

# Partnership Agreement

## Partners

\_\_\_\_\_ and \_\_\_\_\_ (the "Partners"), agree to the following terms and conditions.

## Partnership Name

The Partners will do business as a partnership under the name of \_\_\_\_\_

## Partnership Duration

The partnership [*choose one*] began/will begin on \_\_\_\_\_. It will continue [*choose one*]

indefinitely until it is ended by the terms of this agreement.

until \_\_\_\_\_, unless ended sooner by the terms of this agreement.

## Partnership Office

The main office of the partnership will be at \_\_\_\_\_. The mailing address will be [*choose one*]

the above address.

the following address: \_\_\_\_\_

## Partnership Purpose

The primary purpose of the partnership is \_\_\_\_\_.

## Capital Contributions

The Partners will contribute the following capital to the partnership on or before \_\_\_\_\_.

### A. Cash Contributions

Partner's Name	Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____

### B. Non-cash Contributions

Partner's Name	Description of Property	Value
_____	_____	\$ _____

\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

### **Capital Accounts**

The partnership will maintain a capital account for each Partner. The account will consist of the Partner's capital contribution plus the Partner's share of profits and less the Partner's share of losses and distributions to the Partner. A Partner may not remove capital from his or her account without the written consent of all Partners.

### **Profits and Losses**

A. The net profits and losses of the partnership will be credited to or charged against the Partners' capital accounts:

*[Choose one]*

in the same proportions as their capital contributions.

as follows: \_\_\_\_\_.

B. The partnership will only make distributions to the Partners if all the Partners agree.

### **Salaries**

No Partner will receive a salary for services to the partnership.

### **Interest**

No interest will be paid on a Partner's capital account.

### **Management**

Each Partner will have an equal say in managing the partnership.

*[Choose one]*

All significant partnership decisions will require the agreement of all the Partners.

Routine partnership decisions will require the agreement of a majority of the Partners. The following partnership actions will require the agreement of all the Partners:

borrowing or lending money

signing a lease

signing a contract to buy or sell real estate

signing a security agreement or mortgage

selling partnership assets except for goods sold in the regular course of business

other: \_\_\_\_\_

### **Partnership Funds**

Partnership funds will be kept in an account at \_\_\_\_\_, unless all Partners agree to another financial institution. Partnership checks:

- may be signed by any Partner.
- must be signed by all the Partners.
- must be signed by \_\_\_\_\_ Partners.

### **Agreement to End Partnership**

The Partners may unanimously agree to end the partnership.

### **Partner's Withdrawal**

*[Choose one]*

- The partnership will end if a Partner withdraws by giving written notice of such withdrawal to each of the other Partners.
- Upon the withdrawal of a Partner, the other Partners will, within 30 days, decide either to end the partnership or to buy out the withdrawing Partner's interest and continue the partnership. A decision to buy out the withdrawing Partner's interest and continue the partnership requires the unanimous consent of the remaining Partners.

### **Partner's Death**

- The partnership will end if a Partner dies.
- Upon the death of a partner, the other Partners will, within 30 days, decide either to end the partnership or buy out the deceased Partner's interest and continue the partnership. A decision to buy out the withdrawing Partner's interest and continue the partnership requires the unanimous consent of the remaining Partners.

### **Buyout**

If the remaining Partners decide to buy the interest of a withdrawing or deceased Partner under Paragraph 14 or 15, the remaining Partners, within \_\_\_ days after that Partner's withdrawal or death, will pay the withdrawing Partner or the deceased Partner's estate:

- The amount in the capital account of the withdrawing or deceased Partner as of the date of withdrawal or death.
- The fair market value of the interest of the withdrawing or deceased partner as determined by the partnership's accountant.
- other: \_\_\_\_\_

### **Entire Agreement**

This is the entire agreement between the parties. It replaces and supersedes any and all oral agreements between the

parties, as well as any prior writings. Modifications and amendments to this agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

**Successors and Assignees**

This agreement binds and benefits the heirs, successors and assignees of the parties.

**Notices**

Any notice or communication required or permitted to be given under this Agreement shall be sufficiently given when received by certified mail, or sent by facsimile transmission or overnight courier

**Governing Law**

This agreement will be governed by the laws of the State of \_\_\_\_\_.

**Waiver**

If one party waives any term or provision of this agreement at any time, that waiver will only be effective for the specific instance and specific purpose for which the waiver was given. If either party fails to exercise or delays exercising any of its rights or remedies under this agreement, that party retains the right to enforce that term or provision at a later time.

**Severability**

If a court finds any provision of this agreement invalid or unenforceable, the remainder of this agreement will be interpreted so as best to carry out the parties' intent.

**Attachments and Exhibits**

The parties agree and acknowledge that all attachments, exhibits and schedules referred to in this agreement are incorporated in this agreement by reference.

**No Agency**

Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.

**[ ] Attorney Fees and Expenses**

The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorney fees incurred in enforcing this agreement.

**[ ] Jurisdiction**

The parties consent to the exclusive jurisdiction and venue of the federal and state courts located in \_\_\_\_\_ [county], \_\_\_\_\_ [state], in any action arising out of or relating to this agreement. The parties waive any other venue to which either party might be entitled by domicile or otherwise.

**[ ] Arbitration**

Any controversy or claim arising out of or relating to this agreement shall be settled by arbitration in \_\_\_\_\_ [county], \_\_\_\_\_ [state], in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The prevailing party shall have the right to collect from the other party its reasonable costs and attorney's fees incurred in enforcing this agreement.

Date signed: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

## **Explanation: Partnership Agreement**

The explanations below will help you when you and your partners sit down to think through and complete the partnership agreement.

### **Partners**

Insert the names of all partners.

### **Partnership Name**

Insert the name of the partnership. If you're going to use a business name for your partnership that's different than the names of the partners—for example, Miraculous Windchimes, instead of Furry, Brown and Nemir—it's wise to make at least a local name search to determine if some other business is already using the name. For more information on choosing a name, see Chapter 6.

### **Partnership Duration**

Insert the date the partnership began or is to begin. Then check one of the boxes to indicate when the partnership will end. If you check the second box, insert a date for the end of the partnership—for example, "June, 2005."

### **Partnership Office**

Insert the address where partnership records will be kept. Usually this will be the partnership's main business location. If the partnership's mailing address is the same as the partnership office, check the first box. If you have a separate mailing address—a post office box, for example—check the second box and fill in the mailing address.

### **Partnership Purpose**

Insert the purpose of the partnership—for example, to manufacture and distribute hand made crafts and to operate one or more retail stores for the sale of crafts.

### **Capital Contributions**

Insert the date when the partners are to contribute their start-up capital—the funds or property given to the partnership to enable it to begin operations.

A. If partners will be contributing cash, fill in their names and the amount each will contribute.

B. If partners will contribute property, insert the partners' names. Then describe the property and what value it will be given on the partnership's books.

### **Capital Accounts**

You don't need to insert anything here. A capital account is a bookkeeping technique for keeping track of how much of the partnership assets each partner owns. Your capital account starts out with the amount you invest in the partnership. To that figure you add your share of the

profits and deduct your share of the losses. If you're having trouble with these calculations, consult an accountant.

### **Profits and Losses**

A. Check the first box if you want the partners' shares of profits and losses to be proportionate to the capital they put into the partnership. Here are two examples of what occurs if you make this choice.

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EXAMPLE 1: Three partners put in the same amount of capital: \$10,000 each. All profits will be added equally to each partner's capital account (in other words, a \$15,000 profit would result in a \$5,000 addition to each partner's account) and losses will be equally subtracted.

EXAMPLE 2: One partner puts in \$20,000 and two partners put in \$10,000 each. The profits and assets will be allocated 50%/25%/25%. (Therefore, a \$15,000 profit would result in additions of \$7,500 to one partner's account and \$3,750 to the other two partners' accounts.)

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Check the second box and insert a different formula if you don't want profits to be divided according to capital contributed. For example, if you agree that one partner will be spending more time than the others working on the partnership business, you may decide to allocate proportionally more profits to that partner.

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EXAMPLE: Since Linda Smith will be handling bookkeeping duties for the partnership in addition to her other partnership duties, she and her two partners decide that 40% of the net profits should be credited to her capital account and 30% of the net profits should be credited to the capital account of each of the other two. Net losses, however, will be charged equally against the partners' capital accounts.

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Of course, this isn't the only way to recognize the contribution of a partner who's doing extra work. You could, for example, agree to pay this partner a salary for keeping the books, making it fair to simply allocate profits in proportion to contributions.

### **Salaries**

You don't need to insert anything here unless you want to. Generally, a partner's reward for doing work for the partnership is a share of the partnership profits. But as suggested in the instructions for paragraph 8, there's no legal or tax reason why the partners can't agree to hire one or more partners as employees who will receive a salary for their services. If you decide to follow such an arrangement, spell out the details in the partnership agreement.

### **Interest**

You don't need to insert anything here. Again, the benefit a partner receives from investing money in a partnership is a share of partnership profits. If you agree that a partner is to receive interest, it's better to have the partner lend money to the partnership. Document the loan by

creating a promissory note.

### **Management**

Approach this section—describing how management decisions are made—with a healthy dose of skepticism. The reality is that for a small partnership to succeed, the partners need to have both shared goals and confidence in one another's judgment. If those elements don't exist, pages of rules as to how decisions should be made won't help. Or, put more bluntly, if you don't trust your partners and enjoy working with them, don't bother creating a partnership in the first place.

It's difficult to define how day-to-day decisions will or should be made in a partnership. Certainly when it comes to making important decisions, talking the matter over with all the partners and respecting each other's opinion is wise. But unanimity on everything may be as unnecessary as it is hard to achieve—making it impractical to select the first option in this paragraph (agreement of all partners on all partnership decisions).

Checking the second box—requiring a majority vote on routine decisions—allows you more flexibility. Unanimity is only required on the major business decisions specified.

### **Partnership Funds**

Insert the name of the financial institution where you'll keep the partnership funds.

Then check a box to indicate who will be permitted to sign partnership checks. If you check the last box, insert the number of partners who must sign a single check. In a three-person partnership, for example, you may want to require that all checks be signed by two partners.

The financial institution where you keep the partnership account will also have a form for you to fill out and indicate who has signing authority.

### **Agreement to End Partnership**

You don't need to insert anything here. This paragraph makes it clear that the partnership can be ended if all the partners agree.

### **Partner's Withdrawal**

This section deals with what happens if one of the partners wants to leave the partnership. It raises two major legal points for you to think about. First, unless your partnership has a written agreement stating otherwise, the law says your partnership will end if any partner decides to leave. Second, if your partnership has no agreement to the contrary, a partner isn't free to transfer his or her partnership interest to someone else. In short, unless you agree in writing to a different plan, if one partner leaves, the partnership assets will be liquidated, bills will be paid and the partners will be cashed out. Check the first box if this scenario is what you want.

Check the second box if you want to give the remaining partners the chance to keep the partnership alive by buying out the interest of the withdrawing partner. Technically, this means the remaining partners will create a new partnership, but the business will continue as if there had been no change.



## **Partner's Death**

As with a partner's withdrawal, a partner's death will end the partnership unless you agree to another outcome. Check the first box if you want the partnership to end automatically after a death. Once the partnership assets have been liquidated, the dead partner's share of the assets will be paid to that partner's estate.

Check the second box if you and the remaining partners will want the chance to keep the partnership alive by buying out the interest of the deceased partner. (Technically, the remaining partners will then have a new partnership.)

## **Buy-Out**

Complete this optional paragraph only if you've provided for a buy-out of a withdrawing partner's interest (paragraph 14) or of a deceased partner's interest (paragraph 15). Check one of the first two boxes if it contains an acceptable formula for fixing the buy-out price. If not, check the third box and fill in your chosen method of setting the buy-out amount.

If you haven't provided for a buy-out in paragraph 14 or 15, either cross out this paragraph (in which case, all partners should initial the deletion) or insert the words, "Not Applicable." (Or, assuming you're doing this on a computer, you can just delete the paragraph and renumber the paragraphs that follow.)

## **Standard Clauses**

The remainder of the agreement contains the standard clauses I discuss in Chapter X. The only thing you'll need to fill in here is the name of the state whose law will apply to the contract, in the paragraph called "Governing Law."

## **Date and Signatures**

Fill in the date the agreement is signed. Each of the partners must sign his or her name. Their respective names and addresses should be typed in.

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