

# MODEL CONTRACTS FOR SMALL FIRMS

## LEGAL GUIDANCE FOR DOING INTERNATIONAL BUSINESS

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# International Contractual Alliance

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## Introduction

This Model Contract is a framework for **an Alliance or collaboration between two Parties where no separate jointly owned corporate entity is created**. The Alliance is based solely on the contract between the Parties. (It is sometimes also called a contractual joint venture.)

1. Each contractual Alliance or collaboration is different. This Model Contract provides a series or a “menu” of possibilities depending on the purpose of the Alliance. Provisions that are not relevant to the particular Alliance should be deleted.
2. The Model Contract contemplates the formation of a *Management Committee* on which the two Parties are jointly represented. It may be appropriate in some cases (i) to spell out the authority of particular individuals or subcommittees and/or (ii) to ensure that certain “reserved matters” require unanimous decision.
3. The Model Contract contemplates that the two Parties will *share 50-50 in costs* of the Alliance. It is important to establish what types of costs are to be shared. If a party is to be paid for its work or other contribution, the basis for remuneration should be clearly established – either at the outset or through the Management Committee.
4. Article 3 contemplates that *each party will have areas of responsibility* to contribute towards the success of the Alliance. In some cases these will be expressed in general terms – and not involve formal legal commitment. In other cases, specific legally binding commitment will be appropriate.
5. Article 6 sets out provisions for a relatively straightforward *sharing of knowhow and technical development*. In some cases (e.g. where Intellectual Property rights are of vital importance), more detailed license or other contracts will be necessary.
6. Establish the *duration* of the Alliance. Will it have a specific term with subsequent renewal requiring mutual agreement? Or will it continue indefinitely subject to a party’s right to terminate – either unilaterally by notice or in specified circumstances?
7. *A contractual Alliance does not usually involve the creation of a separate profit-making business* in which the Parties share profits as well as costs. If the arrangements do involve income or profit-sharing, be aware of (i) the need for advice on the tax implications and (ii) the danger that, in many jurisdictions, each party could become jointly liable to third Parties for any claims (caused by whichever party) arising out of activities of either party connected with the Alliance.

8. If the venture does involve a separate profit-making business, this will normally require a more formal “partnership” agreement or the creation of a corporate joint venture.

This Model Contract is a general framework only – and must be tailored to the circumstances of the particular Alliance or collaboration.

# ITC MODEL CONTRACT FOR AN INTERNATIONAL CONTRACTUAL ALLIANCE

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**PARTIES:**

Name (name of company)  
 .....  
 Legal form (e.g. limited liability company)  
 .....  
 Country of incorporation and (if appropriate) trade register number  
 .....  
 Address (place of business, phone, fax, e-mail)  
 .....  
 .....  
 Represented by (name, position, address)  
 .....  
 .....

**Referred to as "ABC"**

Name (name of company)  
 .....  
 Legal form (e.g. limited liability company)  
 .....  
 Country of incorporation and (if appropriate) trade register number  
 .....  
 Address (place of business, phone, fax, e-mail)  
 .....  
 .....  
 Represented by (name, position, address)  
 .....  
 .....

**Referred to as "XYZ"**

ABC and XYZ are together referred to as "the Parties" and individually as a "party".

[Add any further information required e.g. the Parties' fiscal identities]

## Background

- A. ABC is primarily based in *[specify]* and has particular technical expertise in the field of *[specify]*.
- B. XYZ is primarily based in *[specify]* and is engaged principally in the field of *[specify]*.
- C. The Parties believe that there are mutual benefits to be achieved by working together and have agreed to establish a collaborative Alliance in the field of *[specify]* on the terms of this contract.

## Operative provisions

### 1. Objectives and key principles

1.1 The Parties agree to establish a collaborative Alliance (the “Alliance”) whose primary objectives are:

Specify primary objectives of the Alliance. The following are examples only:

- 1.1.1 To make ABC’s technical expertise in the field of . . . . . available to XYZ in order to develop its business in . . . . . ;
- 1.1.2 To explore the various synergies which may be obtained by working together, particularly in the field of . . . . . ;
- 1.1.3 To undertake joint research Projects as may be agreed from time to time *[and to consider the joint commercial exploitation of any new technology or products resulting from their joint research]*;
- 1.1.4 Generally, to explore commercial arrangements that will be for the mutual benefit of both Parties.

1.2 Each party acknowledges that the success of the Alliance will require a cooperative working relationship established upon good communications and team working between the Parties at all levels.

1.3 The Parties confirm their intention to establish and develop the Alliance in accordance with the principles set out in this contract with a view to achieving the success of the Alliance in their mutual best interests *[Option, add where appropriate: “Including the milestone targets and other goals set out in the Alliance plan annexed to this contract”]*.

### 2. Management Committee

2.1 The Parties shall establish a committee (“Management Committee”) responsible for overall organization, direction and management of the Alliance. The role of the Management Committee shall primarily be:

*[specify role of the Management Committee. The following is an example only:*

- 2.1.1 *To give strategic and operational direction to the Alliance;*

- 2.1.2 *To approve particular Projects to be carried out through the Alliance, including any funding commitments of the Parties for those approved Projects;*
- 2.1.3 *To develop targets and milestones in order that progress of the Alliance can be measured;*
- 2.1.4 *To identify resources required to support the Alliance and agree the responsibilities of each party to provide those resources;*
- 2.1.5 *To ensure that communications between the Parties are maintained actively and in a coordinated manner;*
- 2.1.6 *To provide a forum in which any problems can be addressed constructively and resolved.]*

2.2 Each party shall appoint two (2) representatives [*vary number as appropriate*] to be members of the Management Committee (and shall consult with the other party before any such appointment or any change in representation). Each member shall have one vote. Decisions shall be made by simple majority vote (provided that at least one (1) representative of each party is included in that majority vote).

2.3 The first members of the Management Committee shall be: [*specify names*] (appointed by ABC) and [*specify names*] (appointed by XYZ).

2.4 The chairman of the Management Committee shall be nominated by [*specify ABC or XYZ as appropriate*] but shall not have any casting vote.

2.5 The Management Committee shall meet regularly (either telephonically, by video conference or in person) and, unless otherwise agreed, not less than quarterly. Unless otherwise agreed, the venue (if the meeting is in person) shall alternate between the Parties. Communication on a regular basis shall be encouraged between members of the Management Committee.

2.6 Any decision made by the Management Committee in relation to the Alliance shall be binding and, where requiring action by the Parties, shall be carried into effect by the Parties. A failure by a party to comply shall be a breach of this contract.

**3. Contributions of the Parties**

*[Comment: This Article may be appropriate as a framework to set out principal responsibilities or contributions of each party towards the Alliance. What does each party expect the other to contribute to the Alliance?]*

3.1 It is intended that each party shall contribute particular knowledge, skills or services to assist the establishment and success of the Alliance. The general responsibilities of each party are set out in this Article 3.

3.2 The general contributions of ABC towards the Alliance shall be:  
*[These are examples only. Tailor description to each Alliance.]*

3.2.1 *[To provide technical assistance (including through the provision of training) in the field of . . . . . on reasonable terms to be agreed between the Parties through the Management Committee (such technical assistance to be given under the terms of a technical assistance contract)];*

3.2.2 *[ . . . . . ].*

3.3 The general contributions of XYZ towards the Alliance shall be:

3.3.1 *[To use its contacts, knowledge and distribution network in [country] to assist the promotion of [ABC's products]];*

3.3.2 *[To assist with the recruitment of local staff, facilities and resources for the operations of the Alliance];*

3.3.3 *[ . . . . . ].*

3.4 Each party shall use all reasonable efforts to provide its contribution to promote the success of the Alliance. Each party shall be responsible for ensuring that it provides its contribution towards the Alliance using all such diligence and skill as is reasonable in the circumstances.

*[Alternative: If this is intended as a general statement of goodwill without legal liability, delete the above Article 3.4 and replace with the following:*

*“3.4 Each party shall use all reasonable efforts to provide its contribution to promote the success of the Alliance. The Alliance will, however, be built on trust between the Parties and neither party shall (unless otherwise specified in this contract) have any legal liability to the other in respect of the standard, adequacy or performance of its contribution.”]*

## 4. Joint Projects

*[Comment: An Article of this kind may be appropriate where a joint research or other technical Project is to be undertaken. The provisions will need to be tailored to the circumstances of each Alliance.]*

4.1 A particular objective of the Alliance is to identify appropriate Projects for joint research or other collaboration between the Parties, particularly in the field of *[specify field]*. These Projects will be aimed at developments where the results will be of benefit to both Parties. These Projects may lead, in appropriate cases, to arrangements for joint commercial exploitation.

4.2 Joint research or other Projects to be undertaken by the Alliance will be agreed and directed by the Management Committee who shall:

4.2.1 Establish financial resources for the Project (including any minimum financial commitments of the Parties) and allocate personnel to research Projects approved by the Management Committee including the appointment of a Project Manager to lead a Project team;

4.2.2 Approve specific research plans; and

4.2.3 Develop specific performance targets and periodically review progress.

4.3 After the Management Committee has approved plans for a particular Project, the Project team shall coordinate and implement all day-to-day activities of the Parties. The Project team shall work openly and cooperatively and shall meet periodically, as the Project Manager determines to be necessary, to coordinate their activities. Each party shall, through the Project Manager, periodically submit to the Management Committee progress reports in relation to its activities under each joint research Project.

4.4 A more detailed Project contract shall, where considered appropriate by the Parties, be entered into in relation to a particular joint research or other collaborative Project to be funded by the Parties.

## 5. Alliance costs

*[Comment: This Article, or similar provisions, may be appropriate where each party is to bear costs in relation to the Alliance that are to be administered out of a central Joint Account. The concept of a limit on each party's funding commitment is optional.]*

5.1 For the purpose of this Article:

*[Delete the following definition if no limit is set]* “Aggregate Funding Commitment” means, in relation to a party, that party’s maximum commitment to provide finance for the Alliance, namely:

ABC: *[specify maximum commitment]*

XYZ: *[specify maximum commitment]*

or such other amounts as shall from time to time be agreed between the Parties;

“Budget” means an annual budget for the Alliance *[or a particular Project]* approved by the Management Committee;

“Funding Share” means the share of the costs of the Alliance to be borne by each party, namely: ABC – *[specify]* percentage; XYZ – *[specify]* percentage;

“Joint Account” means account(s), in the joint names of the Parties, relating to the operations of the Alliance and to be administered by *[specify party or administrator]*;

“Project Manager” means the Project or general manager appointed by the Management Committee.

5.2 Each party shall contribute its Funding Share of the costs of the Alliance on a quarterly basis in accordance with the Budget set by the Management Committee *[Option, add if applicable: “up to, in each case, its Aggregate Funding Commitment”]*.

5.3 Not less than 30 days before the end of each quarter, the Management Committee *[or, where relevant: the Project Manager]* shall notify each party of that party’s Funding Share of the costs of the Alliance due pursuant to Article 5.2 in respect of that quarter. Each party shall pay the amount due into the Joint Account on or before the last day of the quarter in question.

5.4 Not less than 60 days before the end of each year, the Management Committee shall review the future funding of the Alliance so as to establish the Budget for the following year. *[Option, add if applicable: “No party shall be obliged to provide funds in excess of its Aggregate Funding Commitment.”]*

5.5 Unless otherwise agreed between the Parties:

5.5.1 All notices for funds under this Article 5 shall be sent to the address of the relevant party as specified in or pursuant to Article 17;

5.5.2 All payments shall be made by each party in *[currency]* in cleared funds into the Joint Account;

5.5.3 (Without prejudice to Article 12) Any payment which is in default or delayed by any party shall bear interest, at the rate of *[specify]* % above the base lending rate for the time being of *[specify]* Bank, from the due date of payment until the actual date of payment.

5.6 Payments from the Joint Account shall only be made for work carried out or provided in connection with the Alliance. Invoicing and payment procedures to reimburse a party (or any member of its corporate group) for work carried out by it for the Alliance shall be as established from time to time by the Management Committee [*Alternatively: Delete “as established from time to time by the Management Committee” and replace with: “As set out in the schedule to this contract”*].

5.7 Any cheque or other payment drawing on funds from the Joint Account shall require the signature or written authorization of the Project Manager or other person authorized by the Management Committee.

5.7.1 Any cheque or other payment in excess of [*specify threshold*] (or such other amount as the Management Committee may from time to time decide) shall also require countersignature by such other person as shall be authorized by the Management Committee.

5.7.2 Any cheque or payment in excess of [*specify limit*] shall, in addition to the above signatures, require express authorization by the Management Committee.

5.8 Full and proper books of account and records relating to the Alliance shall be kept in accordance with standard accounting practice under the supervision of the Management Committee. These books and records shall be available at all times for inspection by each party or its duly authorized representative.

5.9 An audit of the Joint Account shall be undertaken every 12 months (or such other period considered appropriate by the Management Committee) by an independent auditor and a report, in a form to be established by the Management Committee, shall be prepared and submitted to each of the Parties. The audit fee shall be paid out of the funds authorized by the Budget.

5.10 If there are any surplus funds in the Joint Account on termination of the Alliance (all outstanding fees, costs and expenses of the Alliance having been met), the surplus or balance shall be distributed among the Parties pro rata to their respective Funding Shares.

## **6. Intellectual Property**

*[Comment: This Article, or similar provisions, may be appropriate where the exchange and development of technical information involves Intellectual Property rights (IPR). It provides a framework of key points. It is prepared on the basis that specific IPR developed under the Alliance will be jointly owned and that “going to market” will require the consent of both Parties. Clarity is important regarding rights after termination of the Alliance. In many cases, more detailed licence agreements will be appropriate to cover the IPR arrangements, particularly where one party’s specific IPR is made available for use by the other party under the Alliance.]*

6.1 For the purposes of this Article:

“Background IPR” means the existing know-how and other Intellectual Property of a party relevant to a Project and available to be disclosed and used for the purposes of the Alliance.

“Intellectual Property” means any patent, copyright, design right or other Intellectual Property protection including rights in any secret process, technical know-how or other confidential information (together with any application for such protection).

“Project” means a particular Project approved by the Management Committee and to be carried out through the Alliance.

“Project IPR” means any specific technical know-how, confidential information or other Intellectual Property developed pursuant to the Alliance.

“Project Trademarks” means any trademarks or names used primarily for the Alliance or any products or services developed under the Alliance; and

“Territory” means [*specify*].

6.2 Under arrangements to be coordinated by the Management Committee, each party shall disclose to the other party such of its Background IPR as is necessary or desirable in order to enable the Project to be carried out effectively. Disclosure shall, if appropriate, include reasonable arrangements for the instruction of suitably qualified staff of the other party in the use and application of that Background IPR.

6.3 All Background IPR originating from a particular party shall remain the exclusive property of that party. The other party shall not use or disclose any such Background IPR except for the specific purposes of the Alliance or as expressly permitted by the Management Committee.

6.4 Each party warrants to the other party that, so far as it is aware, the use of its Background IPR in accordance with this contract will not infringe any Intellectual Property rights of any third party. A party gives no other warranty or representation of any kind to any other party in relation to its Background IPR (including, but not limited to, its suitability for any particular use or application).

6.5 All Project IPR shall, unless otherwise agreed between them, belong to the Parties equally as joint owners. Each party shall, if requested by the other party, enter into such assignment or other formal documentation as may be necessary or desirable to record that joint ownership.

6.6 During the period of this contract, the procedure for obtaining initial registered Intellectual Property rights in respect of any Project IPR shall be implemented by the Project Manager acting on his own initiative or at the direction of the Management Committee. The costs of applying for any such initial protection (including the costs of first filing) shall be met from the Joint Account. Any subsequent decision to proceed with registered protection shall be for the Management Committee.

6.7 In the event of any alleged infringement by a third party of any Project IPR or any Project IPR allegedly infringing any Intellectual Property rights of a third party, the Management Committee shall meet to decide the best course of action and the Parties shall thereafter be bound to take steps to implement that action.

6.8 Each party shall adopt such confidentiality procedures as may be reasonably necessary or prudent in accordance with good industry practice (including obtaining confidentiality undertakings from key employees) to

ensure the safe custody of any materials forming part of the Project IPR or of the other party's Background IPR.

6.9 Except as specifically agreed in writing between the Parties, neither party shall use any trademarks or trade names of the other party in the course of its business or in any form of publicity relating to the Alliance.

6.10 If a party wishes "to go to market" or otherwise exploit commercially any product, service or technology substantially derived from work under the Alliance, it shall notify the other party and discussions in good faith shall take place between the Parties regarding arrangements for use of any Project IPR or Project Trademarks. Unless otherwise agreed:

6.10.1 Each party shall be entitled to use in the course of its own business any general non-confidential know-how developed during the Alliance;

6.10.2 Any commercial marketing or exploitation of Project IPR (or the use of any Project Trademarks) shall require the prior consent of both Parties.

The provisions of this Article 6.10 shall survive any termination of this agreement.

## **7. Preferred supplier/distributor**

*[Comment: This Article may be appropriate if one of the Parties is likely to be appointed a preferred supplier or distributor of products developed under the Alliance.]*

7.1 It is anticipated that XYZ's business, if it develops in the field of *[specify]*, will create a need for *[specify e.g. products]*. Any decision to develop that business shall be solely for XYZ. If XYZ does develop this business, it is agreed that ABC shall become a "preferred supplier" to XYZ for *[specify products]* and have first opportunity to supply them to XYZ subject to price, specification, quality and delivery times being agreed and no less favourable than other potential comparable suppliers.

7.2 If XYZ decides to distribute *[specify products]* internationally, the Parties shall negotiate in good faith for the appointment of ABC as exclusive distributor in *[territories]* for an initial period of *[specify]* years (renewable by agreement) on commercial terms to be agreed in a separate distributorship contract.

## **8. Secondments and personnel**

*[Comment: This Article is only appropriate if there are likely to be secondments of staff between the Parties.]*

8.1 The Parties recognize that secondments of staff (and other sharing of personnel, will actively consider a programme for staff secondments. The terms of any such secondments shall be agreed between the Parties (if necessary through the Management Committee resources and know-how) may be an appropriate means to develop the Alliance.

8.2 Any employees of either ABC or XYZ who are seconded or sent to visit the premises of the other party during the Alliance shall remain employees of the Party sending them. the employer party shall (i) be responsible for ensuring that its employees comply with all security and site regulations

applicable at the other party's premises and (ii) indemnify the other party against any property damage or any personal injury caused by the negligent act or omission of any of its employees at the other party's premises.

## **9. Confidentiality and announcements**

9.1 Each party shall use all reasonable efforts to keep confidential all commercial and technical information that it may acquire in relation to the customers, business or affairs of the other party. No party shall use or disclose any such information except with prior consent of the other party. This restriction shall not apply to any information:

- 9.1.1 Which is or becomes publicly available through no default of that party;
- 9.1.2 Is already in that party's possession without any obligation of confidentiality;
- 9.1.3 To the extent that it is required to be disclosed by law or by the rules of any recognized stock exchange or regulatory body.

9.2 *[Include Article 9.2 where the provision of technical assistance is part of the arrangements for establishing the Alliance. If it is not, then delete Article 9.2.]* Article 9.1 shall not restrict or prevent a party from using, in the course of its business, any know-how or technical information acquired pursuant to the arrangements contemplated by Article 33 and 44 of this contract provided that (i) such use shall not include sublicensing, (ii) appropriate measures to ensure confidentiality are maintained and (iii) no disclosure to third Parties takes place except as permitted by Article 9.1. This shall be subject to the provisions of any technical assistance contract or Project contract that (in the event of any conflict) shall over this Article 9 in respect of the use of information disclosed pursuant to those contracts.

9.3 Each party shall use all reasonable efforts to ensure that its employees, agents and any affiliates observe these confidentiality obligations.

9.4 No announcement in connection with the Alliance or this contract shall be made by either party without the prior approval of the other party (such approval not to be unreasonably withheld or delayed) except as may be required by law or by any stock exchange or by any governmental authority.

9.5 The provisions of this Article 9 shall survive any termination of this contract.

## **10. Restrictions on the Parties**

*[Comment: The scope of any non-compete or other restrictions on the Parties should be carefully tailored to the particular Alliance. Restrictions will be difficult to enforce in many jurisdictions unless specific and reasonable in scope, Territory and length.]*

10.1 It is the intention of the Parties to work closely and collaboratively with each other in developing the Alliance. Therefore, during the period of the Alliance:

10.1.1 ABC shall not enter into a similar Alliance with any other party for operations in the field of *[specify]* or (directly or indirectly) carry on business in the field of *[specify]* in a manner competitive with XYZ in *[specify Territory]*;

10.1.2 XYZ shall not enter into a similar Alliance with any other party for operations in the field of *[specify]* or (directly or indirectly) carry on business in the field of *[specify]* in a manner competitive with ABC in *[specify Territory]*.

10.2 Neither party shall, outside of the Alliance, carry on (whether on its own or with any third party) any research Project that is directly competitive with any research Project being carried out by the Alliance.

10.3 During the period of the Alliance *[Option, add if appropriate: "And for one (1) year after its termination,"]* neither party shall attempt to employ or entice away any employee of the other party engaged in any managerial or technical capacity in relation to the operations of the Alliance.

## **11. Liability**

11.1 It is contemplated that during the Alliance each party (and its employees and representatives) may provide recommendations and advice to the other as part of the relationship between the Parties. Both Parties acknowledge that any such recommendations and advice are given freely and without any warranties or liability. Neither party shall have any claim, liability or cause of action against the other party in respect of any such recommendation or advice given during the Alliance.

11.2 Neither party shall have any responsibility for any liabilities arising in the course of the other parts business.

11.3 Articles 11.1 and 11.2 are subject to any specific terms agreed in any technical assistance contract, Project contract or other contract between the Parties regarding liability for the supply of information or other technical assistance.

## **12. Duration and termination**

*[Comment: This Article contemplates that the Alliance will continue until terminated by notice or joint agreement. In some cases, it may be preferred to establish the Alliance for a defined period (e.g. two years) and for any renewal or extension of that period to require joint agreement of the Parties.]*

12.1 The Alliance shall commence on the date of this contract. It shall continue indefinitely subject to termination in accordance with this Article 12. Each party nevertheless recognizes that it is vital for the success of the Alliance to maintain flexibility and to respond to changing circumstances and practical experience. Each party will consider in good faith any proposals put forward by the other party for the development of the Alliance.

12.2 The Alliance may be terminated by agreement between the Parties at any time.

12.3 Either party may give not less than *[3 months']* *[vary period as appropriate]* written notice at any time to terminate the Alliance, provided that no such notice shall be given prior to *[specify date e.g. two years after commencement]*.

12.4 Either party shall have a right to terminate the Alliance if any of the following events shall occur in relation to the other party (the “Defaulting Party”):

12.4.1 If the Defaulting Party commits a material breach of this contract (or any other contract between the Parties entered into pursuant to this contract) and fails to remedy the breach within 45 days after being given notice by the other party to do so (and such notice specifies that the notifying party intends to exercise its rights of termination under this Article); or

12.4.2 If a filing is presented or an order is made for the appointment of an administrator, receiver, manager or similar officer in bankruptcy over any substantial part of the Defaulting Party’s assets or business (and such filing or order is not discharged within 30 days).

12.5 [Option: Add this Article 12.5 if a change in ownership of the other party could be critical: “12.5 A party shall have the right to terminate the Alliance by giving [45 days] notice if a third party acquires a controlling interest in the other party (and, for this purpose, a “controlling interest” means (i) the ownership or control (directly or indirectly) of more than 50% of the voting capital of that other party or (ii) the right to appoint or remove a majority of the directors of that party).” If it is not appropriate then delete this Article 12.5.]

12.6 In the event of termination:

12.6.1 The Parties shall consult and use all reasonable efforts to agree an orderly programme for winding up the activities of the Alliance;

12.6.2 The terms of this contract and (unless the Parties otherwise agree) the terms of any technical assistance contract and/or Project contract shall automatically terminate except that:

- (a) The provisions of Article 9 (Confidentiality and announcements), 11 (Liability) and 21 (Dispute resolution procedure) shall continue together with any other provisions specified in this contract or any Project contract or technical assistance contract as surviving termination;
- (b) Each party shall remain liable for any breach of its obligations prior to termination.

### **13. Force majeure**

13.1 “Force majeure” means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and which it could not reasonably be expected to have taken into account at the time of the conclusion of this contract, or to have avoided or overcome it or its consequences.

13.2 A party affected by *force majeure* shall not be deemed to be in breach of this contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any *force majeure* of which it has notified the party in accordance with Article 13.3. The time for performance of that obligation shall be extended accordingly, subject to Article 13.4.

13.3 If any *force majeure* occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall within a reasonable time notify the other party as to the nature of the circumstances in question and their effect on its ability to perform.

13.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by *force majeure* for a continuous period in excess of three [*specify any other figure*] months, the other party shall be entitled to terminate this contract by giving written notice to the Party affected by the *force majeure*.

*[Alternative: If preferred, replace Article 13.4 with the following alternative: "13.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by force majeure for a continuous period in excess of [six] months, the Parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to this contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects. But if they do not agree upon such amendments or arrangements within a further period of 30 days, the other party shall be entitled to terminate this contract by giving written notice to the Party affected by the force majeure."]*

## 14. Change of circumstances (hardship)

*[Comment: The Parties should be free to consult each other in the event of a major change in circumstances – particularly one creating Hardship for a particular party. However, an SME should only include the option in Article 14.4 (right to refer to the courts/arbitral tribunal to make a revision or to terminate the contract) if (i) the SME considers that it is not likely to be used against that party's interests by a party in a stronger tactical position or (ii) the right to refer to a court/tribunal is already an existing right under the applicable governing law in the event of Hardship.]*

14.1 Where the performance of this contract becomes more onerous for one of the Parties, that party is nevertheless bound to perform its obligations subject to the following provisions on change of circumstances (Hardship).

14.2 If, however, after the time of conclusion of this contract, events occur which have not been contemplated by the Parties and which fundamentally alter the equilibrium of the present contract, thereby placing an excessive burden on one of the Parties in the performance of its contractual obligations (Hardship), that party shall be entitled to request revision of this contract provided that:

14.2.1 The events could not reasonably have been taken into account by the affected party at the time of conclusion of this contract;

14.2.2 The events are beyond the control of the affected party; and

14.2.3 The risk of the events is not one which, according to this contract, the Party affected should be required to bear.

14.3 Each party shall in good faith consider any proposed revision seriously put forward by the other party in the interests of the relationship between the Parties. No revision shall, however, be effective unless agreed by both Parties in accordance with Article 18.2 [*Option, add when the option in Article 14.4 is included: "Or established pursuant to Article 14.4."*]

*[Option: See comment at the beginning of Article 14. Add if wished; otherwise delete. "14.4 If the Parties fail to reach agreement on the requested revision within [specify time limit if appropriate], a party may resort to the dispute resolution procedure provided in Article 21. The [court/arbitral tribunal] shall have the power to make any revision to this contract that it finds just and equitable in the circumstances or to terminate this contract at a date and on terms to be fixed."]*

## **15. No partnership or agency**

*[Comment: See introductory note 7. It may be difficult to avoid joint liability in many jurisdictions if the Alliance involves income or profit-sharing.]*

Nothing in this contract shall (i) be deemed to constitute a partnership in law between the Parties, (ii) constitute either party the agent of the other for any purpose or (iii) entitle either party to commit or bind the other (or any member of its respective group) in any manner.

## **16. Assignment and subcontracting**

16.1 This contract is personal to the Parties and neither party shall without the prior written approval of the other:

16.1.1 Assign, mortgage, charge or otherwise transfer or deal in, or create any trust over, any of its rights; or

16.1.2 Subcontract or otherwise delegate the whole or any part of its rights or obligations under this contract to another person.

## **17. Notices**

17.1 Any notice under this contract shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party specified in Article 17.2 below, in a manner that ensures receipt of the notice can be proved.

17.2 For the purposes of Article 17.1, notification details are the following, unless other details have been duly notified in accordance with this Article:

17.2.1 ABC: *[specify detail]*;

17.2.2 XYZ: *[specify detail]*.

## **18. Entire Agreement**

18.1 This contract sets out the entire agreement between the Parties with respect to the Alliance. Neither party has entered into this contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this contract. This Article shall not exclude any liability for fraudulent misrepresentation. *[Option, add where relevant: "This contract supersedes any previous agreement or understanding relating to its subject matter."]*

18.2 This contract may not be varied except by agreement of the Parties in writing (which may include e-mail). *[Option, when the option of Article 14.4 or equivalent (reference to court/tribunal) has been included, add to previous sentence: "Or in accordance with Article 14.4".]*

## 19. Effect of invalid or unenforceable provisions

If any provision of this contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this contract shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that (in the absence of the provision found to be null and void) the Parties would not have concluded this contract. The Parties shall use all reasonable efforts to replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

## 20. Authorizations

20.1 This contract is conditional upon the following authorizations first being obtained *[specify the authorization(s) or other conditions required e.g. of governmental or regulatory authorities]*.

20.2 The relevant party shall use all reasonable efforts on its part to obtain such authorizations and shall notify the other party promptly of any difficulty encountered.

## 21. Dispute resolution procedure

21.1 If a dispute arises out of this contract, the Parties shall seek to resolve it on an amicable basis. They shall consider the appointment of a mediator to assist in that resolution. No party shall commence legal or arbitration proceedings unless 30 days' notice in writing has been given to the other party.

21.2 Any dispute, controversy or claim arising out of or relating to this contract (including its conclusion, interpretation, performance, breach, termination or invalidity) shall be finally settled under the rules of *[specify the arbitration institution]* by *[specify the number of arbitrators, e.g. sole arbitrator, three arbitrators]* appointed in accordance with the said rules. The place of arbitration shall be *[specify]*. The language of the arbitration shall be *[specify]*.

*[The following are alternatives to a specified arbitral institution under Article 21.2:*

*Alternative 1: Ad hoc arbitration*

*“21.2 Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of UNCITRAL [specify other rules] by [specify the number of arbitrators, e.g. sole arbitrator, three arbitrators] appointed by [specify name of appointing institution or person]. The place of arbitration shall be [specify]. The language of the arbitration shall be [specify].”*

*[Alternative 2: State courts*

*“21.2 Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of (specify place and country) which will have exclusive jurisdiction.”*

## Applicable law

*[Specify national law]* law shall apply to this contract.

### SIGNATURES OF THE PARTIES

Signed for and on behalf of ABC

Signatory: .....

Date: .....

Signed for and on behalf of XYZ

Signatory: .....

Date: .....