under the strict terms of the agreement.

Their negotiation proved my theory that the co-ownership agreement is the document you pull out of the drawer when other resolution options have failed. It also proved my theory that (in most cases at least) GPs should not be legally represented and should instead deal with each other personally over a coffee and, if necessary a Tim Tam, and leave the lawyers out wherever possible.

Paradoxically, if you have a happy partnership then now is the time to put a new co-ownership agreement in place. It's not needed now. Which is precisely why you need it now.



<p><a href="#">← ACCC HOME</a></p>	<p>Attn: Medical writers</p>	<p>Printer  friendly version</p>
<p>The ACCC</p> <ul style="list-style-type: none"> <li>→ For consumers</li> <li>→ For businesses</li> <li>→ For regulated industries</li> </ul>	<h2>Doctors risk breaching competition laws</h2> <p>A recent Australian Competition and Consumer Commission investigation should serve as a reminder to medical practitioners that they must comply with Australia's competition laws.</p> <p>The investigation concerned five doctors from the Kangaroo Island Medical Clinic, the only general medical clinic on the island located in South Australia. The clinic is operated as an associateship, in which each of the doctors operates their own medical practice and shares office and administration facilities. In addition to the general practice, doctors from the clinic provide on call emergency, obstetric and anaesthetic services to the island's hospital.</p> <p>Doctors not practising within a single legal entity (a single company, sole natural person or legal partnership with no corporate partners or trust) are competitors under the law. Doctors practising in an associateship structure are competitors.</p> <p>In letters dated 1 October 2009, each doctor wrote to the administrator of the Kangaroo Island hospital in these terms:</p>	
<p>+ About us</p>		
<p>+ Publications</p>		
<p>+ Public registers</p>		
<p>+ Media centre</p>		
<p>+ Legislation</p>	<ul style="list-style-type: none"> <li>✦ gave notice of his or her intention not to accept the current remuneration for after hours services to the hospital from midnight 31 October 2009, and</li> <li>✦ enclosed an interim contract for negotiations should the hospital wish to continue an on call doctor arrangement for patients presenting or admitted to the hospital.</li> </ul>	
<p>+ Consumer &amp; business</p>		