

JOINT VENTURE / SHARE HOLDERS AGREEMENT

MODEL OF A JOINT VENTURE/SHARE HOLDERS AGREEMENT BETWEEN TWO COMPANIES HOLDING EQUAL SHARES IN THE JOINT VENTURE COMPANY TO BE INCORPORATED FOR A PARTICULAR PROJECT

THIS AGREEMENT executed at _____ on the day of _____

BETWEEN: M/S. ABC PRIVATE LIMITED.

(herein after referred to as the "ABC", which expression shall, wherever the context so requires or admits, mean and include, its successors and assigns).

A N D: M/S.XYZ PRIVATE LIMITED,

(here in after referred to as the "XYZ ", which expression shall, wherever the context so requires or admits, mean and include, its successors-in-title and assigns);

WITNESSES AS FOLLOWS:

I. WHEREAS ABC is engaged in business of _____ and have the necessary experience and expertise in that field;

II. WHEREAS the XYZ are doing _____ and have the necessary experience and expertise in that field;

III. WHEREAS the parties hereto have decided to float a project of _____ (hereinafter referred to as the "PROJECT");

IV. WHEREAS ABC and XYZ both having the necessary infrastructure and the capabilities of providing the services required for the project have agreed to form a Joint Venture Company for the Project and ABC and XYZ are desirous of entering into an Agreement for constituting Joint Venture Company in terms hereof;

V. WHEREAS the Parties hereto for the said Project have decided to form a Joint Venture Company and whereas subject to all necessary consents, licences, permissions and authorities to be procured for the formation and incorporation of the joint venture Company in the State of India, with the principle object, inter alia, being that of _____;

VI. WHEREAS ABC and XYZ are desirous of recording the Agreement with regard thereto and the agreement arrived at between them;

VII. NOW THIS AGREEMENT WITNESSESTH AS FOLLOWS:

1. It is agreed between the parties hereto to constitute a new Company which will be incorporated under the provisions of the Companies Act, 1956 and the Parties further agree that the said Company shall carry on its business in the name and style of "XYZ - ABC PRIVATE LIMITED" or any other name as may be mutually agreed between the parties hereto, (hereinafter referred to as the "SAID COMPANY" or "JOINT VENTURE COMPANY")

2. It is agreed that the terms and conditions of this Agreement shall govern the relationship of ABC and XYZ and the rendering of services under this Agreement and any subsequent Agreement;

3. It is agreed between the Parties hereto that the share holdings of the said Company shall be held by XYZ and ABC in the ratio of _% belonging to XYZ and _% belonging to ABC;

4. The Company shall be incorporated in the State of _____, after following all the provisions of the Companies Act, 1956 including any amendments from time to time, required for the incorporation thereof. The Registered Office of the Joint Venture Company shall be situated at " _____", _____, _____ Road, _____;

5. It is agreed between the Parties hereto that the said Company shall have as its object of business recorded in the Memorandum of Association & Articles of Association inter alia _____;

6. It is agreed between the Parties hereto that the authorised capital of the said Company shall be Rs. _____/- (Rupees _____only) divided into _____equity share of Rs. _____/- (Rupees _____only) each;

7. The Parties hereto shall jointly approve the Memorandum and Articles of Association of the said Company taking into consideration the principle objectives as set out in Paragraph 5 above;

8. ABC shall on incorporation of the Joint Venture Company subscribe to ____% of the authorised share capital and the XYZ shall on the incorporation of the said Company subscribe to ____% of the authorised share capital,

and pay for such shares on call made by the said Company towards the said shares, within the period prescribed;

9. The Parties further agree that the authorised capital of the said Company may be increased from time to time as per the Provisions of the Companies Act and as per the financial requirements of the said Company and as approved by the Board of Directors/General Body Meeting and it is further agreed that on the authorised capital being increased ABC and XYZ will be entitled to subscribe thereto in equal ratio and only after the other Party by written notice under acknowledgement rescinds the offer to apply for additional shares will the other be entitled to subscribe for those share not applied for;

10. ABC and XYZ agree that till such time as the project is being handled by the Joint Venture Company, ABC and XYZ shall always have equal representation on the Board. Mr. _____ shall be the Nominee Director of ABC and Mr. _____ of XYZ Group being the First Directors who shall hold the Office for entire period of the project, save and except both of them will not be liable for retirement. The number of Directors will be _____ in total, ____ from ABC and _____ from XYZ;

11. It is further agreed between the Parties that in the event of any of the Director from any of the group retiring/being removed/dying or becomes unable to perform the duties of a Director or for any reason ceases to be employed by the Party that nominated them then such party shall promptly by written notice served to the other party name in Successor thereof so that the strength of the Board of Directors remains same as before;

12. Meetings of the Board of Directors for the transaction of business of the Joint Venture may be called, subject to reasonable notice by the Directors of either party.

13. The Board of Directors shall have full responsibility and authority for the performance of the Company including but not limited to assignment of services between the Parties, preparation of the schedule of services, settlement of disputes and any other items affecting the performance of services under this Agreement;

14. The Board of Directors shall constitute a committee being the Executive committee for the execution of the work of the Project Agreement and the said committee shall consist of one representative of ABC and another from XYZ and at all times there shall be equal representative on the said committee from ABC Group and the XYZ Group;

15. The Executive Committee shall be:

a. Responsible for the direction and management of the Work in accordance with the policies and procedures established by the Board of Directors;

b. Responsible for the Co-ordination of the Work; and

c. _____ The Board of Directors may from time to time change the existing Executive Committee by replacing its representatives, however the representation of ABC and XYZ shall always be equal on such committee;

16. Action and decisions of the Board of Directors shall be by unanimous vote and shall be final, and conclusive and binding upon both ABC and XYZ;

17. In the event the Board of Directors is unable to reach any unanimous decision, ABC and XYZ agree that the matter in controversy shall be referred to Mr. _____ with regards to matter relating to _____ and _____ Mr. _____ with regards to matter relating to _____ who shall make an interim decision which may be subject to arbitration if the parties hereto do not accept the decision;

18. The Parties agree that the Board of Directors shall by and large conduct business of the said Company on the basis of the Agreement arrived at between them under this Agreement or mutually agreed between them in writing from time to time between them, giving effect to the understanding arrived at between them under this Agreement;

19. The Parties further agree that until mutually agreed in writing by and between the parties hereto the said Company shall not:

a. increase or re organise its authorised capital;

b. amend the Memorandum of Association & Articles of Association;

c. dissolve or liquidate the said Company;

d. in any manner deal with and dispose off or create any charges with regards to the assets of the said Company or its business;

e. Amalgamate with any other Company;

f. to stand and guarantee in any manner for any other parties or any other person/s without the prior consent and without the Special Resolution of the General Body Meeting of the said Company;

20. Each of the Parties hereto agree that they shall perform their obligations as set out in Clause 24, 25 and 26 with regards to the said Company so as to complete the project undertaken by the said Company as a successful venture;

21. The Parties further agree that as the nature of business undertaken by the Parties is relating to the Project to date which will get transformed to the said Company, any business which has been set out in the Memorandum of Association of the said Company shall be done by XYZ and ABC through the said Company only;

22. ABC and XYZ shall furnish all necessary know how experience, expertise, man power, managerial assistance to make success of the project undertaken by the said Company;

23. The Joint Venture Company shall share, in the manner provided for in the Agreement, the obligations and responsibilities for the services to be performed for the Project as described in this Agreement. Both ABC and XYZ shall give strategic input to the Joint Venture Company to perform the specific services as given below:

24. Both ABC and XYZ will give their input for:- Marketing, project management, i.e., monitoring of the execution of the project from the stage of commencement to completion and property management thereon;

- Identifying Consultants and Contractors, finalisation and awarding tenders to all Contractors and Consultants;

- Any other services required to fulfill the needs of the project;

25. ABC shall give their inputs on procurement and work of all design and technical consultants;

26. XYZ shall give their input in liaisoning with local authorities, Government for obtaining permissions for Plan sanction including all the approvals required from various Governmental Agencies for the purpose of construction and completion of the Project.

27. Neither ABC nor XYZ shall enter into any separate agreement/s with _____ for services in connection with this Project as long as the association between ABC and XYZ with regards to the Project is in existence;

28. The Services required of the parties to Joint Venture Agreement shall be limited to the performance of services required under this Agreement;

29. ABC and XYZ intend that the responsibilities and obligations set out in this agreement shall be borne and performed by each of the party as stated herein and the financial contribution as and when required for the Company shall be in proportion of their participation as provided in clause 3 of this Agreement;

30. It is agreed between ABC and XYZ that for the purposes of _____ the same shall be done by ABC and XYZ together and for the said purpose ABC and XYZ will constitute and form another company in which both ABC and XYZ will have equal shares and XYZ and ABC will have equal representation on board at all times;

31. The Parties agree that as the Parties shall be working in co-ordination with each other and for the furtherance of the interest of the said Company and during the course of work any information, expertise or knowledge material, documents or trade secret exchanged between the parties shall be kept secret and neither parties hereto shall divulge the same to any Third Party in any manner whatsoever and accordingly the parties shall on the incorporation of the said Company include a Clause in the Memorandum and Articles of Association to maintain the trade secret between the parties hereto/shareholder/Directors or anyone employed by the said Company and accordingly the parties shall also execute such document between them after incorporation of the said Company as may be necessary and as advised;

32. It is agreed between the Parties that amounts received by the Joint Venture Company will be allotted to ABC and XYZ equally The distribution so made will be irrespective of the expenses that may be incurred by either XYZ or ABC towards their staff or expenses or any other head of accounts;

33. It is agreed between the ABC and XYZ that for the compliance of their respective obligation to be fulfilled in terms of this Agreement and after meeting the basic expenses of the joint venture company, the amounts in hand of the Joint Venture Company will be distributed between ABC and XYZ in the respective proportion set forth in Clause 3 of this Agreement. Upon completion of this Agreement, funds remaining after payments of outstanding indebtedness of the Joint Venture Company shall be distributed to the respective Parties in the same proportion as set forth in Clause 3 above;

34. Should the Board of Directors determine that additional funds are required for the performance of the Project Agreement for any reasons or to pay losses arising there from or to eliminate any deficits resulting from prior overpayments to the ABC or XYZ, the Parties shall within 14 working days after the decision of the Board of Directors contribute such funds in proportions set forth in Clause 3 of this Agreement;

35. In the event of any of the Party does not contribute for any reasons such funds as may be determined under Clause 34 above the other party may at its discretion bring in the amounts to be contributed by the other party or any part thereof at its discretion and in this event the Other party will be liable for payment of the amounts to the Party contributing in excess along with interest at the rate of 22% per annum or any part thereof to be calculated from the date of contribution to repayment;

36. It is agreed between the parties that the amounts that may become payable in terms of Clause 34 above by the Party failing to contribute in terms of Clause 34 the Party contributing the amounts will be entitled to the said amounts at the first instance from the amounts to be disbursed and out of the share of the Party defaulting in payment along with the interest as stipulated in para 35 and thereafter if any amounts are balance to the share of the party defaulting will be taken by him;

37. It is agreed between parties hereto that the Joint Venture company will employ necessary persons for the purpose of services to be rendered for the project and for the purpose of the project and the said personnel will be employed by mutual consent of both XYZ and ABC. The salary and payment with regards to the said employees shall be borne by the said Joint Venture Company;

38. It is agreed between XYZ and ABC that in the event that either XYZ or ABC or its personnel are required to render service to the Joint Venture company either in sales promotion or any other area of work of the project, then in that event, all the actual expenses incurred will be reimbursed to either XYZ and or ABC as the case may be. The nature of expenses permitted for reimbursement are set out in Annexure _____ hereto;

39. The Parties hereto agree that on the incorporation of the said Company, the said Company in its first meeting shall ratify what has been agreed hereunder;

40. The Parties after the execution of this agreement shall finalise between them the master plan charting out the plan for execution of the project, setting goals, time frames, manner and method of implementation of the project, the day to day operations and manner in which the said company would handle the entire project;

41. The said Company shall appoint an independent Chartered Accountant who shall perform such duties as determined by the Board of Directors which shall include regular audit accounts of the said Company file all necessary forms, applications, accounts with the concerned authority as may be necessary and as per the Provisions of the Companies Act, or any other Statutory Authority with regards to the said Company. For the purpose of this agreement the certified figure of the independent Chartered Accountant shall be final conclusive and binding upon the parties;

42. The Parties hereto agree that all the preliminary expenses with regards to the incorporation of the said Company including all the costs, charges, expenses, professional fees, out of pocket expenses that may be incurred during the incorporation and formation of the said Company and incidental to the establishment of the said Company shall be borne by and paid for by the said Company;

43. The Board of Directors shall appoint an Accountant for the Joint Venture Company who shall maintain the day to day books of the Company on the generally accepted accounting principles;

44. The Board of Directors may authorise one or more bank accounts in any bank nationalised or private and the said Bank account/s for all purposes shall be operative under the joint signature of the representative/s of ABC and XYZ;

45. All payments received by the Joint Venture, in connection with this Agreement, shall be promptly deposited in the aforementioned Joint Account and invoices received by the Joint Venture shall be paid by Cheque drawn against the Joint account;

46. Records of the Joint Venture which are required pursuant to law to be retained beyond the duration of this Agreement shall be retained at such place(s) as determined by the Board of Directors and the cost thereof shared by the parties in proportion to their respective interest as described in Clause 3 of this Agreement;

47. Joint Venture property shall consist of the capital contributions described in Clause 8 of this Agreement and any other property obtained with the funds of the Joint Venture. The Joint Venture property shall be identified and recorded in the Joint Venture accounts;

48. This Agreement represents the entire and integrated agreement between the Parties and supercedes all priornegotiations, representations and agreements, either written or oral. The Agreement may be amended only by written instrument signed by each Party to this Agreement;

49. Neither party shall assign this Agreement without the written consent of the other;

50. The right of any person, firm or corporation, claiming by, through or under any Party (including, but not limited to judgement or other creditors, receivers, trustees, assignees, executors and administrators), to assert any claim against the right of interests if any Party shall be limited in any event to the right to claim or receive after completion of the Project Agreement, and after the doing of the accounts of the Joint Venture, the proportional interest of such Party as described in Clause 3 of this Agreement, and then only subject to the equities of the other Party as set forth in this Agreement;

51. The Parties to this Agreement, respectively bind themselves, their successors, assigns and legal representatives to the other Party with respect to all covenants of this Agreement;

52. All public statements and releases, including the issuance of photographs, models and renderings, for all media for the duration of this Agreement, are subject to the prior approval of the Board of Directors;

53. In subsequent presentations made by the Joint Venture, in any brochures publicity material in any form of media with regards to the Project and any logo mark devised by the Joint Venture Company or any development/drawing that can be and which constitutes any intellectual property shall be the intellectual property of the Joint Venture Company and will be dealt in the manner set out herein

54. If determined by the Board of Directors or required under the Project Agreement, intellectual property, reports, analysis, contracts, designs, drawings, specifications and other instruments of service prepared pursuant to this Agreement shall be registered, patented, copyrighted and secured as intellectual property rights as per the provision of law and in the name of the Joint Venture. The Joint Venture Company shall have the ownership and rights and privileges of all intellectual property rights acquired in the course of the Project and in so far as it is consistent with this Agreement XYZ and ABC will be entitled to use such intellectual property for any of its purpose including to prepare documents for other projects based on such Project information without any payment thereof so long as they are equal shareholders of the Joint Venture Company in terms of this agreement and not otherwise;

55. Neither of XYZ nor ABC shall assign or transfer the intellectual property rights and interest so acquired or established pursuant to this agreement by the Joint Venture Company in the course of its Project, nor permit reproduction of Project documents otherwise then stated in clause 53 above, in any manner resulting in infringement or violation of any of the intellectual property rights secured by the Joint Venture Company during the course of the Project except upon written consent of the other Party;

56. Documents prepared specifically for this Project by one of the Parties to this Agreement may not be copyrighted solely by that Party. Each Party hereby grants the other and the Joint Venture a licence to use and reproduce such documents in furtherance of this Agreement and Project;

57. The Parties further agree that as far as the registered Office of the Company is concerned, the same shall be at _____ or at mutually agreed place provided always that the Registered Office shall be at _____ State of _____, India;

58. It is further agreed between the Parties hereto that during the existence of this Agreement and the incorporation of the said Company if there being any change in Law which may affect the incorporation of the said Company as agreed between the Parties hereto then in that event, the Parties hereto may mutually agree to terminate this Agreement without any claim of damages by either party and in the event of there being any pre incorporation expenses incurred by the Parties hereto, the same shall be shared equally between the ABC and the XYZ;

59. In the event of there being any dispute which may result into a dead lock situation between XYZ and ABC, the Parties before invoking the rights set out in Clause 59 of this Agreement, the Party expressing that the other Party is in breach shall give a written notice of any situation likely to result in dead lock, putting forth all the details of the nature of dispute and the Parties will resolve the said dispute between 14 days of such written notice being received after which period, the Parties may refer the dispute to Arbitration as per the provisions of Clause 70;

60. It is agreed between the parties that in the event of there being a dead lock situation with regard to the management of Joint Venture Company then in that event it is agreed between the parties hereto that for the purposes of removing the dead lock any one of the parties hereto who may chose to value the share held by it and on such valuation done by that party the other party will have the first option to either acquire at that price the shares of the party valuing it or sell its shares to the valuing party and the party valuing the shares will have no option but to either sell its share at the valuation set, to the other party or to acquire the shares of the other party at that value as the case may be;

61. No Party will be entitled to sell transfer, pledge, mortgage, charge, encumber or otherwise dispose off or create any lien on or interest in, any of its shares in the Joint Venture Company, save and except as per Clause 63 below;

62. In the event of any one of the Party decides to dispose off its shareholding, which shall always be the entire shareholding, it shall give notice of its intent of disposal to the other Party, and the other Party will have the right to acquire the entire shareholding on the valuation of the shares done by an Independent Chartered Accountant

appointed by both the Parties or identify a buyer for the purchase of the entire shareholding within a period of 12 weeks from the receipt of the written notice from the Party intending to sell, after which period, the Party intending to sell its shareholding will be entitled to dispose of the shares to any third party. Any notice with regards to intend to sell the shareholding or refusal to acquire the shareholding, shall be done through Registered Post Acknowledgement Due.

63. Notwithstanding the provisions setout in Clause 61, either of the Parties to this agreement would be entitled to transfer its shareholdings to any of its subsidiary or affiliate Companies, may be one or more such subsidiary or affiliate Companies and the shareholding of such transferee shall be clubbed for the purpose of the total shareholding of XYZ or ABC as the case may be. The Transferee shall be bound by the terms and conditions of this Joint Venture Agreement. For the purpose this agreement parties hereto agree that the meaning subsidiary /affiliate companies shall mean such companies wherein the Party desiring to transfer the share holding in the Joint Venture Company should have at least 51% shares in such affiliate or subsidiary as the case may be

64. In the event of the Project being completed and in the event of there being no other project being undertaken the XYZ shall be entitled to take over the Joint Venture Company at Book Value, however the name of the Joint Venture Company will stand changed and XYZ shall not use the name of the Joint Venture Company. If XYZ does not desire to acquire the Company, the XYZ and ABC shall jointly sell the Company to any Third Party and the sale proceeds to be shared equally. The Party shall not be permitted to use the name of XYZ ABC;

65. The Parties hereto agree that the address set out in the title of this Agreement are the true addresses and the notice/s may be issued to them at the said address in the event of there being any change of address, the same shall be intimated to all the Parties failing which any notice/s served on the existing address shall be deemed to be good service on the addressee;

66. Any amendments to this Agreement shall be done with the consent of the Parties and in writing. Otherwise nothing shall be binding on the Parties hereto;

67. This Joint Venture will commence as of the date of this Agreement. It is further agreed that the terms and conditions of this Agreement shall be an agreement governing the shareholder of the Joint Venture Company including where ever it relates to the provisions of share holding its transfers, conduct of the business by the parties hereto and conduct of the Board of Directors and the constitution of the Board of the Joint Venture Company and the terms set out herein;

68. This Agreement shall remain in full force and effect until terminated by written agreement of the Parties or until the Project has been completed and all Joint Venture Property and money has been distributed in accordance with this Agreement and even after the incorporation of the Joint Venture Company as a shareholders agreement;

69. The obligation of each party to contribute in accordance with this Agreement to the satisfaction of all debts and liabilities of the Joint Venture shall survive the termination of this Agreement;

70. It is further agreed between the Parties hereto that in the event of there being any dispute with regards to this Agreement or any of the terms hereof or the interpretation of any of the terms of the Agreement or any dispute arising under the said Agreement, the same shall be referred to the Arbitration of two Arbitrators appointed by each of the Parties hereto i.e., ABC and the XYZ and the Arbitration proceedings shall be as per the provisions of the Arbitration and Conciliation Act, 1996 and the venue of such Arbitration proceedings shall be held and conducted in _____ alone;

71. This Agreement shall be binding upon the Parties hereto and their successors in title and all the shareholders of the Joint Venture Company and their respective heirs, executors, administrators, successors in title and assigns as the case may be;

72. If any provision of this Agreement shall, under any circumstance, be deemed invalid/inoperative to an extent, such invalidity shall not invalidate the whole Agreement, but the said invalid or inoperative provision shall be construed as not to be contained in this Agreement;

73. The provisions of the Companies Act, 1956 would apply with regard to the governing of the Joint Venture Company otherwise than what has been agreed by and between the Parties hereto;

74. It is agreed by and between the Parties hereto that the Courts at _____ alone shall have jurisdiction with regards to this Agreement and the seat of Arbitration shall be _____ and the Arbitration proceedings shall be in English; IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT in the presence of the Witnesses attesting hereunder: SIGNED SEALED AND DELIVERED

BY THE WITHIN NAMED ABC

PRIVATE LIMITED REPRESENTED

BY ITS MANAGING DIRECTOR IN

THE PRESENCE OF THE FOLLOWING

ABC

WITNESSES:

1)

2)

SIGNED SEALED AND DELIVERED

BY THE WITHIN NAMED XYZ

PRIVATE LIMITED REPRESENTED

BY ITS MANAGING DIRECTOR IN

THE PRESENCE OF THE FOLLOWING

XYZ

WITNESSES:

1)

2)