

JOINT VENTURE AGREEMENT

THIS AGREEMENT is made on _____

BETWEEN:

(1) _____ (A) incorporated under the laws of _____ whose [registered] office is at _____.

(2) _____ (A) incorporated under the laws of _____ whose [registered] office is at _____.

WHEREAS:

(A) The parties have agreed to form in a new jointly- owned company (**the JVC**) which will acquire certain rights and assets, and otherwise be established and carry on business, in the manner set out in this Agreement.

(B) The parties have agreed that their relations as shareholders in the JVC shall be governed by the terms of this Agreement.

IT IS AGREED AS FOLLOWS:

INTERPRETATION

Definitions

In this Agreement the following terms shall, unless the context otherwise requires, have the following meanings:

A Director means a director of the JVC appointed by A pursuant to clause 4.1;

A Shares means A ordinary shares of KShs ____ each in the capital of JVC;

B Director means a director of the JVC appointed by B pursuant to clause 4.1;

B Shares means B ordinary shares of KShs ____ each in the capital of JVC;

Board means the board of directors of the JVC;

Business means the business to be carried on by the JVC as _____ [in accordance with the Business Plan as updated by the Board from time to time];

Completion means completion of the establishment of the JVC in accordance with clause 2;

Conditions Precedent means [the conditions precedent to establishment of the JVC set out in clause 17];

JVC means _____ the company to be incorporated pursuant to the terms of this Agreement;

member of A Group means A and any company of which more than 50 per cent of the equity voting capital is

owned or controlled, directly or indirectly, by A;

member of the B Group means B and any company of which more than 50 per cent of the equity voting capital is owned or controlled, directly or indirectly, by B;

Memorandum and Articles means Memorandum and Articles of Association of the JVC;

Parties means A and B.

Statutory Provisions

Except where the context requires otherwise, references to statutory provisions shall be construed as references to those provisions respectively amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Agreement) from time to time.

Headings

Headings are inserted for convenience only and shall not be the construction of this Agreement.

Agreed drafts

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

Currency

Any reference in this Agreement to an amount in Kenya shillings shall include its market rate equivalent at the relevant time in any other currency or combination of currencies.

ESTABLISHMENT OF JVC

Incorporation

As soon as reasonably practicable after the signing of this Agreement and in any event by the date of Completion referred to in clause 2.3, the parties shall cause the JVC to be incorporated with the following characteristics:

the JVC shall be formed in [Kenya] as a private company limited by shares;

the Memorandum and Articles of the JVC shall be in the form of the agreed draft (attached as an Annex to this Agreement);

the JVC shall have an authorised share capital of KShs _____ divided into _____ A Shares and _____ B Shares;

the registered office shall be at _____;

the first auditors of the JVC shall be _____.

Name

The name of the JVC shall be _____ or such other name as shall be mutually agreed between the parties.

Completion

Completion shall take place on _____ [(or, if later, within seven (7))days after fulfillment or waiver of all of the Conditions Precedent] when the following events shall take place, namely:

A shall subscribe unconditionally for _____ A Shares in cash [at par], payment for which shall be made in cleared funds for the account of the JVC;

B shall subscribe unconditionally for _____ A Shares in cash [at par], payment for which shall be made in cleared funds for the account of the JVC;

the parties shall procure that the JVC allots and issues credited as fully paid:

_____ A Shares to A (to be included in the initial _____ ordinary shares of KShs _____ each in the JVC subscribed for by A upon incorporation); and

_____ B Shares to B

the following associated agreements shall be entered into, namely:

the Asset Transfer Agreement / Sale and purchaser Agreement [in the form of the agreed draft] between ___ and the JVC for the transfer of _____ ;

the Distribution Agreement [in the form of the agreed draft] between _____ and the JVC for the distribution of _____;

the Technology Licence [in the form of the agreed draft] between _____ and the JVC for the licensing of _____;

the Supply Agreement [in the form of the agreed draft] between _____ and the JVC for the supply of _____;

the Services Agreement [in the form of the agreed draft] between _____ and the JVC for the provision of services to the JVC as therein provided;

the Trade Marks Agreement(s) [in the form of the agreed draft] between _____ and the JVC for licensing of the use of the _____ mark.

CAPITAL AND FURTHER FINANCE

Share Capital

The JVC shall, in accordance with and following completion of the events and transactions referred to in clause 2, have an issued share capital of KShs _____ consisting of _____ A Shares owned by A and _____ B Shares owned by B.

Increase in share capital

The share capital of the JVC may from time to time be increased by such sum as shall be mutually agreed but so that in any event (unless otherwise agreed) such increased share capital shall be held in the proportions of 50 per cent by B (or other member of B Group).

Further Finance

If the JVC shall in the opinion of the Board require further finance, the JVC shall [(without prejudice to clause 5)] first approach its own bankers. The parties shall not be obliged to

provide guarantees for the JVC's liabilities in respect of such finance but, if they do so, they shall be given in equal proportions. The liabilities of the parties under any such guarantees shall (so far as possible) be several and, if a claim is made under any such guarantee against a party, that party shall be entitled to a contribution from the other party such as to ensure that the aggregate liability is borne in equal proportions.

If finance cannot be obtained from the JVC's own bankers, either party shall be obliged to provide any such further finance to the JVC. Any such finance which the parties do agree to provide shall (unless otherwise agreed) be provided by the parties in equal proportions (whether by way of subscription of share capital, loan stock or otherwise).

The provisions of this clause 3.3 shall apply *mutatis mutandis* to any finance or guarantees provided for the benefit of any subsidiaries of the JVC.

Party ceasing as shareholder

Upon either party ceasing to be a shareholder in the JVC, the other party shall procure that any finance provided by that party under clause 3.3. shall be repaid to it and that it shall be relieved of its obligations under any guarantees provided under clause 3.3 (provided that, notwithstanding the termination of this Agreement, a party ceasing to be a shareholder shall remain liable under any such guarantees for any claims arising in respect of any default by the JVC occurring during the period during which that party was a shareholder in JVC).

DIRECTIONS AND MANAGEMENT

Board of Directors

The business and affairs of the JVC shall (subject to the Reserved Shareholders Matters set out in clause 5) be managed by the Board of the JVC. The Board shall consist of [six (6)] persons of which:

A shall be entitled to appoint and maintain in office [three (3)]. Directors (and to remove any Directors so appointed from office and to appoint another in the place of any Director so removed); and

B shall be entitled to appoint and maintain in office [three (3)]. Directors (and to remove any Directors so appointed from office and to appoint another in the place of any Director so removed).

Appointments and Removals

Every appointment and removal by A or B of a Director pursuant to its entitlement shall be notified in writing to the other party and the Secretary of the Company. A and B shall each use their respective votes in the JVC to ensure that the Board of the JVC is constituted by persons appointed in the manner set out in this Agreement.

Quorum

The quorum for the transaction of business at any meeting of the Board shall be at least one (1) A Director (or his alternate) and at least one (1) B Director (or his alternate) present at the time when the relevant business is transacted.

Voting

At any meeting of the Board, each Director shall be entitled to one vote. Any Director who is absent from any meeting may nominate any other [Director] to act as his alternate and to vote in his place at the meeting. [if the parties are not represented at any meeting of the Board by an equal number of A Directors and B Directors (including alternates), then one of the Directors so present nominated by the

party which is represented by the fewer Directors shall be entitled at that meeting to such additional vote or votes as shall request in the Directors so present representing each party having in aggregate an equal number of votes.] the Chairman shall not have a casting vote.

Notice and Agenda

At least [14 days] written notice shall be given to each of the members of the Board of any meeting of the Board, provided always that a shorter period of notice may be given with the written approval of [at least one (1) B Director]. Any such notice shall contain, *inter alia*, an agenda identifying in reasonable detail the matters to be discussed at the meeting and shall be accompanied by copies of any relevant papers to be discussed at the meeting.

Decisions of Board

A and B agree to accept as binding upon them any decision affecting the JVC and/or the relationship of the JVC with A or B (as the case may be), duly taken by the Board of the JVC in which their respective nominated Directors (or their alternates) have concurred EXCEPT THAT the Reserved Shareholder Matters covered by clause 5 shall require the prior approval of the parties. [NB. *Consider whether this is appropriate. The parties may not wish their appointees to have this wide authority.*]

RESERVED SHAREHOLDER MATTERS

Matters requiring approval of the parties

The following matters (**Reserved Shareholder Matters**) shall require the prior approval of A and B:

any issue of shares (or securities convertible into shares) of the JVC other than an issue of shares to A and B in the proportions specified in clause 3.2;

any sale of the whole or any substantial part of the JVC;

any alteration to the Memorandum and Articles;

any borrowing by the JVC which would result in the aggregate borrowings of the JVC being in excess of KShs _____ or such other amount as the parties shall from time to time agree;

approval of the annual budget and operating plan of the JVC;

any expansion of the marketing territory of the JVC beyond _____;

any development of the product line of the JVC beyond _____ (as improved or enhanced from time to time);

any repayment by the JVC of any loan made by a member of the A Group or the B Group;

filing by the JVC for liquidation, receivership or reorganization under any insolvency laws or any similar action;

the formation of any subsidiary of the JVC;

the purchase by the JVC of the shares or other securities, stock or debentures of any other company;

the commencement, settlement or abandonment of litigation or admission of liability by the JVC involving a dispute in excess of KShs _____ (other than a claim against a member of the A Group or a member of B Group);

the approval of, or any [material] change to, the service / employment contracts with _____ or _____ ;

the appointment (and removal) of the auditors of the JVC;

the entry into of any contract or commitment by the JVC having a value or likely to involve expenditure by the JVC in excess of KShs _____ (or such other limit as the parties shall from time to time agree).

Method of approval

Approval for the purposes of clause 5.1 may be given by A and B either in writing or by unanimous resolution at a general meeting of the shareholders of the JVC or by written resolution.

Subsidiaries

The provisions of clause 5.2 shall apply equally to any matters undertaken by a subsidiary of the JVC as if references therein to "the JVC" included any such subsidiary.

TRANSFER OF SHARES

Transfer notice

Each party hereby undertakes that, if at any time any member of its Group shall desire to sell or otherwise dispose of any of its shares in the JVC other than to another member of its Group, then:

the relevant party (**the Selling Party**) shall give notice in writing to the other party (**the Continuing Party**) of such desire and of its proposed price (in this clause referred to as a **Transfer Notice**);

within thirty (30) days after receipt of the Transfer Notice, the Continuing Party shall have the right by notice in writing (a **Purchase Notice**) to inform the Selling Party that it wishes to purchase the shares included in the Transfer Notice (**the Sale Shares**) at such price as may be specified in the Transfer Notice;

if the Continuing Party so serves a Purchase Notice, the sale and purchase of the Sale Shares shall be completed accordingly; if not, [either] the Selling Party [or the Continuing Party] shall be entitled to request [the Auditors of the JVC] (acting as experts and not as arbitrators) to determine the price (herein called the **Fair Price**) representing in their opinion a fair selling value of the shares to be sold as between buyer and a willing seller;

upon the Fair Price being so determined, the Selling Party may give to the Continuing Party a further notice in writing (herein called a **Second Transfer Notice**) offering to sell all of the Sale Shares at the Fair Price;

if the Continuing Party serves notice within [thirty (30)] days of receipt of the Second Transfer Notice accepting such offer, the sale and purchase of the Sale Shares shall be completed accordingly; if not, the Selling Party or any other member of its Group shall thereafter be entitled to sell the Sale Shares at not less than the Fair Price to a third party purchaser [(approved by the Continuing Party in writing)] within a period of [sixty (60)] days but not otherwise;

if no such sale to such a third party purchaser is concluded within [sixty (60)] days (or such other period as the parties may agree in writing), then it is agreed that [either party] may be

written notice request that the JVC shall be put into liquidation forthwith and, in that event, the parties undertake to propose and support any resolution that may be necessary to liquidate the JVC.]

No dealings in beneficial interest

Neither A or B (nor any member of its respective Group) shall deal or attempt to deal with the beneficial interest in any share of the JVC except by transfer of its shareholding permitted in accordance with this clause 6.

Undertaking by transferee

No transfer of shares of the JVC shall be registered or become effective unless the transferee shall first have entered into an Agreement undertaking to be bound by this Agreement (including this clause 6) to the same extent as the transferor would have been bound had the transfer not been effected.

Minimum period

Neither party (nor any member of its respective Group) shall be entitled to serve a Transfer Notice under clause 6.1 prior to _____

Shareholder ceasing to be a Subsidiary

Each of A and B respectively undertakes to procure that, if any member of its Group holding shares in the JVC ceases at any time to be a [wholly-owned] subsidiary of that party, that subsidiary shall prior to ceasing have transferred beneficially all its shares in the JVC held by it at the time in question to the relevant party (or another members of its Group).

CONFIDENTIALITY

Confidentiality

Each of the parties shall at all times use all reasonable endeavours to keep confidential (and to ensure that its employees and agents shall keep confidential) any confidential information which it may acquire in relation to the JVC [and its subsidiaries] or in relation to the clients, business or affairs of the other party (or any member of its respective Group) and shall not use or disclose such information except with the consent of the other party or, in the case of information relating to the JVC [or one of its subsidiaries], in the ordinary course of advancing the Business. The restriction in this clause 7.1 shall not apply to any information:

which is publicly available or becomes publicly available through no act of the first mentioned party;

which was in the possession of that party prior to its disclosure;

which is disclosed to that party by a third party which did not acquire the information under an obligation of confidentiality;

which is independently acquired by that party as the result of work carried out by an employee to whom no disclosure of such information had been made;

[which is disclosed in accordance with the requirements of law, any stock exchange regulation or any binding judgment, order or requirement of any court or other competent authority].

Employees, agents, etc.

Each party shall use all its respective powers to procure (so far as it is able) that the JVC [and its subsidiaries] shall use all reasonable endeavours to ensure that the officers, employees and agents of each of them shall observe a similar obligation of confidence in favour of the parties to this Agreement.

Survival after termination

The provisions of this clause 7 shall survive any termination of this Agreement.

RESTRICTIONS ON THE PARTIES

Neither A nor B nor any member of its respective Group shall (either or jointly with any other person, firm or company and whether directly or indirectly) carry on or be engaged in or interested (except as the holder for investment of securities dealt in on a stock exchange and not exceeding [5] per cent in nominal value of the securities of any class) in any Competing Business during the period of this Agreement. For this purpose **Competing Business** means _____.

TERM

[NB: Review carefully. The parties may not wish to have this unilateral right of termination/liquidation.]

Term and Notice

[This Agreement shall continue for a minimum period of _____ years and thereafter from year to year, provided that either A or B shall be entitled (without prejudice to the application of clause (*Transfer of Shares*)) to terminate this Agreement by giving _____ months' prior notice (to expire not earlier than _____) in writing served upon the other party].

Liquidation

[Upon, or as soon as practicable after, the termination of this Agreement pursuant to a notice under clause 9.1, the parties shall use their respective powers and votes to cause the JVC to be placed in liquidation. The parties shall co-operate to ensure that all contracts entered into by the JVC (or any subsidiary thereof) prior to such termination shall be duly completed subject to such arrangement as the parties may mutually agree.]

SUPREMACY OF THIS AGREEMENT

A and B shall each use their respective votes in the JVC and all other means at its disposal so as (a) to ensure that this Agreement is duly performed and (b) to ensure that the provisions of the Memorandum and Articles are not infringed (save that in the event of any conflict between this Agreement and the Memorandum and Articles, this Agreement shall prevail as between the parties).

COSTS

The costs of and incidental to the incorporation of the JVC shall be borne and paid by the JVC. The costs of each of the parties incurred in the preparation and execution of this Agreement shall be borne by such party.

NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall be deemed to constitute a partnership between the parties or constitute

either party the agent of the other party for any purpose or entitle either party to commit or bind the other party (or any member of its respective Group) in any manner.

ENTIRE AGREEMENT

This Agreement [and [any other Agreements entered into an Completion pursuant to clause 2?]] set[s] out the entire and understanding between the parties with respect to the subject matter hereof. [This Agreement supercedes [the confidentiality Undertaking/any Heads of Agreement or Memorandum of Understanding], which shall cease to have any further force or effect.] It is agreed that:

[neither] party has entered into this Agreement in reliance upon any representation, warranty or undertaking of [the] other party which is not expressly set out or referred to in this Agreement;

a party shall have no claim or remedy in respect of misrepresentation (whether negligent or otherwise) or untrue statement made by the other party;

this clause shall not exclude any liability for fraudulent misrepresentation.

MUTUAL CONSULTATION AND GOODWILL

[The parties confirm their intention to promote the best interest of the JVC and to consult fully on all matters materially affecting the development of the Business. Each party shall act in good faith towards the other party in order to promote the success of the JVC.]

NOTICES

15.1 Any notice pursuant to this Agreement shall be in writing signed by (or by some person duly authorised by) the person giving it and may be served by leaving it or sending it by facsimile, prepaid recorded delivery or registered post to the address of the other party as follows (or to such other address as shall have been duly notified in accordance with this clause).

15.2 The details for notices are:

A:
B:

ASSIGNMENT

Neither of the parties (nor any member of its respective Group) shall be entitled to assign this Agreement or any of its rights or obligations hereunder except to a transferee of that party's shares in the JVC in accordance with clause 6 of this Agreement.

CONDITIONS PRECEDENT

[Completion under clause 2 shall be conditional upon each of the following conditions having first been satisfied or waived:

(a)

(b)

Each party shall use all reasonable endeavours to procure that the Conditions Precedent are fulfilled as soon as possible. If they shall not have been fulfilled (or waived) by _____, this Agreement (other than the provisions of clause 7 (Confidentiality) shall, unless otherwise agreed, thereupon automatically cease and terminate and neither party shall have any claim of any nature whatsoever against the other party.)

GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with English Law.

AS WITNESS this Agreement has been executed the day and year first before written:

SIGNED BY _____)
for and on behalf of A in the presence of)
)
)
)
)
)

SIGNED BY _____)
for and on behalf of B in the presence of)
)
)
)
)
)