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## DEED OF PARTNERSHIP

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

# DEED OF PARTNERSHIP

## BETWEEN FAMILY MEMBERS ENGAGED IN PRIMARY PRODUCTION

THIS DEED OF PARTNERSHIP made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

BETWEEN each of the persons named and described in Part A of Schedule One (the “Partners”).

### RECITALS:

- A. The Partner or Partners named and described in Schedule Two are the Owners (the “Owners”) of the land described in Schedule Three (the “Land”) and all improvements on the Land.
- B. The Land is suitable for primary production and the Partners wish to carry on Business together in partnership as primary producers, to carry on the Business as set out in Schedule Four.
- C. The terms of the Partnership between the Partners are as set out in this Deed.

### THE PARTIES AGREE AS FOLLOWS:

#### 1. CREATION OF THE PARTNERSHIP

- 1.1. The Partners agree with each other to become Partners and to carry on Business in common as primary producers on the Land and to share the profits of the Business. The nature of the Business is as set out in Schedule Four.
- 1.2. Each of the Partners shall be entitled with the other Partners to be actively involved in the Business and in the management of the Partnership.

#### 2. CONTINUATION OF THE PARTNERSHIP

- 2.1. The Partnership shall commence on the date hereof and shall continue until the first to happen of the following events:
  - (a) the Partners by Unanimous Partnership Resolution decide to sell the Business or cease to carry on the Business or cease to carry on the Partnership, in which event the Partnership shall cease upon such resolution being passed. Provided however in the case of a Unanimous Partnership Resolution to sell the Business as a going concern, the Partnership shall continue until the sale of the Business has been completed and the Business sold as a going concern;

- (b) any of the Partners ceasing to take an active role in the conduct of the Business and the other Partners deciding by Partnership Resolution to terminate the Partnership.
- 2.2. During the continuance of the Partnership all Partners commit to each other to at all times act in the best interests of the Partnership as a whole and undertake that they will take an active and full-time role in the conduct of the Business. Provided that if any Partner is unable to take such active role in the conduct of the Business through ill health, injury or other personal incapacity then the other Partners may by Partnership Resolution excuse that Partner from performing his/her obligations in the Business.
- 2.3. Upon the termination of the Partnership it shall be wound up and dissolved in accordance with the provisions of the Partnership.

### **3. NAME OF PARTNERSHIP**

- 3.1. The Partnership may be conducted in such name or names as the Partners may, by Partnership Resolution, decide. As from the date hereof and until it is resolved otherwise by the Partners, the Partnership shall carry on business and trade under the name The Johns partnership and the Partners shall do all things required in order to register that name as a business name under such Act relating to the registration of business names as may be in force and applicable to the registration of business names.
- 3.2. Partners shall also endeavour to register as trade marks all trade names and logos which the Partners may use in the course of carrying on the Business.
- 3.3. Throughout the continuance of the Partnership, the Partners shall ensure that all business names continue to be registered and all trade marks and trade names are maintained and the registration thereof continued.
- 3.4. The Partners may by Partnership Resolution resolve to abandon and cease to use any business name, trade mark or trade name and for that purpose surrender registration thereof or notify the appropriate authority that the Partnership has ceased to carry on business under that name.

### **4. THE LAND AND MACHINERY**

- 4.1. The Business conducted by the Partnership shall be conducted on the Land and the nature of that business is set out in Schedule Three. The Partnership shall lease the land from the Owners and enter into a formal lease, the essential terms of which are set out in Schedule Five.

- 4.2. In the course of conducting the Business, the Partners may decide to carry on the Business at other places, properties, farms and locations whether in proximity to the Land or elsewhere in Australia.
- 4.3. Where the Land has on it improvements in the form of residences, then it is acknowledged by the Partners that where the Owners are the occupiers of those residences then they are entitled to continue to occupy those residences as their homes throughout the course of the Partnership and no activity of the Partnership will interfere with their right of quiet enjoyment of those residences as their homes.
- 4.4. Where the residences on the Land include an office used by the Partnership for the purposes of carrying on the Business, then the Partners who are the occupiers of the residence will allow all Partners access to that office at all reasonable times.
- 4.5. Where any Machinery is owned by the Owners, it shall continue to be used in the conduct of the Business and be available to the Partners for that purpose. Any new Machinery must be purchased by the Partners and shall form part of the Assets.

## **5. CAPITAL OF THE PARTNERSHIP**

- 5.1. The Partners acknowledge that all of the Land, all of the improvements on the Land, including the residences, will at all times remain the sole and exclusive property of the Owners and nothing in this Partnership Deed shall confer upon the Partners (not being the Owners) any interest either in law or in equity in the Lands (except as lessee) or any right to occupy the Lands other than pursuant to the terms of this Deed and the lease and then only during the continuance of the Partnership for the purposes of conducting the Business.
- 5.2. The Partners acknowledge that in addition to the Land and improvements on the Land, the Owners are the owners of all of the Machinery and none of Machinery forms part of the Partnership property.
- 5.3. The Partners acknowledge that the Partnership property includes:
- (a) all monies advanced by the Partners as Capital contributions to the Partnership;
  - (b) all assets acquired from time to time by the Partnership using Partnership funds;
  - (c) the Business and the goodwill of the Business;
  - (d) all intellectual property developed in the course of the conduct of the Business by the Partners;
  - (e) all monies owing on whatsoever account with the Partnership, and
  - (f) all contracts, arrangements, licences and entitlements that confer rights or



benefits on the Partnership and facilitate the carrying on of the Business; and

(g) all assets listed and described in Schedule Seven.

5.4. The Partners acknowledge that all the Machinery is owned exclusively by the Owners and does not form part of the Partnership Assets.

## **6. INCREASES OR REDUCTIONS IN CAPITAL**

6.1. If during the course of the Partnership the Partners decide by Partnership Resolution to increase the Capital of the Partnership, then all Partners must contribute in accordance with their Share at that time. Provided however that the Partners who are the Owners of the Land shall not be required to contribute to any increase in the Capital of the Partnership unless they voted in favour of the increase in Capital of the Partnership and have agreed to contribute to that increase.

6.2. In respect of all Partners who are not Owners of the Land, if any one or more of them fails to pay their proportion of any increase in the Capital of the Partnership then their Partner Partnership Shares shall be calculated by taking the total Contributions made by all Partners prior to the increase in Capital and then determining each Partner's Share. After all Contributing Partners have paid their Contributions, the non-Contributing Partner's Share shall be his or her percentage of the total Capital of the Partnership.

## **7. PARTNERSHIP SHARES**

7.1. The Partners who are the Owners of the Land shall each be deemed to have the Partnership Shares in the Partnership as set out in Schedule Two. Unless otherwise agreed, the Partnership Shares in the Partnership of the Owners shall not dilute and shall not oblige the Owners as Partners to make any Contributions to increases in Capital.

7.2. The Partnership Shares of each Partner who is not an Owner shall at the date of creation of this Partnership be as set out in Part C of Schedule One opposite each of their respective names and each of those Partners must Contribute the amount of Capital as is set out in Part C of Schedule One for their Partnership Share in the Partnership. The Capital Contribution of each of these Partners shall be the same percentage as their Partnership Share not taking into account the Partnership Shares in the Partnership of the Owners.

**8. PROFITS AND LOSSES OF THE PARTNERSHIP**

- 8.1. Each Partner shall be entitled to share in the profits of the Partnership in each Financial Year of the Partnership. The profits and losses of the Partnership shall be determined as at 30 June in each Financial Year.
- 8.2. Where the Partnership makes a profit in any Financial Year, each Partner shall be entitled to share in the profits as his, her or its entitlement to share in the net income of the Partnership. Provided however that where any Partner has taken drawings during the Financial Year those drawings shall be set-off against that Partner's entitlement to his or her share of the profits.
- 8.3. All losses of the Partnership shall be borne and contributed to by the Partners in accordance with their Partnership Share at the time those losses are ascertained. All losses (if any) shall be ascertained as at 30 June in each Financial Year.
- 8.4. Where it is apparent during a Financial Year that the Partnership is incurring losses or will incur a loss at the end of the Financial Year then the Partners may by Partnership Resolution require all Partners to (including the Owners) to Contribute by any particular date in accordance with their Partnership Share in the Partnership to such losses or anticipated losses. Such Contributions shall for all purposes be deemed loans by those Partners to the Partnership. Such Contributions shall be equal to each Partner's Partnership Share in the Partnership as at the time of the Partnership Resolution.
- 8.5. Where a Partner fails to Contribute to any losses in any Financial Year that Partner shall not be entitled to share in any profits or make any drawings in the Partnership until all other Partners who have Contributed have been repaid, in full, their Contributions.

**9. EXPENSES OF THE PARTNERSHIP AND THE BUSINESS**

- 9.1. All expenses, costs, outgoings of whatsoever kind or nature including all interest on mortgages, loans, wages, salaries, insurance premiums, contractor's fees and all expenses involved in maintaining the Land and otherwise in carrying on the Business in the ordinary and proper way shall first be paid out of the gross revenue of the Business and if this is inadequate then out of Capital. If this in turn is inadequate then to the extent that there is still a deficiency by Contributions made by the Partners (including the Owners) in accordance with their Shares in the Partnership.

## **10. ACCOUNTANT**

- 10.1. The Partnership shall engage an Accountant (the “**Accountant**”) for the purposes of preparing all tax returns, business activity statements and ensuring that the Partnership is compliant with all relevant tax laws.
- 10.2. For the purpose of preparing Accounts and the lodgement of tax returns, the Partners shall take the advice of the Accountant as to whether to conduct the Business under a cash or accruals basis.
- 10.3. The Accountant shall prepare all the Accounts of the Partnership including its profit and loss balance sheet for each Financial Year and each Partner shall co-operate with and provide all information reasonably requested by the Accountant so as to enable the Accountant to prepare such Accounts in a way that shows a true and fair view of the Partnership and the Business for that Financial Year.
- 10.4. Where under the *Income Tax Assessment Act* any Partner has the right to make any election, then that Partner shall be entitled to make his or her own election and the Accountant must prepare all tax returns having regard to those elections. Where individual elections are not applicable then all elections shall be made by the Partnership by Partnership Resolution.

## **11. BANK**

- 11.1. The Partnership shall open up a bank account at such Bank as the Partners may by Partners’ Resolution so decide and all Partners shall be entitled to be signatories on the Bank account provided that in respect of any transaction involving a sum greater than ten thousand dollars (\$10,000) there must be at least two (2) signatories, one of whom shall be one of the Owners.
- 11.2. All cheques drawn on the Partnership Bank account shall be in the name of the Partnership and all cheques drawn on the Partnership Bank account shall be for the proper and legitimate purposes of the Partnership and not to meet any personal needs or requirements, debts, liabilities or obligations of any particular Partner.
- 11.3. All revenue and other moneys shall be deposited into the Partnership’s Bank accounts at the Bank unless by Partnership Resolution the Partners resolve to deposit those moneys elsewhere.



## **12. OBLIGATIONS OF THE PARTNERS**

- 12.1. All Partners must use their best endeavours to properly manage and conduct the Business and the Partnership in accordance with and for the best interests of the Partners as a whole.
- 12.2. All Partners must use care, skill and diligence in the conduct of the Business and must at all times act honestly and in good faith in all their dealings with other Partners.
- 12.3. Each Partner promises and undertakes to each other Partner that whilst he or she is a Partner in the Partnership and for a period of five (5 years) years after ceasing to be a Partner, he or she will not carry on or conduct any business in competition with the Business within a five hundred (500) kilometre radius of the Land or any other property upon which the Partnership carries on the Business.
- 12.4. Each Partner must not by deliberate or reckless act or omission cause damage or harm to the Partnership or to any Partner and must justly and faithfully so conduct himself or herself in its, his or her dealings with the other Partners in respect of the Business.
- 12.5. No Partner shall use any of the Partnership assets for his or her own personal benefit or interest with the intent that the Partnership assets shall only be used for the interests of the Partners as a whole.
- 12.6. No Partner shall mortgage his or her Share in the Partnership or at any time attempt to mortgage, secure, charge or otherwise encumber any of the Partnership assets except with the approval and consent of all the Owners and separately the approval and consent of the Partners given by Partnership Resolution.

## **13. WINDING UP OF THE PARTNERSHIP**

- 13.1. The Partnership shall not be wound up or dissolved upon the death of any Partner including one of the Owners unless all of the other Owners elect to terminate the Partnership or the surviving Partners by Partnership Resolution resolve to terminate the Partnership.
- 13.2. The Partnership shall not be terminated by the death or bankruptcy of any Partner unless the other Partners by Partnership Resolution so resolve.
- 13.3. The Partnership shall not be terminated by the retirement or removal of a Partner from the Partnership.
- 13.4. Where the Partners have decided by Partnership Resolution that the Partnership is to be terminated or where the Partnership has come to an end as provided in this clause then the Partners shall collectively do all things necessary to realise all the Partnership



assets, convert the same into money, deposit such moneys in the Bank and in so realising the Partnership assets endeavour to obtain the best prices and values for those assets.

- 13.5. Where the Business or any part of the Business can be sold as a going concern then the Partners shall use their best endeavours to sell the Business for the best price they can achieve. Any Partner may bid for and purchase the Business.
- 13.6. Where the Business (or any part of the Business) is sold as a going concern, each of the Partners shall provide to the buyer thereof covenants and undertakings not to compete with the Business for a period of five (5) years from the completion of the sale within a radius of five hundred (500) kilometres of the place where the Business is conducted at the time of its sale as a going concern.

#### **14. APPLICATION OF REALISED FUNDS**

- 14.1. All Partnership assets when realised and converted to cash shall be applied:
- 14.1.1. firstly, in paying all the Liabilities of the Partnership including any loans made by Partners;
- 14.1.2. secondly, in paying back all Contributions made by the Partners to the Capital of the Partnership. Where the Owners have not contributed any Contributions, they shall not be entitled to receive any payment in respect of any deemed Contribution; and
- 14.1.3. thirdly, in distribution of all remaining Capital to the Partners in accordance with their Shares in the Partnership.
- 14.2. Where there is any deficiency in the winding up of the Partnership, each Partner including the Owners shall Contribute to that deficiency in accordance with that Partner's Share in the Partnership.

#### **15. RETIREMENT OR REMOVAL OF A PARTNER**

- 15.1. Any Partner may be removed from the Partnership by a Partnership Resolution to that effect. A removed Partner shall be entitled to be paid by the other Partners for the transfer of his or her Partnership Share, the value of that Partnership Share as agreed or if no agreement is reached within 30 days of the Partnership Resolution, as determined by the Accountant. The Accountant shall use his or her best endeavours to ensure that such payment represents the true and fair value of that Partnership Share and in the absence of manifest error or clear failure by the Accountant to fairly value

that Partnership Share, such valuation by the Accountant shall be final and conclusive as the value of that Partnership Share of that Partner so removed.

15.2. Any Partner may at any time retire from the Partnership by serving written notice to that effect to the other Partners. Such retirement shall take effect from the 1st July following service of the notice unless that would mean less than three (3) months prior written notice would be given by the retiring Partner, in which event the retirement will take effect on the 1st July in the next calendar year.

15.3. A retiring Partner shall be entitled to be paid by the other Partners for the transfer of his or her Partnership Share, the value of that Partnership Share as agreed or if no agreement is reached within 30 days of the notice, as determined by the Accountant. The Accountant shall use his or her best endeavours to ensure that such payment represents the true and fair value of that Partnership Share and in the absence of manifest error or clear failure by the Accountant to fairly value that Partnership Share, such valuation by the Accountant shall be final and conclusive as the value of that Partnership Share of that Partner so retiring.

## 16. DEFINITIONS

16.1. 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 Greg Smith or such other qualified person as the Partners may by Partnership Decision decide is to be the Accountant.

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

“**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 and includes any other business or enterprise which the Partners resolve by Partnership Resolution to carry on in the Partnership.

“**Capital**” means the total capital of the Partnership from time to time, made up of Contributions made by the Partners to Capital and all other monies, property and Assets

which are of a capital nature and which form part of the Capital.

“**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’ Meeting 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 Resolution from the position of Chairperson.

“**Contribution**” means an amount contributed at any time by a Partner to Capital and includes contributions made by Partners simultaneously with the execution of this Deed being the amounts set out in Part C of Schedule One and also includes contributions made to pay deficiencies on winding up of the Partnership.

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

“**Financial Year**” means in respect of the current year, the period from the date of this Deed up to and including 30<sup>th</sup> June next 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.

“**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.

“**Machinery**” means all plant farm equipment and materials listed in Schedule Six.

“**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 hereof who become Partners of the Partnership but only for so long as those persons remain Partners.

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

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

“**Partnership Name**” means The Johns 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.

“**Partnership Resolution**” means a resolution passed by not less than a majority in number of the Partners that collectively hold fifty five percent (50%) of the Partnership Shares at a Partners’ Meeting or by written Partnership Resolution signed by a majority holding that

percentage of Partnership Shares.

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

“**Quorum**” means a majority of Partners who collectively hold fifty percent (50%) Partnership Shares in the Partnership at the time.

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

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**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** )  
**Andrew Urika** )  
in the presence of:

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

\_\_\_\_\_  
Signature  
Print Name of Partner:

## SCHEDULE ONE

### PART A: THE PARTNERS (Definition)

Name of Partner	Address of Partner
Company Pty Ltd ACN 111 222 333	1 Smith StreetSydney NSW2000
Andrew Urika	1 Bradley StreetSydney NSW2000

### PART B: PARTNERSHIP SHARES (Clause 7)

Name of Partner	Partnership Shares - %
Company Pty Ltd ACN 111 222 333	60
Andrew Urika	40

### PART C: CAPITAL CONTRIBUTION (Definition)

Name of Partner	Capital Contribution - %
Company Pty Ltd ACN 111 222 333	65
Andrew Urika	35

## SCHEDULE TWO

### THE OWNER/S (Recital A)

Name of Partner	Address of Owner
Company Pty Ltd ACN 111 222 333	1 Smith StreetSydney NSW2000
Andrew Urika	1 Bradley StreetSydney NSW2000

Initial: \_\_\_\_\_