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**Form and Drafting Notes Provided for Use in Lexis Practice Advisor By:** Ethan Horwitz, Carlton Fields Jordan Burt, LLP and Kandis Koustenis, Cloudigy Law

## Sample Joint Venture Agreement (LLC as Joint Venture Entity)

### Form Summary

- This form contemplates a joint venture between two entities who wish to establish a limited liability company as their joint venture vehicle. The purpose of the joint venture is to research and develop a new product for later manufacture for sale. Both parties own background intellectual property and agree to extend any necessary licenses to the other party. The agreement incorporates the inventorship model where ownership of the developed or foreground IP is allocated to the party employing the people who developed it.

This Joint Venture Agreement ("Agreement") is entered into by and between **ABC, Inc.** ("ABC"), 601 Park Avenue, New York, New York 12345 and **XYZ Ltd.** ("XYZ"), 9879 Houston Street, New York, New York 98790. The parties are sometimes referred to together as the "Joint Venturers" and individually as a "Joint Venturer."

**WHEREAS**, ABC and XYZ have agreed to form and establish a joint venture to be conducted under the name of **We Develop Together LLC** (the "Joint Venture" or the "JV"); and

**WHEREAS**, ABC and XYZ wish to enter into this Agreement to govern their relationship and to define their respective roles and responsibilities in carrying out the objectives of the Joint Venture;

**NOW, THEREFORE**, ABC and XYZ agree as follows:

### 1. Definitions

- 1.1. "Territory" means the United States and Canada.
- 1.2. "Business" means the Business to be conducted by the JV as described in Paragraph 2.3 of this Agreement and the Business Plan.
- 1.3. "Business Plan" means a plan jointly created by the Joint Venturers to detail the business objectives, goals, and milestones of the JV, which shall be updated from time to time to reflect the most current business goals and objectives for the JV as agreed by the Joint Venturers.
- 1.4. "Board" means the Board of Managers of the Joint Venture.
- 1.5. "Invention" means an invention patentable under Title 35 of the United States Code, or any patent on such an invention.
- 1.6. "Patents" mean all patents and applications relating thereto resulting from any Inventions.
- 1.7. "Intellectual Property" means any Invention, Patent, trade secret, technical know-how, trademark, or work for which copyright protection is available under Title 17 of the United States Code.
- 1.8. "Background IP" or "Background Technology" means existing Intellectual Property not generated in the course of the JV's Business and owned by one of the Joint Venturers or a third party.

## 2. **Business and Purpose of Joint Venture**

2.1. The principal place of business of the Joint Venture shall be located at [insert location].

2.2. The term of the Joint Venture shall commence on the execution date of this Agreement and shall continue until [\_\_\_\_\_], unless the Joint Venture is terminated or dissolved according to the terms of this Agreement.

### **Drafting Note to Paragraph 2.2**

- If there is a fixed term for the parties' collaboration, it should be defined here. If not, there can be no set term or the term could be dependent upon an event. In the case of the latter, where the "event" is defined as the parties' agreement to terminate, see the Alternate Clause to Paragraph 2.2.

### **Alternate Clause to Paragraph 2.2**

- The term of the Joint Venture shall commence on the execution date of this Agreement and will terminate on the agreement of both parties, unless the Joint Venture is otherwise terminated or dissolved according to the terms of this Agreement.

2.3. The Joint Venturers establish this Joint Venture for the purpose of research and development of "**New Product Invention**" and later manufacture for sale in the Territory. The Joint Venture shall not engage in any other business or activity without the written consent of the Joint Venturers.

### **Drafting Note to Paragraph 2.3**

- The purpose of the JV should be narrowly defined, taking care to add enough detail to avoid causing misunderstandings about the scope of the joint venture. It should be drafted after considering how non-competition provisions in the JV agreement will affect each parties' business, and how any IP assets developed during the JV terms will be owned.

2.4. The Joint Venture shall be conducted in the best interests of the Joint Venture in accordance with the then current Business Plan. Each Joint Venturer shall act in good faith towards the other in order to promote the Joint Venture's success and meet the milestone targets and other goals of the Business Plan.

2.5. The Joint Venturers confirm their intention to consult fully on all matters materially affecting the development of the Joint Venture and according to the terms and obligations of this Agreement.

## 3. **Capital and Other Financing**

3.1. Concurrently with the execution of this Agreement, the Joint Venturers shall contribute to the JV the following cash amounts (each such contribution, an "Initial Capital Contribution").

ABC \$[insert amount]

XYZ \$[insert amount]

3.2. Upon the agreement of the Joint Venturers, a Joint Venturer may make an additional capital contribution ("Additional Capital Contribution"). The percentage interests in the JV of the Joint Venturers shall be adjusted to reflect any Additional Capital Contribution at the time it is made.

3.3. If it should be determined that the Joint Venture requires further financing, the Joint Venture shall approach its own banking sources. If financing cannot be obtained from the Joint Venture's banking sources, neither Joint Venturer shall be obliged to provide any financing to the Joint Venture. In the event the Joint Venturers agree to provide further financing, the terms and conditions of any agreements shall be subject to

the prior approval of the Joint Venturers. Unless otherwise agreed in writing, any financing shall be provided by the Joint Venturers in equal proportions (whether by way of share capital, loans or otherwise).

3.4. The Joint Venturers shall not be obliged to provide guarantees for any borrowings of the Joint Venture but, if they do so, they shall be given in equal proportions. If a claim is made against a Joint Venturer 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.

3.5. Except as otherwise provided by the relevant state LLC law, the debts, obligation and liabilities of the Joint Venture, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Joint Venture, and none of the Joint Venturers shall be obligated for any such debt, obligation or liability of the Joint Venture solely by reason of being a Joint Venturer.

3.6. Except upon dissolution of the JV or as may be specifically provided in this Agreement, no Joint Venturer shall have the right to demand or to receive the return of all or any part of its Capital Contributions to the Joint Venture.

**Drafting Note to Section 3**

- If the joint venture is not built solely for research at the exclusion of profit making, consider the division of profits and losses and whether it should relate in some way to each party's contribution. Will profits be reinvested or distributed? If built for profit, the percent ownership is often the way the profits are divided. See the Optional Clause and Alternate Optional Clause to Section 3.

**Optional Clause to Section 3**

- Any profits from the joint venture will be used to invest in further research.

**Alternate Optional Clause to Section 3**

- Any profits from the joint venture will be divided equally among the Joint Venturers.

4. **Intellectual Property**

4.1. ABC and XYZ shall retain ownership of their Background IP. Attached to and made a part of this Agreement are Schedules listing the Background IP of each Joint Venturer. These Schedules may be amended from time to time by mutual agreement of the Joint Venturers.

4.2. ABC agrees to provide any and all licenses to the JV, or any other agreements necessary to provide access and right to use of its owned Background IP necessary or beneficial to the JV's Business.

**Drafting Note to Paragraphs 4.2 and 4.3**

- A primary issue in any joint venture is the contribution each partner will make to the JV project. Each partner's contribution should be clearly defined and can include the contribution of IP assets, as is the case here, but also financing (see Paragraph 3 above), loaning of employees, distribution channels, marketing capabilities, and work contributions of each JV partner. When one or more of the parties already owns IP assets that may be useful to the JV's development efforts, they may contribute the ability to use this "background IP" to the JV. To do so, they will provide an appropriate license to the other JV partner or the JV entity. The agreement may include a limitation of the background IP owner's ability to terminate or substantially alter the license agreement to the disadvantage of the joint venture. For an alternate clause that includes this limitation on the background IP license extended in Paragraphs 4.2 and 4.3, see the Alternate Clause.

**Alternate Clause to Paragraph 4.2**

- ABC agrees to provide any and all licenses to the JV, or any other agreements necessary to provide access and right to use of its owned Background IP necessary or beneficial to the JV's Business. Unless this Agreement is terminated pursuant to section 12 of the Agreement, the license may not be terminated or altered without the consent of all the parties.

4.3. XYZ agrees to provide any and all licenses to the JV, or any other agreements necessary to provide access and right to use of its owned Background IP necessary or beneficial to the JV's Business.

**Drafting Note to Paragraphs 4.2 and 4.3**

- A primary issue in any joint venture is the contribution each partner will make to the JV project. Each partner's contribution should be clearly defined and can include the contribution of IP assets, as is the case here, but also financing (see Paragraph 3 above), loaning of employees, distribution channels, marketing capabilities, and work contributions of each JV partner. When one or more of the parties already owns IP assets that may be useful to the JV's development efforts, they may contribute the ability to use this "background IP" to the JV. To do so, they will provide an appropriate license to the other JV partner or the JV entity. The agreement may include a limitation of the background IP owner's ability to terminate or substantially alter the license agreement to the disadvantage of the joint venture. For an alternate clause that includes this limitation on the background IP license extended in Paragraphs 4.2 and 4.3, see the Alternate Clause.

**Alternate Clause to Paragraph 4.3**

- XYZ agrees to provide any and all licenses to the JV, or any other agreements necessary to provide access and right to use of its owned Background IP necessary or beneficial to the JV's Business. Unless this Agreement is terminated pursuant to section 12 of the Agreement, the license may not be terminated or altered without the consent of all the parties.

4.4. Intellectual Property developed solely by an employee or employees of one Joint Venturer in carrying out the research and development objectives of the JV, will be owned by that Joint Venturer. A Joint Venturer with sole ownership according to this provision shall provide the Joint Venture with access and right to use the developed Intellectual Property as may be necessary or beneficial to the JV.

**Drafting Note to Paragraph 4.4**

- Ownership of the developed or "foreground IP" is allocated here to the party employing the people who developed it. The Joint Venturer with ownership then grants a license to the other Joint Venturer. The inventorship model is often adopted because it tracks the default ownership rules under the patent and copyright laws. But it does require that the parties agree upon which party invented, created or developed the resulting IP asset, which can be difficult in the context of a joint venture relationship.

4.5. Intellectual Property developed jointly by an employee or employees of one Joint Venturer with an employee or employees of another Joint Venturer in carrying out the research and development objectives of the JV shall be owned by the Joint Venture, namely We Develop Together LLC.

4.6. This is a contract "for the performance of experimental, developmental, or research work in the field of [\_\_\_\_\_]" and the provisions of 35 USC § 102(c) apply.

5. **Management**

- 5.1. Responsibility for management of the business and affairs of the Joint Venture shall be delegated to a Board of Managers.
- 5.2. The Board of Managers shall at all times be composed of four (4) Managers.
- 5.3. Each Joint Venturer shall appoint two (2) individuals to serve as its initial representatives on the Board of Managers. Each such individual shall serve until such time as he or she resigns, retires, dies or is removed.
- 5.4. Any Manager may be removed with or without cause by the Joint Venturer who appointed such Manager.
- 5.5. Upon the resignation, retirement, death or removal of any Manager, the Joint Venturer who appointed such Manager shall designate the replacement Manager.
- 5.6. The Board of Managers shall meet:
- 5.6.1. at least once each fiscal quarter at the principal offices of the Joint Venture or at such other place as may be agreed upon from time to time by the Board of Managers;
  - 5.6.2. at such other times as may be determined by the Board;
  - 5.6.3. upon the request of at least two (2) Managers or the President upon ten (10) days' notice to all Managers;
  - 5.6.4. in accordance with Section 8 of this Agreement, following a failure by the Board of Managers to adopt or reject a proposal for action presented to it.
- 5.7. The Board of Managers shall cause written minutes to be prepared of all actions taken by the Board.
- 5.8. No action may be taken at a meeting of the Board of Managers unless a quorum of at least one Manager appointed by each Joint Venturer is present.
- 5.9. Each Manager shall be entitled to cast one vote with respect to any decision made by the Board. Approval or action by the Board shall constitute approval or action by the Joint Venture and shall be binding on the Joint Venturers.
- 5.10. The Board of Managers, acting on behalf of the Joint Venture, shall have the right, power and authority to take the following action, and no such action will be taken without the approval of the Board of Managers

**Drafting Note to Sections 5, 6 and 7**

- There are three types of decisions to be made which affect the joint venture. Critical decisions, or those matters which are “reserved” for decision, and approval, by the Joint Venturers, are covered in Section 6. Day-to-day decisions, which are managed by an appointed president of the Joint Venture, are covered in Section 7. In between those areas fall the decisions covered in Section 5, which are delegated to a Board of Managers. There will be no disagreement over the day-to-day decisions as there is just one decision-maker, i.e., the president. When there is disagreement concerning the critical decisions, which require unanimity, the JV must be dissolved. Lastly, if there is no agreement regarding a mid-level decision, the JV members can agree that the tie be broken by the president.

## 6. Reserved Matters

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

- 6.1.1. Any sale of all or substantially all of the Joint Venture or its assets;
- 6.1.2. Approval of the annual budget and operating plan of the Joint Venture;
- 6.1.3. Any change to the purpose of the Joint Venture, including any expansions or other changes to the IP assets to be developed;
- 6.1.4. Approve any contract, agreement or commitment with a value in excess of \$[insert amount] or a term longer than [insert number] months;
- 6.1.5. Incur indebtedness or loan any sum in an amount in excess of \$[insert amount] or for a period in excess of [insert number] months
- 6.1.6. The commencement, settlement or abandonment of litigation or admission of liability by the Joint Venture.

### **Drafting Note to Sections 5, 6 and 7**

- There are three types of decisions to be made which affect the joint venture. Critical decisions, or those matters which are “reserved” for decision, and approval, by the Joint Venturers, are covered in Section 6. Day-to-day decisions, which are managed by an appointed president of the Joint Venture, are covered in Section 7. In between those areas fall the decisions covered in Section 5, which are delegated to a Board of Managers. There will be no disagreement over the day-to-day decisions as there is just one decision-maker, i.e., the president. When there is disagreement concerning the critical decisions, which require unanimity, the JV must be dissolved. Lastly, if there is no agreement regarding a mid-level decision, the JV members can agree that the tie be broken by the president.

## 7. Officers

7.1. The Board of Managers shall appoint a president of the Joint Venture (“President”). Subject to the supervision and authority of the Board of Managers, the President:

- 7.1.1. shall be the chief executive officer of the Joint Venture;
- 7.1.2. shall have responsibility and authority for management of the day-to-day operations of the Joint Venture;
- 7.1.3. may execute agreements and contracts on behalf of the Joint Venture.

7.2. The Board of Managers shall appoint a secretary of the Joint Venture (“Secretary”). The Secretary, at the direction of the Board, shall prepare and distribute to each Manager an agenda in advance of each meeting and shall prepare and distribute to each Manager written minutes of all meetings of the Board.

7.3. The Board of Managers may appoint other officers of the Joint Venture (including, but not limited to, one or more vice presidents, a treasurer and an assistant secretary) upon terms and conditions the Board deems necessary and appropriate. Any officer shall hold his or her respective office unless and until such officer is removed by the Board of Managers.

**Drafting Note to Sections 5, 6 and 7**

- There are three types of decisions to be made which affect the joint venture. Critical decisions, or those matters which are “reserved” for decision, and approval, by the Joint Venturers, are covered in Section 6. Day-to-day decisions, which are managed by an appointed president of the Joint Venture, are covered in Section 7. In between those areas fall the decisions covered in Section 5, which are delegated to a Board of Managers. There will be no disagreement over the day-to-day decisions as there is just one decision-maker, i.e., the president. When there is disagreement concerning the critical decisions, which require unanimity, the JV must be dissolved. Lastly, if there is no agreement regarding a mid-level decision, the JV members can agree that the tie be broken by the president.

8. **Deadlock**

8.1. “Deadlock” shall occur if the Board of Managers casts a tie vote on a matter submitted to it at a meeting or in the form of a proposed written consent, and during the sixty (60) day period following this tie vote, the Board is unable to break the tie. During this sixty (60) day period, the Board shall hold at least one additional meeting at which it shall make a good faith effort to break the tie.

8.2. If a Deadlock occurs, the Joint Venture shall submit the matter that was the subject of the tie to the chief executive officers for each of the Joint Venturers. Upon such notice, the chief executive officers shall then make a good faith effort to resolve the dispute and break the tie. If the chief executive officers are unable to resolve the dispute within sixty (60) days of receiving notice of the Deadlock, then either Joint Venturer may terminate the Joint Venture in accordance with the terms of this Agreement.

**Drafting Note to Paragraph 8.2**

- Where there is the possibility of a deadlock between or among the JV parties, the parties may, for certain less material issues, provide for deadlock resolution procedures or outcomes less onerous than those triggered under the regular deadlock provision. This is particularly important where the parties have agreed to a deadlock provision requiring the sale of the JV or right of one member to purchase the JV. Not all disagreements require such extreme measures in the event of a deadlock. For circumstances requiring less extreme measures, see the Alternate Clause to Paragraph 8.2 which would replace the last sentence in Paragraph 8.2

**Alternate Clause to Paragraph 8.2**

- If the chief executive officers are unable to resolve the dispute within sixty (60) days of receiving notice of the Deadlock, then the president of the JV shall cast the deciding vote.

9. **Proprietary and other Information**

9.1. Each Joint Venturer agrees that it will not, either during the Term of this JV or at any time after its termination, use Background Technology or Background IP belonging to another party for any purpose except the Business of the JV. The Joint Venturers agree not to divulge such Background Technology or Background IP to any person without the prior written consent of the owner party.

9.2. No Joint Venturer shall use in any advertising, promotional, or sales literature the name of any other Joint Venturer without prior written consent of the other Joint Venturer.

## 10. **Books and Records**

10.1. The JV's fiscal year shall be the calendar year.

10.2. The Board of Managers shall keep, or cause to be kept, accurate, full and complete books and accounts showing assets, liabilities, income, operations, transactions and the financial condition of the Joint Venture.

10.3. The books, accounts and records of the Joint Venture at all times shall be maintained at the Joint Venture's principal office.

### **Drafting Note to Section 10**

- The Optional Clause to Section 10 is typically included when the JV is controlled by one party and the other party wants to make sure that it has access to the books and records.

### **Optional Clause to Section 10**

- All books and records may be reviewed by either of the Joint Venturers upon reasonable notice and at reasonable business times.

## 11. **Restrictions on Transfers and Withdrawals**

11.1. No Joint Venturer may transfer all or any portion of its interest in the Joint Venture without the express written consent of the nontransferring Joint Venturer.

### **Drafting Note to Paragraph 11.1**

- Transfers may be subject to a "right of first refusal" which gives the Joint Venturers the chance to purchase the interest intended to be transferred. Only if the Joint Venturers refuse to purchase the other member's interest can it be transferred to an outside party. Rights of first refusal clauses are frequently found in joint venture agreements and are therefore discussed in great length in the context of mergers and acquisitions.

11.2. Any transferee of a JV interest shall become a substituted Joint Venturer upon the express written consent of the nontransferring Joint Venturer; the transferee agreeing to be bound by all the terms and conditions of this Agreement as then in effect; and the receipt of any necessary regulatory approvals.

11.3. Unless and until a transferee is admitted as a substituted Joint Venturer, the transferee shall have no right to exercise any of the powers, rights and privileges of a Joint Venturer under this Agreement.

11.4. No Joint Venturer shall have any right to resign or otherwise withdraw from the Joint Venture without the express written consent of all the other Joint Venturers.

## 12. **Dissolution**

12.1. The Joint Venture shall be dissolved and its affairs wound up upon the occurrence of any of the following events:

- 12.1.1. the consent in writing of all Joint Venturers to dissolve and wind up the affairs of the JV;



12.1.2. the sale or other disposition by the JV of all or substantially all of the LLC assets;

12.1.3. the Termination Date;

12.1.4. upon thirty (30) days' written notice by any Joint Venturer, if a Deadlock occurs and the chief executive officers of the Joint Venturers are unable to resolve the Deadlock within sixty (60) days of receiving notice of the Deadlock;

12.1.5. if a Joint Venturer fails to perform any of its material obligation under this Agreement (an "Event of Default") then the non-defaulting Joint Venturer shall have the right to give the defaulting Joint Venturer notice (a "Notice of Default").

12.1.5.1. The Notice of Default shall set forth the nature of the obligations which the defaulting Joint Venturer has failed to perform.

12.1.5.2. If the defaulting Joint Venturer fails to cure the Event of Default within thirty (30) days, the non-defaulting Joint Venturer may (i) terminate the JV, or (ii) cause the determination of Fair Market Value and purchase the defaulting Joint Venturers interest in the JV at a price equal to [insert percentage]% of the Fair Market Value of the interest.

12.2. Upon the dissolution of the JV, the Board of Managers (or any other person or entity responsible for winding up the affairs of the JV) shall proceed without unnecessary delay to sell or otherwise liquidate the JV's assets and pay or make due provision for the payment of all debts, liabilities and obligations of the JV.

**Drafting Note to Paragraphs 12.2 and 12.3**

- One of the key issues the parties will face when the joint venture ends, which "end" is triggered here by the events listed in Paragraphs 12.1.1 to 12.1.5, is how to dispose of, or "de-allocate", the JV's IP assets. The IP assets are typically comprised of IP assets owned by the JV (e.g., the foreground IP), IP assets assigned or licensed in from JV members (e.g., background IP), and IP assets licensed in from third parties. Exit strategies can be a spin off, a merger, or as here, dissolution. Separate provisions for the de-allocation of each asset type must be negotiated; a public sale (where JV partners may or may not be permitted to participate as potential buyers), or a distribution to the JV partners may be considered. If they are distributed, the order of distribution among the JV partners should be included, as is done in Paragraph 12.3 ("in accordance with their respective percentage interests in the JV").

12.3. The Board of Managers (or any other person or entity responsible for winding up the affairs of the JV) shall distribute the net liquidation proceeds and any other liquid assets of the JV after the payment of all debts, liabilities and obligations of the JV (including all amounts owing to a Joint Venturer under this Agreement or any other agreement other than due to its capacity as a Joint Venturer in the JV) to the Joint Venturers, pro rata, in accordance with their respective percentage interests in the JV.

**Drafting Note to Paragraphs 12.2 and 12.3**

- One of the key issues the parties will face when the joint venture ends, which "end" is triggered here by the events listed in Paragraphs 12.1.1 to 12.1.5, is how to dispose of, or "de-allocate", the JV's IP assets. The IP assets are typically comprised of IP assets owned by the JV (e.g., the foreground IP), IP assets assigned or licensed in from JV members (e.g., background IP), and IP assets licensed in from third parties. Exit strategies can be a spin off, a merger, or as here, dissolution. Separate provisions for the de-allocation of each asset type must be negotiated; a public sale (where JV partners may or may not be permitted to participate as potential buyers), or a distribution to the JV partners may be considered. If they are distributed, the order of distribution among the JV partners should be included, as is done in Paragraph 12.3 ("in accordance with their respective percentage interests in the JV").

12.4. To minimize any losses otherwise attendant upon the winding up of a business, a reasonable time shall be allowed for the orderly winding up of the business and affairs of the Joint Venture and the liquidation of its assets pursuant to this Agreement.

### 13. **General Provisions**

13.1. No amendment or modification of this Agreement shall be valid unless made in writing and signed by all parties to the Agreement.

13.2. This Agreement shall not be assigned by any Joint Venturer without the express written consent of the other Joint Venturers, which consent shall not be unreasonably withheld. This provision shall not apply in the event a Joint Venturer changes its name or as part of a sale of its entire business.

13.3. This Agreement shall be governed by and interpreted in accordance with the laws of [insert state name] without regard for conflicts of laws principles. Each Joint Venturer expressly consents to the personal jurisdiction of the state and federal courts located in the state of [insert state name] for any lawsuit filed against any party to this Agreement by any other party to this Agreement concerning the Joint Venture or any matter arising from or relating to this Agreement.

#### **Drafting Note to Paragraph 13.3**

- Paragraph 13.3 is a typical “forum selection” clause. The parties may instead decide to have disputes resolved by an alternate resolution dispute mechanism, such as arbitration or mediation, or to have only certain types of disputes resolved by an alternate resolution dispute mechanism. In that case, details such as the location and the applicable rules should be specified. For an example of such a clause, see the Alternate Clause to Paragraph 13.3.

#### **Alternate Clause to Paragraph 13.3**

- Any dispute, controversy or claim arising out of the Joint Venture or this Agreement shall be finally settled by arbitration in accordance with the Rules of the American Arbitration Association. The arbitration, including the rendering of the award, shall take place in New York, New York. Any such arbitration shall be conducted in the English language by a sole neutral arbitrator. The arbitrator shall interpret this Agreement in accordance with the governing substantive law. He or she shall have the power to enter legal and equitable relief and to award, equally or otherwise, the costs of the arbitration. The arbitrator’s award shall be final, binding and nonappealable. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over the party adversely affected by the award.

13.4. If any provision of this Agreement is declared invalid, all other provisions shall remain in full force and effect.

13.5. This Agreement is intended by the Joint Venturers to be the final expression of their agreement and the complete and exclusive statement of its terms, notwithstanding any prior representations or statements.

13.6. All notices, demands, requests or other communications which are required to be given, served or sent by a Joint Venturer pursuant to this Agreement shall be in writing and shall be hand delivered (including delivery by courier), or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to ABC: [Address]

If to XYZ: [Address]

Each Joint Venturer may designate by notice in writing a new address to which any notice, demand, request or communication may be given, served or sent.

13.7. Waiver by any Joint Venturer of any breach or failure to comply with any provision of this Agreement by the other Joint Venturer shall not be construed as, or constitute, a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

In witness whereof, the Joint Venturers execute this Agreement by their duly authorized officers or representatives on the dates shown below.

ABC, INC.

\_\_\_\_\_

By: [\_\_\_\_\_]

Its: [\_\_\_\_\_]

Date: [\_\_\_\_\_]

XYZ, LTD.

\_\_\_\_\_

By: [\_\_\_\_\_]

Its: [\_\_\_\_\_]

Date: [\_\_\_\_\_]

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