



**1. Referring advisor details**

Date of instructions:  Date documents required:

Name and company of referring advisor:

Address:

Telephone number:  Email:

**2. Principals, Proprietors and Policy Owners**

**Principals** are the individuals who control the day to day functions and make the decisions affecting the business or property. They are the key persons whose lives will trigger the options and who will be named in any life insurance policies.

**Proprietors** mean the persons or companies who are the legal owners of the interest in the Primary Business or Associated Business. For example the proprietors may be an individual or a company (either in its own capacity or for example, as trustee of a discretionary trust). In some cases the Principal and Proprietor may be the same (e.g. in a partnership).

**\*Note: in some cases one Principal may have two or more Proprietors. For example:** Martin is a partner in a legal practice with three other lawyers. Martin owns a 25% interest in the Legal Eagles Partnership and ABC Pty Ltd as trustee for the Martin Family Trust owns 25% of the units in the Legal Eagles Services Trust. In this example Martin is the Principal of the Legal Eagles Partnership and the Martin Family Trust. Martin is also the Proprietor in respect of his interest in Legal Eagles Partnership and ABC Pty Ltd as trustee for Martin Family Trust is the Proprietor of the interest in the Legal Eagle Services Unit Trust.

Enter details of the principals and proprietors below.

Principals	Address	Proprietors	Address

\*Please provide ACN where appropriate. If a company is acting as trustee of a trust, then provide full name of company and trust.

**3. Non participating parties:**

Are there any parties who are not participating in this Agreement?

Yes  No

If yes, then please provide full name, ACN and address (registered address if company) of non participating parties.

5. Starting date of agreement (If known):

6. State/territory law to apply:

**7. Policy register**

There are various ways to fund the buy and sell obligations created in the agreement. These are individual or joint policies on each other's life; group policy on all lives; no policies but self insurance through self risk; or self insurance through personally held policies. It is usually only appropriate to have no policy where the Principal is asset rich and also uninsurable.

Principal life insured	Policy owner	Type of cover	Insurer	Policy No	Sum insured	Specified purpose
Martin	1/5th Legal Eagles Pty Ltd ATF Legal Eagles Unit Trust	Death	MLC Life	12345	\$1,000,000	1/5th Internal debt 4/5th Equity
	4/5th Mrs Martin					

Specified purpose means the purpose for which insurance proceeds payable is intended to be applied. Unless you otherwise advise, the agreement provides for the following specified purposes:

- "Equity" means the purpose of funding all or part of the agreed value of the Principal's equity in the business.
- "Key person-revenue protection" means the purpose of enabling the business to meet the revenue costs of continuing the work currently performed by the insured.
- "External debt" means the purpose of enabling the beneficial owner to meet its debts to person or entities who are not parties to the agreement.
- "Release of guarantees" means the purpose of enabling the beneficial owner to assist in securing the release of Principal who has suffered an option event from any guarantees he or she may have provided.
- "Internal debt" means the purpose of enabling the beneficial owner to meet its debts to persons or entities who are associates of any of the parties to the agreement.
- "Personal" means the purpose of enabling the beneficial owner to meet the personal estate planning and capital gains and other taxation needs of the insured, their family, estate or related entities.

**8. Premiums**

Please indicate who will be responsible for payment of insurance premiums. If you do not select an option, then the agreement will provide for the business to pay.

Business       Policy owner  
 Other

**9. Business structure**

Please provide a full description of the ownership structure. Where ownership of different parts of the structure varies, then identify the different ownership interests. You may wish to provide a diagram.

In this document the following terms have the following meaning:

**Primary Business** means the trading entity.

**Associated Business** means any associated business in which the Principals have an interest and which is to be transferred at the same time as the Principals' interest in the Primary Business under the business succession agreement. A common example of an associated business is a service entity run in conjunction with a professional practice.

Company       Unit trust       Partnership

Name and address of primary business (including ACN)

Name and address of associated business (incl. ACN)

Name and address of associated business 2 (incl.ACN)

\*Please be sure to clearly identify the interest of each party in the primary business and any associated business in a separate document.

**10. Agreed value**

This is the agreed value of buy/sell assets as at execution of agreement. The value can be fixed and updated periodically, or you can nominate a formula which allows the business to be valued at the appropriate time. If your business structure is made up of a primary business and associated entities, then you should include a value to cover these entities, even if only nominal. For example a four partner business operated through a unit trust and valued at \$500,000 will likely require an extra \$4 agreed value for the shares in the corporate trustee.

Agreed value of buy/sell assets:

\$  (Primary Business)  
 \$  (Associated Business 1)  
 \$  (Associated Business 2)

Please provide details at end of this booklet if you require another valuation method (e.g. assets to be valued by independent valuer at date of option event, value to be determined by amount of insurance proceeds).

**11. Shortfall**

If there is a shortfall between the insurance funding and the value of the Principal's equity, then how (if at all) will the shortfall be covered? [please tick]

No payment of shortfall  
 As a lump sum. If this option is selected, then provide details of when the lump sum is payable (e.g. 30 days from option event)  
 \$   
 In instalments. If this option is selected, then:  
 No of instalments:   
 Due on:  (e.g. first business day of the calendar month immediately following transfer of equity and each quarter thereafter.

**12. Option events**

**12(a). Death and TPD?**

Death of the principal is the primary event the agreement will cover. You can elect to have total and permanent disablement of a principal to be an event to which the agreement will apply. To do this tick "yes".

Is total and permanent disablement of a Principal to be an option event?

Yes       No

<b>12(b). Trauma?</b>	<p>Is trauma of a Principal to be an option event?</p> <p><input type="radio"/> Yes    <input type="radio"/> No</p> <p>If yes, then please complete questions 14 to 16 below.</p>
<b>13. Cost</b>	<p><input type="radio"/> \$1,650 inclusive of GST if "trauma" is not an option event. Additional drafting will be charged at hourly rates.</p> <p><input type="radio"/> If trauma is to be included, then we will provide you with a quote after further discussion with you. See explanatory note below.</p>
<b>14. Please tick to indicate you have read explanatory statement on trauma events below:</b>	<p><input type="radio"/> Yes    <input type="radio"/> No</p>
<b>15. Within what period of time should the principal be required to return to work so the put/call options are not capable of exercise?</b>	<p><input type="radio"/> 6 month    <input type="radio"/> 12 months</p> <p><input type="radio"/> Other <input type="text"/></p>
<b>16. What activities should the principal be required to perform within the period referred to above, in order that the put/call options are not capable of exercise?</b>	<p><input type="radio"/> All normal work activities previously carried on</p> <p><input type="radio"/> Specific activities (please specify):</p> <p><input type="text"/></p>

Where trauma is an option event we recommend the option is only exercisable if both conditions are satisfied (i.e. unable to return to work within the specified time and to carry on the required duties at work).

## Explanatory note – trauma events

### ISSUES TO CONSIDER

The standard events covered by the buy/sell agreement are death or total permanent disability of a Principal. You may also elect for the agreement to include "trauma event". If you do elect to include trauma event as an option event, then it will require some consultation with you so that the clauses are drafted to suit the parties to the agreement.

There are two basic issues for you to consider in relation to the trauma event:

1. Firstly, it is possible for someone to suffer a "trauma event" and a short time later, recover from the trauma event so it is possible for them to return to work and resume their usual duties. Clearly it is not the intention for the person suffering the trauma event to lose their ownership in the business automatically on the happening of the trauma event in circumstances where within a specified time they are able to return to work.

To address this issue, we recommend the trauma event is not triggered until a person has suffered a trauma event, the insurance company has paid out the trauma policy and that person is unable to return to work and perform their usual duties within a time agreed by the parties (e.g., six months, 12 months depending on the nature of the business).

2. Secondly, the parties should realise that the proceeds received under a trauma policy may be required to fund the obligations under the agreement. They may not be required until the appropriate length of time agreed between the parties (e.g. 6 month or 12 month period referred to above) has expired. The parties need to be aware that if the trauma policy proceeds have been paid out and used (e.g. to meet medical expenses or living expenses), then the funding obligations under the agreement will remain a debt due from the affected Principal to the other parties to the agreement. It may be prudent therefore for the amount of the trauma policy cover to exceed the value of the affected Principal's equity in the business (so as to allow payment of interim expenses).

### ADDITIONAL COST

As a result of the additional consultation and drafting required to include trauma as an option event, there will be an additional cost. The additional work involved will be charged at our firm's hourly rates. If you require trauma events to be included in the agreement, then you should contact us to discuss the particulars. We will then be able to provide you with an estimate of the additional cost involved.

# General information and instructions for completing form

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## COMPLETING THIS FORM

It is extremely important that you provide us with accurate and complete information in this form. This includes full party details, address detail and ACN (where applicable). You should not leave any part of this form blank. If there is something that is not applicable to you, then mark it as such. If there is not sufficient space, then you should use the additional space provided or attach a separate sheet.

## GENERAL INFORMATION

The agreement we draft will form part of the agreements relating to the ownership and conduct of the business. It may be affected by the terms of the company constitution or trust deed subject to which the business is conducted. If this is the case, then we strongly recommend you provide us with copies of any governing documents with these instructions.

The general agreement we draft will cover death and TPD. Trauma may also be included as an option event but to do so, we will require specific instructions from the parties.

The agreement has been drafted to accommodate a large variety of business structures including where the business is owned by several different entities. You may have a simple structure; for example a partnership where you are both the owner and the principal. Or you may have a more complex structure; for example an accounting practice where the business is conducted as a partnership of trusts and there is an associated service entity. The agreement we draft will provide buy/sell rights for all entities you disclose which form part of the business structure.

## SPECIFIC REQUIREMENTS

If you have specific requirements which are not contemplated by this data collection sheet, then you should provide details in the additional space provided or contact us. For example, you may wish to contain options on the bankruptcy, retirement, insanity of a principal or you may wish to include more technical valuation process. If you do require more specific drafting, then we will provide you with a fee proposal to adapt our standard agreement.

## OPTION EVENTS

The manner in which options are exercised and the time limits for doing so and making payment are all set out in this agreement. We will also provide you with a pro-forma notice of exercise of options which you can use as and when necessary.

## PREPARATION OF WILLS

As part of your business succession planning, we recommend you conduct a review of your Wills. There can be significant tax advantages available to your estate and beneficiaries if you are able to nominate the beneficiaries of your business interest in the Will. This is not a substitute for a business succession agreement but a sound strategy to use in conjunction with a business succession agreement.

# Declaration

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Our scope of work includes drafting the business succession agreement and any other ancillary documentation necessary to give effect to your instruction as set out in this document.

By signing this declaration and returning this fact finder to us, you are agreeing to the fees and charges quoted in this fact finder. As set out in this agreement, any additional drafting will be charged at our firm's hourly rates. We will provide you with an estimate of the additional costs once we know the extent of additional drafting required. You also acknowledge that our fee does not include a review of the governing documents of the business, the proprietors or the policy owners. If you require us to review such documents, then we will do so at hourly rates.

By signing this form you warrant on your own behalf and on behalf of the parties to the agreement (including the principals, proprietors, policy owners) that the instructions you have given are complete and accurate and can be relied upon by us in preparing the agreement.

We need you to confirm you want us to commence work on your behalf by signing and returning this complete fact finder and declaration to us.

Signed:	
Name:	
Date:	



## Important notice to client

SECTION 48(4)

### Who to contact if there are problems

1. You may contact the Queensland Law Society if you have a complaint about the fees and costs charged or the work performed by your solicitor or firm.
2. Here are the phone number and postal address for the Queensland Law Society:

**Telephone:** 3842 5888

**Address:** GPO Box 1785, Brisbane Qld 4001

### Client able to negotiate agreement and get legal advice

3. You have the right to negotiate this client agreement with your solicitor or firm before you sign it.
4. You may obtain independent legal advice before signing this client agreement.

### Client able to change solicitor or firm

5. You may change solicitor or firm at any time even if this client agreement says otherwise.
6. If you change solicitor or firm, it is important for you to give your original solicitor or firm notice of the change as your original solicitor or firm may charge and recover fees and costs from you for work done before notice is given.
7. Your original solicitor or firm may keep your file until you pay all fees and costs or reach an agreement about paying them.

### Agreement about who will do legal work

8. This client agreement must state the names and status (for example, partner, senior associate, employed solicitor, articulated clerk, paralegal or consultant) of the people who will do the legal work for you.

### Agreement about fees & costs payable for work

9. This client agreement is the basis for determining how much you pay for work done by your solicitor or firm.
10. A client agreement may set a lump sum amount for fees and costs.

11. Otherwise, the client agreement must state the basis on which fees and costs will be calculated (whether or not including a lump sum) and give either—
  - an estimate of the total amount of fees and costs likely to be payable for the work, or
  - if it is not reasonably practicable to estimate the total amount of fees and costs likely to be payable for the work, then a range of estimates of the total amount of fees and costs likely to be payable for the work and an explanation of the significant variables that will affect the calculation of the amount.
12. However, your solicitor or firm is not bound by the estimate or range of estimates given in this client agreement.
13. Extraordinary items of work not normally done for similar work must be expressly approved by you even if this client agreement says otherwise.
14. Clause 13 has no application if this client agreement sets a lump sum amount only for fees and costs.

### Agreement about type and frequency of accounts

15. An account from your solicitor or firm must be in the form agreed to in this client agreement or must clearly set out all items of work done for you and the amount charged for each item.
16. If a form of account is agreed to, then it must be a form resulting in the inclusion in each account of sufficient details of the work done to allow you to decide whether the fees and costs in the account are reasonable.
17. This client agreement should state the intervals for giving you accounts.

### Advice if work includes litigation

18. If the work involves or is likely to involve litigation, then this client agreement must include an explanation and estimate of the range of costs you may recover from another party if you are successful or you may be required to pay the other party if you are not successful.
19. Also, if your solicitor agrees to do the work on a speculative basis, then this client agreement must include the terms and conditions on which fees and costs become payable to you.

### Agreement may be amended

20. This agreement may be amended if you and your solicitor or firm agree to the changes in writing.

## Challenging the amount of an account

21. You may formally challenge the amount of an account by applying to the Solicitors Complaints Tribunal for the appointment of a costs assessor to assess the account.
22. If you do this, then you can not subsequently challenge the validity or enforceability of this client agreement.
23. This means that before applying for the appointment of a costs assessor, you should consider, and, if necessary obtain advice about, whether there are grounds for challenging the validity or enforceability of this agreement.

## When client may be sued for outstanding fees or costs

24. Generally, before your solicitor or firm may sue you for outstanding fees or costs, more than one month must have passed from the time you were given the account.
25. However, your solicitor or firm may ask the court for permission to sue before that time.

## Can a client be sued for outstanding fees or costs if the client has applied to the Solicitors Complaints Tribunal for an assessment?

26. Generally, your solicitor or firm may not sue you for an outstanding account if you have applied to the Solicitors Complaints Tribunal for the appointment of a costs assessor to assess the account and the assessment has not concluded.
27. However, your solicitor or firm may ask the court for permission to sue.

## Other remedies

28. You may have other remedies against your solicitor or firm concerning this agreement or the work done under it.
29. You may obtain independent legal advice about the remedies available.

## Privacy Statement

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### Your information is treated confidentially

When you inquire about or receive legal services we record information about you, mainly to assess your requirements for legal services. If you become a client of McMahon Clarke, then we use the information to provide legal services.

We also use and may disclose your information for the following purposes:

- To consider other inquiries made by you to us.
- To help us develop and identify products and services that may interest you.
- To tell you about products and services (unless you have asked us not to) or recommend legal products and services.
- To maintain our relationship with you.
- To conduct market or client satisfaction research.
- To perform our internal administration and operations including accounting, reporting, risk management, record keeping, archiving, systems development and testing and staff training.
- To comply with legislative or regulatory requirements.

Collection of your information is essential for us to service your relationship with us and our business operations. Without your information we would not be able to provide you with our products and services.

From time to time, we may disclose some of your information to the following types of organisations (including individuals):

- Your agents, including other legal advisers.
- Your executor, administrator, trustee, guardian or attorney.
- Regulatory bodies, government agencies, law enforcement agencies and courts.
- Other parties we are authorised or required by law to disclose information to.

### How you can gain access to the information

You can access your information by contacting our privacy officer at any time during business hours, either by telephone or letter, using the contact details listed below.