

# Joint Venture Shareholders' Agreement

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[Party 1]  
[Party 2]

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Drafted by Solicitors

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**THIS AGREEMENT** is dated [DATE]

## **Parties**

- (1) [COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**X**).
- (2) [COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Y**).

## **Background**

- (A) X and Y each hold one ordinary share of [£1] in a newly formed company incorporated in England and Wales with company number [NUMBER] and whose registered office is at [REGISTERED OFFICE ADDRESS] (**JVC**).
- (B) The JVC shall carry on business in accordance with the terms and conditions of this agreement.
- (C) X and Y shall exercise their rights in relation to the JVC in accordance with the terms and conditions of this agreement.

## **Agreed terms**

### **1. Interpretation**

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Act:** the Companies Act 2006.

**Adequate Procedures:** adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010.

**Articles:** the new articles of association of the JVC in the agreed form to be adopted on or prior to Completion as amended or superseded from time to time.

**Associated Person:** means in relation to a company, a person (including an employee, agent or subsidiary) who performs services for or on that company's behalf.

**Board:** the board of directors of the JVC as constituted from time to time.

**Business:** has the meaning given in clause 2.

**Business Day:** any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks are generally open for business.

**Business Plan:** has the meaning given in clause 10.

**Completion:** the completion of the formation of the JVC in accordance with clause 4.

**Completion Date:** has the meaning given in clause 4.2.

**Conditions:** the conditions set out in clause 5.

**Confidential Information:** has the meaning given in clause 23.

**Continuing Shareholder:** has the meaning given in clause 16.5.

**Deadlock Notice:** has the meaning given in clause 14.3.

**Deadlock Resolution Notice:** has the meaning given in clause 15.

**Electronic form:** has the meaning given in section 1168 of the Act.

**Eligible Director:** any Eligible X Director or Eligible Y Director (as the case may be).

**Eligible X Director:** An X Director who would be entitled to vote on the matter at a meeting of the Board (but excluding any X Director whose vote is not to be counted in respect of the particular matter).

**Eligible Y Director:** A Y Director who would be entitled to vote on the matter at a meeting of the Board (but excluding any Y Director whose vote is not to be counted in respect of the particular matter).

**Encumbrance:** includes any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect.

**Expert:** a person appointed in accordance with clause 19 to resolve a matter under this agreement.

**Fair Value:** means the value of any shares determined in accordance with clause 18.

**Financial Year:** in relation to the JVC, means a financial accounting period of 12 months ending on the date given in clause 4.3(i) but, in the first year in which the JVC is formed, means the period starting with the day the JVC is formed and ending on the date given in clause 4.3(i).

**Group:** in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company; and each company in a Group is a member of the Group.

**holding company** and **subsidiary:** mean a "holding company" and "subsidiary" as defined in section 1159 of the Act [and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee].

**Notice of Obligatory Transfer Event:** has the meaning given in clause 18.1.

**Obligatory Transfer Event:** in relation to a party, any event specified in clause 17 that happens to that party.

**Reserved Matters:** the matters listed in the Schedule.

**Shareholders:** the holders of shares in the JVC.

**Tax Act 2010:** the Corporation Tax Act 2010.

**Transfer Notice:** has the meaning given in clause 16.5.

**X Agreement:** the agreement relating to the transfer of the X Business to the JVC executed on [DATE], a copy of which is attached to this agreement for identification.

**X Business:** the business to be transferred to the JVC at Completion under the terms of the X Agreement.

**X Director:** any director appointed to the Board by X.

**X Share:** an ordinary share of £1 in the capital of the JVC designated as an X Share.

**Y Agreement:** the agreement relating to the transfer of the Y Business to the JVC executed on [DATE], a copy of which is attached to this agreement for identification.

**Y Business:** the business to be transferred to the JVC at Completion under the terms of the Y Agreement.

**Y Director:** any director appointed to the Board by Y.

**Y Share:** an ordinary share of £1 in the capital of the JVC designated as a Y Share.

- 1.2 Clause, schedule and paragraph headings do not affect the interpretation of this agreement.
- 1.3 A reference to a clause or a schedule is a reference to a clause of, or schedule to, this agreement. A reference to a paragraph is to a paragraph of the relevant schedule.
- 1.4 A **person** includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 All warranties, representations, agreements and obligations expressed to be given or entered into by more than one person are given or entered into jointly and severally by the persons concerned.
- 1.8 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes but no other electronic form, save for the purposes of clause 6.4 to clause 6.10, where a reference to **writing** or **written** includes electronic forms and the sending or supply of notices in electronic form.

- 1.10 Documents in **agreed form** are documents in the form agreed by the parties to this agreement and initialled by them or on their behalf for identification.
- 1.11 A reference in this agreement to a document is a reference to the document whether in paper or electronic form.
- 1.12 A reference in this agreement to **other documents referred to in this agreement** is a reference to the following documents [SPECIFY RELEVANT DOCUMENTS OR DELETE THIS SUBCLAUSE].
- 1.13 Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words "without limitation" following them.
- 1.14 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.15 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.16 References to times of day are, unless the context requires otherwise, to London time and references to a day are to a period of 24 hours running from midnight on the previous day.

## **2. The Business of the JVC**

- 2.1 The business of the JVC is [BUSINESS OF THE JVC].
- 2.2 Each party shall use its reasonable endeavours to promote and develop the business of the JVC to the best advantage of the JVC.

## **3. Period to Completion**

- 3.1 The parties shall procure that prior to Completion and except as required by clause 4, the JVC shall not carry on any trade or business or be engaged in any activities of any sort nor have any assets or liabilities.
- 3.2 Each of X and Y undertake to the other that until Completion, the X Business and the Y Business respectively shall be maintained and conducted in the usual course of business without any material interruption or alteration in the nature, scope or manner of the business and so as to maintain the same as a going concern.

## **4. Completion**

- 4.1 Completion shall take place at [TIME] on the Completion Date at:
- (a) the offices of [NAME OF PARTY]; or

(b) any other place agreed in writing by the parties.

4.2 Completion Date means [DATE] but if the Conditions have not been satisfied or waived in accordance with clause 5 (conditions) on or before that date means:

- (a) the second Business Day after they are all satisfied or waived; or
- (b) any other date agreed in writing by the parties.

4.3 At Completion the parties shall procure that such shareholder and board meetings of the JVC are held as may be necessary to:

- (a) re-designate the share held in the JVC by X as an X Share and the share held in the JVC by Y as a Y Share;
- (b) adopt the Articles in the agreed form;
- (c) change the JVC's name to [NAME];
- (d) appoint [NAME(S)] as X director[s] and [NAME(S)] as Y director[s] and [NAME] as chairman. [NAME] shall be Managing Director and [NAME] shall be Finance Director;
- (e) appoint [NAME] as the secretary of the JVC;
- (f) resolve that the registered office of the JVC shall be at [ADDRESS];
- (g) appoint [NAME] as the auditors of the JVC;
- (h) appoint [NAME] as the principal bankers to the JVC; and
- (i) resolve that the JVC's Financial Year shall end on [DATE] in each year.

4.4 At Completion:

- (a) the parties shall procure that the JVC shall issue credited as fully paid [NUMBER] X Shares to X and enter X in the register of members of the JVC as the holder of such X Shares and issue a share certificate to X in respect of all such shares; and
- (b) in consideration for the issue of X Shares, X shall transfer or procure the transfer of the X Business to the JVC in accordance with the terms of the X Agreement and pay [AMOUNT] by [AGREED METHOD OF PAYMENT] to the JVC.

4.5 At Completion:

- (a) the parties shall procure that the JVC shall issue credited as fully paid [NUMBER] Y Shares to Y and enter Y in the register of members of the JVC as the holder of such Y Shares and issue a share certificate to Y in respect of all such shares; and
- (b) in consideration for the issue of Y Shares, Y shall transfer or procure the transfer of the Y Business to the JVC in accordance with the terms of the Y Agreement [and pay [AMOUNT] by [AGREED METHOD OF PAYMENT] to the JVC.

4.6 At Completion the parties shall adopt the Business Plan that has been prepared for the Financial Year and which is in agreed form.

4.7 At Completion the parties shall procure that the following agreements are executed in the agreed form:

- (a) [DETAILS OF ANY SERVICES AGREEMENTS WITH DIRECTORS, DISTRIBUTORSHIP AGREEMENTS, IP LICENCES ETC].

4.8 The parties waive, or agree to procure the waiver of, any rights or restrictions which may exist in the articles of association of the JVC or otherwise which might prevent the allotment and issue of the X Shares and Y Shares pursuant to clause 4.4 and clause 4.5.

## **5. Conditions**

5.1 Completion is conditional on the satisfaction or waiver of the following Conditions:

- (a) where both parties are satisfied (whether or not as a result of receiving confirmation to this effect from the European Commission) that the JVC does not constitute a concentration having a Community dimension within the meaning of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, as amended [or any subsequent legislation] then:
  - (i) both parties are satisfied (whether or not as a result of receiving confirmation from the Office of Fair Trading) that the JVC does not constitute a relevant merger situation within the meaning of part 3 of the Enterprise Act 2002;
  - (ii) both parties have received confirmation in terms satisfactory to them that the JVC shall not be referred to the Competition Commission for further investigation in accordance with part 3 of the Enterprise Act 2002;
- (b) where the JVC does constitute a concentration with a Community dimension within the meaning of Council Regulation 139/2004/EC, as amended then the parties have received confirmation from the European Commission in terms satisfactory to them that despite the JVC constituting such a concentration, the Commission has decided not to oppose the concentration and declared it to be compatible with the Internal Market.
- (c) both parties having passed requisite resolutions at general meetings approving this agreement.
- (d) any third party consents having been obtained.
- (e) no person having threatened or commenced any proceedings to prohibit or otherwise challenge the transaction.
- (f) no legislation or regulation being proposed or passed that would prohibit or materially restrict the implementation of the agreement or the participation in the JVC of either party.
- (g) the X Agreement becoming unconditional (save in relation to any condition making completion of that agreement conditional upon completion of this agreement) and not being terminated in accordance with its terms.

- (h) the Y Agreement becoming unconditional (save in relation to any condition making completion of that agreement conditional upon completion of this agreement) and not being terminated in accordance with its terms.
- (i) there not having occurred any material adverse change in the business, operations, assets, position (financial, trading or otherwise), profits of the X Business, taken as a whole, or any event or circumstance that may result in such material adverse change.
- (j) there not having occurred any material adverse change in the business, operations, assets, position (financial, trading or otherwise), profits of the Y Business, taken as a whole, or any event or circumstance that may result in such material adverse change.
- (k) [INSERT ANY OTHER SPECIFIC CONDITIONS OR DELETE THIS SUBCLAUSE]

5.2 X and Y shall use all reasonable endeavours to procure that the Conditions are satisfied as soon as practicable and in any event no later than 6.00 pm:

- (a) on [DATE ON WHICH PARTIES EXPECT ALL CONDITIONS TO BE SATISFIED];  
or
- (b) where a later date has been agreed in writing by X and Y, on that date.

5.3 A Condition may only be waived by both parties in writing.

5.4 If at any time either party becomes aware of a fact or circumstance that might prevent a Condition being satisfied, it shall immediately inform the other party.

5.5 If the Conditions have not been satisfied or waived by 6.00 pm on [BACK STOP DATE] this agreement shall cease to have effect immediately after that time on that date except for:

- (a) Clause 1 (interpretation);
- (b) this clause (conditions);
- (c) Clause 23 (confidentiality);
- (d) Clause 25 (whole agreement);
- (e) Clause 27 (variation and waiver);
- (f) Clause 28 (costs);
- (g) Clause 32 (notice);
- (h) Clause 34 (language);
- (i) Clause 35 (severance);
- (j) Clause 39 (governing law and jurisdiction);
- (k) any rights or liabilities that have accrued under this agreement; and
- (l) [INCLUDE OTHER RELEVANT PROVISIONS].

## **6. Directors and management**

- 6.1 The Board has responsibility for the supervision and management of the JVC and its business but shall obtain the prior written approval of the holders of the X Shares and the Y Shares before taking any decision in relation to any of the Reserved Matters.
- 6.2 There shall be a minimum number of [TWO] directors on the Board made up of an equal number of X Directors and Y Directors.
- 6.3 The post of chairman shall be held in alternate years by an X Director or by a Y Director. The chairman shall not have a casting vote. If the chairman for the time being is unable to attend any meeting of the Board the party who appointed him shall be entitled to appoint another Director appointed by it to act as chairman at the meeting.
- 6.4 A party may nominate a director, and remove a director whom it nominated, by giving notice to the JVC and the other party. The appointment or removal takes effect on the date on which the notice is received by the JVC or, if a later date is given in the notice, on that date.
- 6.5 The party removing a director shall indemnify and keep indemnified the JVC against any claim connected with the director's removal from office.
- 6.6 The parties intend there to be a meeting of directors at least [once a month] to be held at [SPECIFY LOCATION].
- 6.7 A director may, and at the request of a director, [the secretary] shall, call a meeting of directors.
- 6.8 The parties shall ensure that at least seven Business Days' notice of a meeting of directors is given to all directors entitled to receive notice accompanied by:
  - (a) an agenda specifying in reasonable detail the matters to be raised at the meeting; and
  - (b) copies of any papers to be discussed at the meeting [or the committee meeting].
- 6.9 A shorter period of notice of a meeting of directors may be given if at least one X Director and one Y Director agree in writing.
- 6.10 Matters not on the agenda, or business conducted in relation to those matters, may not be raised at a meeting of directors unless all the directors [present] agree in writing.
- 6.11 The quorum at any meeting of directors (including adjourned meetings) is one Eligible X Director (or his alternate) and one Eligible Y Director (or his alternate).

- 6.12 No business shall be conducted at any meeting of directors unless a quorum is present at the beginning of the meeting and at the time when there is to be voting on any business.
- 6.13 If a quorum is not present within 30 minutes after the time specified for a directors' meeting in the notice of the meeting then it shall be adjourned for [two] Business Days at the same time and place.
- 6.14 A meeting of directors shall be adjourned to another time or date at the request of all the X Directors or all the Y Directors present at the meeting. No business may be conducted at a meeting after such a request has been made. No more than one such adjournment may be made in respect of a meeting.
- 6.15 Meetings of directors shall make decisions by passing resolutions. A resolution is passed if:
- (a) more votes are cast for it than against it; and
  - (b) at least one Eligible X Director and one Eligible Y Director have voted in favour of it.
- 6.16 Except as provided by clause 6.17, at a meeting of directors, each director has one vote.
- 6.17 If the parties are not represented at any meeting of the Board by an equal number of Eligible X Directors and Eligible Y Directors (whether present in person or by alternate), then one of the Eligible Directors so nominated by the party which is represented by fewer Eligible Directors shall be entitled at that meeting to such additional vote or votes as shall result in the Eligible Directors so present representing each party having in aggregate an equal number of votes.

## **7. Finance for the JVC**

- 7.1 The parties envisage that the JVC shall be self-financed from the cash flow of the X Business and Y Business [and [ANY CASH CONTRIBUTION MADE BY EITHER PARTY]].
- 7.2 If it needs any additional initial finance, the JVC shall seek a loan from its principal bankers.
- 7.3 There is no obligation on the parties to provide any further finance to the JVC but, if they do so, the parties shall each provide the same amount on the same terms unless they agree otherwise in writing.
- 7.4 If the parties agree to increase the share capital of the JVC, half of the shares issued shall be X Shares, and issued to X, and half shall be Y Shares and issued to Y unless they agree otherwise in writing.

## **8. Restrictions on the parties**

- 8.1 Neither party nor any of its subsidiaries shall (unless otherwise agreed in writing by the other party and the JVC), in [SPECIFY TERRITORY] during the times specified below, carry on or be employed, engaged or interested in any business which would be in competition with any part of the Business of the JVC or any of its subsidiaries (as described in clause 2.1), including any developments in the Business after the date of this agreement. The times during which the restrictions apply are:
- (a) any time when the party in question is a Shareholder; and
  - (b) for a period of [two] years after the party in question ceases to be a Shareholder.
- 8.2 Neither party nor any of its subsidiaries shall, in the same area of business in which the JVC operates and during the times specified below, deal with or seek the custom of any person that is, or was within the previous 12 months, a client or customer of the JVC or any of its subsidiaries or, where the party is no longer a Shareholder, any person that was a client or customer at any time during the period of 12 months immediately preceding the party in question ceasing to be a Shareholder. The times during which the restrictions apply are:
- (a) any time when the party in question is a Shareholder; and
  - (b) for a period of [two] years after the party in question ceases to be a Shareholder.
- 8.3 Neither party nor any of its subsidiaries shall, during the times specified below, offer employment to, enter into a contract for the services of, or attempt to solicit or seek to entice away from the JVC or any of its subsidiaries any individual who is at the time of the offer, or attempt, a director, officer or employee with the JVC or any of its subsidiaries or procure or facilitate the making of any such offer or attempt by any other person. The times during which the restrictions apply are:
- (a) any time when the party in question is a Shareholder; and
  - (b) for a period of [two] years after the party in question ceases to be a Shareholder.
- 8.4 Neither party nor any of its subsidiaries shall, during the times specified below, solicit or endeavour to entice away from the JVC or any of its subsidiaries any supplier who supplies, or has supplied within the previous 12 months, goods or services to the JVC or any of its subsidiaries or, where the party is no longer a Shareholder, any supplier who has supplied goods or services to the JVC or any of its subsidiaries at any time during the period of 12 months immediately preceding the party in question ceasing to be a Shareholder if that solicitation or enticement causes or would cause such supplier to cease supplying, or materially reduce its supply of, those goods or services to the JVC or any of its subsidiaries. The times during which the restrictions apply are:
- (a) any time when the party in question is a Shareholder; and
  - (b) for a period of [two] years after the party in question ceases to be a Shareholder.
- 8.5 The undertakings in this clause are given by each party to the other and to the JVC and its subsidiaries and apply to actions carried out by each party (or any of its subsidiaries) in any

capacity and whether directly or indirectly, on the party's (or subsidiary's) own behalf, on behalf of any other person or jointly with any other person.

8.6 Nothing in this clause prevents a party or any of its subsidiaries:

- (a) from holding for investment purposes only any units of any authorised unit trust; or
- (b) from holding for investment purposes only not more than [PERCENTAGE] per cent of any class of shares or securities of any company traded on the London Stock Exchange.

8.7 Each of the covenants in this clause is considered fair and reasonable by the parties. If any such restriction shall be found to be unenforceable but would be valid if any part of it were deleted or the period or area of application reduced, the restriction shall apply with such modifications as may be necessary to make it valid and effective.

8.8 Each party shall procure that its subsidiaries comply with the terms of this clause.

## **9. Anti-corruption**

9.1 Each party undertakes to the other party that:

- (a) it will not, and will procure that the JVC will not, [in the course of the operation of the Business, engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
- (b) it has and will maintain in place, and will procure that the JVC has and will maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010; and
- (c) from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under clause 9.1(a) and clause 9.1(b) and will provide any information reasonably requested by the other party in support of such compliance.

9.2 Breach of any of the undertakings in this clause shall be deemed to be a material breach of the agreement for the purpose of clause 17.

## **10. The Business Plan**

10.1 The Business Plan is an annual business plan for the JVC prepared by the JVC and it shall include in relation to the Financial Year to which it relates:

- (a) a cashflow statement giving:
  - (i) an estimate of the working capital requirements; and
  - (ii) an indication of the amount (if any) that it is considered prudent to retain, for the purpose of meeting those requirements, out of those profits of the previous Financial Year that are available for distribution to shareholders;

- (b) a monthly projected profit and loss account;
- (c) an operating budget (including capital expenditure requirements) and balance sheet forecast;
- (d) a management report giving business objectives for the year; and
- (e) a financial report which shall include an analysis of the estimated results of the JVC for the previous Financial Year compared with the Business Plan for that year, identifying variations in sales revenues, costs and other material items.

10.2 The Business Plan for the Financial Year in which the JVC is formed shall be in agreed form and adopted by the parties at Completion.

10.3 The Business Plan for every other Financial Year shall be:

- (a) prepared by the Board within 45 days of the end of the preceding Financial Year (the first day being the first day of the Financial Year to which the plan relates); and
- (b) adopted and approved by the parties by agreement in writing or at a general meeting of Shareholders as soon as possible after it has been prepared.

## **11. Accounting**

11.1 The JVC shall at all times maintain accurate and complete accounting and other financial records including all corporation tax computations and related documents and correspondence with HM Revenue & Customs in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable in the United Kingdom.

11.2 Each party and its authorised representatives shall be allowed access at all reasonable times to examine the books and records of the JVC.

11.3 The JVC shall supply each party with the financial and other information necessary to keep the party informed about how effectively the Business of the JVC is performing and in particular shall supply each party with:

- (a) a copy of each year's Business Plan for approval in accordance with clause 10.3;
- (b) a copy of the audited accounts of the JVC prepared in accordance with the laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom, within [three] months of the end of the year to which the audited accounts relate; and
- (c) monthly management accounts of the JVC to be supplied within [NUMBER] days of the end of the month to which they relate (the first day being the first day of the following month) and the accounts shall include a profit and loss account, a balance sheet and a cashflow statement.

- 11.4 Each party shall be entitled to require the JVC, and the JVC shall as soon as possible comply with such a request, to provide any documents, information and correspondence necessary (at the cost of the party making the request) to enable the relevant party to comply with filing, elections, returns or any other requirements of HM Revenue & Customs or of any other revenue or tax authority.

## **12. Dividend policy**

- 12.1 [Subject to the requirements of the Act, and unless the parties agree otherwise in relation to any particular Financial Year, the JVC shall distribute by way of dividend at least [PERCENTAGE]% of the profit of the JVC in relation to each Financial Year but after making all necessary, reasonable and prudent provisions and reserves for taxation, for the repayment of borrowings by the JVC (if any), minority interests and extraordinary items as shown in the audited accounts for that year.]

**OR**

[The parties agree that the JVC shall not declare, pay or make any dividend or other distribution until all loans made to the JVC by the parties have been repaid in full.]

- 12.2 A distribution under this clause in relation to any Financial Year shall be made within six months of the day to which the audited accounts for that year are made up.

## **13. Tax matters**

- 13.1 [Unless the parties otherwise expressly agree in writing, the parties shall procure that all of the JVC's trading losses and all other amounts eligible for relief from taxation shall be carried by the JVC and not surrendered (wholly or partly) to the parties.]

**OR**

[Unless the parties otherwise expressly agree in writing, each party shall co-operate to ensure that, to the extent permitted by law, so far as possible that all of the JVC's trading losses and other amounts eligible for relief from corporation tax under Chapter 4 of Part 5 of the Tax Act 2010 (consortium claims for group relief) shall be surrendered or made available to the parties (or any other company which is a member of its Group and which is entitled to claim group relief pursuant to sections 130, 132, 133 and 153 of the Tax Act 2010) in proportion to the relevant party's interest in the X and Y Shares. For this purpose, the following provisions shall apply:

- (a) each party shall give and procure that the JVC gives its consent, and each party shall take and procure that the JVC takes, such other action as may reasonably be required to ensure that such surrenders are effectively made within any relevant time limits;
- (b) in respect of each surrender, each party shall make (or shall procure that the relevant claimant company within its Group makes) a payment in respect of the

amount surrendered (as referred to in section 183 of the Tax Act 2010) within [nine months] of the end of the claim period (within the meaning of section 130(2) of the Tax Act 2010) not later than [14 Business Days] after the delivery of the relevant company's tax return or amended tax return for the relevant claim period;

- (c) the amount of any payment referred to in clause 13.1(b) shall be equal to the sum obtained by multiplying the amount so surrendered by a percentage equal to the effective percentage rate of corporation tax applicable in the United Kingdom to companies generally (excluding, for the avoidance of doubt, the small profits rate as defined in section 18 of the Tax Act 2010) in respect of income profits for the claimant company's claim period (as defined above) the amount of corporation tax saved by the claimant company as a result of the surrender; and
- (d) any such payment made pursuant to clause 13.1(b) shall be subject to return if and to the extent that it is determined that relevant losses or other amounts surrendered are not available for surrender or there is an insufficiency of profits of the claimant company and any such payment shall be adjusted to the extent that it is subsequently found to have been incorrectly calculated.

13.2 Unless the parties otherwise expressly agree in writing, and to the maximum extent permitted by law, each party shall be entitled to surrender (and to procure that any other company which is a member of its Group and which is entitled to consent to a surrender pursuant to sections 130, 132, 133 and 153 of the Tax Act 2010, surrenders) to the JVC, trading losses and other amounts eligible for relief from corporation tax under Chapter 4 of Part 5, of the Tax Act 2010 (in proportion to the relevant party's interest in the X and Y Shares). For this purpose the following provisions shall apply:

- (a) each party shall give and procure that the relevant surrendering company within its Group (if the surrendering company is not a party) gives all consents and each party shall take and procure that the relevant surrendering company within its Group (if the surrendering company is not a party) takes such other action as may reasonably be required to ensure that such surrenders are effectively made within any relevant time limits;
- (b) in respect of any such surrender, each party shall procure that the JVC shall make a payment to the relevant surrendering company as respects the amount surrendered (as referred to in section 183 of the Tax Act 2010) within [nine months] of the end of the claim period (within the meaning of section 130(2) of the Tax Act 2010) not later than [14 Business Days] after the delivery of the relevant company's tax return or amended tax return for the relevant claim period;
- (c) the amount of any payment referred to in clause 13.2(b) shall be equal to the amount of corporation tax saved by the claimant company as a result of the surrender; and
- (d) any such payment made pursuant to clause 13.2(b) shall be subject to return if, and to the extent, that it is determined that relevant losses or other amounts surrendered are not available for surrender or there is an insufficiency of profits of the claimant company and any such payment shall be adjusted to the extent that it is subsequently found to have been incorrectly calculated.

## **14. Deadlock**

- 14.1 There is a deadlock if a resolution is proposed and one of the following applies:
- (a) at a properly convened meeting of Shareholders or of the Board there is no quorum at the meeting and no quorum at the meeting when it is reconvened following an adjournment;
  - (b) on a directors' resolution, all Eligible X Directors or all Eligible Y Directors vote against or abstain from voting on the resolution (unless one of their number proposed the resolution); or
  - (c) on a shareholders' resolution, all the Shareholders of the X Shares or all the Shareholders of the Y Shares vote against or abstain from voting on the resolution (unless one of their number proposed the resolution).
- 14.2 There is no deadlock if a meeting, or adjourned meeting, is inquorate because the person who proposed the resolution does not attend.
- 14.3 Either party may within 28 days of the meeting at which the deadlock arises or within 28 days of the date of the resolution in respect of which the deadlock arises (as the case may be) (the first day being the day after the meeting or the date of the resolution, as the case may be) serve notice on the other party (**Deadlock Notice**):
- (a) stating that in its opinion a deadlock has occurred; and
  - (b) identifying the matter giving rise to the deadlock.
- 14.4 The parties undertake that they shall:
- (a) on the date of service of the Deadlock Notice, refer the matter giving rise to the deadlock to the chairman of the holding company of each party's Group for resolution; and
  - (b) use all reasonable endeavours in good faith to resolve the dispute.
- 14.5 If a deadlock occurs before the first anniversary of this agreement and cannot be resolved in accordance with this clause 14 within [14] days from the date the deadlock matter is referred to the chairmen under clause 14.4, either party may transfer its shares in accordance with clause 16 at a price determined by an Expert to be Fair Value for the shares in accordance with clause 18.4 to clause 18.6 (save that for the purposes of clause 18.4(c) the date of sale shall be the date the deadlock occurred).

## **15. Resolution of deadlock**

- 15.1 A Deadlock Resolution Notice is a notice served by one party on the other in which the server offers, at the price for each share specified in the notice (in cash and not on deferred terms), either to sell all its shares in the JVC to the recipient of the notice or to buy all the recipient's shares in the JVC.

- 15.2 A Deadlock Resolution Notice:
- (a) may not be revoked; and
  - (b) may not be served before the first anniversary of the date of this agreement.
- 15.3 If the parties are unable to resolve a deadlock within [14] days from the date the deadlock matter is referred to the chairmen under clause 14.4, then either party may within 28 days of the expiry of the 14 day period (the first day is the day after the day of expiry) serve a Deadlock Resolution Notice on the other.
- 15.4 The recipient of a Deadlock Resolution Notice may choose to do either of the following, at the price for each share specified in the Deadlock Resolution Notice, by serving a counter-notice within 28 days of receiving the Deadlock Resolution Notice (the first day is the day after the day of receipt):
- (a) buy all the shares in the JVC of the server of the Deadlock Resolution Notice; or
  - (b) sell all its shares in the JVC to the server of the Deadlock Resolution Notice.
- 15.5 If no counter-notice is served within the period of 28 days available, the recipient of the Deadlock Resolution Notice is deemed to have accepted the offer in the Deadlock Resolution Notice at the expiry of that period.
- 15.6 The service of a counter-notice, or deemed acceptance of the Deadlock Resolution Notice, shall bind the parties to buy and sell the shares (as the case may be) on the terms set out in clause 21.
- 15.7 If both parties serve a Deadlock Resolution Notice under clause 15.3, the Deadlock Resolution Notice containing the highest price per share shall be effective.
- 15.8 If at the end of the 28 day period specified in clause 15.3 neither party has served a Deadlock Resolution Notice, either party may elect by written notice served on the other party for the JVC to be wound up in accordance with clause 20.
- 15.9 References in this clause to shares held by a party in the JVC are to all the shares in the JVC held by that party and not to some only of those shares.

## **16. Transfer of shares**

- 16.1 No party shall transfer, grant any security interest over, or otherwise dispose of or give any person any rights in or over any share or interest in any share in the JVC unless it is permitted or required under this agreement and carried out in accordance with the terms of this agreement. If a party transfers (or purports to transfer) any shares other than in accordance with this clause, it shall be deemed to have served a Transfer Notice.

- 16.2 A party may do anything prohibited by this clause if the other party has consented to it in writing.
- 16.3 A party may transfer all of its shares in the JVC to a member of its Group without following the steps in this clause if, at the time of the transfer and in relation to all the shares being transferred, the transferring party:
- (a) procures that the transferee executes and delivers to the other party a deed of adherence in the form annexed to this agreement agreeing to be bound by the terms of this agreement as if it were a party to it; and
  - (b) guarantees all the obligations and any liabilities of the transferee under that agreement.
- 16.4 A party may transfer all of its shares in the JVC to any person for cash and not on deferred terms if the party follows the steps in this clause.
- 16.5 The party wishing to transfer its shares (**Seller**) shall give an irrevocable notice (**Transfer Notice**) to the other party (**Continuing Shareholder**) of the details of the proposed transfer including:
- (a) if it wishes to sell its shares to a third party, the name of the proposed transferee; and
  - (b) the price (in cash) at which it wishes to transfer its shares.
- 16.6 If the Continuing Shareholder gives notice to the Seller within [28] days of receiving the Transfer Notice (the first day being the day after it receives the Transfer Notice) that it wishes to buy all the Seller's shares in the JVC, the Continuing Shareholder shall have the right to do so at the price specified in the Transfer Notice.
- 16.7 The Continuing Shareholder is bound to buy all the Seller's shares when it gives notice to the Seller under clause 16.6 that it wishes to do so. The sale and purchase of shares shall take place on the terms set out in clause 21.
- 16.8 If at the expiry of the period specified in clause 16.6, the Continuing Shareholder has not notified the Seller that it wants to buy the shares, the Seller may transfer all its shares in the JVC to the buyer identified in the Transfer Notice at a price not less than the price specified in that notice provided that it does so within [two] months of the expiry of the period specified in clause 16.6.
- 16.9 Each party undertakes (in respect of the shares that it holds) to give, and to use its reasonable efforts to procure that shareholders in its Group give, the approvals required for the transfer of shares under this clause.
- 16.10 The Seller shall procure that, in relation to the shares being sold in the JVC, any buyer of the shares who is not already a Shareholder and therefore a party to this agreement, shall enter into a shareholders' agreement on completion of the sale of such shares with the

Continuing Shareholder on the same terms as apply to the Seller in relation to those shares before completion.

- 16.11 References in this clause to shares held by a party in the JVC are to all the shares in the JVC held by that party or any member of its Group and not to some only of those shares.

## **17. Obligatory Transfer Event**

If anything mentioned in this clause happens to a party it is an Obligatory Transfer Event in respect of that party and the provisions of clause 18 apply:

- (a) the passing of a resolution for the liquidation of the party or any other company in the party's Group other than a solvent liquidation for the purpose of the reconstruction or amalgamation of all or part of the party's Group (the structure of which has been previously approved by the other party in writing) in which a new company assumes (and is capable of assuming) all the obligations of the party or other company in the party's Group; or
- (b) the presentation at court by any competent person of a petition for the winding up of the party or any other company in the party's Group and which has not been withdrawn or dismissed within [seven] days of such presentation; or
- (c) a change in control (as 'control' is defined in section 1124 of the Tax Act 2010) of the party; or
- (d) the issue at court by any competent person of a notice of intention to appoint an administrator to the party or any other company in the party's Group, a notice of appointment of an administrator to the party or any other company in the party's Group or an application for an administration order in respect of the party or any other company in the party's Group; or
- (e) any step is taken by any person to appoint a receiver, administrative receiver or manager in respect of the whole or a substantial part of the assets or undertaking of the party or any other company in the party's Group; or
- (f) the party or any other company in the party's Group being unable to pay its debts as they fall due for the purposes of section 123 of the Insolvency Act 1986; or
- (g) the party or any other company in the party's Group entering into a composition or arrangement with its creditors; or
- (h) any chargee taking any step to enforcing any charge created over any shares held by the party in the Company (other than by the appointment of a receiver, administrative receiver or manager); or
- (i) if a process has been instituted that could lead to the party being dissolved and its assets being distributed among the party's creditors, shareholders or other contributors; or
- (j) the party ceasing to carry on its business or substantially all of its business; or
- (k) the party commits a material or persistent breach of this agreement which if capable of remedy has not been so remedied within [20] Business Days of the other party requiring such remedy; or

- (l) in the case of the Obligatory Transfer Events set out in sub-clauses (a), (b), (d) or (e) above, any competent person takes any analogous step in any jurisdiction in which the relevant party carries on business; or

## **18. Transfer following Obligatory Transfer Event**

- 18.1 Where an Obligatory Transfer Event happens to a party (in this clause the **Seller**) it shall give notice of it to the other party (in this clause the **Buyer**) as soon as possible and, if it does not, it is deemed to have given such notice on the date on which the Buyer becomes aware of such Obligatory Transfer Event (**Notice of Obligatory Transfer Event**).
- 18.2 As soon as practicable after service, or deemed service, of the Notice of Obligatory Transfer Event, the parties shall appoint an Expert to determine the Fair Value of the Seller's shares in the JVC (**Sale Shares**).
- 18.3 The Buyer has the right, within [14] days of receiving notification of the Fair Value determined by the Expert (the first day being the day after the Buyer receives the Fair Value notification) to serve a notice on the Seller to buy all of the Sale Shares at the Fair Value.
- 18.4 In this clause the Fair Value of the Sale Shares shall be the value that the Expert certifies to be the fair market value in his opinion based on the following assumptions:
  - (a) the value of the shares in question is that proportion of the fair market value of the entire issued share capital of the JVC that the Sale Shares bear to the then total issued share capital of the JVC (with no premium or discount for the size of the Seller's shareholding or for the rights or restrictions applying to the shares under this agreement or the Articles);
  - (b) the sale is between a willing buyer and a willing seller on the open market;
  - (c) the sale is taking place on the date that the Obligatory Transfer Event occurred;
  - (d) if the JVC is then carrying on its Business as a going concern, on the assumption that it shall continue to do so;
  - (e) the shares are sold free of all Encumbrances; and
  - (f) to take account of any other factors that the Expert reasonably believes should be taken into account.
- 18.5 If any problem arises in applying any of the assumptions set out in clause 18.4, the Expert shall resolve the problem in whatever manner he shall, in his absolute discretion, think fit.
- 18.6 The Expert shall be requested to determine the Fair Value of the Sale Shares within [14] Business Days of his appointment and to notify the Buyer and Seller in writing of his determination.

18.7 The service of a notice to buy under clause 18.3 shall bind the parties to buy and sell the shares, as the case may be, in accordance with clause 21.

18.8 If at the end of the period specified in clause 18.3 the Buyer has not served a notice to buy the Sale Shares, the Buyer may elect by written notice served on the Seller for the JVC to be wound up in accordance with clause 20.

## **19. Expert**

19.1 An Expert is a person appointed in accordance with this clause to resolve a matter under this agreement.

19.2 The parties shall endeavour to agree on the identity of an independent Expert and such independent Expert shall be jointly appointed by the parties.

19.3 If the parties are unable to agree on the identity of an Expert within [five] Business Days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the then President of the Institute of Chartered Accountants in England and Wales to appoint an Expert who is an accountant of repute with experience in the valuation of private companies limited by shares.

19.4 Subject to clause 18.6, the Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.

19.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

(a) either party may apply to the then President of the Institute of Chartered Accountants in England and Wales to discharge the Expert and to appoint a replacement Expert with the required expertise; and

(b) this clause applies in relation to the new Expert as if he were the first Expert appointed.

19.6 All matters under this clause shall be conducted, and the Expert's decision shall be written, in the English language.

19.7 The parties are entitled to make submissions to the Expert including oral submissions and shall provide (or procure that others including the JVC provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision, subject to the Expert agreeing to give such confidentiality undertakings as the parties may reasonably require.

19.8 To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he

considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.

- 19.9 Each party shall with reasonable promptness supply (and procure that others including the JVC supply) each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause.
- 19.10 The Expert shall act as an expert and not as an arbitrator. The Expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud.
- 19.11 Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in such other proportions as the Expert shall direct.

## **20. Termination and liquidation**

- 20.1 Except for the provisions which this clause states shall continue in full force after termination, this agreement shall terminate:
- (a) when one party ceases to hold any shares in the JVC;
  - (b) when a resolution is passed by shareholders or creditors, or an order made by a court or other competent body or person instituting a process that shall lead to the JVC being wound up and its assets being distributed among the JVC's creditors, shareholders or other contributors; or
  - (c) [INCLUDE ANY OTHER EVENTS THAT SHOULD LEAD TO TERMINATION].
- 20.2 The following provisions of this agreement remain in full force after termination:
- (a) Clause 1 (interpretation);
  - (b) Clause 8 (restrictions on the parties);
  - (c) Clause 13 (tax matters);
  - (d) this clause;
  - (e) Clause 23 (confidentiality);
  - (f) Clause 25 (whole agreement);
  - (g) Clause 27 (variation and waiver);
  - (h) Clause 28 (costs);
  - (i) Clause 32 (notice);
  - (j) Clause 34 (language);
  - (k) Clause 35 (severance);

(l) Clause 39 (governing law and jurisdiction).

- 20.3 Termination of this agreement shall not affect any rights or liabilities that the parties have accrued under it.
- 20.4 If this agreement terminates (other than by reason of a transfer of shares pursuant to clause 16.3) each party shall, if requested by the other, procure that the name of the JVC is changed to avoid confusion with the name of the party making the request.
- 20.5 Where the JVC is to be wound up and its assets distributed, the parties shall agree a suitable basis for dealing with the interests and assets of the JVC and shall endeavour to ensure that:
- (a) all existing contracts of the JVC are performed to the extent that there are sufficient resources;
  - (b) the JVC shall not enter into any new contractual obligations;
  - (c) the JVC is dissolved and its assets are distributed as soon as practical;
  - (d) any assets transferred to the JVC pursuant to the X Agreement shall be returned to X or as X directs and any assets transferred to the JVC pursuant to the Y Agreement shall be returned to Y or as Y directs; and
  - (e) any other proprietary information or intellectual property rights belonging to or originating from a party shall be returned to it by the other party or the JVC and all such proprietary information or intellectual property rights shall be erased from the computer systems of the JVC and the party who is returning it.
- 20.6 Where any party is required by any law, regulation or governmental or regulatory authority to retain any proprietary information (or copies of such information) of the other party or the JVC, it shall notify the other party in writing of such retention giving details of the information that it has been required to retain.

## **21. Completion of the sale and purchase of shares in the JVC**

- 21.1 This clause applies only to transfers between the parties pursuant to clause 15 (resolution of deadlock), clause 16 (transfer of shares) and clause 18 (transfer following obligatory transfer event).
- 21.2 The sale of shares under this agreement shall be completed at the offices of [NAME OF PARTY] on the [NUMBER] Business Day:
- (a) after the deemed acceptance of a Deadlock Resolution Notice under clause 15.5 or receipt of a counter-notice to a Deadlock Resolution Notice under clause 15.4; or
  - (b) after the Continuing Shareholder (having received a Transfer Notice) gives notice to the Seller that it wishes to buy all the Seller's shares under clause 16.6; or
  - (c) after service of a notice to buy under clause 18.3.

- 21.3 At completion the party selling the shares shall:
- (a) transfer the shares free from all Encumbrances by way of a duly completed share transfer form to the buyer together with the relevant share certificate and such other documents as the buyer may reasonably require to show good title to the shares or enable it to be registered as the holder of the shares;
  - (b) deliver the resignations of any directors appointed by the selling party to take effect at completion and acknowledging that they have no claims against the JVC;
  - (c) warrant that it has no right to require the JVC to issue it with any share capital or other securities and that no Encumbrance affects any unissued shares or other securities of the JVC;
  - (d) warrant that it is selling the shares with full title guarantee;
  - (e) warrant that no commitment has been given to create an Encumbrance affecting the shares being sold (or any unissued shares or other securities of the JVC) and that no person has claimed any rights in respect thereof;
  - (f) undertake to do all it can, at its own cost, to give the buyer the full legal and beneficial title to the shares; and
  - (g) provide the JVC with a waiver in writing of any rights it may have to be issued with any share capital or other securities in the JVC.
- 21.4 At completion the buying party shall pay the purchase price by [AGREED METHOD OF PAYMENT] to the selling party or its solicitors (who have been irrevocably authorised by the selling party to receive it).
- 21.5 At or before completion the JVC shall repay any loans made by the selling party to the JVC (together with any interest accrued thereon) and the parties shall use their best endeavours to procure that the selling party is released from any guarantees, security arrangements and other obligations that it has given in respect of the JVC and its business.
- 21.6 The parties shall procure the registration (subject to due stamping by the buyer) of the transfer of shares in the JVC pursuant to this clause and each of them consents to such transfer and registration pursuant to this agreement and the Articles.
- 21.7 The shares shall be sold with all rights that attach, or may in the future attach, to them (including the right to receive all dividends and distributions declared, made or paid on or after the events referred to in clause 21.2(a), clause 21.2(b), and clause 21.2(c)).
- 21.8 The party buying the shares is not obliged to complete the purchase of any of the shares being sold unless the purchase of all the shares being sold is completed simultaneously.
- 21.9 If the party selling the shares fails to complete the transfer of shares as required under this clause, the JVC:

- (a) is irrevocably authorised to appoint any person to transfer the shares on the selling party's behalf and to do anything else that the party buying the shares may reasonably require to complete the sale; and
- (b) may receive the purchase price in trust for the party selling the shares, giving a receipt that shall discharge the party buying the shares.

## **22. Status of agreement**

- 22.1 Each party shall, to the extent that it is able to do so, exercise all its voting rights and other powers in relation to the JVC to procure that the provisions of this agreement are properly and promptly observed and given full force and effect according to the spirit and intention of the agreement.
- 22.2 If any provision in the Articles conflicts with any provision of this agreement, this agreement shall prevail as between the parties.
- 22.3 The parties shall, when necessary, exercise their powers of voting and any other rights and powers they have to amend, waive or suspend a conflicting provision in the Articles to the extent necessary to permit the JVC and its business to be administered as provided in this agreement.

## **23. Confidentiality**

- 23.1 In this clause Confidential Information means any information which:
  - (a) either party may have or acquire (whether before or after the date of this agreement) in relation to the customers, suppliers, business, assets or affairs of the JVC (including, without limitation, any information provided pursuant to clause 11);
  - (b) either party or any member of its Group may have or acquire (whether before or after the date of this agreement) in relation to the customers, suppliers, business, assets or affairs of the other party or any member of the other party's Group, as a consequence of the negotiations relating to this agreement or any other agreement or document referred to in this agreement or the performance of the agreement or any other agreement or document referred to in this agreement; or
  - (c) relates to the contents of this agreement (or any agreement or arrangement entered into pursuant to this agreement),

but excludes the information in clause 23.2.

- 23.2 Information is not Confidential Information if:
  - (a) it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this agreement;
  - (b) either party can establish to the reasonable satisfaction of the other party that it found out the information from a source not connected with the other party or its

Group and that the source is not under any obligation of confidence in respect of the information;

- (c) either party can establish to the reasonable satisfaction of the other party that the information was known to the first party before the date of this agreement and that it was not under any obligation of confidence in respect of the information; or
- (d) the parties agree in writing that it is not confidential.

23.3 Each party shall at all times use all reasonable endeavours to keep confidential (and to ensure that its employees, agents, subsidiaries and the employees and agents of such subsidiaries, and the JVC (in respect of information specified in clause 23.1(b) and clause 23.1(c)) shall keep confidential) any Confidential Information and shall not use or disclose any such Confidential Information except:

- (a) to another member of the X Group or Y Group, as the case may be, or to a party's professional advisers where such disclosure is for a purpose related to the operation of this agreement;
- (b) with the written consent of such of the JVC or the party or any member of its Group that the information relates to;
- (c) as may be required by law or by the rules of any recognised stock exchange, or governmental or other regulatory body, when the party concerned shall, if practicable, supply a copy of the required disclosure to the other before it is disclosed and incorporate any amendments or additions reasonably required by the other and which would not thereby prevent the disclosing party from complying with its legal obligations;
- (d) to any tax authority to the extent reasonably required for the purposes of the tax affairs of the party concerned or any member of its Group; or
- (e) if the information comes within the public domain (otherwise than as a result of the breach of this clause 23.3).

23.4 Each party shall inform (and shall use all reasonable endeavours to procure that any subsidiary and the JVC shall inform) any officer, employee or agent or any professional adviser advising it in relation to the matters referred to in this agreement, or to whom it provides Confidential Information, that such information is confidential and shall require them:

- (a) to keep it confidential; and
- (b) not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this agreement).

23.5 Upon termination of this agreement, either party may demand from the other and the JVC the return of any documents containing Confidential Information in relation to the first party by notice in writing whereupon the other party shall (and shall use all reasonable endeavours to ensure that its subsidiaries, and its officers and employees and those of its subsidiaries and the JVC shall):

- (a) return such documents; and

- (b) destroy any copies of such documents and any other document or other record reproducing, containing or made from or with reference to the Confidential Information,

save, in each case, for any submission to or filings with governmental, tax or regulatory authorities. Such return or destruction shall take place as soon as practicable after the receipt of any such notice.

23.6 The obligations of each of the parties in this clause 23 shall continue without limit in time and notwithstanding termination of this agreement for any cause.

23.7 On the signing of this agreement the parties shall issue a joint announcement about the formation of the JVC in the agreed form.

## **24. Warranty**

Each party warrants and represents to the other that, at the date of this agreement, the JVC has not carried on any business, has no assets or liabilities, has no employees and is not a party to any contracts except as necessary to comply with clause 4.

## **25. Whole agreement**

25.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede all previous arrangements, understandings and agreements between them, whether oral or written, relating to their subject matter.

25.2 Each party acknowledges that in entering into this agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement or those documents.

25.3 Nothing in this clause 25 shall limit or exclude any liability for fraud.

## **26. Assignments**

26.1 No person may assign, or grant any Encumbrance over or sub-contract, or deal in any way with, any of its rights and obligations under this agreement or any document referred to in it without the prior written consent of all the parties (such consent not to be unreasonably conditioned, withheld or delayed).

26.2 Each person that has rights under this agreement is acting on its own behalf.

## **27. Variation and waiver**

27.1 A variation of this agreement shall be in writing and signed by or on behalf of all parties.

- 27.2 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.
- 27.3 A person that waives a right in relation to one person, or takes or fails to take any action against that person, does not affect its rights against any other person.
- 27.4 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.
- 27.5 No single or partial exercise of any right or remedy under this agreement shall preclude or restrict the further exercise of any such right or remedy.
- 27.6 Unless specifically provided otherwise, rights and remedies arising under this agreement are cumulative and do not exclude rights and remedies provided by law.

**28. Costs**

Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this agreement, shall be borne by the party that incurred the costs.

**29. No partnership**

The parties to this agreement are not in partnership with each other and there is no relationship of principal and agent between them.

**30. Good faith**

- 30.1 All transactions entered into between either party or any of its subsidiaries and the JVC shall be conducted in good faith and on the basis set out or referred to in this agreement or, if not provided for in this agreement, as may be agreed by the parties and, in the absence of such agreement, on an arm's length basis.
- 30.2 Each party shall at all times act in good faith towards the other and shall use all reasonable endeavours to ensure that this agreement is observed.
- 30.3 Each party shall do all things necessary and desirable to give effect to the spirit and intention of this agreement.

### **31. Third party rights**

- 31.1 A person who is not a party to this agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 except where such rights are expressly granted by clauses 8 and 21.
- 31.2 The right of the parties to terminate, rescind or agree any amendment, variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to the agreement.

### **32. Notice**

- 32.1 A notice given under this agreement:
- (a) shall be in writing in the English language;
  - (b) shall be sent for the attention of the person, and to the address, or fax number, given in this clause 32 (or such other address, fax number or person as the relevant party may notify to the other party); and
  - (c) shall be:
    - (i) delivered personally; or
    - (ii) delivered by commercial courier; or
    - (iii) sent by fax; or
    - (iv) sent by pre-paid United Kingdom first-class post or recorded delivery; or
- 32.2 The addresses for service of notice are:
- (a) [FIRST PARTY]  
Address:  
  
For the attention of:  
  
Fax number:
  - (b) [SECOND PARTY]  
Address:  
  
For the attention of:  
  
Fax number:
- 32.3 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:
- (a) if delivered personally, at the time of delivery; or
  - (b) if delivered by commercial courier, at the time of signature of the courier's delivery receipt; or

- (c) if sent or supplied by electronic means, [one] hour after the notice was sent or supplied;
- (d) if sent by pre-paid United Kingdom first class post to an address in the United Kingdom or recorded delivery, 48 hours after it was posted or five Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five Business Days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider; or
- (e) if deemed receipt under the previous paragraphs of this sub-clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of deemed receipt and all references to time are to local time in the place of deemed receipt.

32.4 To prove delivery it is sufficient to prove that the notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

### **33. Interest on late payment**

33.1 Where a sum is required to be paid under this agreement but is not paid before or on the date the parties agreed, the person due to pay the sum shall also pay an amount equal to interest on that sum at the rate set out in clause 33.2 for the period beginning with the date on which the payment was due and ending with the date the sum is paid (and the period shall continue after as well as before judgment).

33.2 The rate of interest shall be [four] per cent per annum above the base lending rate from time to time of [Barclays Bank Plc]. Interest shall accrue on a daily basis and be compounded quarterly.

33.3 This clause 33 is without prejudice to any claim for interest under the Late Payment of Commercial Debts (Interest) Act 1998.

### **34. Language**

If this agreement is translated into any language other than English, the English language text shall prevail.

### **35. Severance**

35.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

35.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**36. Further assurance**

Without prejudice to clause 4, each party shall promptly execute and deliver all such documents, and do all such things, as the other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

**37. Counterparts**

This agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

**38. Agreement survives Completion**

This agreement (other than obligations that have already been fully performed) remains in full force after Completion.

**39. Governing law and jurisdiction**

39.1 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

39.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

**Schedule      Matters reserved for shareholder approval**

1.     Permitting the registration of any person as a member of the JVC other than X and Y in relation to their initial investment and any of their transferees in accordance with the terms of this agreement.
2.     Altering the name of the JVC.
3.     Altering in any respect the Articles or the rights attaching to any of the shares in the JVC.
4.     Adopting or amending the Business Plan in respect of each Financial Year.
5.     Changing the nature of the JVC's Business or the commencement of any new business by the JVC which is not ancillary or incidental to the Business.
6.     Making any acquisition or disposal by the JVC of any material asset(s) otherwise than in the ordinary course of business.
7.     Creating or granting any Encumbrance over the whole or any part of the Business, undertaking or assets of the JVC or over any shares in the JVC or agreeing to do so.
8.     Appointing any agent or other intermediary to conduct any of the JVC's Business
9.     [INSERT ANY OTHER RESERVED MATTERS OR DELETE THIS CLAUSE]

Signed by [NAME OF DIRECTOR]  
for and on behalf of [NAME OF X]

.....  
Director

Signed by [NAME OF DIRECTOR]  
for and on behalf of [NAME OF Y]

.....  
Director