

Full name: Memorandum of understanding: international joint ventures.

DATED

MEMORANDUM OF UNDERSTANDING

between

[PARTY 1]

and

[PARTY 2]

CONTENTS

CLAUSE

1.	Business of the JVC	1
2.	Structure	1
3.	Contributions to the joint venture and finance	1
4.	Conditions and approvals	3
5.	Accounts.....	3
6.	Management and employees	3
7.	Dividend policy	4
8.	Restrictions on parties	5
9.	Deadlock.....	5
10.	Transfer of shares	5
11.	Termination and liquidation	5
12.	Language	5
13.	Exclusivity.....	5
14.	Costs	6
15.	Governing law and jurisdiction	7

SCHEDULE

SCHEDULE	PROPOSED TIMETABLE.....	8
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BACKGROUND

- (A) [FULL COMPANY NAME] (X) and [FULL COMPANY NAME] (Y) are proposing to form a new company for the purposes of [DESCRIBE JOINT VENTURE] (**Joint Venture**). This memorandum of understanding sets out the proposed terms of the Joint Venture and timetable for implementation. It is not intended to be legally binding except as specifically set out below.
- (B) This memorandum of understanding is confidential to the parties and their advisers, and is subject to the confidentiality agreement dated [DATE] already entered into between X and Y, which continues in full force and effect. This paragraph is legally binding.

1. BUSINESS OF THE JVC

The parties wish to enter into the Joint Venture to [REASONS FOR JOINT VENTURE AND INTENDED SCOPE (PRODUCTS AND TERRITORY)].

2. STRUCTURE

- 2.1 It is proposed that the Joint Venture will be conducted through a [DESCRIBE CORPORATE VEHICLE] incorporated in [COUNTRY], to be formed by the parties on or before closing (**JVC**) [but the parties may agree a different structure if it becomes necessary or desirable for commercial or other reasons].
- 2.2 The name of the JVC will be [NAME] or such other name as the parties may agree.
- 2.3 The headquarters of the JVC will be based in [LOCATION OF HEADQUARTERS].
- 2.4 Each party will own half of the share capital of the JVC and will have equal shareholder voting rights.

3. CONTRIBUTIONS TO THE JOINT VENTURE AND FINANCE

- 3.1 As consideration for the issue of shares in the JVC to X at closing, X shall transfer to the JVC the [DESCRIBE BUSINESS TO BE CONTRIBUTED BY X] (**X Business**) and make any cash payment required by paragraph 3.4.

- 3.2 As consideration for the issue of shares in the JVC to Y at closing, Y shall transfer to the JVC the [DESCRIBE BUSINESS TO BE CONTRIBUTED BY Y] (**Y Business**) and make any cash payment required by paragraph 3.4.
- 3.3 Upon signing this memorandum of understanding, the parties intend to appoint [NAME OF VALUER] (**Valuer**) to conduct an independent valuation of the X Business and the Y Business on the basis of agreed instructions, a copy of which is annexed to this memorandum of understanding.
- 3.4 If different values are attributed by the Valuer to the X Business and the Y Business, the party that contributes the lesser valued business shall make a cash payment equal to the difference in value in part consideration for the issue of shares in the JVC at closing [or the parties shall agree an alternative arrangement for bridging any difference to maintain the 50:50 equity relationship within the JVC].
- 3.5 [The definitive agreements for the Joint Venture will provide that, if either party gives inaccurate or misleading information to the Valuer in connection with the valuation referred to in paragraph 3.3, or withholds information that could have a material impact on the valuation, it will compensate the other party on an indemnity basis for any difference between the original valuation and a revised valuation as determined by the Valuer (as if made at the same time as the original valuation but based on correct information).]
- 3.6 Each party will conduct investigations into the business to be contributed by the other to the JVC that will include: [LIST SPECIFIC REPORTS AND INVESTIGATIONS REQUIRED].
- 3.7 Each party will allow the other party, its advisers and the Valuer full access to such records, key employees, advisers and operations of the X Business and the Y Business as are reasonably required for the purposes of the valuation of the X Business and the Y Business and each party's investigations.
- 3.8 The parties and the JVC will execute acquisition agreements relating to the sale of the X Business and the Y Business to the JVC which will incorporate warranties and indemnities and other terms negotiated between the parties.
- 3.9 The parties envisage that the Joint Venture shall be self-financing. They do not envisage having to provide any further finance to the Joint Venture. However, if further finance is required [the parties intend to contribute equally **OR** it shall be provided, so far as practicable, from external funding sources].

4. CONDITIONS AND APPROVALS

The proposed Joint Venture will be conditional on:

- (a) both parties accepting the valuation referred to in paragraph 3.3 and otherwise being satisfied with the results of their investigations into the business to be contributed by the other party to the Joint Venture;
- (b) [the shareholders of both parties approving the Joint Venture;]
- (c) any third party, regulatory or tax consents required for the Joint Venture being received in terms satisfactory to both parties;
- (d) [a satisfactory outcome of the consultation with the employees of the X Business and the Y Business;]
- (e) there being no material adverse change in the business, operations, assets, position (financial, trading or otherwise), profits [or prospects] of the X Business or the Y Business between the signing of this memorandum of understanding and closing;
- (f) no legislation or regulation being proposed or passed that would prohibit or materially restrict the implementation of the definitive agreements or the participation in the Joint Venture of either party; and
- (g) each party producing a legal opinion, in a form satisfactory to the other, confirming that it has the capacity to enter into the Joint Venture.

5. ACCOUNTS

- 5.1 The financial year end of the JVC will be [YEAR END].
- 5.2 The accounts of the JVC will be prepared in accordance with [RELEVANT ACCOUNTING STANDARDS] and the first auditors of the JVC will be [NAME OF AUDITORS].
- 5.3 The management of the JVC will prepare an annual business plan for approval by the parties as shareholders and monthly management accounts, which will be sent to the parties as shareholders (together with such other financial and operational information as they may reasonably require from time to time). The first business plan will be prepared by the parties and adopted by the JVC at closing.

6. MANAGEMENT AND EMPLOYEES

- 6.1 Each party will appoint an equal number of directors to the board of the JVC, who will have equal voting rights. No board resolution will be passed without at least one

director appointed by each party voting in favour of it. The post of chairman will be held by an appointee of each party in rotation in alternate years. The chairman will not have a casting vote.

6.2 The following board appointments will be made on formation of the JVC:

- (a) [NAME] will be Chairman;
- (b) [NAME] will be Chief Executive Officer;
- (c) [NAME] will be Chief Financial Officer;
- (d) [NAME] will be [OTHER KEY POSITION OR DIRECTOR];
- (e) [NAME] will be [OTHER KEY POSITION OR DIRECTOR]; and
- (f) [NAME] will be [OTHER KEY POSITION OR DIRECTOR].

6.3 The board of directors will be responsible for the day to day management of the JVC, but the following issues will be reserved for agreement between the parties as shareholders:

- (a) altering in any respect any constitutional documents of the JVC or the rights attaching to any of the shares in the JVC;
- (b) permitting the registration of any person as a member of the JVC other than X and Y [in respect of their initial investment] [and any of their permitted transferees];
- (c) altering the name of the JVC;
- (d) adopting or amending the business plan for each financial year; and
- (e) [OTHER RESERVED MATTERS].

6.4 [DETAILS OF EMPLOYEES TO BE TRANSFERRED TO THE JVC AND HOW IT IS INTENDED THAT REDUNDANCY COSTS (IF ANY) WILL BE BORNE BY THE PARTIES.]

7. **DIVIDEND POLICY**

The parties intend that the JVC will [distribute by way of dividend at least [NUMBER]% of profits available for distribution in each financial year, unless they agree otherwise **OR** not distribute a dividend until any and all loans to the JVC from the parties have been repaid in full].

8. RESTRICTIONS ON PARTIES

The parties will give undertakings not to compete with the business of the JVC and not to solicit its customers or employees.

9. DEADLOCK

If there is a disagreement between the directors or the parties as shareholders that cannot be resolved at board or shareholder level, the matter will be referred to the Chairmen of the parties and, failing agreement, a termination process as outlined in the definitive agreements for the Joint Venture will ensue.

10. TRANSFER OF SHARES

Neither party will be able to transfer shares to a third party without first offering to sell them to the other party at the price of the proposed sale to the third party. However, such pre-emption will not apply to intra-group transfers of the whole of a party's shareholding.

11. TERMINATION AND LIQUIDATION

11.1 If either party materially breaches the agreement governing the Joint Venture, becomes insolvent or is subject to a change of control, the other party shall be entitled to purchase its shares in the JVC at a price to be determined by an independent expert.

11.2 If the JVC is wound up, the parties will endeavour to ensure that, before dissolution, assets contributed by each party will, so far as possible, be transferred back to that party.

12. LANGUAGE

The negotiations will be conducted in [LANGUAGE] and all legal agreements relating to the Joint Venture will be prepared in [LANGUAGE].

13. EXCLUSIVITY

13.1 This paragraph 13 is legally binding.

13.2 In consideration of the mutual undertakings each party gives to the other in this paragraph 13, each party warrants that it is not currently carrying out any of the

activities listed in this paragraph and undertakes that for a period of [NUMBER OF WEEKS/MONTHS] from the date of signing this memorandum of understanding, it shall not:

- (a) commence or continue negotiations for the sale or any other type of disposal of all or a significant part of the X Business or the Y Business (as the case may be) to a third party; or
- (b) commence or continue negotiations about a potential joint venture with a third party, the business of which may overlap with the proposed business of the Joint Venture; or
- (c) disclose any information (including, without limitation, information about the X Business or the Y Business) to a third party for the purpose of negotiations relating to a sale or other disposal or joint venture described in paragraph 13.2(a) or paragraph 13.2(b); or
- (d) seek, encourage or respond to any approach that might lead to negotiations relating to a sale or other disposal or joint venture described in paragraph 13.2(a) or paragraph 13.2(b).

13.3 Each party shall ensure that its employees, agents and advisers comply with the undertakings in this paragraph 13 as if they were the relevant party.

13.4 Each party acknowledges that the other will incur significant costs, fees and expenses by relying on this paragraph and that, if it breaches this paragraph, it shall (without prejudice to any other remedies the other party may have) indemnify and keep indemnified the other party for all costs, fees and expenses incurred in connection with the valuation referred to in paragraph 3.3 and investigations, negotiations and preparation of documents relating to the proposed Joint Venture.

14. COSTS

14.1 This paragraph 14 is legally binding and is subject to paragraph 13.

14.2 The fees of the Valuer appointed under paragraph 3.3 shall be borne equally by the parties.

14.3 The fees of [ADVISORS] relating to the preparation of [DOCUMENTS] shall be borne equally by the parties.

14.4 Subject to paragraph 14.2 and paragraph 14.3, each party shall be responsible for its own costs (including, without limitation, costs relating to the investigations of the

businesses to be contributed by the other party to the Joint Venture referred to in paragraph 3.6).

- 14.5 Each party may end negotiations in relation to the proposed Joint Venture without having to give any reason for doing so or incurring any liability to the other party.

15. GOVERNING LAW AND JURISDICTION

- 15.1 This paragraph 15 is legally binding.

- 15.2 This memorandum of understanding, and all negotiations and any legal agreements prepared in connection with the Joint Venture, and any dispute or claim arising out of or in connection with them or their subject matter or formation, shall be governed by, and construed in accordance with, the law of [RELEVANT JURISDICTION].

- 15.3 Each party irrevocably agrees that the courts of [RELEVANT JURISDICTION] shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this memorandum of understanding, the negotiations relating to the proposed Joint Venture and any legal agreements prepared in connection with the Joint Venture or their subject matter or formation.

Schedule Proposed timetable

Action	Responsibility	Timing/deadline
Instruct Valuer		
Start due diligence		
Prepare first draft of shareholders' agreement and by-laws of the JVC		
Prepare first drafts of [OTHER DOCUMENTS]		
Establish third party consents and approvals		
Valuation complete		
Agree business plan		
Signing		
Closing		
ANNEX		
Instructions to Valuer		

Each party hereby confirms its agreement to the terms contained in this memorandum of understanding.

Signed by [DIRECTOR OR OFFICER] for and on behalf of [PARTY X]

Date:

Signed by [DIRECTOR OR OFFICER] for and on behalf of [PARTY Y]

Date: