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Joint Venture Agreement

This kit includes tools and guidelines to assist you in drafting a joint venture agreement.

A joint venture is a mechanism by which two or more entities can combine to do business together without the formality and commitment involved in forming a partnership or other similar entity. The joint venture can be a useful tool for small businesses and large businesses alike, affording the venturing partners with many of the benefits of partnership without many of its liabilities.

While this kit is designed to assist you in preparing a joint venture agreement, you are advised to consult with a competent attorney experienced in the law of joint ventures prior to executing any agreement forming a joint venture.

This kit includes general information about joint ventures, as well as a sample joint venture agreement with instructions.

Joint Venture – Information

Joint ventures provide businesses with an opportunity to form short-term, single-purpose partnerships, thus deriving many of the benefits of strategic partnership without many of the liabilities. Below is a general overview of the characteristics, advantages and disadvantages of using a joint venture to accomplish your business's goals.

To form the joint venture, the co-venturing partners contribute funds, goods or equipment at the outset. The proportion which each partner contributes can be 50% each, or it can be in unequal amounts, with one contributor providing a majority of the resources for the formation and initial operation of the venture. The instructions that follow this overview provide general information about formation and operation of a joint venture.

One of the benefits of a joint venture is its lack of permanency. As opposed to a partnership, which can create a number of responsibilities, duties and obligations on the part of each partner, a joint venture generally only obligates its partners to those specific duties and obligations set forth in the Joint Venture Agreement. Further, joint ventures frequently have short, defined durations. Many joint venture agreements provide for the venture to terminate and cease its existence after only a few years. Such time-limited joint ventures represent less of a commitment on the part of the partners than would a standard partnership.

Another benefit offered by joint ventures is that it allows companies to share expertise or relationships with other companies to penetrate new markets, or to develop new products or services, thus benefiting both parties. For example, smaller companies can join with larger more established companies to share expertise and develop new technologies, affording the larger company access to new research materials, while affording the smaller company additional clout and market presence. Further, such strategic relationships can combine to decrease competition in a particular market, making it easier for the partners involved to penetrate that market.

Joint ventures are frequently used when a domestic company wishes to enter a foreign market. The joint venture structure allows the domestic company to seek a short-term, project-specific relationship with a company within that foreign country. The domestic company then can take advantage of the foreign companies local know-how and relationships, while the foreign company gains access to relationships and expertise it might not ordinarily be exposed to.

It is worth noting that an exit strategy employed by many joint venture partners is for one partner to acquire the other partner's interest in the venture. This approach can work well where one business has used the venture to experiment outside of its core business, developing a product or service with another company whose expertise lies closer to the business conducted by the joint venture.

Joint Venture Agreement - Instructions

This kit's sample Joint Venture Agreement includes a basic framework for such an agreement, setting forth in general terms the types of provisions necessary to establish a joint venture. Below is a set of basic instructions that should assist you in completing the sample form to draft your own joint venture agreement tailored specifically to the needs of your business.

Purpose

Joint ventures are generally formed to accomplish a specific purpose. Many are structured so that they are only authorized to perform a specific function, and are prohibited from taking any action outside of the course of performing that particular function. In the sample agreement below, specify in detail the purpose that the joint venture is being established to perform.

Contribution

At the outset of forming a joint venture, the venturing partners must determine what each of them will be contributing to the effort. The partners may contribute cash, equipment, or other goods necessary for the operation of the joint venture.

While many joint ventures are formed with all parties contributing equal amounts of cash, the parties may contribute to the venture in any proportion they choose. Determine what each partner will contribute to the venture, and describe in detail the items, amounts and overall percentage of total joint venture funds in the appropriate provision of the Joint Venture Agreement.

Distribution of Profits

Frequently, joint ventures assign profits based upon the proportion of each partner's original contribution to the venture. However, the distribution of profits can also be apportioned based on other considerations, i.e., the amount and/or types of services provided on behalf of the venture by each partner.

Management

A joint venture is generally managed through the delegation of authority by the venturing partners to a managing agent. There are many different options for how such a manager can be structured. Ultimately, it is important to clearly establish who will have direct responsibility for the day-to-day operations of the venture, to whom that person or entity will be directly accountable, and who will be authorized to bind the venture. A common solution to this issue is to establish a steering committee under the terms of the Joint Venture Agreement, with members being drawn from each partner (often in proportion to the partners' contribution to the venture, i.e., equal partners would each appoint 4 members to an 8-member committee). The Joint Venture Agreement might then set forth the terms under which the steering committee could appoint a general manager or CEO to operate the day to day operations of the venture. Another solution is to have the partners appoint a general manager directly, vesting decision-making and oversight into an individual.

No matter what kind of management structure you choose, be certain to specify clearly the person or entity that shall be authorized to bind the venture, and that shall be directly responsible for the day-to-day operations of the venture.

Term

While many joint ventures are limited in duration, others are established with an indefinite lifespan. The term of the agreement and of the venture itself should be discussed and agreed upon by the parties prior to executing the joint venture agreement.

JOINT VENTURE AGREEMENT

THIS AGREEMENT (the "Agreement) is made as of the _____ day of ________, 20___, by and between ____________________________________, a ____*(entity type, if applicable, and state of incorporation/registration/formation, i.e., a Delaware corporation))*_______________ (the "First Party"), and ____, a _________*(entity type, if applicable, and state of incorporation/ registration/formation)*___________ (the "Second Party," and collectively, the "Parties").

WHEREAS the First Party is engaged in the business of _________*(briefly describe First Party's business)*____;

WHEREAS the Second Party is engaged in the business of ______*(briefly describe Second Party's business)*____;

WHEREAS the Parties wish to join together in a joint venture for the purpose of _______*(briefly describe the purpose of the joint venture)*________________________________;

NOW THEREFORE BE IT RESOLVED, in consideration of the mutual covenants, promises, warranties and other good and valuable consideration set forth herein, the Parties agree as follows:

1. Formation. The joint venture formed pursuant to this Agreement (the "Joint Venture") shall do business under the name ________________________________, and shall have its legal address at ____ __________________. The Joint Venture shall be considered in all respects a joint venture between the Parties, and nothing in this Agreement shall be construed to create a partnership or any other fiduciary relationship between the Parties.

2. Purpose. The Joint Venture shall be formed for the purpose of _______*(describe in detail the business that will be conducted by the Joint Venture)*____________________________________ ____ _____________________________________.

3. Contributions.

   a. The Parties shall each make an initial contribution to the Joint Venture according to the following terms:

      i. First Party's Contribution: _____*(State specifically the amount of First Party's financial contribution, as well as any equipment, goods or other value contributed by First Party. Include the % of total funds contributed by Second Party. Also include the date by which such contributions must be made.)*_________________________ ___________________________.

ii. Second Party's Contribution: ____*(State specifically the amount of Second Party's financial contribution, as well as any equipment, goods or other value contributed by First Party. Include the % of total funds contributed by Second Party. Also include the date by which such contributions must be made.)*____________________
_________________________________.

b. A bank account at the bank of ________________________ shall be established by ______*(the managing party; see Section 5 below)*___, into which the financial contributions of the Parties shall be deposited, for use in the set-up, operation, and administration of the Joint Venture.

c. In the event that the Joint Venture requires additional funds to be contributed to it by the Parties, such additional contributions shall be made in the following proportion: __ ______*(state the proportion that each Party shall be responsible for contributing in the event additional funds are required)*____
____.

4. Distribution of Profits. Any and all net profits accruing to the Joint Venture shall be held and distributed to the Parties in the following proportion: _____*(State the proportion of profits to be received by First Party and Second Party)*_______________________________________
____.

5. Management. The Joint Venture shall be managed according to the following terms: *(Describe structure of management; procedures for appointing/selecting managers, including chief executive officer or general manager; fees/compensation for managers, if any (See instructions above for more details))*____
____
____.

6. No Exclusivity. Neither Party shall be obligated to offer any business opportunities or to conduct business exclusively with the other Party by virtue of this Agreement.

7. Term. This Agreement shall remain in full force and effect, for a period of five years from the date of this Agreement (the "Initial Term"). Upon the expiration of the Initial Term, the Agreement shall be automatically renewed for successive periods of one year each (each, a "Renewal Term"), unless either Party gives written notice of termination to the other Party at least 30 days prior to (but in no case more than 60 days prior to) the expiration of the Initial Term or of any Renewal Term. At any time, this Agreement may also be terminated by mutual written consent of the Parties. If this Agreement either expires or is terminated, the Joint Venture shall be terminated as well, and all Parties' obligations under this Agreement with respect to the operation and administration of the Joint Venture shall no longer have force or effect.

8. Confidentiality. Any information pertaining to either Party's business to which the other Party is exposed as a result of the relationship contemplated by this Agreement shall be considered to be "Confidential Information." Neither Party may disclose any Confidential

Information to any person or entity, except as required by law, without the express written consent of the affected Party.

9. Further Actions. The Parties hereby agree to execute any further documents and to take any necessary actions to complete the formation of the Joint Venture.

10. Assignment. Neither Party may assign or transfer their respective rights or obligations under this Agreement without prior written consent from the other Party. Except that if the assignment or transfer is pursuant to a sale of all or substantially all of a Party's assets, or is pursuant to a sale of a Party's business, then no consent shall be required. In the event that an assignment or transfer is made pursuant to either a sale of all or substantially all of the Party's assets or pursuant to a sale of the business, then written notice must be given of such transfer within 10 days of such assignment or transfer.

11. Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of ____________________, without regard to conflicts of law principles.

12. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

13. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

14. Notice. Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service, addressed as follows:

If to First Party: ______________________________________
____
____
____

If to Second Party: ______________________________________
____
____
____

If to Joint Venture: ______________________________________
____
____
____

15. Headings. The headings for section herein are for convenience only and shall not affect the meaning of the provisions of this Agreement.

16. Entire Agreement. This Agreement constitutes the entire agreement between First Party and Second Party, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

FIRST PARTY	**SECOND PARTY**
______________________	______________________
Signature	Signature
______________________	______________________
Print Name	Print Name
______________________	______________________
Title	Title