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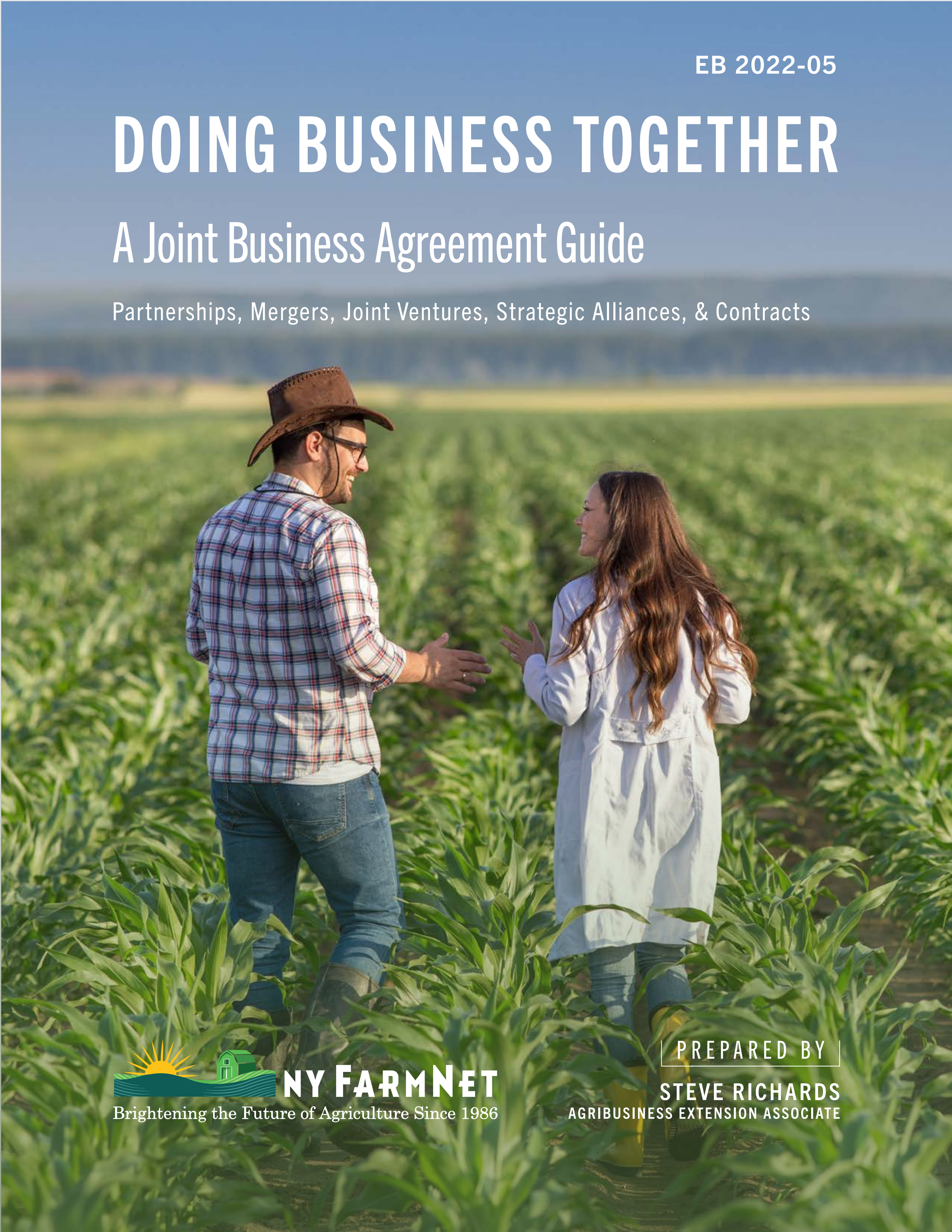
DOING BUSINESS TOGETHER

A Joint Business Agreement Guide

Partnerships, Mergers, Joint Ventures, Strategic Alliances, & Contracts



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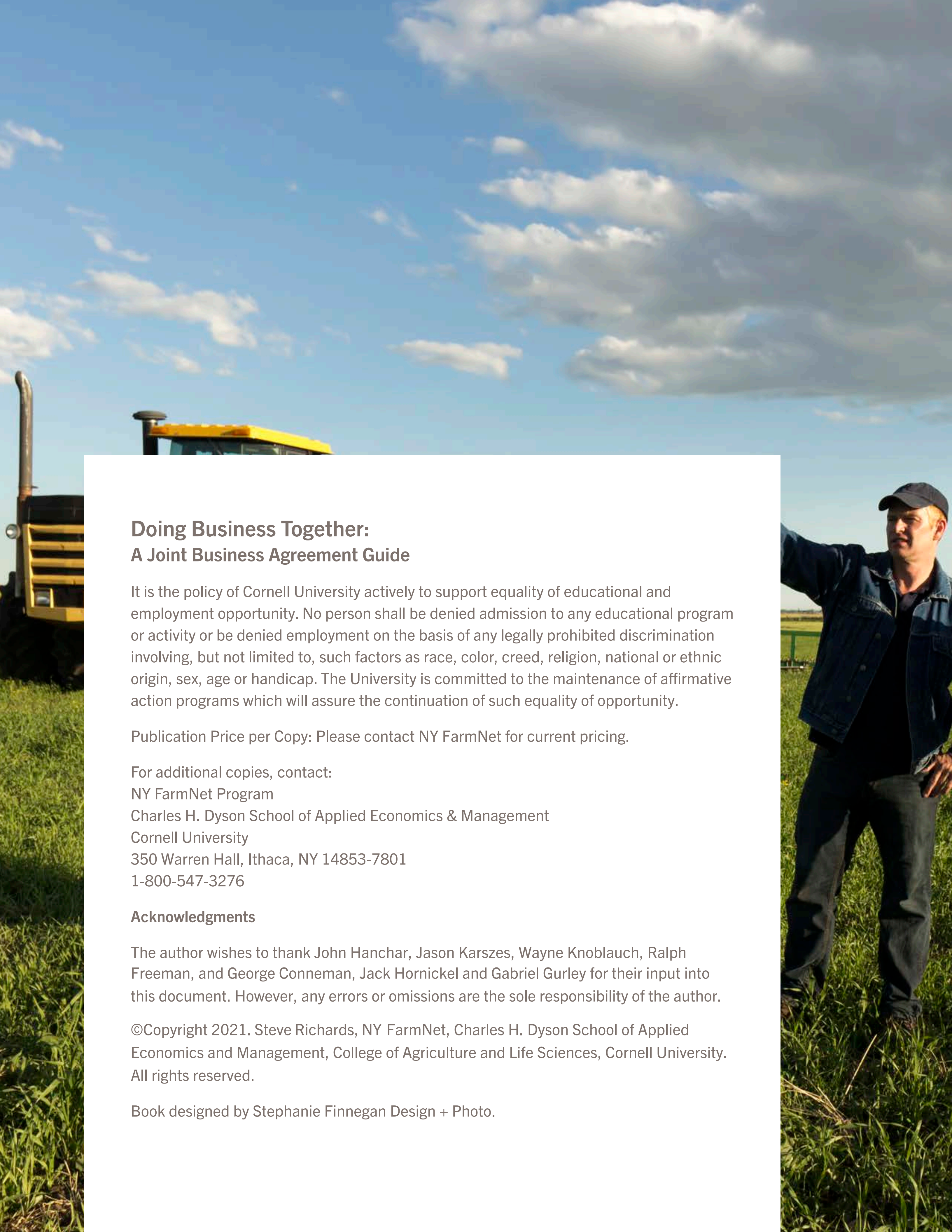

Doing Business Together:
A Joint Business Agreement Guide

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INTRODUCTION

YOUR JOINT BUSINESS AGREEMENT GUIDE

WHAT DOES THE TERM "BUSINESS PARTNER" MEAN?

For this workbook, and in the broadest sense of the word, a business partner is anyone you will do business with under a written agreement. As you will find out, there are many degrees of the term "partner." This book will help you decide:

- What kind of business agreement to pursue (or if you should pursue one at all)
- How to communicate with each party before entering into a business agreement
- What types of joint business agreements exist for business partners
- What legal and financial tools are involved in creating a joint business agreement.
- Which professionals are needed to help you create a joint business agreement.

WHAT IS A JOINT BUSINESS AGREEMENT?

A joint business agreement is a legally binding business agreement created to satisfy one or more of the following scenarios:

- Transferring the ownership of business assets
- Improving supplier or customer relations
- Sharing income and expenses
- Sharing risks and profits
- Providing a tool for investment
- Merging businesses
- Creating a separate business entity

DO YOU NEED A FACILITATOR?

Most business agreements need facilitation. A facilitator can help get challenging issues resolved, provide information and resources, and keep the process moving. If you would like a facilitator to help you work through this workbook, please contact NY FarmNet at (800) 547-3276 anytime 24/7. Or you may contact using the online contact form at https://nyfarmnet.org/.

USING THIS WORKBOOK

Business agreements can be complicated, but they don't have to be. This workbook will walk you through the business agreement process step-by-step at your own pace. The steps in this workbook are just a suggestion—you may use them in a different order if you wish. Skipping steps is not recommended; you should review the materials in each chapter before moving forward.

No business agreement is suitable for everyone. Each contract will differ based on your goals and the goals of the other people and businesses.

Discussion points

There will be many questions to answer and discuss along the way. This heading will alert you to stop and discuss an important point or fill out a worksheet. All worksheets are included in this workbook

Decision Point

At each step in this workbook, you will be asked to make decisions regarding the future of your farm. This will help you narrow down the options that fit your particular situation. *Before you move to the next step in the process, you need to answer these questions!*

CHAPTER 1

DO YOU WANT A BUSINESS PARTNER?

Regardless of the type of joint business agreement you choose, this chapter labels all situations involving another party as a "business partnership." Maybe after reading this chapter, you will decide that you do not want a business partner. Avoiding a bad partnership can also be considered a success. Also, make sure any agreement you decide upon is in writing, not based on a handshake.

IS A BUSINESS PARTNERSHIP THE BEST SOLUTION?

In general, partnering with another individual or business increases the likelihood of success on two conditions:

1. There is a purpose for the partnership. Potential partners understand the problem for which partnering is a possible solution.

2. The proposed partnership is the best solution to achieve the desired results.

WHO WILL BE YOUR FUTURE BUSINESS PARTNER(S)?

Choosing the right business partner is one of the most important decisions you can make. Even if you are contracting with another firm or individual, you will need good communication and trust. Keep in mind what traits you are looking for in a business partner and try to reach your decision rationally, based on facts, rather than making a hurried, emotional decision.

HOW WELL WILL YOU WORK WITH SOMEONE ELSE?

Finding out how you work with other people is essential. Don't assume that your business partner knows what your intentions are for the business agreement. Likewise, meet often to determine the other person's expectations for the business agreement. Ideas change, people change, and businesses change. The only way to keep in touch with reality is to communicate well and often.

This is an excellent time to request the assistance of a meeting facilitator if you think there are unspoken or touchy topics. The following two activities will help you outline the basics of your business agreement:

1. In the back of this workbook, you will find a Partnership Quiz to help you and your business partner(s) communicate about working together successfully.

Complete the Partnership Quiz on pages 22–25.

2. Also included in this workbook is a Goal Setting Worksheet (individual business and personal goals). For the worksheet to be helpful, you, your family, and your business partner(s) must fill it out. To manage the farm or business agreement together, you should discuss these sheets and iron out potential conflicts. Please take as much time as you need for this crucial step.

Fill out the Goal Setting Worksheet on pages 19–21.

Checklist to complete before moving on to the next section:

- ☐ We have identified the potential business partner(s).
- ☐ We have completed the partnership quiz and discussed the results.
- ☐ We have completed, compared, and discussed the Goal Setting Worksheet.

CHAPTER 2

WHAT WILL THE AGREEMENT DO FOR YOU?

This chapter will help you decide which joint business agreements are the ones you would like to pursue with your attorney. The business agreement you choose should be enforceable and straightforward, with provisions to protect each party from liability and tax risks. Flexibility should also be a concern, as you may wish to dissolve or make changes in the agreement in the future. Your new business agreement may also necessitate changing your business entity.

4 BASIC AGREEMENT DEFINITIONS

The definitions of the different types of joint business agreements are as follows:

Merger/Full Partnership: A full joining together of two previously separate businesses or individuals. An actual merger is when the previous businesses are dissolved before folding their assets and liabilities into a newly created entity. Most business partnerships are mergers—where you are combining the assets of two or more individuals to make a single, separate business.

Joint Venture: This agreement involves two or more individuals (or businesses) contracting for a specific business operation. The venture exists for a particular project or enterprise only, not for a continuing relationship. An excellent example of a joint venture occurred between Mitsubishi and Chrysler in the early 1990s called Diamond Star Motors. The Plymouth Laser, Eagle Talon, and Mitsubishi Eclipse were all manufactured by Diamond Star. The joint venture eventually lapsed (Diamond Star no longer exists), but Mitsubishi and Chrysler still exist.

Strategic Alliance: A business relationship in which two or more individuals or businesses combine efforts in a continuing business venture. This relationship can be as involved as a joint venture or as simple as a contractual agreement. A good example of a strategic alliance is that between Wal-Mart and McDonald's—where McDonald's operates restaurants inside Wal-Mart stores, but both retain their separate business entities.

Contractual Agreement: Most business agreements are contracts. Contracts are simply agreements between businesses or people to supply services, products, or money in exchange for other services, products, or money. There are many examples in the agriculture industry.

WHAT IS THE INTENT OF YOUR BUSINESS AGREEMENT?

You and your business partners are going to want the business agreement to do something. Now it is time to clarify what that "something" will be. This intent will affect what type of agreement you choose to pursue.

We want our business agreement to do the following:

☐ Transfer ownership of business assets (Please reference the Junior and Senior Transfer Guides for more information on this subject).

☐ Combine businesses or individuals; creating a new business entity

☐ Join businesses for a specific enterprise and time-frame

☐ Join businesses for a continuing business relationship

☐ Form an agreement with a supplier or customer

☐ Form an agreement with another business to buy, sell, or manage together

The following table shows the different types of contracts and how they are used to satisfy the intent of the business agreement.

INTENT	MERGER	JOINT VENTURE	ALLIANCE	CONTRACT
Join two businesses and creating a new business	✔			
Join for a specific project or specific period of time		✔		
Join for long term business relationship			✔	✔
Supplier / Customer agreement **Agreement with another business**			✔	✔

Note: Although alliances and contracts look the same on this table, the strategic alliances differ. Strategic alliances are formed for an ongoing business relationship, while contracts are usually for a specific period. Refer to the Wal-Mart and McDonalds example: as long as a Wal-Mart store containing a McDonald's exists, McDonald's will stay there. A contractual agreement (like a lease) would treat McDonald's as a tenant, and Wal-Mart could decide to change tenants after the lease expires.

TO WHAT DEGREE DO YOU WANT TO SHARE?

How much do you and your business partners want to share? What the partners DO NOT wish to share usually thins out the choices the best! Discuss what you are willing to share and not share with potential business partners.

The table below illustrates what each business agreement typically shares

USUALLY SHARED	MERGER	JOINT VENTURE	ALLIANCE	CONTRACT
Assets / Liabilities	✔	✔		
Income / Expenses	✔	✔	✔	
Management	✔	✔	✔	✔
Risks / Rewards	✔	✔	✔	✔

Note: Although mergers and joint ventures look the same on this table, the joint venture differs because the business partners only share concerning the specific enterprise they are creating together. Refer to the Diamond Star Motors example: Chrysler and Mitsubishi shared all categories above concerning the Plymouth Laser, Eagle Talon, and Mitsubishi Eclipse, but the parent car companies did not share any items in the table concerning other product lines.

What are you and the other business partners willing to share?

- ☐ Assets and liabilities
- ☐ Income and expenses
- ☐ Management duties
- ☐ Risks and rewards

DO YOU NEED A NEW BUSINESS ENTITY?

If you are going to merge businesses, start a new company with a partner, or create a joint venture, you will probably need to create a new business entity.

BUSINESS STRUCTURE

How you structure your business can affect what legal, financial, tax, and long-term planning options are available to you. The U.S. Small Business Administration has a website explaining the different business structures (*sba.gov*). The chart below is from the website.

BUSINESS STRUCTURE	OWNERSHIP	LIABILITY	TAXES
Sole Proprietorship	One person	Unlimited personal liability	Personal tax only
Partnerships	Two or more people	Unlimited personal liability unless structured as a limited partnership	Self-employment tax (except for limited partners) and personal tax
Limited Liability Company (LLC)	One or more people	Owners/Members are not personally liable	Self-employment tax, can elect personal tax or corporate tax
Corporation – C Corp	One or more people	Owners/Stockholders are not personally liable	Corporate tax
Corporation – S Corp	One or more people, but no more than 100, and all must be US citizens	Owners/Stockholders are not personally liable	Personal tax
Corporation – Nonprofit	One or more people	Owners are not personally liable	Tax-exempt, but corporate profits can't be distributed

HOW DO THESE AGREEMENTS WORK UNDER DIFFERENT BUSINESS STRUCTURES?

These agreements work similarly under each business structure. The diagram below shows how these agreements are linked with one another.

BUSINESS ENTITY AGREEMENT

Entity Name, Entity Purpose, Entity Duration, Initial Participants, Dissolution of Entity, Signatures

OPERATING AGREEMENT

Participant Authority, Participant Payment Methods, Management Structure, and Dispute Resolution

BUY-SELL AGREEMENT

Who can enter the business, Participant Buy-out Provisions, and Events Triggering Participant Exit

SOME NOTABLE DIFFERENCES BETWEEN BUSINESS ENTITIES

Probably the most easily recognizable differences between business entities are the terms used to describe their participants, their ownership structure, and their tax reporting schedules. The table below points out some of these differences.

WHAT ABOUT LLP'S?

LLP is sometimes used as an abbreviation for Limited Liability Partnership. The reason this type is not included in the entity options is that an LLP is really either an LLC that elects to be taxed as a partnership or a Limited Partnership, which provides liability protection for everyone except the general partner. Because not everyone receives liability protection under a Limited Partnership, an LLC is often the better choice than a Limited Partnership.

BUSINESS STRUCTURE	DESCRIPTIVE TERMS USED	INCOME SHARING	DECISION MAKING
Sole Proprietor	Participants = Proprietors Tax Form = 1040 Schedule F Ownership = Personal property	The proprietor makes the decisions on how net income is split.	Up to the owner who makes the decisions.
Partnership	Participants = Partners Tax Forms = 1065,1040 Schedule F Ownership = Partner %	Partnership/Membership agreement determines how net income is split. Can be based on management, labor, and/or ownership.	Partnership agreement or % share determines who makes the decisions.
Limited Liability Company	Participants = Members Tax Forms = 1065, 1040 Schedule F[1] Ownership = Member %		LLC operating agreements spell out voting privileges.
S Corporation	Participant = Shareholder Tax Form = 1120 S Ownership = Stock	Net income is split among shareholders according to how much stock each shareholder owns.	Board of Directors and Shareholders vote on decisions. Operating agreements spell voting privileges.
C Corporation	Participant = Shareholder Tax Form = 1120 Ownership = Stock		

Checklist to complete before moving on to the next section:

- ☐ We have identified what we want the agreement to do
- ☐ We have identified what items we do not want to share within the agreement
- ☐ We have reviewed the different business structures available

We are most interested in the following contracts:

- ☐ Mergers (Go to page 11)
- ☐ Joint Ventures (Go to page 12)
- ☐ Strategic Alliances(Go to page 14)
- ☐ Contractual Agreements (Go to page 13)

We are most interested in the following business structures:

- ☐ No Change Needed
- ☐ General Partnership
- ☐ Limited Liability Company (LLC)
- ☐ S Corporation
- ☐ C Corporation

[1] Unless one is a single member LLC (just 1040 sch F) or one elects to be taxed as a corporation (Form 1120).

CHAPTER 3

MERGERS, PARTNERSHIPS, AND JOINT VENTURES

WHAT DOES EACH PROSPECTIVE PARTNER BRING TO THE TABLE?

Whether you are joining a business, bringing a new partner into a business, or combining businesses, you have to document what each partner or business contributes to the new business. Documenting these contributions will help resolve any conflicts that may arise in the future between business partners and the Internal Revenue Service. Not all contributions to the business need to be property or money. Contributions of labor and management are also considered valid.

This sort of documentation can be done by each partner individually but should be reviewed and approved by an accountant (monetary contributions) and a certified appraiser (property contributions). To help the process along, have each partner estimate his/her contributions and complete the financial statements at the end of this workbook.

Complete the individual/business financial statements on page 26.

ESTIMATE THE NEW BUSINESS'S FINANCIAL VIABILITY

After you merge the contributions of each partner, you need to estimate the new business's financial future. These are called Pro Forma financial statements. Is your new entity going to be financially viable? Review these proforma financial statements with other business professionals to see if your projections are reasonable.

Complete the proforma financial statements on page 26.

SUM OF NON-MONETARY CONTRIBUTIONS OF PARTNERS

When looking at the non-monetary contributions of partners, be sure that you know how much labor and management this venture will need. You want to have an accurate picture of "who is contributing what" management and labor. These items will be spelled out in more detail in Chapter 5.

Complete the non-monetary contributions worksheet on page 28.

WHAT IF CONTRIBUTIONS TO THE PARTNERSHIP ARE NOT EQUAL AT THE START?

All contributions to the partnership do not need to be equal at the beginning. Unequal partners can fix this situation through a "loan" from the majority partner to the minority partner. The minority partner pays the majority partner until they reach their desired share or stock level.

MERGER AGREEMENTS

The term "merger" often describes the act of combining businesses. Suppose both companies are combined, and an entirely new business is created (with the previous business owners becoming partners). In that case, you can skip down to the "basics of partnership agreements" section. Suppose the merger involves the buying and selling of one company by another (hence the term mergers and acquisitions). In that case, there is a preliminary agreement involved called a **letter of intent**. The essential items covered in a letter of intent are:

1. A description of the transaction (who is buying whom)

2. The purchase price (or a pricing formula)

3. Continued employment of key personnel (if so desired)

4. Non-compete agreements

5. Indemnification provisions (how will the financial transaction be guaranteed)

If you intend to acquire a business as part of your merger, you should fill in the letter of intent worksheet on page 29.

BASICS OF PARTNERSHIP AGREEMENTS

Partnership agreements contain at least seven items in addition to the business entity agreement. If your partnership is already in existence, you may need to add some of these items to update your existing business agreements.

OPERATING AGREEMENTS

1. **The authority of each partner:** The rights and responsibilities of each partner—and restrictions on partners, if any. Example: borrowing or spending money.

2. **The method of partner payment:** this section determines how profits are divided between partners. This section may also specify partnership withdrawals and guaranteed payments.

3. **Management structure:** This section allocates the decision-making authority and voting privileges of each partner. See Chapter 5 for more details on this.

4. **Dispute resolution:** This section dictates how partners resolve a deadlocked dispute. Often this involves a neutral third party, mediation, or arbitration.

BUY-SELL AGREEMENTS

5. **Participant entrance:** This section dictates who can enter the business and how they will be admitted (i.e., through a buy-out of an existing partner, current partners voting, or through inheritance).

6. **Buy-out provisions:** This section determines who can buy out a partner's share in the business, at what price, and payment terms.

7. **Participant exit:** What are some events that trigger a buy-out? How can a partner leave the business? How will the partnership be dissolved?

If you intend to draft a partnership agreement, you should fill out the partnership worksheets on pages 30–35.

JOINT VENTURES

Since a joint venture is a partnership for a specific, limited purpose, there are some typical add-ons to a partnership agreement to make it a joint venture. These are:

1. How long will the joint venture last?
2. How will the venture be staffed, and who will make staffing decisions?
3. Provisions for possible conflicts of interest?
4. How will the joint venture be managed?
5. Are you resolving tax issues regarding the joint venture?
6. How will the Joint Venture be dissolved?

If you intend to draft a joint venture agreement, you should fill out the joint venture worksheet on page 34–35.

Checklist to complete before moving on to the next section:

- ☐ We have completed our current financial statements
- ☐ We have completed the proforma financial statements
- ☐ We have completed the non-monetary contributions worksheet
- ☐ We have filled out the letter of intent worksheet (if we are considering a merger).
- ☐ We have filled out the partnership agreement worksheets (if we are considering a partnership agreement).
- ☐ We have filled out the joint venture worksheet (if we are considering a joint venture)

CHAPTER 4

CONTRACTUAL AGREEMENTS AND ALLIANCES

DO CONTRACTS AND ALLIANCES NEED A BUSINESS STRUCTURE?

Strategic alliances and contractual agreements are written contracts between two individuals or businesses and typically do not involve a separate business structure. However, you still might research the benefits of changing your current business structure if it is not providing you with the proper liability, tax, and management benefits.

FLEXIBILITY

Strategic alliances and contractual agreements can cover a broad range of business activities. These business agreements do not necessarily have a set format by which you need to model your contract. This fact makes strategic alliances and contractual agreements very flexible.

COMPLEXITY

The spectrum of complexity for these agreements is also broad—starting as simple as a rental agreement and stopping short of a full-fledged partnership agreement. Striking a balance between keeping the contract inclusive yet simple can be the most challenging part. If the contract is too simple, it may not provide for essential contingencies. If the agreement is very complex, there is a risk that the businesses could find themselves considered "partners" by the IRS or a defendant in a liability suit.

CONTRACTUAL AGREEMENTS

Contractual agreements are usually for a specific purpose and a limited amount of time. The essential components of a contractual agreement are:

1. Names of the parties involved
2. Purpose of the contract
3. Duration of contract
4. Method of payment
5. What constitutes a breach/how to void the contract
6. Consequences of withdrawing from the contract
7. Dispute resolution
8. Signatures

COMMON AGRICULTURAL CONTRACTUAL AGREEMENTS

Lease agreements: Renting buildings, equipment, land, animals, and other assets.

Sales contracts: An owner-held note for equipment, buildings, land, animals, and other assets.

Land contracts: An owner-held mortgage, typically for land and buildings.

Option-to-buy contracts: Can specify who has the right (right of first refusal) to buy a specified property, the payment terms, and when the option expires.

Lease option contracts: A combination of a lease and an option-to-buy contract.

Other contracts: A contract with a supplier, customer, or similar business for a specific duration.

If you are interested in a contractual agreement, fill out the contract worksheet on pages 36–37.

STRATEGIC ALLIANCES

A strategic alliance is a contract. A strategic alliance is different from a run-of-the-mill contract, as it establishes an ongoing business relationship. Strategic alliances generally include those items found in a contract, plus some additional items such as:

1. An agreed-upon common goal
   - The purpose for forming the alliance
   - The benefits to each member of the alliance
2. The defined roles of each business/individual involved
   - Identify steps each partner will take to meet the requirements of the agreement
   - Outline each participant's accountability for upholding the agreement
3. The framework of how each business/individual will work toward that goal
   - Time frames for achieving goals in the agreement
   - Consequences of not meeting agreed-upon goals

COMMON STRATEGIC ALLIANCES

HORIZONTAL ALLIANCES

An alliance with a business that operates in a similar industry as your own, hence the term "horizontal." Examples of a horizontal alliance would be: shared employees, shared equipment and facilities, and even shared agricultural enterprises. Alliances involving shared agricultural enterprises operate much like partnerships, except assets and liabilities of the different parties are kept separate. A simple example is a share-lease agreement.

Share lease agreements: A share-lease agreement is a contract that combines the business assets, management, and labor of two parties without creating a formal business structure. In the dairy industry, these agreements are called "share-milking." These are popular agreements that work best with up-to-date, accurate record-keeping.

VERTICAL ALLIANCES

These are ongoing relationships with suppliers or customers within an industry, hence the term "vertical." Examples of vertical alliances would be contracts with suppliers of agricultural inputs or buyers of your firm's agricultural outputs. There are many instances of feed contracts in the dairy industry, heifer raising contracts, and other custom work contracts.

If you are interested in a strategic alliance, fill out the strategic alliance worksheet on page 38.

Checklist to complete before moving on to the next section:

- ☐ If we are considering a contractual agreement: we have filled out the worksheet.
- ☐ If we are considering a strategic alliance: we have filled out the worksheet.

CHAPTER 5

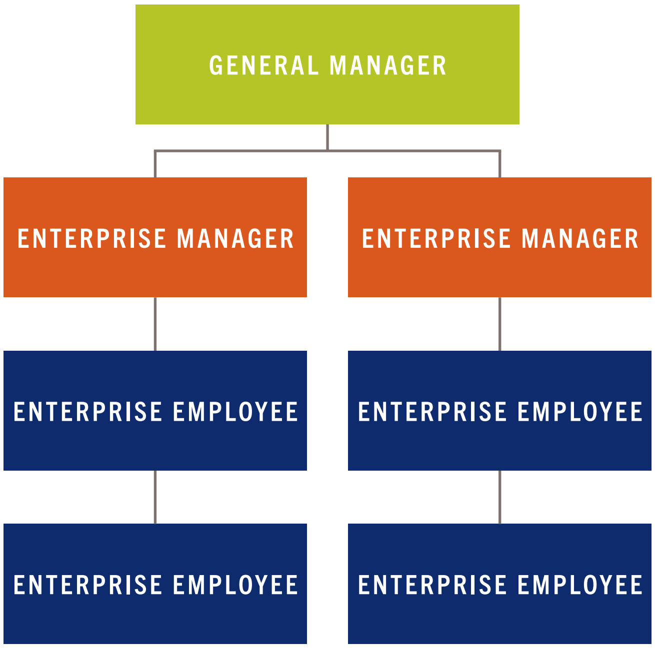
ORGANIZATIONAL STRUCTURE

Every business needs a management structure of some sort. Most business partnerships have the rights and responsibilities of each participant written into their partnership agreements. For those forming Limited Liability Companies, S or C corporations, you are required by law to detail your management structure. Sometimes, there can be differences between what is legally required and actual practices. If you are relying on a contract, you may not need a management structure. However, the more individuals and businesses become intertwined, the greater the need for management structure. This chapter provides a brief overview of this topic, as this is the building block of all management systems.

The root causes of many performance problems in business partnerships are improper management systems and lack of responsibility by one or more partners. A structure emphasizing organization, measurement, and communication can help prevent some of these problems.

A NEW BUSINESS NEEDS AN ORGANIZATIONAL CHART

An organizational chart is a visual representation of two things: who's the boss and who's accountable for the business area. There are many different models for an organizational structure. The most common example looks something like this:



This example is a "top-down" model of management. There are other structures to choose from, but the important thing is that your management structure reflects how your business operates in the real world.

Tip: Assign responsibility and accountability for similar activities. For instance, you never want to assign the responsibility of an enterprise to someone who won't be held accountable for right or wrong decisions. Likewise, you cannot make someone responsible for something that they do not have any control over.

Fill out the organizational chart worksheets on page 40.

MEASUREMENT

They say, "if you can't measure it, you can't manage it." Your management system needs to be able to measure the performance of everyone involved in the business. If performance is not measured, underperformance might never be detected or corrected.

How are you going to measure the performance of the individuals involved in the business agreement?

COMMUNICATION

Miscommunication is probably the number one cause of business disagreements. To prevent problems and to resolve conflicts, a regularly scheduled meeting time is beneficial. For a contractual relationship, this might be once a year or less. For a full partnership or joint venture, this might be once a week or more. In any case, schedule the meeting and make it a priority to keep the appointed time.

What will be your meeting schedule with your new business partners?

Checklist to complete before moving on to the next section:

- ☐ We have designed an organizational chart
- ☐ We have discussed how we will measure performance
- ☐ We have decided upon a meeting format and schedule

CHAPTER 6

CRAFTING BUSINESS AGREEMENTS

Now that you have an idea of what kind of agreement you want and what that agreement includes, it is time to get some professional advice. Legal and financial issues can be challenging to discuss, so it will be helpful to gather a team of service providers.

WHICH PROFESSIONAL SERVICE PROVIDERS DO I NEED TO CONSULT?

A common mistake made by people drawing up business partnership agreements is either writing the agreement by themselves or relying on the help of just a few people. Often, a single trusted family advisor (such as a lawyer or an accountant) executes the entire process. While this may get the job done faster, one individual may overlook certain aspects of a complete business agreement. Below is a list of specialists to consult while drafting your new business agreement:

Family/business members: Everyone who is involved in the business or contract

Lender: If the new arrangement needs to have new loans or loan changes

Accountant: Knows the tax implications of a new business entity

Business Management Specialist: Someone who knows your industry

Farm Transfer Facilitator: Keeps the process moving while you are busy

Lawyer: Drafts and reviews and the legal agreements

Other: Production specialists, insurance agents, counselors, and other service providers

Realize that you will not need to meet with every provider each week or meet with all of these providers simultaneously. However, your professional team needs to be able to collaborate with one another to double-check each other's work and create a transfer plan that works for all parties.

HOW DO I FIND A GOOD SERVICE PROVIDER?

After reviewing the list of professional service providers, you may notice that you need to find more people to consult. How do you go about finding the right service provider? Some tips:

1. **Compile a list of names.** List all the people you can find in that particular service area. Ask around—your family, other service providers, and even your neighbors.

2. **Check the person out.** Find out who has used that person's services and call them for references. Treat this like a job interview—this service provider will be doing important work for you, so you want the best!

HOW DO I GET THE MOST FROM PROFESSIONAL SERVICE PROVIDERS?

Service providers are busy people like you. They have other cases to handle besides yours. Here are two good pieces of advice to getting the most from your service provider:

1. **Keep in contact.** Ensuring that your service provider gives you the attention you need is like the saying: "the squeaky wheel gets the grease." Call them when you need advice, and do not wait for them to call you first.

2. **Ask the right questions.** Ask questions in the service providers' realm of expertise (i.e., don't ask your accountant legal questions). Also, do your homework so that you ask the most direct, concise question possible. Don't be afraid to get clarification on items you don't understand.

3. **Make your expectations known.** What do you expect from your service providers, and how much is it going to cost? How is this person going to cooperate with your family and other professional service providers? It is a good idea to write these things down and review them with your service provider to see if they are willing to meet your expectations. Make sure all of your agreements are in writing.

4. **Don't be afraid to change providers.** Although you may have time and money invested in a particular person, don't be scared to replace that person if he/she isn't doing the job you want. The future of your business depends on getting the business agreement done right!

WORKING WITH YOUR ATTORNEY

Working with your attorney is the same as working with any other service provider. However, people that have the law at their fingertips can intimidate us. One key point to remember is that attorneys specialize in different aspects of the law. For a business agreement, you need an attorney that specializes in business or corporate law.

HOW MUCH WILL THIS COST?

Prices range widely, depending on the complexity of the transactions. Think of this as an investment. Just like a good tractor lasts you ten years or more, a good business agreement will last a long time. Your service providers should be able to quote you before you start.

MEET ANNUALLY WITH YOUR BUSINESS AGREEMENT TEAM FOR A CHECK-UP

Laws change, and people change. To keep your business agreement up to snuff for the times, be sure to review it once a year with your business partners and your professional service providers.

Check off and identify which specialties will be consulted to help prepare your new business agreement?

- ☐ Business members: ______________
- ☐ Lender: ______________
- ☐ Accountant: ______________
- ☐ Management Specialist: ______________
- ☐ Farm Transfer Facilitator: ______________
- ☐ Financial Planner: ______________
- ☐ Lawyer: ______________
- ☐ Other: ______________

APPENDIX

WORKSHEETS

GOAL SETTING WORKSHEET

PART ONE: PERSONAL GOALS

1. Personal: Why are you in business?

2. Personal: Why do others (spouse, employees, etc.) think you are in business?

3. Personal: What do you hope to accomplish in your lifetime?

PART TWO: BUSINESS GOALS

4. What will your farm look like in 10 years?

5. What will your farm look like in five years?

6. What about a year from today?

PART THREE: MAKING CHANGES IN YOUR BUSINESS

If your farm will be different in the future

7. What will you change?

8. How will you make that change?

9. Who is responsible for making that change (you, spouse, employees)?

10. When will the change take place?

11. How will you know when you have succeeded (how will you measure the change)?

BUSINESS PARTNERSHIP TEST

By Stuart F. Smith

In business together? Appraise your qualifications and resources.

Personal relationships and specific business characteristics are essential to the success of joint business operations. Before you decide to go into business with someone else, complete a comprehensive evaluation of the farm resources, including management. Identify your personal strengths and attributes that can be contributed to the company and identify your shortcomings that may cause problems.

Although the emphasis of this test is on appraising your personal qualifications, here are some business characteristics that are essential for success:

1. The business must generate adequate income to meet current family needs and provide financial security after considering sources of off-farm income. You must put the right combination of land, labor, capital, and management together to meet income goals. Test the profitability and financial feasibility of your proposed plan. If it doesn't measure up, adopt a new strategy.

2. Management must be shared, but not necessarily equally, by the partners. There must be the desire and a plan to transfer control from one generation to the next.

3. Income should be shared based on each partner's labor, management, and capital contribution to the business. Financial and business records must be kept and used to distribute earnings based on contributions and monitor and improve financial progress.

4. If the transfer of ownership is a goal, you must have an understood and accepted plan by all parties.

5. A written agreement needs to be developed and used. Competent legal and business management advice should be obtained and followed.

Here are the personal characteristics that need to be appraised before entering a partnership or joint business agreement.

1. **Common or complementary objectives and goals.** The goals of individuals separated by one or more generations will not be identical. Many will be different, but they must not be conflicting. If you cannot agree on common or complementary goals, don't farm together.

2. **Ability to work, learn, share ideas, and manage together.** Working together requires compromise and commitment. You need the willingness to divide responsibility and accept decisions for which the other person is responsible. You must be willing to give and take without losing sight of your shared goals and objectives.

3. **Respect your partner and have confidence in your ability and your business arrangement.** Farm together if you and your partner have the personal characteristics that blend together and have a plan that you know will work. Completing the attached test will help you appraise your own qualifications for farming together.

QUALITY OF HUMAN RELATIONSHIPS TEST*

Take the following test to determine if you have the personal characteristics to successfully farm together with a partner or joint business operator/manager. Rate your answers using the following point scale:

Your Answer	Your Points
Yes! Yes! Yes!	10
Yes	8
Maybe Yes	6
Don't Know	4
Probably No	2
Very Unlikely	1
Definitely No!	0

Everyone planning to farm together should take Test A. Take Tests A and B if you are from the senior generation and plan to farm with your son, daughter, or someone else from the junior generation. If you are the son, daughter, or another junior generation member, take Test A and C.

TEST A – FOR ANY AND ALL PARTIES TO THE POTENTIAL AGREEMENT	
QUESTION	ANSWER POINTS
1. Do you prefer to work and plan together vs. work alone and plan independently?	________
2. Are you willing to talk things over and make joint management decisions vs. "do it your way"?	________
3. Are you willing to listen and accept ideas/suggestions from others with less experience, less training, or less education?	________
4. Are you able to make suggestions and recommendations versus giving orders and believing "my way is best"?	________
5. Are you willing to give others credit for things well done and accept responsibility for failures?	________
6. Can you discuss business and family issues with your potential business partner without getting angry?	________
7. Do you prefer to figure out how to get things done more effectively versus "do it like you always have done it"?	________
8. Do you like to recruit, hire, train, supervise, and evaluate employees?	________
9. Are you willing to monitor and analyze the farm business and financial records, production records, and recommend changes based on your analysis?	________
10. Are you willing to arrange and attend a weekly meeting?	________
11. Are you willing to develop a written business agreement?	________
12. Are you willing to review the business agreement and update it when necessary?	________
Total Points	________

TEST B – ADDITIONAL QUESTIONS FOR THE SENIOR GENERATION	
QUESTION	**ANSWER POINTS**
1. Are you ready to turn over specific management responsibilities to the younger generation and are you willing to encourage and help them develop their management expertise?	______
2. Do you have a feasible plan for transferring the ownership of the farm business to the junior generation? Are you willing to recognize their earned equity as part of this plan?	______
3. Are you willing to borrow additional capital to build up the business to support two generations?	______
4. Are you willing to accept a junior partner with a different living style? Can you let his/her family have their own life yet help them get through family crises with praise, encouragement, and care?	______
5. Are you willing to plan and hold a family conference to discuss goals, roles, differences, and expectations? Are you ready to help the younger generation identify their farming future and help them get there?	______
Total Points	______

TEST C – ADDITIONAL QUESTIONS FOR THE JUNIOR GENERATION	
QUESTION	**ANSWER POINTS**
1. Do you have the patience to grow into the business over a period of time—say 5 to 8 years?	______
2. Are you ready and willing to take on additional labor and management responsibilities to operate a farm business in which you have minor ownership?	______
3. Are you willing to accept and try advice based on the senior generation's experience? Do you have a plan that will continue to involve your senior partner in the management of the business?	______
4. Do you understand that the senior generation has different goals based on retirement needs and that the farm may have to help pay for these needs? Are you willing to help them identify and plan for these needs?	______
5. Can you accept advice from the senior generation about life, raising a family, and family relationships? Are you willing to ask them for help in resolving family and business problems?	______
Total Points	______

ANSWER KEY—TOTAL YOUR SCORE FROM THE APPROPRIATE TESTS. *		
TOTAL POINTS TEST A	TOTAL POINTS TEST A + B OR C	LEVEL OF QUALIFICATION FOR FARMING TOGETHER
91 – 120	135 – 170	You will make a fine partner
71 – 90	101 – 134	You can make it work
51 – 70	71 – 100	It will be difficult
31 – 50	41 – 70	Don't try it just yet
11 – 30	16 – 40	Little chance of success
0 – 10	0 – 15	No chance!

Note: Sometimes, it is more helpful to discuss the areas in which you are the weakest rather than just focusing on the score

* Concept and ideas for this test are from *Farm Business Arrangements: Which One for You?*, North Central Regional Publication 50, pp. 21–22; *Test Yourself…Would you be a Good Partner?*, by Claude W. Gifford, Farm Journal, Inc.

INDIVIDUAL BALANCE SHEET

ASSETS		LIABILITIES	
Checking Account		Credit Cards	
Savings Account		Unpaid Bills	
Cash		IOU's	
Stocks & Bonds		Other	
Vehicles		Car Loans	
Machinery		Machinery Loans	
Farm Equipment		Equipment Loans	
Tools/Supplies		Other	
House		Home Mortgage	
Land		Land Mortgage	
Other		Other Loans	
Total Owned		Total Owed	
Total Owned - Total Owed =		Equity	

PRO-FORMA BALANCE SHEET

ASSETS		LIABILITIES	
Checking Account		Credit Cards	
Savings Account		Unpaid Bills	
Cash		IOU's	
Stocks & Bonds		Other	
Vehicles		Car Loans	
Machinery		Machinery Loans	
Farm Equipment		Equipment Loans	
Tools/Supplies		Other	
House		Home Mortgage	
Land		Land Mortgage	
Other		Other Loans	
Total Owned		Total Owed	
Total Owned - Total Owed =		Equity	

GENERAL INCOME STATEMENT WORKSHEET

BUSINESS NAME:	YEAR 1	YEAR 2	YEAR 3
SALES	$	$	$
Total Sales			
COST OF GOODS SOLD	$	$	$
Total Cost of Goods Sold			
Gross Margin (Sales minus Cost of Goods Sold)			
Gross Margin % of Sales (Gross Margin/Sales)			
OVERHEAD EXPENSES	$	$	$
Total Overhead Expenses			
Total Expenses (COGS plus Overhead Expenses)			
Net Income (Sales minus Total Expenses)			

NON-MONETARY CONTRIBUTIONS WORKSHEET

MANAGEMENT CONTRIBUTION

Partner #1 ______________________________

Partner #2 ______________________________

Partner #3 ______________________________

Partner #4 ______________________________

LABOR CONTRIBUTION

Partner #1 ______________________________

Partner #2 ______________________________

Partner #3 ______________________________

Partner #4 ______________________________

OTHER CONTRIBUTION

Partner #1 ______________________________

Partner #2 ______________________________

Partner #3 ______________________________

Partner #4 ______________________________

NOTES

MERGERS: LETTER OF INTENT WORKSHEET

Sketch out a brief description of what your letter of intent should contain:

Who is buying whom? (Business names)

Purchase Price

Payment terms (how is it going to be financed, any property exchanges)?

Continued employment of key employees

How is this transaction going to be guaranteed? What are the consequences of not going through with the deal?

Other provisions

PARTNERSHIPS: OPERATING AGREEMENT WORKSHEET

AUTHORITY OF EACH PARTNER

(Who is allowed to do what in the partnership: borrow money, spend money, and make other critical decisions)

Partner #1 ____

Partner #2 ____

Partner #3 ____

Partner #4 ____

HOW EACH PARTNER IS PAID

(Especially important if the payments are not equal among partners or if they do not proportionately reflect the contributions to the partnership)

Partner #1 ____

Partner #2 ____

Partner #3 ____

Partner #4 ____

MANAGEMENT STRUCTURE

(Voting privileges of each partner; how partnership decisions are made)

Partner #1 ____

Partner #2 ____

Partner #3 ____

Partner #4 ____

Is there an equal number of partners? If so, how will deadlocked decisions be decided?

DISPUTE RESOLUTION

(What happens if there is a severe disagreement? Will there be a third party to help? Will the dispute go to mediation or arbitration?)

PARTNERSHIPS: BUY-SELL AGREEMENT WORKSHEET

PARTICIPANT ENTRANCE

(Who can enter the business? What will this new person have to provide in terms of money, property, labor, management, etc? What will be the voting procedure of the current partners?)

BUY-OUT PROVISIONS

(Who can own a partner's share? How is a price determined for a partner's share? What are the terms of payment for a partner's share?)

PARTICIPANT EXIT

(What events trigger a buy-out? Consider what happens in the event of death, disability, divorce, and personal bankruptcy. How does a partner leave the business?)

PARTNERSHIPS: JOINT VENTURE ADDITIONS

DURATION OF THE JOINT VENTURE

(Termination date or trigger event)

STAFFING OF THE JOINT VENTURE

(If different from those participating in the current businesses)

PROVISIONS FOR CONFLICT OF INTEREST

(Will the joint venture affect either participating business in a positive/negative manner? What actions will be taken to avoid this?)

HOW WILL THE JOINT VENTURE BE MANAGED?

(What are the goals of the venture, how will the partner's know if they have achieved these goals?)

TAX ISSUES TO BE RESOLVED

(Check with your accountant about these items)

CONTRACTUAL AGREEMENT CHECKLIST

Names of the parties involved

Purpose of the contract

Duration of the contract

Payment/method of payment

How to get out of the contract

What constitutes a breach of contract

Consequences of breaching contract

How to resolve disputes

STRATEGIC ALLIANCE WORKSHEET

Note: Alliance agreements can be as simple and as complex as you want them. Below are some opportunities to take notes on what you wish this agreement to do for you and your business.

AGREED UPON COMMON GOALS

(Purpose, benefits to each member, etc.)

ROLES OF EACH INDIVIDUAL / BUSINESS

(How will each member of the agreement meet the requirements/goals? What is each participant's accountability?)

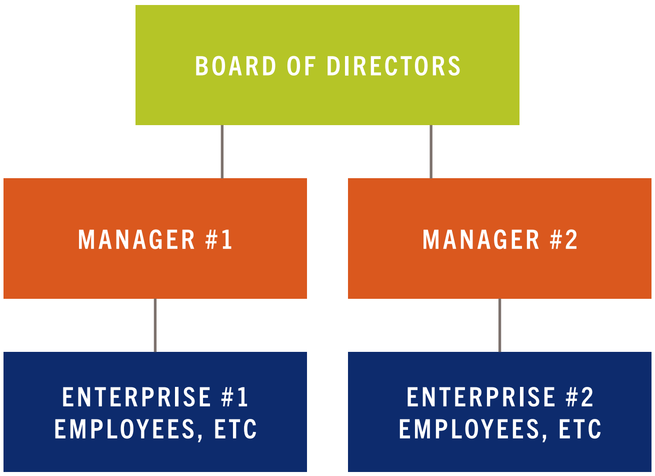
FRAMEWORK

(Time frames, exit and dispute resolutions, buy-sell agreements, purchase options, etc. may all be rolled into a strategic alliance agreement)

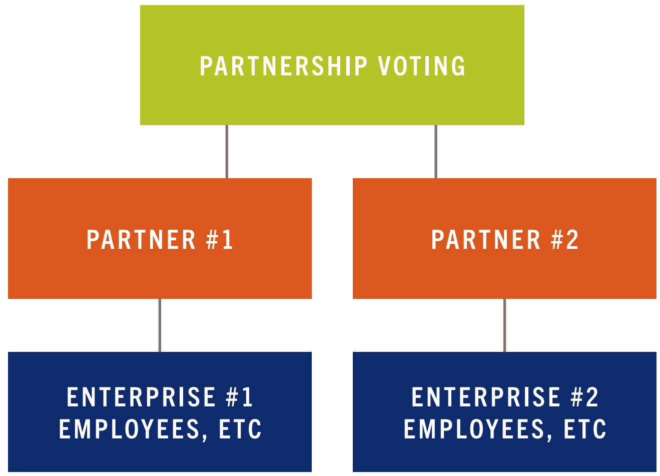
ORGANIZATIONAL CHART WORKSHEET

These are just a couple of examples of business organizational charts. Your organizational chart can be any combination of these models. What is important is that there is someone designated to be responsible for each area of the business and that each person is accountable for their actions and decisions.

CORPORATE MODEL

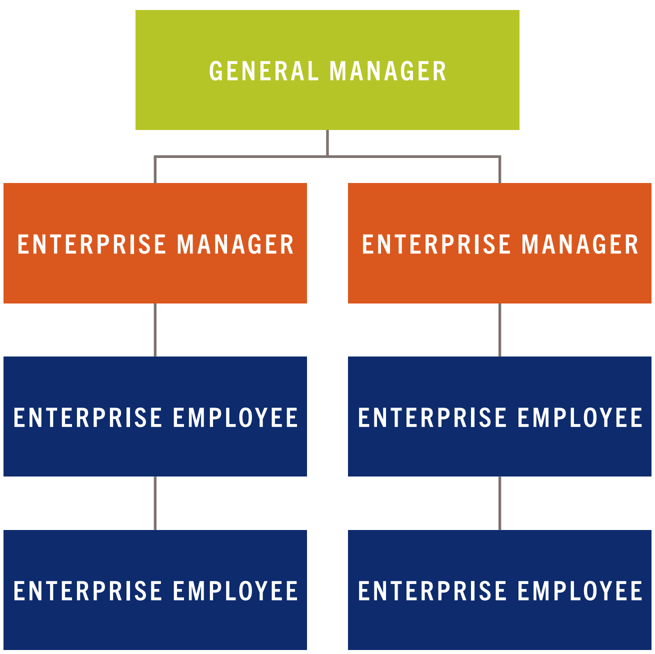


SHARED GOVERNANCE MODEL



Note: You can see that if every decision is decided by an equal number of votes, there will have to be some tie-breaking mechanism.

TRADITIONAL MODEL



Sketch an organizational chart below.

Who will manage what part of the business?

How will performance be measured?

If underperformance is observed, what corrective action will be taken?

How will communications be handled between the participants in the business?

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