

# Memo of Understanding For Partnership Agreement



Updated: February 9, 2016

This Memo of Understanding serves to document the principal terms of our partnership. This is not a binding legal document, but instead a preliminary outline of the terms and conditions of the partnership. It defines how we will work together to fund, start and operate the business. Once we have discussed and agreed on these topics, we will engage an attorney to create a legal Partnership or Operating Agreement.

Use this outline to capture the terms you have agreed to, and to document any open items you need to discuss further or with your attorney.

## 1. Business Purpose:

- 1.1. What is the purpose of the business? What is your broad definition of the business and what it offers?
- 1.2. What is your vision for the business? Will it be just one location, or do you envision growing into multiple location?
- 1.3. Are you considering franchising your concept?
- 1.4. Will you be offering your product or services internationally?
- 1.5. Do you have an exit strategy?
- 1.6. Are you in agreement about potential future exits like selling the business or bringing in other investors?

## 2. Principal Place of Business:

- 2.1. What will be the official business address?
- 2.2. If it's an on-line business, what the address of record? This can be a home address, or you may want to consider a shared business address or executive suite.
- 2.3. Will you be operating in multiple states and countries?

## 3. Funding & Capital Contributions:

- 3.1. List who will be investing cash into the business and what amount.
- 3.2. Will the company use any types of loans for start-up? Who will be required to personally guarantee the loan? Who will put up personal collateral if required?
- 3.3. Will the LLC have the right to Capital Calls (i.e. required additional cash investments from the Members)? What happens if members don't honor capital calls?
- 3.4. Other than Capital Calls, how can the company borrow more money in the future if it needs to?
- 3.5. How will the cash investments be treated? Are they loans to the company?
- 3.6. Can owners encumber or assign their rights?

## 4. Ownership:

- 4.1. Who are the owners of the business?
- 4.2. What percentage of unit/shares and number of units/shares will be owned by whom?
- 4.3. Will someone earn or be awarded units/shares over time? Based on what terms?
- 4.4. Will one of the owners be given units/share upfront for "sweat equity" (i.e. no cash investment). Are they vested in those units/shares 100% upfront or is there a vesting schedule?
- 4.5. If it's a 50/50 partnership, what happens if you can't agree on something?

## 5. Management:

- 5.1. Who will play what role in the management of the company?
- 5.2. For an LLC, who will be the Managing Member? Who will be the Tax Matters Member?
- 5.3. For a Corporation, who will be the President, Vice-President, and Treasurer?
- 5.4. Who has the ability to incur debt or liabilities on behalf of the company (i.e. who can sign on new loans or other debts and agreements)? Are there any financial limits?
- 5.5. Who will manage the financials of the business, including accounts payable, account receivable, cash management and payroll?
- 5.6. Who will be involved in the day-to-day operations of the business, and who is only an investor or "silent partner"?
- 5.7. For operations, who will be responsible for what specific roles? Who will be responsible for Sales, Manufacturing, Operations, Retail, Employees, Financials, etc.?
- 5.8. What would constitute a conflict of interest or competition outside of the business?

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- 5.9. How many hours will each partner dedicate to the business? Will some partners keep their current jobs outside of the business, while others will be dedicated to the business full-time?
- 5.10. For the partners dedicated to the business full-time, will they be paid a salary or other compensation for their efforts beyond their share of profits?
- 5.11. Will you be hiring a General Manager to run the day-to-day operations? What will that person be paid and who will they report to?
- 5.12. How and when will you use professionals such as accountants and attorneys?
- 5.13. Who will prepare your Federal Tax Returns?
- 5.14. What acts would require majority consent of the Member/Shareholders?
- 5.15. How are Members added or removed?
- 5.16. If all owners will be actively involved in the business, how you agree to and schedule time off from the business?
- 5.17. Who will have a company credit card and what will the spending limits be?

### **6. Distributions & Benefits:**

- 6.1. How and when will profit distributions be calculated and distributed?
- 6.2. Will the company retain some earnings for future needs?
- 6.3. How will profits and losses be treated from a tax perspective?
- 6.4. Will the company provide any other benefits for the owners (i.e. health insurance, life insurance, etc.)?
- 6.5. What discretionary expenses will be covered by the company (i.e. auto expense, cell phone expense, T&E expense, etc.)?

### **7. Dispute Resolution:**

- 7.1. If there is a dispute that cannot be resolved or settled internally, what are the possible remedies? Do you agree to arbitration before taking legal action? Is the arbitration binding?

### **8. Buy-Sell Agreement:**

- 8.1. What are the rules that apply to selling an interest in the company?
- 8.2. Are there any restrictions on transfer of ownership?
- 8.3. Is there a right of first refusal option for other owners? What are the terms of this process?
- 8.4. How will the value of the units/shares be calculated?
- 8.5. What happens if one of the Member or Shareholders dies? Do the others have the first right of purchase on those units/shares? Do the other members have to buy those units/shares or is it an option? Will there be life insurance policies in place to cover this? If there is no life insurance, what are the terms of payment?
- 8.6. What happens if one or more owners want out and want to sell their ownership? What is the process? Will you use a "Call Notice or Put Notice" process?
- 8.7. What happens if one of the owners becomes incapacitated?
- 8.8. What happens if one of the owners gets married or divorced?