

MODEL CONTRACTS FOR SMALL FIRMS

LEGAL GUIDANCE FOR DOING INTERNATIONAL BUSINESS

Contents

Foreword

Acknowledgements

Introduction

Chapter 1

International Contractual Alliance

Introduction

ITC Model Contract for an International Contractual Alliance

Chapter 2

International Corporate Joint Venture

Introduction

ITC Model Contract for an International Corporate Joint Venture

Chapter 3

International Commercial Sale of Goods

Introduction

ITC Model Contract for the International Commercial Sale of Goods (short version)

ITC Model Contract for the International Commercial Sale of Goods (standard version)

Chapter 4

International Long-Term Supply of Goods

Introduction

ITC Model Contract for the International Long-Term Supply of Goods

Chapter 5

International Contract Manufacture Agreement

Introduction

ITC Model International Contract Manufacture Agreement

Chapter 6

International Distribution of Goods

Introduction

ITC Model Contract for the International Distribution of Goods

Chapter 7

International Commercial Agency

Introduction

ITC Model Contract for an International Commercial Agency

Chapter 8

International Supply of Services

Introduction

ITC Model Contract for the International Supply of Services

International Corporate Joint Venture

Introduction

This Model Contract is a framework for a **joint venture between two Parties to establish a jointly-owned company** (“JVC”). Key features are:

1. It contemplates *50-50 equal ownership*. If there are more than two Parties, or one is to have a majority share, its provisions will need to be adapted.
2. *Each party makes an initial financial contribution* to the capital of the JVC. It is important to establish whether or not a party will have any continuing obligation to provide further finance to the JVC. Article 5 is prepared on the basis that any future finance requires mutual consent.
3. *Each corporate JVC must be formed in a particular jurisdiction*. Usually, this will determine the governing law. It will be necessary to prepare Articles of association/by-laws or other formal constitutional documents in that jurisdiction that are consistent with the joint venture contract. It is good practice to ensure that the joint venture contract addresses key items as a matter of contract between the Parties.
4. For clarity regarding development of the JVC’s Business, it is good practice to *have a Business Plan* agreed between the Parties at the outset. This could be attached to, or at least identified in, the joint venture contract.
5. Many joint ventures involve contribution by a party of assets, property, technology or services or associated distributorship or supply arrangements. These will often require “ancillary contracts” to be entered into in order to spell out the detailed terms (price, specification, liability etc.).
6. Overall direction and management of the JVC is usually in the hands of the JVC *Board of directors*. It is important at the outset to clarify the balance of decision-making power between (i) the Parties as shareholders, (ii) the Board and (iii) individual executives of the JVC. It is common to specify that certain “Reserved Matters” will require mutual consent of the Parties either as shareholders or at the Board.
7. *A sale by a party of its Shares* in the JVC can, under the Model Contract, only be made *with mutual consent*.

8. If a party wishes *to bring the joint venture to an end*, this usually requires mutual agreement. Article 14.3 contemplates, after a reasonably lengthy procedure, that a party can nevertheless call for a winding up of the JVC in certain circumstances of breakdown or deadlock.

If more complex arrangements are involved or a wider range of options is needed, consult the (long-form) ITC Model Incorporated Joint Venture Contract (the “Long Form JVC Contract”).

ITC MODEL CONTRACT FOR AN INTERNATIONAL CORPORATE JOINT VENTURE

PARTIES:

Name (name of company)
.....

Legal form (e.g. limited liability company)
.....

Country of incorporation and (if appropriate) trade register number
.....

Address (place of business, phone, fax, e-mail)
.....
.....

Represented by (name, position, address)
.....
.....

Referred to as "ABC"

Name (name of company)
.....

Legal form (e.g. limited liability company)
.....

Country of incorporation and (if appropriate) trade register number
.....

Address (place of business, phone, fax, e-mail)
.....
.....

Represented by (name, position, address)
.....
.....

Referred to as "XYZ"

ABC and XYZ are together referred to as "the Parties" and individually as a "Party".

[Add any further information required e.g. the Parties' fiscal identities]

Background

- A. ABC and XYZ (the “Parties”) have agreed to form a new jointly owned company (the “JVC”) which shall be established and carry on Business in the manner set out in this contract.
- B. The Parties have agreed that their relations as shareholders in the JVC shall be governed by the terms of this contract.

Operative provisions

1. Interpretation

1.1 In this contract the following terms shall have the following meanings:

“Board” means the Board of directors of the JVC;

“Business” means the Business to be carried on by the JVC as *[specify nature of Business]* in accordance with the Business Plan as updated by the Board from time to time;

“Closing” means completion of the establishment of the JVC in accordance with Article 3;

“Member of the ABC Group” means ABC and any subsidiary or parent company for the time being of ABC and any other subsidiary for the time being of that parent company;

“Member of the XYZ Group” means XYZ and any subsidiary or parent company for the time being of XYZ and any other subsidiary for the time being of that holding parent;

“Shares” means ordinary Shares in the capital of the JVC;

[Option: If the JVC is to operate in a specific Territory, add: “Territory” means [specify].]

1.2 Any reference to an “Agreed Form” is to the draft form of the relevant document agreed between the Parties and signed on their behalf for the purpose of identification before the signature of this contract (with such amendments, if any, as may subsequently be agreed in writing between the Parties).

1.3 Any reference in this contract to an amount in *[specify currency]* shall include its market rate equivalent at the relevant time in any other currency.

2. Business of JVC

2.1 The Parties wish to establish the JVC for the purpose of *[set out scope of Business]* (the “Business”) *[Option, if JVC is to operate solely in a particular Territory, add: “In the Territory”]*. The Business shall be conducted in the best interests of the JVC in accordance with the then current Business Plan. The initial Business Plan is annexed to this contract *[delete if not annexed]*.

2.2 Each party shall act in good faith towards the other in order to promote the JVC’s success [Option, add if applicable: “With the objective of meeting the milestone targets and other goals set out in the Business Plan”]. The Parties confirm their intention to consult fully on all matters materially affecting the development of the Business.

3. Establishment of JVC: Conditions precedent

3.1 The Parties [Option: If one party is to have particular responsibility for initial formation, replace “the Parties” with name of particular party to be responsible e.g. “ABC”] shall take appropriate steps to arrange for the formation of the JVC in [specify country]. The JVC shall not trade or carry on Business in any manner prior to Closing. Closing shall be conditional upon each of the following conditions (“Conditions Precedent”) having first been satisfied or waived: [set out any specific conditions precedent e.g.]

- 3.1.1 [Approval by specified regulatory authority];
- 3.1.2

3.2 Each party shall use all reasonable efforts to ensure that the conditions precedent are fulfilled as soon as possible and shall notify the other promptly of any difficulties encountered. If the conditions precedent are not fulfilled (or waived) by [specify date], this contract (other than the provisions of Article 12 (confidentiality) and Article 24 (disputes resolution procedure) shall, unless otherwise agreed, thereupon automatically cease and terminate and neither party shall have any claim of any nature whatsoever against the other party.

4. Establishment of JVC: Closing

4.1 Closing shall take place on [specify date] (or, if later, within 7 days after the fulfilment or waiver of all the conditions precedent) when the following events and matters set out in this Article 4 shall take place. If not previously formed under Article 3.1, the Parties shall cause the JVC to be incorporated with the following characteristics:

- 4.1.1 The JVC shall be formed in [country] as [specify type of company e.g. a private company limited by Shares];
- 4.1.2 The Articles of association/bylaws of the JVC shall be in the Agreed Form [annexed to this contract: Delete if the Articles/bylaws are not annexed];
- 4.1.3 The name of the JVC shall be “[specify]”;
- 4.1.4 The [registered] office of the JVC shall be at [specify];
- 4.1.5 The directors of the JVC shall be:

ABC Directors:	[specify]	XYZ Directors:	[specify]
	[]		[]
	[]		[]

4.1.6 The first auditors of the JVC shall be [specify].

4.2 ABC shall subscribe unconditionally for *[specify number]* Shares in cash at a price of *[specify]* per share, payment for which shall be made in cleared funds into such bank account as shall be agreed by the Parties (the “JVC Account”). XYZ shall subscribe unconditionally for *[specify number]* Shares in cash at a price of *[specify]* per share, payment for which shall be made in cleared funds into the JVC account. The Parties shall procure that the JVC issues credited as fully paid:

4.2.1 *[Specify number]* Shares to ABC *[to include the initial [specify number] if ABC alone has already set up the company] ordinary Shares in the JVC subscribed for by ABC upon incorporation); and*

4.2.2 *[Specify number]* Shares to XYZ;

and that the names of ABC and XYZ are entered in the register of members of the JVC as the respective holders of the Shares subscribed by them *[and that share certificates are issued to ABC and XYZ in respect of such Shares: Delete if share certificates not issued under local law].*

4.3 *[Omit this Article if the Parties do not also provide loans to fund the JVC on Closing as well as share capital.]* The Parties shall, in addition, advance loans to the JVC on Closing in *[currency]* in the following amounts:

ABC

XYZ

The terms of these loans, including as to interest, shall be the same for each party or otherwise as agreed between them and the Board from time to time. Any such loans shall be repaid to the Parties at the same time and in the same proportions.

4.4 The Parties shall cause the following ancillary contracts to be entered into, namely:

[Specify any additional contracts to be executed on Closing in order to establish the Business of the JVC – for example:

4.4.1 *The asset transfer/sale and purchase contract (in the Agreed Form) between and the JVC for the transfer of;*

4.4.2 *The distributorship contract (in the Agreed Form) between and the JVC relating to the distribution of;*

4.4.3 *The technology assistance contract (in the Agreed Form) between and the JVC for the provision of technical assistance and licensing of;*

4.4.4 *The supply contract (in the Agreed Form) between and the JVC for the supply of;*

4.4.5 *The services contract (in the Agreed Form) between and the JVC for the provision of services to the JVC as therein provided;*

4.4.6 *The trademark licence(s) (in the Agreed Form) between and the JVC for licensing of the use of the mark.]*

[Comment: Outline examples of a number of these contracts appear as schedules to the Long Form JVC Contract.]

5. Capital and further finance

[Comment: This Model Contract contemplates that the Shares of the JVC will be held 50-50 between the two Parties. If there are more than two Parties or the Shares are not to be held equally, terms will have to be adapted to the circumstances. In some cases, it may be appropriate to have separate “classes” of Shares (e.g. ABC Shares to be held by ABC and XYZ Shares to be held by XYZ) with different rights attaching to each class.]

5.1 The JVC shall, in accordance with and following completion of the events and transactions referred to in Article 4, have an issued share capital of *[specify amount]* consisting of *[specify number]* Shares owned by ABC and *[specify number]* Shares owned by XYZ.

5.2 The share capital of the JVC may from time to time be increased by such sum as shall be mutually agreed but so that in any event, unless otherwise agreed, the increased share capital of the JVC shall be held in the proportions of 50% by ABC (or member(s) of the ABC Group) and 50% by XYZ (or member(s) of the XYZ Group).

5.3 If the JVC shall in the opinion of the Board require further finance, the JVC shall first approach its own banking sources. If finance cannot be obtained from the JVC's own banking sources, neither party shall be obliged to provide any finance to the JVC. Any finance that the Parties do agree to provide shall (unless otherwise agreed) be provided by the Parties in equal proportions (whether by way of subscription of share capital, loans or otherwise).

5.4 The Parties shall not be obliged to provide guarantees in respect of any borrowings of the JVC but, if they do so, they shall be given in equal proportions. If a claim is made against a party under any such guarantee, that party shall be entitled to a contribution from the other party of such amount as shall ensure that the aggregate liability is borne in equal proportions.

6. Directors and Management

6.1 The Business and affairs of the JVC shall (subject to the Shareholder Matters referred to in Article 7.2) be managed by the Board of the JVC. The Board shall consist of four (4) persons *[vary number as appropriate]* of which:

6.1.1 ABC shall be entitled to appoint and maintain in office two (2) directors (“ABC Directors”) and to remove any director so appointed from office (and to appoint another in the place of any director so removed); and

6.1.2 XYZ shall be entitled to appoint and maintain in office two (2) directors (“XYZ Directors”) and to remove any director so appointed from office (and to appoint another in the place of any director so removed).

6.2 Each appointment and removal by ABC or XYZ of a director pursuant to its entitlement shall be notified in writing to the other party and the JVC. ABC and XYZ shall each use their respective votes in the JVC to ensure that the Board of the JVC is constituted by persons appointed in the manner set out in this contract.

6.3 At least 14 days written notice shall be given to each member of the Board of any meeting of the Board, provided always that a shorter period of notice may be given with the written approval of at least one (1) ABC director and at least one (1) XYZ director. Any such notice shall include an agenda identifying in reasonable detail the matters to be discussed at the meeting and shall be accompanied by copies of any relevant papers. The Board shall meet regularly (either telephonically, by video conference or in person) and, unless otherwise agreed, not less than quarterly.

6.4 The quorum for the transaction of Business at any meeting of the Board shall be at least one (1) ABC director and at least one (1) XYZ director present at the time when the relevant Business is transacted.

6.5 The chairman shall be appointed from among the [ABC] directors. *[alternatively: If preferred, delete the previous sentence and replace with “The appointment of the chairman shall rotate each [year/meeting] between an ABC director and an XYZ director.”]* The chairman shall not have a casting vote.

6.6 At any meeting of the Board, each director shall be entitled to one vote. Any decision of the Board in favour of a resolution, to be valid, shall require the positive vote of at least one (1) ABC director and at least one (1) XYZ director. If the Parties are not represented at any meeting of the Board by an equal number of ABC Directors and XYZ Directors, then one of the directors present nominated by the Party which is represented by the fewer directors shall be entitled at that meeting to such additional vote or votes as shall result in the directors present representing each party having in aggregate an equal number of votes.

7. Reserved Matters

[Comment: The list of “Reserved Matters” should be reviewed in the light of the scope of authority proposed for the Board. This Article ensures that the JVC cannot in any event take these steps without the approval of both Parties. The list should be adapted to meet the circumstances. Reserved Matters will be particularly important if one party has a minority voting position.]

7.1 The following matters (“Reserved Matters”) shall require the prior approval of ABC and XYZ:

- 7.1.1 Any issue of Shares (or securities convertible into Shares) of the JVC other than an issue of Shares to ABC and XYZ in equal proportions as specified in Article 5.2;
- 7.1.2 Any alteration to the Articles of association/bylaws of the JVC;
- 7.1.3 Any sale of the whole or any substantial part of the JVC;
- 7.1.4 Any borrowing by the JVC that would result in the aggregate borrowings of the JVC being in excess of *[specify amount]* or such other amount as the Parties shall from time to time determine;
- 7.1.5 Approval of the annual budget and operating plan of the JVC;
- 7.1.6 Any expansion of the marketing Territory of the JVC beyond *[specify Territory]* or any development of the product line of the JVC beyond *[specify]* (as improved or enhanced from time to time);

- 7.1.7 Any major reorganization affecting the JVC, including the formation of any subsidiary of the JVC;
 - 7.1.8 Any contract or commitment by the JVC having a value or likely to involve expenditure by the JVC in excess of *[specify amount]* (or such other limit as the Parties shall from time to time agree);
 - 7.1.9 The appointment (or removal) and the terms of reference of the chief executive and the appointment (or removal) of any employee whose remuneration is in excess of *[specify amount]* (or such other amount as the Parties shall from time to time agree);
 - 7.1.10 The appointment (or removal) of the auditors of the JVC or any significant change in the accounting policies of the JVC;
 - 7.1.11 Any change for a particular year in the dividend policy specified in Article 10;
 - 7.1.12 The commencement, settlement or abandonment of litigation or admission of liability by the JVC involving a dispute in excess of *[specify amount]* (other than a claim against a Member of the ABC Group or a Member of the XYZ Group);
 - 7.1.13 Any payment by the JVC to any Member of the ABC Group or the XYZ Group (whether by way of management or administrative charges, bonus, licence fees, repayment of loan, dividends or otherwise) unless within permitted limits first approved by the Board;
 - 7.1.14 Filing by the JVC for receivership, reorganization or liquidation under any insolvency laws or any similar action.
- 7.2 Approval for the purposes of Article 7.1 may be given:
- 7.2.1 In the case of items specified in Articles 7.1.1, 7.1.2 and 7.1.3 *[review list to decide matters requiring approval at shareholder level rather than the Board]* (“Shareholder Matters”), by ABC and XYZ either in writing or by unanimous resolution at a general meeting of the shareholders of the JVC or by written resolution;
 - 7.2.2 In the case of the remaining Reserved Matters, by unanimous agreement of all the directors either by written resolution or by unanimous resolution at a meeting of the Board.
- 7.3 The provisions of Article 7.1 shall apply equally to any matters undertaken by a subsidiary of the JVC as if references therein to “the JVC” included, where appropriate, any such subsidiary.

8. General meetings

- 8.1 General meetings of the Parties as shareholders in the JVC shall take place in accordance with the applicable provisions of the Articles of association/bylaws which shall include terms that:
- 8.1.1 The quorum for transaction of any Business shall require the presence of a duly authorized representative of each of the Parties;

- 8.1.2 The notice of meeting shall set out an agenda identifying in reasonable detail the matters to be discussed (unless the Parties agree otherwise);
- 8.1.3 The chairman of the meeting shall be nominated by *[specify ABC or XYZ as appropriate]* but shall not have a casting vote.

9. Additional contributions of the Parties

[Comment: This Article may be appropriate as a framework to set out principal responsibilities of each party towards the JVC in addition, for example, to the specific terms for (i) financial contributions under Articles 4 or 5 or (ii) services, products or technical assistance to be provided under ancillary contracts contemplated by Article 4.4.]

9.1 It is intended that each party will contribute particular knowledge, skills or services to assist the establishment and success of the JVC. The general responsibilities of each party are set out in this Article 9.

9.2 The general contributions of ABC towards the JVC shall be:

[These are examples only. Tailor the description to the circumstances of each JVC.]

9.2.1 *[To provide technical assistance (including through the provision of training) in the field of on reasonable terms to be agreed with the JVC through the Board [such technical assistance to be given under the terms of the technical assistance contract];*

9.2.2 *[.].*

9.3 The general contributions of XYZ towards the JVC shall be:

9.3.1 *[To use its contacts, knowledge and distribution network in [country] to assist the promotion of the JVC's products];*

9.3.2 *[To assist in the recruitment of local staff, facilities and resources for the operations of the JVC];*

9.3.3 *[.].*

9.4 Each party will use all reasonable efforts to provide its contribution to promote the success of the JVC. Each party shall provide its contribution towards the JVC using all such diligence and skill as is reasonable in the circumstances.

[Alternative: If this is intended as a general statement of goodwill without legal liability, then delete the above Article 9.4 and replace with the following:

“9.4 Each party will use all reasonable efforts to provide its contribution to promote the success of the JVC. The relationship between the Parties for the JVC will, however, be built on trust and neither party shall (unless otherwise specified in this contract or any other contract between that party and the JVC) have any legal liability to the JVC or the other party in respect of the standard, adequacy or performance of its contribution to the JVC.”]

10. Dividend policy

The Parties agree that (unless otherwise agreed under Article 7 in relation to a particular financial year) the JVC shall distribute by way of dividend not less than [e.g. fifty (50)] % of the audited after tax profit in relation to each financial year.

11. Transfer of Shares

11.1 Unless it is a transfer made with the prior written consent of the other party, neither ABC nor XYZ shall sell, transfer, pledge, charge, dispose of or otherwise deal with any right or interest in any of its Shares in the JVC (including the grant of any option over or in respect of any Shares).

11.2 Consent shall not unreasonably be withheld for a transfer by a party to a member of its own group. Each of ABC and XYZ, respectively, undertakes to procure that, if any member of its group which holds Shares in the JVC ceases at any time to be a wholly owned subsidiary of that party, that subsidiary shall first transfer beneficially all its Shares in the JVC back to the relevant party (or another member of its group).

11.3 No transfer of Shares of the JVC shall in any event be registered or become effective unless the transferee shall first have entered into a contract undertaking to be bound by this contract (including this Article 11) to the same extent as the transferor would have been bound had the transfer not been effected.

12. Confidentiality

12.1 Each of the Parties shall at all times use all reasonable efforts to keep confidential (and to ensure that its employees and agents keep confidential) all commercial and technical information which it may acquire (i) in relation to the JVC or (ii) in relation to the clients, Business or affairs of the other party (or any member of its respective group). Neither party shall use or disclose any such information except with the consent of the other party or, in the case of information relating to the JVC, in the ordinary course of advancing the JVC's Business. The restriction in this Article 12.1 shall not apply to any information that is:

12.1.1 Publicly available through no fault of that party;

12.1.2 Already in the possession of that party prior to its disclosure without any obligation of confidentiality; or

12.1.3 Required to be disclosed by that party pursuant to any law, stock exchange regulation or binding judgment, order or requirement of any court or other competent authority.

12.2 Each party shall use all its respective powers to ensure (so far as it is able) that the JVC and its officers, employees and agents observe a similar obligation of confidence in favour of the Parties to this contract.

12.3 The provisions of this Article 12 shall survive any termination of this contract.

13. Restrictions on the Parties

[Comment: Restrictions on a party's ability to carry on competing activities may be difficult to enforce in many jurisdictions unless they are specific and reasonable in scope, Territory and duration.]

13.1 Neither ABC nor XYZ nor any member of its respective group shall (directly or indirectly or solely or jointly with any other person, firm or company) carry on or be engaged in any Competing Business in the Territory during the period of this contract.

13.2 For this purpose: "Competing Business" means *[specify]*; and "Territory" means *[specify]*.

13.3 During the period of this contract *[Option, add if appropriate: "And for one (1) year after its termination"]*, neither party shall attempt to employ or entice away any employee of the other party engaged in any managerial or technical capacity in relation to the operations of the JVC.

14. Deadlock or termination

14.1 In the event of a deadlock, breakdown or other circumstances in which a party wishes to terminate or substantially change the structure of the JVC, the matter shall be referred to the respective chairmen/chief executives of the Parties who shall seek to resolve the matter on an amicable basis.

14.2 If the matter cannot be settled by agreement in initial discussions, then either party may give notice that it seeks formally to resolve the situation within 90 days. The Parties shall continue to negotiate in good faith with a view to resolving the matter including by one of the following methods:

14.2.1 The purchase by the JVC of the disaffected party's Shares on terms acceptable to the Parties (provided that the purchase by the JVC can lawfully be made and is financially practicable);

14.2.2 The purchase by the other party of the disaffected party's Shares in the JVC (or the sale of that party's Shares to one or more third Parties);

14.2.3 The sale of the whole of the issued share capital of the JVC to a third party; or

14.2.4 Winding up of the JVC.

14.3 If no such method of settling the dispute has been agreed within 90 days after the notice is given under Article 14.2, a disaffected party may serve notice requiring the JVC to be wound-up. No notice requiring the winding up of the JVC may, however, be served by either party within the initial two (2) year period *[vary period as appropriate]* after the establishment of the JVC.

14.4 Upon or as soon as practicable after notice under Article 14.3, the Parties shall use their respective powers and votes to cause the JVC to be placed in liquidation. The Parties shall cooperate to ensure that all existing contracts entered into by the JVC prior to such winding up shall be duly completed subject to such arrangements as the Parties may mutually agree. The Parties shall endeavour to agree an appropriate allocation of the assets of the JVC (including any intellectual property owned by the JVC) prior to any such winding up.

15. Supremacy of this contract

15.1 ABC and XYZ shall each use its respective powers (including its votes in the JVC) and all other means at its disposal to ensure that this contract is duly observed and performed.

15.2 The Parties shall endeavour to ensure that the Articles of association/bylaws are consistent with the terms of this contract. If there is any conflict between this contract and the Articles of association/bylaws, this contract shall prevail as between the Parties and they shall make such changes to the Articles of association/bylaws as shall be necessary to give effect to this contract.

16. *Force majeure*

16.1 “*Force majeure*” means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this contract or to have avoided or overcome it or its consequences.

16.2 A party affected by *force majeure* shall not be deemed to be in breach of this contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any *force majeure* of which it has notified the other party in accordance with Article 16.3. The time for performance of that obligation shall be extended accordingly, subject to Article 16.4.

16.3 If any *force majeure* occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall within a reasonable time notify the other party as to the nature of the circumstances in question and their effect on its ability to perform.

16.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by *force majeure* for a continuous period in excess of three [*specify any other figure*] months, the other party shall be entitled to terminate this contract by giving written notice to the Party affected by the *force majeure*.

[*Alternative: If preferred, replace Article 16.4 with the following alternative: “16.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by force majeure for a continuous period in excess of [six] months, the Parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to this contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of 30 days, the other party shall be entitled to terminate this contract by giving written notice to the Party affected by the force majeure”.*]

17. Change of circumstances (hardship)

[*Comment: The Parties should be free to consult each other in the event of a major change in circumstances – particularly one creating hardship for a particular party. However, an SME should only include the option in Article 17.4 (right to refer to the courts/arbitral tribunal to make a revision) if (i) the SME considers that it is not likely to be used against that party’s interests by a party in a stronger tactical position or (ii) the right to refer to*

a court/tribunal is an established right under the applicable governing law in the event of hardship.]

17.1 Where the performance of this contract becomes more onerous for one of the Parties, that party is nevertheless bound to perform its obligations subject to the following provisions on change of circumstances (hardship).

17.2 If, however, after the time of conclusion of this contract, events occur which have not been contemplated by the Parties, and which fundamentally alter the equilibrium of the present contract, thereby placing an excessive burden on one of the Parties in the performance of its contractual obligations (hardship), that party shall be entitled to request revision of this contract provided that:

17.2.1 The events could not reasonably have been taken into account by the affected party at the time of conclusion of this contract;

17.2.2 The events are beyond the control of the affected party; and

17.2.3 The risk of the events is not one which, according to this contract, the Party affected should be required to bear.

17.3 Each party shall in good faith consider any proposed revision seriously put forward by the other party in the interests of the relationship between the Parties. No revision shall, however, be effective unless agreed by both Parties in accordance with Article 22.2 *[Option, add when the option in Article 17.4 is included: "Or established pursuant to Article 17.4".]*

[Option: See comment at beginning of Article 17. Add if wished; otherwise delete:

"17.4 If the Parties fail to reach agreement on the requested revision within [specify time limit if appropriate], a party may resort to the dispute resolution procedure provided in Article 24. The [court/arbitral tribunal] shall have the power to make any revision to this contract that it finds just and equitable in the circumstances or to terminate this contract at a date and on terms to be fixed."]

18. Costs

The costs of, and incidental to, the incorporation of the JVC shall be borne and paid by the JVC. Each party shall (unless otherwise agreed) bear its own costs incurred in the preparation, execution and performance of this contract.

19. No partnership or agency

Nothing in this contract shall (i) be deemed to constitute a partnership in law between the Parties, (ii) constitute either party the agent of the other for any purpose or (iii) entitle either party to commit or bind the other (or any member of its respective group) in any manner.

20. Assignment and subcontracting

20.1 This contract is personal to the Parties and neither party shall without the prior written approval of the other:

20.1.1 Assign, mortgage, charge or otherwise transfer or deal in, or create any trust over, any of its rights; or

20.1.2 Subcontract or otherwise delegate the whole or any part of its rights or obligations under this contract to another person.

21. Notices

21.1 Any notice under this contract shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party as specified in Article 21.2 below, in a manner that ensures receipt of the notice can be proved.

21.2 For the purposes of Article 21.1, notification details are the following, unless other details have been duly notified in accordance with this Article:

21.1.1 ABC: *[specify details]*;

21.1.2 XYZ: *[specify details]*.

22. Entire agreement/variations

22.1 This contract *[add where appropriate: “And any other contracts entered into on Closing pursuant to Article 4”]* sets out the entire contract between the Parties with respect to the JVC. Neither party has entered into this contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this contract. This Article shall not exclude any liability for fraudulent misrepresentation. *[Option, add where appropriate: “This contract supersedes [the Confidentiality Undertaking/any Heads of Agreement or Memorandum of Understanding]”.]*

22.2 This contract may not be varied except by agreement in writing between the Parties *[Option, where the option in Article 17.4 (reference to court/tribunal) has been included, add to previous sentence: “Or in accordance with Article 17.4”]*.

23. Effect of invalid or unenforceable provisions

If any provision of this contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this contract shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that (in the absence of the provision found to be null and void) the Parties would not have concluded this contract. The Parties shall use all reasonable efforts to replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

24. Dispute resolution procedure

24.1 If a dispute arises out of this contract, the Parties shall seek to resolve it on an amicable basis. They shall consider the appointment of a mediator to assist in that resolution. No party shall commence legal or arbitration proceedings unless 30 days' notice has been given to the other party.

24.2 Any dispute, controversy or claim arising out of or relating to this contract (including its conclusion, interpretation, performance, breach, termination or invalidity) shall be finally settled under the rules of *[specify the arbitration institution]* by *[specify the number of arbitrators, e.g. sole arbitrator, three arbitrators]* appointed in accordance with the said rules. The place of arbitration shall be *[specify]*. The language of the arbitration shall be *[specify]*.

[The following are alternatives to a specified arbitral institution under Article 24.2:

Alternative 1: Ad hoc arbitration

“24.2 Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of UNCITRAL [specify other rules] by [specify the number of arbitrators, e.g. sole arbitrator, three arbitrators] appointed by [specify name of appointing institution or person]. The place of arbitration shall be [specify]. The language of the arbitration shall be [specify].”]

[Alternative 2: State courts

“24.2 Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of (specify place and country) which will have exclusive jurisdiction.”]

25. Applicable law

[Specify national law] law shall apply to this contract.

SIGNATURES OF THE PARTIES

Signed for and on behalf of ABC

Signatory:

Date:

Signed for and on behalf of XYZ

Signatory:

Date: