



SAMPLE JOINT VENTURE AGREEMENT

DOCUMENT NO:	ICPAK/PS/2018
PREPARED BY:	COMPLIANCE DEPARTMENT/ PROFESSIONAL SERVICES DIVISION
RECOMMENDED BY:	PRACTITIONERS DEVELOPMENT COMMITTEE
APPROVED BY	
DATE OF APPROVAL	
DATE OF ISSUE:	
DATE OF REVIEW	
EFFECTIVE DATE:	

JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT (herein referred to as the "Venture") is made and entered into as of this [.....DATE.....], by and between;

[.....NAME OF FIRM 1....] of _____[address], City of _____, County of _____,

and

[..... NAME OF FIRM 2] of _____[address], City of _____, County of _____.

WHEREAS both "[FIRM 1]" and "[FIRM 2]" are in the business of provision of audit and accountancy services, the parties desire to establish between them a joint venture in order to collaborate in [JOINT VENTURE DESCRIPTION],

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants and commitments set forth herein, the firms hereto agree as follows:

1. FORMATION

- 1.1 The joint venture formed by this Agreement (the "Joint Venture") will conduct its business under the name [JOINT VENTURE NAME], and will have its registered address at [ADDRESS]. The Joint Venture shall be considered a joint venture between the Parties in all respects, and in no event, shall this Agreement be construed to create a partnership or any other fiduciary relationship between the firms.
- 1.2 The term of the Joint Venture shall commence on the execution date of this Agreement and shall continue until [___ PROVIDE DATE OF TERMINATION _____], unless the Joint Venture is terminated or dissolved according to the terms of this Agreement.

2. PURPOSE

- 2.1 The Joint Venture shall be formed for the purpose of [... PROVIDE A DESCRIPTION OF THE SERVICES THAT THE JOINT VENTURE IS CONCERNED WITH, AND THE OBJECTIVE/PURPOSE OF THE JOINT VENTURE...]. The Joint Venture shall not engage in any other business or activity without the written consent of the firms.
- 2.2 The Venture shall be conducted in the best interests of the Firm in accordance with the then current Business Plan. Each Firm shall act in good faith towards the other in order to promote the Venture's success and meet the milestone targets and other goals of the Business Plan.
- 2.3 The Firm confirm their intention to consult fully on all matters materially affecting the development of the Venture and according to the terms and obligations of this Agreement

3. CAPITAL AND OTHER FINANCING

- 3.1 Concurrently with the execution of this Agreement, the Firm shall contribute to the Venture the following cash amounts (each such contribution, an “Initial Capital Contribution”).

FIRM 1 [insert amount]

FIRM 2 [insert amount]

- 3.2 A bank account at [NAME OF BANK] shall be opened by the Firm on behalf of the Venture, and the financial contributions of the Parties shall be deposited by the due date set forth above.
- 3.3 Upon the agreement of the firms, a Firm may make an additional capital contribution. (“Additional Capital Contribution”). The percentage interests in the JV of the Firm shall be adjusted to reflect any Additional Capital Contribution at the time it is made.
- 3.4 If it should be determined that should the Joint Venture requires further financing, the Joint Venture shall approach its own banking sources. If financing cannot be obtained from the Joint Venture’s banking sources, neither Firms shall be obliged to provide any financing to the Joint Venture. In the event the Firm agree to provide further financing, the terms and conditions of any agreements shall be subject to the prior approval of the two firms. Unless otherwise agreed in writing, any financing shall be provided by the Firm in equal proportions (whether by way of share capital, loans or otherwise).
- 3.5 The Firm shall not be obliged to provide guarantees for any borrowings of the Joint Venture. But if they do so, they shall be given in equal proportions. If a claim is made against a Firm under any such guarantee, that party shall be entitled to a contribution from the other party of such amount as shall ensure that the aggregate liability is borne in equal proportions.
- 3.6 Except as otherwise provided by the law, the debts, obligation and liabilities of the Joint Venture, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Joint Venture, and none of the Firm shall be obligated for any such debt, obligation or liability of the Joint Venture solely by reason of being a firms.
- 3.7 Except upon dissolution of the JV or as may be specifically provided in this Agreement, no Firm shall have the right to demand or to receive the return of all or any part of its Capital Contributions to the Joint Venture.

4. DISTRIBUTION OF PROFITS

- 4.1 Any and all net income accruing to the Joint Venture shall be distributed equally to the Parties.
- 4.2 The venture may also reinvest these profits in lieu of paying them out.

5. MANAGEMENT

- 5.1 Responsibility for management of the business and affairs of the Joint Venture shall be delegated to a Board of Managers.
- 5.2 The Board of Managers shall at all times be composed of four (4) members, who shall comprise of at least one partner from each firm and one other representative of the firm appointed by the managing partner of the appointing firm.
- 5.3 Each Firm shall appoint one individual to serve as its initial representatives on the Board of Managers. Each such individual shall serve until such time as he or she resigns, retires, dies or is removed.
- 5.4 Any Manager may be removed with or without cause by the firm who appointed such Manager.
- 5.5 Upon the resignation, retirement, death or removal of any Manager, the Firm who appointed such Manager shall designate the replacement Manager.
- 5.6 The Board of Managers shall meet:
 - at least once each fiscal quarter at the principal offices of the Joint Venture or at such other place as may be agreed upon from time to time by the Board of Managers;
 - at such other times as may be determined by the Board;
 - upon the request of at least two (2) Managers or the President upon ten (10) days' notice to all Managers;
 - following a failure by the Board of Managers to adopt or reject a proposal for action presented to it.
- 5.7 The Board of Managers shall cause written minutes to be prepared of all actions taken by the Board.
- 5.8 No action may be taken at a meeting of the Board of Managers unless a quorum of at least one Manager appointed by each Firm is present.
- 5.9 Each Manager shall be entitled to cast one vote with respect to any decision made by the Board. Approval or action by the Board shall constitute approval or action by the Joint Venture and shall be binding on the firms.

5.10 The Board of Managers, acting on behalf of the Joint Venture, shall have the right, power and authority to take the following action, and no such action will be taken without the approval of the Board of Managers

5.11 Reserved Matters

The following matters (“Reserved Matters”) shall require the prior approval of both Firm 1 and Firm 2:

- Any sale of all or substantially all of the Joint Venture or its assets;
- Approval of the annual budget and operating plan of the Joint Venture;
- Any change to the purpose of the Joint Venture, including any expansions;
- Approve any contract, agreement or commitment with a value in excess of Sh. [insert amount] or a term longer than [insert number] months;
- Incur indebtedness or loan any sum in an amount in excess of Sh. [insert amount] or for a period in excess of [insert number] months
- The commencement, settlement or abandonment of litigation or admission of liability by the Joint Venture.

5.12 Officers

The Board of Managers shall appoint a president of the Joint Venture (“President”). Subject to the supervision and authority of the Board of Managers, the President:

- shall be the chief executive officer of the Joint Venture;
- shall have responsibility and authority for management of the day-to-day operations of the Joint Venture;
- may execute agreements and contracts on behalf of the Joint Venture.

The Board of Managers shall appoint a secretary of the Joint Venture (“Secretary”). The Secretary, at the direction of the Board, shall prepare and distribute to each Manager an agenda in advance of each meeting and shall prepare and distribute to each Manager written minutes of all meetings of the Board.

The Board of Managers may appoint other officers of the Joint Venture (including, but not limited to, one or more vice presidents, a treasurer and an assistant secretary) upon terms and conditions the Board deems necessary and appropriate. Any officer shall hold his or her respective office unless and until such officer is removed by the Board of Managers.

5.13 Deadlock

“Deadlock” shall occur if the Board of Managers casts a tie vote on a matter submitted to it at a meeting or in the form of a proposed written consent, and during the sixty (60) day period following this tie vote, the Board is unable to break the tie. During this sixty (60) day period, the Board shall hold at least one additional meeting at which it shall make a good faith effort to break the tie.

If a Deadlock occurs, the Joint Venture shall submit the matter that was the subject of the tie to the chief executive officers for each of the firms. Upon such notice, the chief executive officers shall then make a good faith effort to resolve the dispute and break the tie.

If the chief executive officers are unable to resolve the dispute within sixty (60) days of receiving notice of the Deadlock, then either Firm may terminate the Joint Venture in accordance with the terms of this Agreement.

5.14 Books and Records

The Venture's fiscal year shall be the calendar year.

The Board of Managers shall keep, or cause to be kept, accurate, full and complete books and accounts showing assets, liabilities, income, operations, transactions and the financial condition of the Joint Venture.

The books, accounts and records of the Joint Venture at all times shall be maintained at the Joint Venture's principal office.

All books and records may be reviewed by either of the Firm upon reasonable notice and at reasonable business times

5.15 Responsibilities of the Parties

The Parties will each have the following responsibilities under the Joint Venture:

Responsibilities of Firm 1.

Responsibilities of firm 2.

6. RESTRICTIONS ON TRANSFERS AND WITHDRAWAL

6.1 No Firm may transfer all or any portion of its interest in the Joint Venture without the express written consent of the non-transferring (the other) firm.

- Any transferee of a JV interest shall become a substituted Firm upon:
- the express written consent of the non-transferring firm;
- the transferee agreeing to be bound by all the terms and conditions of this Agreement as then in effect; and
- the receipt of any necessary regulatory approvals.

6.2 Unless and until a transferee is admitted as a substituted firms, the transferee shall have no right to exercise any of the powers, rights and privileges of a Firm under this Agreement.

6.3 No Firms shall have any right to resign or otherwise withdraw from the Joint Venture without the express written consent of all the other firms.

7. NON-EXCLUSIVITY

No exclusivity is formed by virtue of this Joint Venture Agreement and neither Party shall be obligated to make offers to the other related to any business.

8. DISSOLUTION

- 8.1 The Joint Venture shall be dissolved and its affairs wound up upon the occurrence of any of the following events:
- i. the consent in writing of all Firm to dissolve and wind up the affairs of the venture;
 - ii. the sale or other disposition by the Venture of all or substantially all of the assets;
 - iii. the Termination Date;
 - iv. upon thirty (30) days' written notice by any firm,
 - v. if a Deadlock occurs and the chief executive officers of the Firm are unable to resolve the Deadlock within sixty (60) days of receiving notice of the Deadlock;
 - vi. if a Firm fails to perform any of its material obligation under this Agreement (an "Event of Default") then the non-defaulting Firm shall have the right to give the defaulting Firm notice (a "Notice of Default").
- 8.2 The Notice of Default shall set forth the nature of the obligations which the defaulting Firm has failed to perform.
- 8.3 If the defaulting Firm fails to cure the Event of Default within thirty (30) days, the non-defaulting Firm may;
- a. terminate the JV, or
 - b. cause the determination of Fair Market Value and purchase the defaulting firm's interest in the JV at a price equal to [insert percentage] % of the Fair Market Value of the interest.
- 8.4 Upon the dissolution of the JV, the Board of Managers (or any other person or entity responsible for winding up the affairs of the JV) shall proceed without unnecessary delay to sell or otherwise liquidate the JV's assets and pay or make due provision for the payment of all debts, liabilities and obligations.
- 8.5 The Board of Managers (or any other person or entity responsible for winding up the affairs of the) shall distribute the net liquidation proceeds and any other liquid assets of the after the payment of all debts, liabilities and obligations of the JV (including all amounts owing to a Firm under this Agreement or any other agreement other than due to its capacity as a Firm in the) to the firm, pro rata, in accordance with their respective percentage interests in the firms.
- 8.6 To minimize any losses otherwise attendant upon the winding up of a business, a reasonable time shall be allowed for the orderly winding up of the business and affairs of the Joint Venture and the liquidation of its assets pursuant to this Agreement

9. GENERAL PROVISIONS

- 9.1 No amendment or modification of this Agreement shall be valid unless made in writing and signed by all parties to the Agreement.
- 9.2 This Agreement shall not be assigned by any Firm without the express written consent of the other firms, which consent shall not be unreasonably withheld. This provision shall not apply in the event a Firm changes its name or as part of a sale of its entire business.
- 9.3 This Agreement shall be governed by and interpreted in accordance with the laws of Kenya without regard for conflicts of laws principles. Each Firm expressly consents to the personal jurisdiction of the state and federal courts located in Kenya for any lawsuit filed against any party to this Agreement by any other party to this Agreement concerning the Joint Venture or any matter arising from or relating to this Agreement.
- 9.4 If any provision of this Agreement is declared invalid, all other provisions shall remain in full force and effect.
- 9.5 This Agreement is intended by the Firm to be the final expression of their agreement and the complete and exclusive statement of its terms, notwithstanding any prior representations or statements.
- 9.6 All notices, demands, requests or other communications which are required to be given, served or sent by a Firm pursuant to this Agreement shall be in writing and shall be hand delivered (including delivery by courier), or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, addressed as follows;
- If to FIRM 1: [Address]
If to FIRM B: [Address]
- 9.7 Each Firm may designate by notice in writing a new address to which any notice, demand, request or communication may be given, served or sent.
- 9.8 Waiver by any Firm of any breach or failure to comply with any provision of this Agreement by the other Firm shall not be construed as, or constitute, a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

10. CONFIDENTIAL INFORMATION

- 10.1 Each Firm agrees that it will not, either during the Term of this Venture or at any time after its termination, use information belonging to another party for any purpose except the Business of the Joint Venture. The Firm agree not to divulge such information to any person without the prior written consent of the owner party.
- 10.2 No Firm shall use in any advertising, promotional, or sales literature the name of any other Firm without prior written consent of the other firm.

11. FURTHER ACTIONS

- 11.1 The Parties shall execute any documents and take all appropriate actions as may be necessary to give effect to the Joint Venture.

12. COUNTERPARTS

- 12.1 This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one instrument.

13. SEVERABILITY

- 13.1 The Parties recognize the uncertainty of the law with respect to certain provisions of this Agreement and expressly stipulate that this Agreement will be construed in a manner that renders its provisions valid and enforceable to the maximum extent possible under applicable law. To the extent that any provisions of this Agreement are determined by a court of competent jurisdiction to be invalid or unenforceable, such provisions will be deleted from this Agreement or modified so as to make them enforceable and the validity and enforceability of the remainder of such provisions and of this Agreement will be unaffected.

14. ENTIRE AGREEMENT

- 14.1 This Agreement contains the entire agreement and understanding between the Parties, superseding all prior contemporaneous communications, representations, agreements, and understandings, oral or written, between the Parties with respect to the subject matter hereof. This Agreement may not be modified in any manner except by written amendment executed by each Party hereto.

14.2 In witness whereof, the Firm execute this Agreement by their duly authorized officers or representatives on the dates shown below.

FIRM 1

Name: [_____]

Position: [_____]

Signature [_____]

Date: [_____]

FIRM 2

Name: [_____]

Position: [_____]

Signature [_____]

Date: [_____]