



ICC Model Contracts

For Start-ups

Basic foundational models including Term Sheet, Shareholders, Directors Services, Employment and Confidentiality Agreements



**Includes fully
editable contract**



ICC Model Contract

For Start-ups



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International Chamber of Commerce
Publications
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France

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Contents

Foreword	7
Introduction	8
Term Sheet	9
Article 1 Subject matter of the Investment	9
Article 2 The Parties	10
Article 3 Business/Project/Use of proceeds	10
Article 4 Purpose of the Term Sheet	10
Article 5 Investment	11
Article 6 Contractual documentation	11
Article 7 Governance and management of the Company	11
Article 8 Reserved Matters	12
Article 9 Information duties	12
Article 10 Exit from the Company	13
Article 11 Anti-dilution	13
Article 12 General dividend payout	13
Article 13 Liquidation Preference	13
Article 14 Key People	13
Article 15 Lock-Up Period	14
Article 16 Exclusivity	14
Article 17 Time Schedule and Costs	14
Article 18 Resolution of Disputes	15
Article 19 Applicable Law	15
Annex 1 Cap Table	16
ICC Model Shareholders Agreement for Start-Up Companies	17
Article 1 Definitions and Interpretation	18
Article 2 Representations and warranties	20
Article 3 Investment	21
Article 4 Incorporation and Articles of Association	22
Article 5 Ownership and Share retention	22
Article 6 Transfer of Shares	23
Article 7 Governance and management of the Company	28

Article 8	Dividend policy	31
Article 9	Termination & liquidation of the Company	31
Article 10	Term and Termination	32
Article 11	Miscellaneous	32
Article 12	Resolution of Disputes	34
Article 13	Applicable Law	35
Article 14	Authentic Text	36
Annex 1	Cap Table	37
Annex 2	Articles of Association of the Company	38
Annex 3	Form of Deed of Adherence	39
Annex 4	ICC Confidentiality Clause 2016	41
Annex 5	Intellectual Property Rights and Works	43
ICC Model Directors Services/Management Agreement		44
Article 1	Purpose	45
Article 2	Method of providing Services	45
Article 3	Compensation for Services rendered	46
Article 4	Term and Termination of the Agreement	47
Article 5	Confidentiality	47
Article 6	Post-Contractual Non-Competition Covenant	48
Article 7	Assignment of Intellectual Property rights	48
Article 8	Notices	50
Article 9	Assignment	50
Article 10	Other Provisions	50
Article 11	Resolution of Disputes	50
Article 12	Applicable Law	51
Article 13	Parties' Independence	52
Article 14	Anti-Bribery and Anti-Corruption	52
Annex 1	Fee to be paid to Consultant	53
Annex 2	ICC Confidentiality Clause 2016	54
Annex 3	ICC Anti-corruption Clause	56
ICC Model Employment Agreement		57
Article 1	Commencement of Employment	57
Article 2	Job Title	58
Article 3	Place of Work	58
Article 4	Salary	58
Article 5	Working Hours and Procedures	59

Article 6	Holidays	59
Article 7	Incapacity	59
Article 8	Termination and Notice Period	59
Article 9	Disciplinary and Grievance Procedures	60
Article 10	Data Protection	60
Article 11	Changes to Your Terms of Employment	60
Article 12	Confidentiality	60
Article 13	Restrictive Covenant	60
Article 14	Company Property	61
Article 15	Anti-Bribery and Anti-Corruption	61
Article 16	Third Party Rights	61
Article 17	Applicable Law	62
Article 18	Resolution of Disputes	62
Article 19	Acceptance	62
Annex 1	Job Description	63
Annex 2	ICC Confidentiality Clause 2016	64
Annex 3	ICC Anti-corruption Clause	66

ICC Model Confidentiality Agreement	67	
I. Introduction	67	
II. ICC Model Confidentiality Agreement	69	
Article 1	Definitions	69
Article 2	Definition of Confidential Information	69
Article 3	Obligation to keep confidential and restrictive use	70
Article 4	Exclusions from obligation to keep confidential and restrictive use	70
Article 5	Copies	70
Article 6	Refusal	70
Article 7	No license or ownership	70
Article 8	No warranty	70
Article 9	No further obligations	71
Article 10	Term and termination	71
Article 11	Survival of obligations	71
Article 12	Breach and remedies	71
Article 13	Disposal	71
Article 14	Protective order	71
Article 15	Good faith and fair dealing	72
Article 16	Dispute resolution	72
Article 17	Applicable law	72

Article 18	No assignment.....	72
Article 19	Written form	72
Article 20	Default rules	73
Checklist for Start-ups on IP assignment and licensing		76
ICC Principles to facilitate commercial negotiation.....		79
About the International Chamber of Commerce (ICC)		81
ICC Publications.....		82

Foreword

This package of foundational model contracts, designed to help entrepreneurs create start-up ventures on solid legal footing, is the latest addition to the renowned family of ICC model commercial contracts, and furthers ICC's mission to provide technical support for SMEs.

The *ICC Model Contracts for Start-ups* were developed by a dedicated working group of international expert practitioners associated with the ICC Commission on Commercial Law and Practice (CLP), and benefited particularly from the leadership and insight of CLP Commission Chair Ercüment Erdem (Turkey), as well as the active participation of the following members: Bettina Geisseler (Germany); Sergi Giménez Binder (Spain); Peter Poleacov (Germany); Ecem Süsoy (Turkey); Carlo Tabellini (Italy); and Cecilia Xu Lindsey (United Kingdom). The models also benefitted from robust commentary from experts across the global network of ICC national committees.

ICC Secretariat lead and oversight was provided by Emily O'Connor (France) and Secretariat support by Whitney Jolivet (France).

Introduction

The majority of today's innovative developments and initiatives come from either the research and development departments of big companies or from young entrepreneurs. In the last decade, the number of start-ups has increased rapidly and a new legal consultancy speciality has emerged to support these entrepreneurial ventures.

One of the biggest problems start-ups face is the legal fees that come along with the desired legal services. Most start-ups have very limited resources, which they intend to direct to their development costs; legal fees are often considered to be a burden.

In this spirit, many young entrepreneurs do not avail themselves of law firms, and instead try to move forward using online sources or without obtaining any legal support at all. This can cause significant problems later in the life of the business; small problems when disregarded at the beginning risk turning into major legal issues.

To help entrepreneurs avoid such problems and build a strong formal foundation for their new ventures, and in keeping with ICC's mission to facilitate international trade, ICC has prepared this package of model documents that address key issues related to the formation of a corporate entity. The package comprises:

- Model Term Sheet
- Model Shareholders Agreement
- Model Directors' Services/Management Agreement
- Model Employment Agreement
- Model Confidentiality Agreement
- Checklist on intellectual property assignment and licensing

This package provides start-ups with a reliable set of model contracts that have been drafted by practicing international experts for new businesses that intend to operate internationally. The models have therefore been drafted without reference to any particular national law, but rather to internationally-accepted standards of international business-to-business practice. As with all model contracts, users will need to consult legal counsel to ensure that any needed adjustments are made to bring the models into compliance with the requirements of the particular applicable law.

Term Sheet



Drafting notes

- This standard Term Sheet contains some of the principal clauses commonly used in transactions involving investments in start-up companies.
- This Term Sheet is a template; consequently, it may be amended to include any adjustments required from time to time and case by case.
- This Term Sheet is intended to be a mere guideline - and is certainly not exhaustive - for company members wishing to raise funds to be invested in venture capital. This Term Sheet has been drawn up based on common practice, considering however that this document is structured to balance the interests of all parties concerned and thus does not contain clauses which - although commonly used in *venture capital* transactions - strongly weigh in favour of one or the other party.
- This Term Sheet is based on subjective items and, accordingly, it can be modified on the basis of actual requirements. Therefore, we suggest that this Term Sheet (as amended after negotiations) be submitted to legal counsel before it is signed, to ensure that all expectations and requirements of those concerned are reflected therein.
- This Term Sheet may depend on special requirements of form, for example notarial certification.
- This Term Sheet is intended to be signed together with, or subsequently to, the ICC Model Confidentiality Agreement.



Term Sheet

Article 1 Subject matter of the Investment

Option A (*Existing Company*)

..... (*Insert the name of the company*), a
 (*company type*) company
 duly incorporated under the laws of
 (*laws of the country where the company is incorporated*), with registered office at

 (*registered address of the company*), and registered with
 Trade Registry Office
 (*name of the Trade Registry Office where the company is incorporated*)
 under the registration number (*registration number of
 the company before the relevant Trade Registry Office*) with taxpayer ID and VAT registration number
 and with the total issued share capital of (*number of
 shares*) (the “Company”).

The Company is engaged in (*scope of activities of the Company*)

Option B (*Company to be incorporated*):

A company (*company type*) to be established and organised
 under the laws of (*laws of the country where the company will
 be incorporated*) (“Company”) in line with the objectives hereunder;
 (*Company’s objectives*).

Article 2 The Parties

..... (First and last name),
 born on (date), in
 (place), resident in (place), who will
 possess% (ratio) of the issued share capital of the Company and will be acting as
 (specify title and qualification in the Company)
 of the Company.

..... (First and last name),
 born on (date), in
 (place), resident in (place), who will
 possess% (ratio) of the issued share capital of the Company and will be acting as
 (specify title and qualification in the Company) of
 the Company.

Hereinafter referred to as “Entrepreneurs”.

..... (Insert the name of the company),
 a (company type) company duly incorporated
 under the laws of (laws of the country where the company
 is incorporated), with registered office at
 (registered address of the company), and registered with
 (name of the Trade Registry Office where the company is incorporated) under the
 registration number (registration number of the company
 before the relevant Trade Registry Office) with taxpayer ID and VAT registration number
 and with the total issued share capital of (number of
 shares) who will possess% (ratio) of the issued share capital of the Company and will
 be acting as (specify title and
 qualification in the Company) of the Company (hereinafter referred to as “Investor”), represented by
 (first and last name), duly empowered to act in
 the name of the Investor.

Entrepreneurs and Investor will be collectively referred to as Parties.

Article 3 Business/Project/Use of proceeds

To undertake an entrepreneurial initiative jointly by adding resources, endeavour and interests and
 collaborate with the purpose of developing together a business concept related to providing products
 and/or service on (name of the business/project)
 and to support the Company in expanding its business/project through a strengthening operation
 (short description of the use of the
 funds to be raised), as specified in the business plan (Business Plan).

Article 4 Purpose of the Term Sheet

This Term Sheet is not binding, except for Articles 16 (Exclusivity), 17 (Time Schedule and Costs), 18
 (Resolution of Disputes) and 19 (Applicable Law); therefore, no legal obligations arise on the Parties who
 sign the Term Sheet insofar as concerns the closing of the transaction envisaged herein (Transaction),
 except the Parties’ commitment to carry on negotiations in good faith in compliance with the guidelines
 laid down herein.

The Parties acknowledge that, if negotiations are successfully brought to an end, the terms
 and conditions for the Parties *inter se* will be reflected in the Contractual Documentation (as
 hereinafter defined).

Article 5 Investment

Option A (*Investor's investment into the Company established by the Entrepreneurs*)

The Entrepreneurs will admit the Investor who has shown its intention to make the investment on the basis of the information provided by the Company and set out in the Business Plan. The investment will be implemented through capital increase, not to exceed [EUR] (*amount*), through capital subscription by the Investor to the Company in return for new Company shares (Investment) in one instalment [or in several tranches], on the terms and conditions specified in this Term Sheet. As and from the applicable date of admission, the Investor shall be deemed to be party to the Contractual Documentation as hereinafter defined. The Investment will be based on the assumption that the *pre-money* value of the Company is equal to [EUR] (*amount*) and, consequently, at the closing of the Investment, Investor will hold a share/shares in the Company capital equal to % (*ratio*) on a *fully diluted basis*. Annex 1 to this Term Sheet specifies the *cap table* after the Investor's entry in the Company.

The closing of the Investment will be subject to the occurrence of the following conditions precedent:

- a) the satisfactory outcome, in Investor's sole judgment, of a legal, accounting, fiscal and business due diligence review, to be carried out by Investor or consultants trusted by it (Due Diligence Review) during a period not to exceed (*number*) days after the execution of this Term Sheet;
- b) The Entrepreneurs' execution with Investor of the Contractual Documentation in terms satisfactory to the Investor.

Option B (*Investor's investment into the Company to be established by the Entrepreneurs and Investor*)

Prior to the establishment of the Company, the Investor has shown its intention to make the investment on the basis of the information provided by the Entrepreneurs and set out in the Business Plan. The investment will be implemented through cash investment into the Company in return for (*number*) of Company shares (Investment) and on the incorporation date of the Company, the Investor shall hold % (*ratio*) of the issued share capital of the Company.

Article 6 Contractual documentation

The Parties will produce and be a party to the contractual documentation as follows: (i) the Shareholders' Agreement, (ii) the new By-Laws/Articles of Association of the Company; (iii) the Confidentiality Agreement; and (iv) any other agreement that the Parties deem necessary for the implementation of the Investment (Contractual Documentation).

The Contractual Documentation shall be in compliance with (i) the regulations set out in this Term Sheet, (ii) the requirements of the applicable law and (iii) the contractual provisions commonly adopted at a national and international level for similar transactions.

Article 7 Governance and management of the Company

- a) Board of Directors: Unless otherwise decided by the Parties and as long as permitted under the applicable law, the Board of Directors will be composed of (*number*) directors, of which:
 - (*number*) director(s) will be named by the Entrepreneurs; and
 - (*number*) director(s) will be named by the Investor.

Other than the Reserved Matters stipulated under Article 8, the meeting quorum for all meetings of the Board of Directors shall be attendance of at least (*number*) Board Members and the decisions shall require the affirmative votes of at least (*number*) Board Members.

- b) Supervisory Body: Unless otherwise decided by the Parties and as long as permitted under the applicable law, the Supervisory Body will be composed of one auditor appointed by Investor. If the applicable law so requires, the Supervisory Body will be composed of a Board of Auditors of three statutory (and two alternate) members; of which Entrepreneurs will appoint two statutory auditors and one alternate auditor and Investor will appoint one statutory auditor (who will act as Chairman of the Board of Auditors) and one alternate auditor.

Article 8 Reserved Matters

Option A (Existing Company)

As long as permitted under the applicable law, the Entrepreneurs agree and undertake that the authorised body of the Company shall take any of the following decisions (Reserved Matters) unanimously (or by qualified majority):¹

- sale, transfer, lease or disposal of all or a material portion of the Company's assets;
- transfer of any Company share;²
- acquisition and/or sale of interests in companies, businesses or lines of business;
- creating, incurring, assuming or permitting any encumbrances upon or with respect to any of the Company shares;
- granting of real guarantees of any kind on the Company's assets;
- purchasing of a real estate or material assets by the Company;
- merger, participation in a share exchange with any other corporation, spin-off, conversion of type of the Company;
- establishment of company/companies;
- any change of Company's nationality;
- proceeding with any capital increase or capital decrease;
- assumption of any debt and/or standing surety or other forms of personal guarantee in an amount exceeding [EUR] (amount) per year;
- assumption of liabilities not contemplated in the latest approved Business Plan in a total amount exceeding [EUR] (amount);
- execution of agreements whose total value exceeds [EUR] (amount) per year;
- any material changes to the nature of the Company business that are not contemplated by the Business Plan;
- contracting with any third party other than contemplated by the Business Plan;
- payments of the salary of any employee or manager (including bonuses, fees or benefits) whose total annual remuneration exceeds [EUR] (amount);
- appointment of the managing director of the Company and determination of its powers;
- payments to the Company members (or to any company in which the Company has an interest) other than as provided for by the Contractual Documentation;
- distribution of dividends;
- granting of options or incentives to the Company members, employees or partners;
- sale of the Company's industrial property rights transfer or licensing of any and all intellectual property rights and works of the Company;
- liquidation or revocation of the liquidation of the Company, the appointment or revocation of the liquidator and the determination of its fee;
- any amendments to the Company By-Laws/Articles of Association.

[Each of the items listed under the Reserved Matters are optional. The Parties, upon their agreement may add into or remove certain items from the Reserved Matters.]

Article 9 Information duties

As long as permitted under the applicable law, the Entrepreneurs shall exchange with Investor any information on the financial, accounting and strategic position of the Company by means of reports that shall be in compliance with the forms and time schedules agreed with the Investor.

¹ The choice is left to the Parties according to the corporate structure they decide to agree upon.

² Please check the relevant national mandatory laws on transfer of Company shares.

Article 10 Exit from the Company

The Parties may exit from the Company by selling their shares in the Company. For this purpose, the Contractual Documentation shall contain, inter alia, the following clauses:

1. Right of first refusal (first option): any shareholder of the Company wishing to transfer some or all of its shares to any third-party purchaser shall be obliged to first notify the other shareholder(s) of such intent and offer them the shares to be transferred. In this regard, the other shareholder(s) possess a right of first refusal in comparison to third parties who wish to purchase such shares.
2. Right to co-sell (*tag-along*) in favour of the minority shareholder of the Company. When a majority shareholder(s) sells its shares in the Company, the minority shareholder will have a tag-along right that will enable it to participate in the sale at the same time for the same price for the shares.³
3. Obligation to co-sell (*drag-along*) in favour of the majority shareholder of the Company. When a majority shareholder(s) sells its shares in the Company, the majority shareholder will have a drag-along right that will enable it to force the minority shareholder(s) to accept an offer with the same price, terms and conditions that the majority shareholder(s) has been offered from a third party to purchase 100% of the Company shares.⁴
4. Call-option: granting a Company shareholder with the right to purchase the shares of the shareholders who sell their shares in whole or in part at a pre-determined price and oblige the counterparty to sell its shares at the same price.
5. Put-option: granting a Company shareholder with the right to sell its shares in whole or in part at a pre-determined price and oblige the counterparty to sell its shares at the same price.

Article 11 Anti-dilution

As long as permitted under the applicable law, the Investor shall have the right (*Pre-emptive Right*) to subscribe new shares in case of capital increases and issuance of new shares at the same price and on the same terms as applicable to other shareholders.

Article 12 General dividend payout

The Parties will adopt a dividend policy under which the Company shall pay cash dividends to the shareholders from time to time.⁵

Article 13 Liquidation Preference

As long as permitted under the applicable law, if a liquidation event occurs (e.g. the transfer of all or part of the Company capital; transfer of the business or a line of business; listing of the Company on a regulated market; or the liquidation of the Company) (Liquidation Event), the Investor will be entitled to a *non-participating liquidation preference* by virtue of which the Investor will receive, on a preference basis with respect to other members of the Company, a portion of the proceeds arising from the Liquidation Event in an amount equal to either:

- a) the capital paid in by Investor, multiplied by [1.5];⁶ or
- b) the amount of the proceeds arising from a Liquidation Event that would be owed to Investor in proportion to its share in the Company capital,

whichever is higher.

Article 14 Key People

The Entrepreneurs and other key people of the Company (Key People) shall be designated by the Entrepreneurs.

The Key People shall assume obligations regarding specific clauses of "*bad leaver*" and the "*non-compete and stability commitment*", under separate agreements executed directly with the Company before or concurrently with the execution of the Contractual Documentation, in compliance with terms to be agreed upon when preparing the Contractual Documentation.

³ The tag-along clause effectively obliges the majority to include the minority shareholders in the negotiations. Moreover, it gives minority shareholders the ability to capitalise on a deal that a majority holder puts together, enjoying the latter's greater ability to source buyers and negotiate payment terms.

⁴ Considering that share offerings, mergers, acquisitions, and takeovers can be complicated transactions, the drag-along provision represents an aid in the sense that it allows buyers to sell 100% of a company's securities to a potential buyer.

⁵ The general dividend payout's criteria (e.g. when, to what extent, etc.) will be negotiated in the Shareholders' Agreement.

⁶ The above criteria may change depending on the type of investor.

The Key People will also be entitled to specific “good leaver” clauses, if they are unjustly excluded from the governance of the Company.

Subject to the Board of Directors’ approval, the Parties agree that they will prepare in good faith an incentive plan for Key People and the employees of the Company, which may include a right to exercise warrants on the Company capital or share option rights through issuing new shares through capital increase.

Article 15 Lock-Up Period

The Parties hereby agree and undertake that, unless it is unanimously approved by the Board of Directors, the Entrepreneurs shall maintain their respective shares in the Company’s capital for a period of (duration) as of the date of the Shareholders’ Agreement (Lock-up Period). Without prejudice to the rights and obligations to co-sell, the Investor will be granted a right of first refusal and call-option on the shares of the Entrepreneurs wishing to transfer their shares in the Company capital with or without consideration.

Article 16 Exclusivity

Option A

Entrepreneurs shall abstain from entering into and/or proceeding with negotiations with other investors for at least (number) days after the execution of this Term Sheet.

Option B (Company to be established)

As Parties are interested in negotiating the Transaction on the assumption that in the event of a positive outcome of their negotiations all tangible/intangible assets⁷ listed in Annex currently belonging to the Entrepreneurs, will be contributed to the Company according to the Business Plan, Entrepreneurs shall abstain from transferring said assets to third parties for at least days after the execution of this Term Sheet.

Article 17 Time Schedule and Costs

Option A (Existing Company)

The execution of all Contractual Documentation is estimated to occur within approximately days after the execution of this Term Sheet (Closing).

Option B (Company to be incorporated)

The execution of all Contractual Documentation is estimated to occur within approximately days after the execution of this Term Sheet (Closing).

If the Closing is successfully concluded, the costs of the consultants designated by the Investor and Entrepreneurs for the carrying out of the Due Diligence Review and the negotiation and drafting of the Contractual Documentation shall be charged to the Company up to the ceiling of [EUR] plus VAT, disbursements and social security contributions pursuant to the applicable law.

If the Closing is not successfully concluded by reason of one or several Entrepreneurs’ unilateral decision, the costs of the consultants designated by the Investor to carry out the Due Diligence Review and prepare the Contractual Documentation will be charged to the Entrepreneurs or to the Company up to the ceiling of [EUR] plus VAT, disbursements and social security contributions pursuant to the applicable law.

Article 18 Resolution of Disputes

1. In the event of any dispute arising out of or in connection with the present contract, the parties shall first refer the dispute to proceedings under the ICC Mediation Rules.⁸ The commencement of proceeding under the ICC Mediation Rules shall not prevent any party from commencing arbitration/litigation in accordance with Section 2 below.

⁷ Examples of tangible/intangible assets are patents, softwares, copyrights, equipment, machinery, etc.

⁸ The ICC Mediation Rules (Publication 865) which replace the ICC ADR Rules, effective as of 1 January 2014, can be found on the [ICC website](#). The above is model Clause C: Obligation to Refer Dispute to ICC Mediation Rules, while permitting parallel ICC Arbitration proceedings if required. Other options are available for the parties to select, such as model Clause A (Option to Use ICC Mediation Rules), model Clause B (Obligation to Consider ICC Mediation Rules) or model Clause D (Obligation to Refer Dispute to the ICC Mediation Rules, followed by ICC Arbitration if required). See also [Mediation Guidance Notes](#).

2. **Option A:** ICC Arbitration

All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.⁹

Option B: Litigation (Ordinary Courts)

In case of dispute the courts of (place)
 (country) shall have exclusive jurisdiction.

Article 19 Applicable Law

Option A: International principles¹⁰

Any questions relating to this Term Sheet which are not expressly or implicitly settled by the provisions contained in this Term Sheet shall be governed, in the following order:

- (a) by the principles of law generally recognised in international trade as applicable to international contracts with consultants,
- (b) by the relevant trade usages, and
- (c) by the UNIDROIT Principles,

with the exclusion—subject to Article 19.2 hereunder—of national laws.

The Parties agree that in any event consideration shall be given to mandatory provisions of the law of the country where the Business Plan is rendered which would be applicable even if the Term Sheet is governed by a foreign law (overriding mandatory rules). Any such provisions will be taken into account to the extent that they embody principles which are universally recognised and provided their application appears reasonable in the context of international trade.

Option B: National laws

This Term Sheet is governed by the laws of
 (name of the country the law of which is to apply)¹¹ regardless of the conflict of law rules of that country.

The Parties agree that in any event consideration shall be given to mandatory provisions of the law of the country where the Company operates which would be applicable even if this Term Sheet is governed by a foreign law (overriding mandatory rules). Any such provisions will be taken into account to the extent that they embody principles which are universally recognised and provided their application appears reasonable in the context of international trade.

It is understood and agreed that the Closing shall be anyway subject to approval by the Parties' decision-making bodies.

Place Place
 Date Date
 (.....) (.....)

⁹ The ICC Arbitration Rules, effective as of 1 January 2021, can be found on the [ICC website](#). Parties are free to adapt the clause to their particular circumstances: standard clauses are available in the previous link. For instance, they may wish to stipulate the number of arbitrators, given that the ICC Arbitration Rules contain a presumption in favour of a sole arbitrator. Also, it may be desirable for them to stipulate the place and language of the arbitration and the law applicable to the merits. The ICC Arbitration Rules do not limit the parties' free choice of the place and language of the arbitration or the law governing the contract. Parties should also consider the guidance provided for emergency arbitrator, expedited proceedings, publication of awards and multi-tier clauses. When adapting the clause, care must be taken to avoid any risk of ambiguity. Unclear wording in the clause will cause uncertainty and delay and can hinder or even compromise the dispute resolution process. Parties should also take account of any factors that may affect the enforceability of the clause under applicable law. These include any mandatory requirements that may exist at the place of arbitration and the expected place or places of enforcement.

¹⁰ In case this alternative is chosen, it is advisable to choose arbitration (Option A of Article 18) for the resolution of disputes. In fact, it is doubtful whether ordinary courts would apply general principles instead of a national law.

¹¹ This model form has been prepared on the assumption that it would not be governed by a specific national law (as stated in Option A of Article 19). If the Parties prefer nevertheless to submit the Term Sheet to a national law, they should carefully check, in advance, if the clauses of the model conform with the mandatory provisions of the law they have chosen.

Annex 1 to Term Sheet

Cap Table

Name	Capital Share in nominal value	Capital Share %
First and Last Name of Entrepreneur	<i>Capital share in nominal value held after the Investor's entry</i>	<i>Capital share percentage held after the Investor's entry</i>
First and Last Name of Entrepreneur	<i>Capital share in nominal value held after the Investor's entry</i>	<i>Capital share percentage held after the Investor's entry</i>
Investor	<i>Capital share in nominal value held after the Investor's entry</i>	<i>Capital share percentage held after the Investor's entry</i>

ICC Model Shareholders Agreement for Start-Up Companies

Drafting notes

- This Shareholders Agreement is a template; consequently, it may be amended to include any adjustments required from time to time and case by case. We suggest that this model Agreement (as amended after negotiations) be submitted to legal counsel before it is signed, to ensure that all expectations and requirements of those concerned are reflected therein.
- This Shareholders Agreement has been drawn up based on common practice, considering however that this document is structured to balance the interests of all parties concerned and thus does not contain clauses which strongly weigh in favour of one or the other party.
- This Shareholders Agreement may depend on special requirements of form, for example notarial certification.

ICC Model Shareholders Agreement for Start-Up Companies

This Shareholders Agreement ("**Agreement**") is made as of (date) between:

..... (first and last name),
born on (date), in (place),
resident in (place)
and

..... (first and last name),
born on (date), in (place),
resident in (place), currently carry out the business
of and as a result of their practical business
experience, intend to develop their business by
(name of Entrepreneur1);

..... (first and last name),
born on (date), in (place),
resident in (place)
and

..... (first and last name),
born on (date), in (place),
resident in (place), currently carry out the business
of and as a result of their practical business
experience, intend to develop their business by
(name of Entrepreneur2) (**Entrepreneurs**);

..... (insert the name of the company),
a (company type) company duly
incorporated under the laws of
(laws of the country where the company is incorporated), with registered office at
..... (registered address of the company),
and registered with (name of the
Trade Registry Office where the company is incorporated) under the registration number
..... (registration number of the company before the relevant Trade
Registry Office) with taxpayer ID and VAT registration number and
with the total issued share capital of (number of shares) (Investor), represented by
..... (first and last name), duly empowered
to act in the name of the Investor.

(**Entrepreneurs** and **Investor** will be individually referred to as **Party**, and collectively referred to as **Parties**)

Preamble

Whereas:

Option A The Entrepreneurs' entrepreneurial initiative is undertaken through incorporation of (insert the name of the duly established company), a (company type) company duly incorporated under the laws of the (laws of the country where the company is incorporated) on (incorporation date of the company) with registered office at (registered address of the company) and registered with (name of the Trade Registry Office where the company is incorporated) under the registration number (registration number of the company before the relevant Trade Registry Office), with taxpayer ID and VAT registration number and with the total issued share capital of (amount), divided into (number) ordinary shares of (currency), all of which are fully paid. ("Company").

The Company is engaged in (scope of activities of the Company).

The Investor who has shown its intention to make investment on the basis of a satisfactory outcome of due diligence has invested in the Company in return for purchasing a number of shares in the Company.

Option B The Parties, following the execution date of this Agreement, individually acknowledge, declare and undertake to establish a company (company type) organised under the laws of (laws of the country where the company will be incorporated) ("Company") in line with their objectives hereunder:

The corporate purpose of the Company includes the following scope of activities (scope of activities of the Company).

- A. The Parties hereto determine to undertake a business initiative jointly by adding resources, endeavour and interests and collaborate with the purpose of developing together a business concept related to providing products and/or service on (name of the business/project) and to support the Company in expanding its business/project through a strengthening operation (short description of the use of the funds to be raised), ("Business").¹
- B. The Parties intend to govern their relationship as the Shareholders and to control, direct and regulate the operation and management of the Company.
- C. The Parties have agreed to such engagement on the terms and subject to the conditions of this Agreement as provided herein.

It is agreed as follows

Article 1 Definitions and Interpretation

1. As used in this Agreement, the following terms shall have the meanings set out below.

Admission Conditions has the meaning set out in Article 3.1.

Admission Date means the date on which the Investor [or any other investor] is admitted to the Company.

Affiliate means with respect to any Party, any person, including, but not limited to, a director or officer of such Party, directly or indirectly, through one or more intermediaries that controls, or is controlled by, or is under common control with, such Party. For the purpose of this definition, "Control" (including the terms "controlling", "controlled by" and "under common control with") shall mean (i) the legal or beneficial ownership, directly or indirectly, of 50% (fifty percent) or more of the share capital or other ownership interests of any person, (ii) the ability of any person, directly or indirectly, to appoint half or more of the board or other controlling body, or (iii) the ability of any person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise to direct or cause the direction of the management and policies.

Articles of Association mean articles of association of the Company set forth in Annex 2, being in effect starting as of the Incorporation Date, as amended from time to time thereafter.

¹ The Parties can elaborate the scope of the Business term depending on their business model, plans and purposes. They can provide the name of the Project/Business as well as the description of the Project/Business. If required, an Annex that includes all the details of the Project/Business can be inserted into the Agreement.

Annex means annexes, exhibits, schedules and appendices of this Agreement as amended, restated or supplemented from time to time.

Board of Directors or Board means the board of directors of the Company, as constituted from time to time.

Board Member means the member(s) of the Board from time to time.

Business means the term under the Preamble of this Agreement.

Business Day means any day except Saturday, Sunday or any statutory holiday in (insert a country or countries).

Company means the term under the Preamble of this Agreement.

Confidential Information has the meaning set out in Article 11.8 and Annex 4.

Connected Persons mean with respect to any

(i) (Investor or Entrepreneurs), or

(ii) such Shareholder's² or

(iii)³

Encumbrance means any mortgage, pledge (including the share pledge, enterprise pledge, pledge of receivables), option, equities (including rights of pre-emption and rights of first refusal), security interest, usufruct right, easement, conditional sale or other title retention agreement, attachment (whether preliminary, ordinary or an execution of a judgment), lien, trusteeship, charge of any kind, including any agreement to exercise voting rights, any agreement or derivatives transaction to give effect to any of the foregoing or other similar restriction or third-party rights of any nature whatsoever, as the context may require.⁴

Execution Date means the execution date of this Agreement.

Fair Market Value means the value of any Shares either agreed by the Parties or, in the absence of an agreement, the value determined in accordance with Article 6.8.

Fiscal Year shall mean the accounting year of the relevant Company commencing on January 1 and ending on December 31 of each year.

Governmental Authority means the government of any nation, or of any political subdivision thereof, whether state, regional or local, and any agency, authority, branch, department, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government or any subdivision thereof (including any supra-national bodies), and all officials, agents and representatives of each of the foregoing.

General Assembly means the general assembly of the Company.

Incorporation Date means the date affixed to the Company's certificate of incorporation.

Indebtedness of any person means and includes (i) indebtedness for borrowed money in whatsoever form; (ii) amounts owing as deferred purchase price for property; (iii) indebtedness evidenced by any note, bond, debenture, mortgage or other debt instrument; (iv) commitments or obligations by which such person assures a creditor against loss with respect to any indebtedness, obligation or liability of any other person of a type described in clauses (i) through (iii) above or; (v) any other arrangement, document or instrument having the effect of indebtedness.

Intellectual Property Rights mean patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in goodwill, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) whether registered or unregistered and including all applications (and rights to apply for such rights as mentioned hereunder), and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist in any part of the world that can in any way be related to the Business.⁵

2 For example, spouse, parents and children, or other legal successors.

3 Any other persons who are permitted by the Parties to acquire the Shares.

4 This term should be defined in accordance with the applicable Law.

5 This term should be defined in accordance with the applicable Law.

Law means any legislation, law, constitution, decree, legislation, order, ordinance, regulation, treaty or other legislative measure in any jurisdiction and any directive, request, requirement, code of practice, decision, guidance or guideline.

Liquidation Event means

(Optional) **Lock-up Period** means the period determined in accordance with Article 6.1.3.

Share or **Shares** means any share of the Company.

Shareholder or **Shareholders** means the holder of the Shares from time to time.

Transfer means with respect to the Shares, as the case may be, any transfer, purchase, sale, exchange, division, grant of usufruct, creation of pledge, grant of voting rights (pursuant to a proxy, voting agreement or otherwise but excluding standard proxies for representation at a General Assembly) or grant of option rights or other disposition effecting an existing interest in the Shares and “Transferring”, “Transferred” and “to Transfer” shall be construed accordingly.⁶

(Optional) **Valuation Expert** means any one of (i) (*number*) independent reputable investment banks of appropriate expertise in and with an established record of valuing companies in the same industry as that of the Company; or (ii) ;⁷ or (iii) a respectable financial advisor determined by the Parties.

Works mean, including but not limited to, documents, work product, products, processes, materials, designs, brands and images related to the Business.

1.1 In this Agreement unless context otherwise requires:

- 1.1.1 Definitions used in this Agreement shall apply equally to both the singular and plural forms of the terms defined.
- 1.1.2 References to one gender include all genders.
- 1.1.3 References to a person include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of a state or unincorporated association (whether or not having separate legal personality).
- 1.1.4 References to this Agreement shall include any Annexes to it; and references to Articles and Annexes are to Articles of, and Annexes to, this Agreement.
- 1.1.5 The words “hereby”, “herein”, “hereto” and “hereunder” and similar words shall be construed as references to this Agreement as a whole and not just to the particular Article in which the reference appears.
- 1.1.6 Headings shall be ignored in interpreting this Agreement.
- 1.1.7 References to any document (including this Agreement), or to a provision in a document, shall be construed as a reference to such document or provision as amended, supplemented, modified, restated or novated from time to time.
- 1.1.8 The words “including” and “include” and words of similar effect shall not be deemed to limit the general effect of the words that precede them.

Article 2 Representations and warranties

Each Party hereby represents and warrants to the other Party that:

1. It has the power, authority and capacity to execute, deliver and lawfully perform the terms of this Agreement.
2. This Agreement constitutes a valid and legally binding obligation of such Party, enforceable against such Party in accordance with its terms.
3. Neither the execution, delivery and performance by such Party of this Agreement, nor the consummation of the transactions contemplated hereby, will (a) to the extent applicable, result in a material breach of any provision of its articles of associations; (b) result in a material breach of, or constitute a default under, any instrument or agreement to which it is a party or by which it is bound; or (c) violate any mandatory legal provisions of applicable Law, including without limitation any injunction, judgment, order, decree, ruling, or other restriction imposed by the Governmental Authorities or court to which it is subject. There are no legal proceedings against it, actual, pending or threatened, which might affect the validity or enforceability of this Agreement.

6 This term should be defined in accordance with the applicable Law.

7 For example, accounting firm/audit firm of international standing with no conflict of interests with the Company or the Parties.

4. It is not a party to any other agreement that would restrict such Shareholder's ability to perform its obligations as set forth in this Agreement.
5. Each Party represents and warrants that no third party can claim any rights to any Intellectual Property, Works or other proprietary right possessed by that Party as it relates to the Business.
6. (Optional) All consents of the Governmental Authorities that are required or advisable for or in connection with the execution, delivery performance, legality, or enforceability of this Agreement have been obtained and are in full force and effect.

Article 3 Investment

Option A⁸

1. Subject to the satisfactory outcome of a legal, financial and technical due diligence review to be carried out by Investor or its consultants ("Admission Conditions")⁹ admission to the Company will be implemented through capital increase, not to exceed [EUR] (*amount*), through capital subscription by the Investor to the Company in return for new Shares of Company (Investment) in one instalment [or in several tranches], on the terms and conditions specified in this Agreement.
2. The admission to the Company shall take place on the Admission Date once the events as follows have occurred:
 - a. (Each)¹⁰ Investor shall pay the sum [EUR] (*amount*) by electronic funds transfer to the bank account of the Company as set out below.

Account name :

Bank:

Account number:

Sort code:

IBAN:

Swift Code:

- b. (Optional)¹¹ A meeting of the Board shall be held at which the Company shall:
 - i) issue the [First Tranche Shares] [New Shares] credited as fully paid to the Investors and enter their names in the register of members in respect thereof;
 - ii) execute and deliver to the Investors certificates for the [First Tranche Shares] [New Shares];
 - iii) appoint and as Investor directors; [and]
 - iv) pass any such other resolutions as may be required to carry out the obligations of the Company under this Agreement.
3. As and from the Admission Date, the Investor shall be deemed to be party to this Agreement and will hold a Share/Shares in the Company equal to (*ratio*) on a fully diluted basis. Annex 1 to this Agreement specifies the cap table after the Investor's admission to the Company.

Option B¹²

Prior to the establishment of the Company, the Investor has shown its intention to make the investment on the basis of the information provided by the Entrepreneurs in accordance with the Business. The investment will be implemented through cash investment into the Company in return for (*number*) of Company Shares ("Investment") and on the incorporation date of the Company, the Investor shall hold% (*ratio*) of the issued share capital of the Company.

8 Option A for the Investor's investment into the duly established Company.

9 The Admission Conditions can be elaborated based on the needs of the Investor and scope of the Business.

10 If there would be more than one investor.

11 Parties are always advised to obtain legal advice on the admission to the Company as the admission conditions may differ from jurisdiction to jurisdiction.

12 Investor's investment into the Company to be incorporated by the Entrepreneurs and Investor.

Article 4 Incorporation¹³ and Articles of Association

4.1 (Optional) Incorporation¹⁴

4.1.1 The Parties hereby agree and undertake to establish the Company no later than (number) Business Days from the Execution Date of this Agreement or another date agreed by the Parties and to register it to the extent required by the applicable Law, with all relevant registration bodies for purposes of the Agreement and to carry out the Business.

4.1.2 If the Company cannot be established within the period specified under Article 4.1.1. or any other period mutually agreed in writing by the Parties due to the reasons solely attributable to the (Investor or Entrepreneurs), the (Investor or Entrepreneurs) shall¹⁵

4.2 (Optional) Incorporators

The Parties hereby agree and undertake that the Company will be established provided that the Investor and Entrepreneurs will be the founder Shareholders of the Company to be established. In the event the (Investor or Entrepreneurs), will not be a founder Shareholder of the Company, (Investor or Entrepreneurs) shall¹⁶

4.3 Articles of Association

4.3.1 In order to reflect the mutual understanding of the Parties under this Agreement and the requirements of the Law, the Parties shall take the necessary measures to align the Articles of Association of the Company with this Agreement.

4.3.2 To the extent the Articles of Association deviate from this Agreement, the provisions of this Agreement shall prevail between the Parties, and the Parties shall, to the extent permitted by Law, act so as to give effect to the provisions of this Agreement.

4.3.3 Parties hereby agree and undertake to amend the Articles of Association as necessary in such manner as to bring them in conformity with this Agreement and to maintain such conformity.

Article 5 Ownership and Share retention¹⁷

Option A

As at the date of this Agreement, the entire issued and paid-up Share ownership of the Company is as follows:¹⁸

Name of the Shareholder	Number of Shares	Amount of Shares	Percentage of Shares (%)	Class of Shares
.....
.....
.....

As and from the Admission Date, the Shares being held by the Investor in the Company and the Share ownership of the Company will be reflected into Annex 1 of this Agreement. The Shareholders of the Company shall procure that on the Admission Date, the Investor shall execute a Deed of Adherence as set forth in Annex 3.

13 To be applied when the Company to be established by the Entrepreneurs and Investor has not been incorporated yet, the incorporation provisions will be inserted into the Agreement.

14 Please see fn. immediately above.

15 For example: "be no longer obliged to perform its obligations regarding "....." or "terminate the Agreement". In this case, the indemnification provisions set forth in Article 10.3. can be applied.

16 For example: "terminate the Agreement". In this case, the indemnification provisions set forth in Article 10.3. can be applied.

17 As long as permitted under applicable Law, the Parties are free to categorise the Shares as ordinary shares (common stock) and preference shares (preferred stock). Preference shares could provide an advantage over ordinary shares in receiving dividends (higher amount or priority), in voting rights, in receiving liquidation proceeds (higher amount or priority).

18 Option A reflects the scenario in which the Company was established by and between the Entrepreneurs.

Option B

On the Incorporation Date of the Company, the shareholding structure of the Company will be as follows:¹⁹

Name of the Shareholder	Number of Shares	Amount of Shares	Percentage of Shares (%)	Class of Shares
.....
.....
.....

Article 6 Transfer of Shares

6.1 Transfer of Shares²⁰

- 6.1.1 Any Transfer of Shares (other than Permitted Share Transfer or otherwise foreseen and agreed to in this Agreement), whether for consideration or not and regardless of the type of transaction involved, requires the unanimous²¹ written consent of the Board of Directors. The Board shall provide the consent provided that the Transfer complies with the requirements of the provisions of this Agreement and the Articles of Association. Any other attempted Transfer shall be void. It shall be a condition for the Transfer of the Shares, as the case may be, to any person that such person shall agree in writing to be a party to this Agreement and bound by the provisions of this Agreement in accordance with the “Deed of Adherence” as set forth in Annex 3, and any Transfer in respect of which such condition has not been satisfied shall be void.
- 6.1.2 The Articles of Association shall provide that the Board of Directors shall refuse to register any Transfer of Shares, as the case may be, except in cases where such Transfer is affected in accordance with the provisions of this Agreement and the Articles of Association. The Parties agree that they will cause the Board Members nominated by them to exercise their power of consent if the Transfer is carried out in accordance with the provisions of this Agreement and the Articles of Association.
- 6.1.3 (Optional) As long as permitted under applicable Law, the Parties hereby agree and undertake that, unless it is unanimously²² approved by the Board of Directors, the Entrepreneurs shall maintain their respective Shares in the Company for a period of (*duration*) as of the date of this Agreement (“Lock-up Period”).

6.2 Permitted Share Transfer

Any Party may freely Transfer its Shares to any of its Affiliates or Connected Persons, provided that (i) such Affiliate or Connected Person acknowledges and agrees in writing in accordance with the “Deed of Adherence” as set out under Annex 3 to become a party and to be bound by the terms and conditions of this Agreement; (ii) such Affiliate or Connected Person remains an Affiliate or Connected Person of the Transferring Party at all times following the Transfer; (iii) the Transferring Party remains jointly and severally liable as a co-debtor for all obligations of such Affiliate under this Agreement; and (iv) the respective share transfer agreement (“Affiliate Transfer Agreement”) contains an obligation to the effect that all Shares held by the Affiliate or Connected Person must be retransferred to the Transferring Party if and before the Affiliate ceases for whatever reason to be an Affiliate (such transfer or retransfer “Permitted Share Transfer”). The Transferring Party shall demonstrate to the other Party that the Affiliate Transfer Agreement contains these provisions by delivering to the other Party, at least (*number*) weeks prior to the relevant Permitted Share Transfer, a copy of the complete Affiliate Transfer Agreement, certified as conforming to the original by the Transferring Party. The Transferring Party shall inform the other Party without delay, if the Affiliate, which holds the Shares, ceases for whatever reason to be an Affiliate of the Transferring Party. The joint and several liability of the Transferring Party referred above shall remain until the effectiveness of the retransfer from the Affiliate, if any.

19 Option B for the scenario if the Company has not been incorporated yet by and between the Entrepreneurs and Investor.

20 Parties are always advised to obtain legal advice as to the transfer of shares may differ from jurisdiction to jurisdiction.

21 Please check the relevant national mandatory laws on the voting majority for the transfer of Shares.

22 Different majority voting threshold other than unanimous approval can be determined.

6.3 Right of first refusal

- 6.3.1 If, unless it is unanimously²³ approved by the Board of Directors, following the Lock-up Period,²⁴ any Shareholder wishing to Transfer some or all of its Shares (“Transferor”) to any third-party purchaser and who has received a *bona fide* and binding offer which is capable of constituting a legally binding agreement upon its acceptance (“Offer”) shall first serve:
- a) a written notice (**Transfer Notice**) to the Board of Directors and each other Shareholder (**Offeree**) setting forth (i) the identity of the proposed purchaser (**Prospective Buyer**), (ii) the amount of Shares proposed to be purchased, payment terms and the price offered (**Offered Shares**), (iii) the proposed closing date of the transfer of the Offered Shares which shall in no event be longer than (*duration*) of the date of the Transfer Notice, and (iv) the other terms and conditions of the Offer; and
 - b) (Optional) a certified copy of a firm financing commitment letter from a (*financial institution*),²⁵ in favour of the Transferor securing the performance by the Prospective Buyer of the terms of the Offer, unless the most recent audited balance sheet of the Prospective Buyer reflects sufficient liquid funds to enable the Prospective Buyer to comply with the terms of the Offer under such share transfer agreement ((a) and (b) together being the Offer Terms)).
- 6.3.2 The right granted to the Offeree to be notified and to have the right to purchase the Offered Shares under this Article 6.3. shall be referred to as the “Right of First Refusal”.
- 6.3.3 Any Offeree shall, by a written notice served on the Transferor, and the Board of Directors, within (*duration*) Business Days after the receipt of the Transfer Notice elects (“Notice of Intent”):
- a) to purchase all (but not less than all) of the Offered Shares on the Offer Terms in accordance with Article 6.3.5. below; or
 - b) to waive its right to purchase the Offered Shares, and permit the Transferor to proceed with the Transfer of all (but not less than all) of the Offered Shares to the Prospective Buyer on the Offer Terms; or
 - c) where relevant, to exercise the Tag-Along Right in accordance with Article 6.4. below.²⁶
- 6.3.4 An Offeree, which fails to issue a Notice of Intent and therefore fails to make an election pursuant to this Article 6.3.4. within the prescribed period, shall be deemed to have elected to act pursuant to Article 6.3.3.(b) above. Any election by the Offeree (or failure thereof) hereunder shall be irrevocable.
- 6.3.5 If one or more Offerees elect to purchase the Offered Shares as contemplated by Article 6.3.3.(a) above, the Transferor informs the Offeree and the Board of Directors by written notice of such acceptance (and if the Notices of Intent account for more than all of the Offered Shares, of the allocation of the Offered Shares between the Offerees, which shall be made in accordance with Article 6.3.6.) and each Offeree which has given a Notice of Intent having accepting the Offer Terms shall be bound and obligated to purchase the Offered Shares (or the Offered Shares allocated to it) on the terms reflected in the Transfer Notice and at the Offer Terms. The Transferor shall within (*duration*) Business Days after the date of such election, or a longer period to be agreed by the Transferor and the Offeree (or as the case may be the Offerees) in writing, sell to the Offeree provided, however, that such period shall be extended by the Transferor at the request of the Offeree if the Offeree is unable to complete the Transfer of the Offered Shares for grounds not reasonably within the Offeree’s control, including but not limited to the inability to obtain in a timely manner all necessary approvals of the Governmental Authorities including but not limited with merger control proceedings, if required, and prior approval proceedings for such Transfer.
- 6.3.6 The Offered Shares shall be allocated between Offerees who accept the Offer Terms such that each Offeree shall be allocated not less than its pro-rata proportion of the Offered Shares based on each such Offeree’s relative holding of Shares in the Company.

23 Different majority voting threshold other than unanimous approval can be determined.

24 Lock up period is optional.

25 For example, a first-class international bank.

26 Tag-along right is optional.

6.4 (Optional) Tag-Along Right

- 6.4.1 If, after the Lock-up Period,²⁷ a Shareholder (“Selling Shareholder”), having first complied with Article 6.3., proposes to make a Transfer of 50%²⁸ or more of the Shares of the Company to a third-person purchaser, (in each case, the “Tag-Along Sale”), the Selling Shareholder shall procure that each of the non-Selling Shareholders shall have the opportunity (“Tag-Along Right”) to Transfer to such third-person purchaser all of their respective Shares (“Tag-Along Shares”) with the same Offer Terms.
- 6.4.2 Not less than (*duration*) Business Days prior to the completion of any proposed Tag-Along Sale, the Selling Shareholder(s) shall deliver to the Board of Directors and the non-Selling Shareholders a written notice (“Tag-Along Notice”), which notice shall set out (to the extent not described in any accompanying documents):
- a) the identity of the third-person purchaser;
 - b) the type and amount of consideration to be paid by the third-person purchaser for the Tag-Along Shares which, for each Tag-Along Share, shall be on terms no less favourable (including as to participating in any escrow, earn-out or holdback arrangements) than those for the Shares being sold (directly or indirectly) by the non-Selling Shareholders;
 - c) the proposed date of the Transfer (if known); and
 - d) all other material terms and conditions, if any, of the Tag-Along Sale.
- 6.4.3 The Tagging Shareholders (defined below) shall be entitled to Transfer their respective Shares to the third-person purchaser:
- a) at the same time as the Transfer by the Selling Shareholder;
 - b) for the same type and amount of consideration as for the corresponding Shares being sold by the Selling Shareholder; and
 - c) on substantially the same economic terms (including participating in any escrow arrangements on the same terms), subject always to the Articles of Association.
- 6.4.4 If a non-Selling Shareholder wishes to exercise its Tag-Along Right (in such event, a “Tagging Shareholder”), the Tagging Shareholder shall notify the Selling Shareholder within (*duration*) Business Days following the date of the Tag-Along Notice (“Acceptance Period”) that it wishes to exercise its Tag-Along Right, and in such case the Selling Shareholder shall procure the Transfer of the Tag-Along Shares to the third-person purchaser. Any non-Selling Shareholder that does not notify the Selling Shareholders within the Acceptance Period shall be deemed to have waived its Tag-Along Right.
- 6.4.5 Following the expiry of the Acceptance Period, the Selling Shareholder shall deliver to each Tagging Shareholder, not less than (*duration*) Business Days prior to the proposed Tag-Along Sale, a definitive agreement (along with any ancillary transfer instruments) to effect the Transfer of its Tag-Along Shares to the third-person purchaser.
- 6.4.6 Each Tagging Shareholder shall:
- a) not less than (*duration*) Business Days prior to the anticipated date of the proposed Transfer, return to the Selling Shareholders the duly executed documents and, if a certificate has been issued in respect of the relevant Shares, the relevant certificates(s) (or an indemnity in respect of any missing certificates in a form satisfactory to the Board of Directors), all of which shall be held against payment of the aggregate consideration due to him. If a Tagging Shareholder fails to comply with this Article 6.4.6.(a) in full not less than (*duration*) Business Days prior to the proposed Transfer, it shall be deemed to have waived its Tag-Along Right;
 - b) give warranties to the third-person purchaser as to the title to its Tag-Along Shares and its capacity to transfer the Tag-Along Shares on the same basis as the Selling Shareholder(s);
 - c) bear an amount of any costs of the Tag-Along Sale (to the extent such costs are not paid by the Company) in the same proportions as the consideration (of whatever form) received by it bears to the aggregate consideration paid pursuant to the Tag-Along Sale;
 - d) participate in any escrow arrangements agreed between the Selling Shareholders and third-person purchaser in connection with the Tag-Along Sale on the same basis as the Selling Shareholder(s); and
 - e) procure (as far as it is reasonably able) that any of its directors vote in favour of the Tag-Along Sale, provided the Selling Shareholder has complied in full with its obligations pursuant to this Article 6.4.

27 Lock-up period is optional.

28 The Parties are free to determine another majority threshold.

- 6.4.7 The Selling Shareholder shall furnish or shall procure that the third-person purchaser furnishes such evidence of completion of such Tag-Along Sale as may be reasonably requested by any Tagging Shareholder. Each Tagging Shareholder shall be entitled to receive its consideration pursuant to the Tag-Along Sale (less its share of the costs of the Tag-Along Sale) at the same time as the Selling Shareholder.
- 6.4.8 If some or all of the non-Selling Shareholders waive, or are deemed to have waived, their Tag-Along Rights, the Tag-Along Sale is permitted to be made provided:
 - a) it is completed within (duration) Business Days of the expiry of the Acceptance Period (or, where any antitrust, regulatory or other third-party conditions are required to be satisfied before the Tag-Along Sale can be completed, by the longstop date for the satisfaction of such conditions in the Tag-Along Sale documentation (as agreed between the Selling Shareholder and the third-person purchaser); and
 - b) it takes place on terms and conditions no more favourable to the Selling Shareholder in any material respect than to those stated on the Tag-Along Notice.
- 6.4.9 All Shareholders agree to vote their Shares in favour of the Tag-Along Sale at any meeting of the Shareholders called to vote on or approve the Tag-Along Sale (and any ancillary or related matters) and/or consent in writing to the Tag-Along Sale (and any ancillary or related matters), provided the Selling Shareholder has complied in full with its obligations pursuant to this Article 6.4.
- 6.4.10 If the Tag-Along Sale is not completed within the period set out in Article 6.4.8., the Selling Shareholder shall promptly return to the Tagging Shareholder all documents (if any) previously delivered in respect of the Tag-Along Sale, and all the restrictions on Transfer contained in this Agreement with respect to Shares held or owned by the Selling Shareholder and such Tagging Shares Holder shall again be in effect.

6.5 (Optional) Drag-Along Right

- 6.5.1 Except for Transfers expressly permitted pursuant to Article 6.2., in the event that the Shareholders holding a minimum of²⁹ (ratio) of the Shares in the Company (“Transferring Shareholders”) decide to transfer to a *bona fide* third party (“Third-party Purchaser”) more than³⁰(ratio) of the Shares and such Third-party Purchaser desires to purchase or otherwise acquire more Shares than those owned by the Transferring Shareholders, then the Transferring Shareholders shall have the irrevocable right (but not the obligation) to compel other non-selling Shareholders (“Dragged Shareholders”) to sell all of their Shares (“Dragged Shares”) to the Third-party Purchaser on the same terms and conditions as have been offered to the Transferring Shareholders. If the Transferring Shareholders elect to exercise their rights under this Article 6.5., they shall deliver to the Dragged Shareholders a notice (“Drag-Along Notice”) to Transfer the Shares not later than (duration) Business Days prior to the date of the Transfer. Dragged Shareholders will not be required to make any representations and warranties to any person in connection with such Transfer except as to the existence of their legal title in, and the absence of security interests created by the Dragged Shareholders in the Dragged Shares to be Transferred by the Dragged Shareholders and the authority for and the validity and binding effect against the Dragged Shareholders of any normal and customary agreement entered into by the Dragged Shareholders in connection with such Transfer.
- 6.5.2 Upon receipt of the Drag-Along Notice, the Dragged Shareholders shall be obligated to (i) sell all of their Shares to the Third-party Purchaser free of any Encumbrance and in the transaction contemplated by the Drag-Along Notice, and (ii) take all actions necessary for the consummation of the transaction so envisaged, including voting its Shares in favour of such transaction and executing the documents in connection therewith, as may reasonably be requested of it by the Transferor.
- 6.5.3 (Optional) In the event that the Dragged Shareholder is (Investor or Entrepreneurs), its obligation to Transfer its Shares pursuant to Article 6.5., is subject to’s (Investor or Entrepreneurs) return³¹ that shall not be below the amount equal to (amount).³²
- 6.5.4 If either the Transferring Shareholders or the Third-party Purchaser elects not to proceed with the Transfer, the Dragged Shareholder will not be under any obligation to acquire or procure that the Third-

29 This Share ratio can be reduced by up to 51% by mutual agreement of the Parties.

30 This Share ratio can be reduced by up to 51% by mutual agreement of the Parties.

31 A definition on Shareholder return/Investor return can be made.

32 For instance, if the Dragged Shareholder (Investor or Entrepreneurs) is an investor, the amount that such investor invested in cash to the Company (as equity investment) on the Incorporation Date or any other date mutually agreed by the Parties, the amount that will be returned to it will not be below the equity investment/investment amount.

party Purchaser acquires the Dragged Shares offered for the Transfer by the Dragged Shareholder in the Drag-Along Notice.

6.6 (Optional) **Call Option**³³

6.6.1 The Entrepreneurs shall have the right to call and purchase the shares held by the Investor (“Exit Call Option”) at any time during the (*duration*) and ending on (*date*) (“Exit Call Period”).

6.6.2 The price of the Shares subject to Call Option (“Call Option Price”) shall be calculated at the date of exercise of the Call Option by the Valuation Expert.

The Entrepreneurs shall be entitled to send a written notice (“Valuation Notice”) to the Investor identifying the Valuation Expert for the determination of the Call Option Price, and thereafter, within (*number*) Business Days after determination of the Call Option Price by the Valuation Expert, they shall also be entitled to deliver to the Investor a notice (“Call Notice”), which shall be irrevocable, stating their intent to purchase all but not less than all of the Shares held by the Investor.

6.6.3 Upon delivery to the Investor of a Call Notice to purchase from the Investor all but not less than all of the Investor Shares, the Investor is obliged to sell all but not less than all of the Shares it holds at the Call Option Price determined by the Valuation Expert, and the Entrepreneurs hereby agree to purchase and pay for such Investor Shares.

6.6.4 In the event the Entrepreneurs do not purchase all but not less than all of the Shares of the Investor within (*numbers*) Business Days after the determination and notice of the Call Option Price by the Valuation Expert, unless such period is extended with an additional reasonable period at the request of the Entrepreneurs if the latter are unable to complete such purchase for grounds not reasonably within the Entrepreneurs’ control, the Call Option shall be deemed to have been waived by the Entrepreneurs.

6.7 (Optional) **Exit Put Option**³⁴

6.7.1 The Investor shall have the right (“Exit Put Option”), exercisable in its sole discretion, at any time from (*date*) and ending on (*date*) (“Exit Put Period”).

6.7.2 The price of the Shares subject to Exit Put Option (“Exit Put Option Price”) shall be calculated at the date of exercise of the Exit Put Option by the Valuation Expert.

6.7.3 The Investor shall be entitled to send a written notice (“Valuation Notice”) to the Entrepreneurs identifying the Valuation Expert for the determination of the Exit Put Option Price and successively within (*number*) Business Days after determination of the Exit Put Option Price by the Valuation Expert; it shall also be entitled to deliver to the Entrepreneurs a notice (“Exit Put Notice”), which shall be irrevocable, stating its intent to sell all but not less than all of the Shares held by the Investor.

6.7.4 Upon delivery to the Entrepreneurs of an Exit Put Notice, to sell to the Entrepreneurs all but not less than all of the Shares held by the Investor, the Investor is obliged to sell all but not less than all of the Shares it holds at the Exit Put Option Price determined by the Valuation Expert and the Entrepreneurs hereby agree to purchase and pay for such Investor Shares.

6.7.5 In the event the Investor does not sell all but not less than all of the Shares of the Investor within (*numbers*) Business Days after the determination and notice of the Exit Put Option Price by the Valuation Expert, unless such period is extended with an additional reasonable period at the request of the Investor if the latter is unable to complete such purchase for grounds not reasonably within the Investor’s control, the Exit Put Option shall be deemed to have been waived by the Investor.

6.8 **Fair Market Value Determination**

If the Parties cannot agree on the value of any Shares or, in the absence of an agreement, the Fair Market Value shall be determined by an independent Valuation Expert.

6.8.1 Effect of Transfer

If either Shareholder Transfers its Shares, as the case may be, in accordance with the provisions of this Agreement:

33 The Call Option right is granted to the Entrepreneurs under this model Agreement however, this right can be granted to each of the existing Parties of the Agreement (e.g. the Investor).

34 The Exit Put Option right is granted to the Investor under this model Agreement however, this right can be granted to each of the existing Parties of the Agreement. Additionally, the events that may constitute Exit Put Option events (such as Company’s failure of achievement of the certain/ pre-agreed conditions) can be determined under this Agreement upon the Parties’ request.

- a) the Shareholder who Transfers its Shares, shall repay all Indebtedness due to the Company (together with any accrued interest thereon);
- b) the Shareholder who Transfers its Shares, shall procure the resignation of all Board Members nominated by it;
- c) the prospective third-party purchaser of the Shares to be Transferred, shall accept to be liable of any sureties or any other guarantees given by such transferring Shareholder to the benefit of the Company to any third party including banks or other financial institutions, and the such transferring Shareholder and the prospective third-party purchaser of the Transferred Shares shall procure that any beneficiary of such a surety or guarantee, including banks and other institutions, shall accept that the sureties or any other guarantees given by such Transferring Shareholder to the benefit of the Company shall be assumed by the prospective third-party buyer until such sureties or guarantees are ceased or released and such shall be a condition for the acceptance of the Transfer by the Company.

6.9 (Optional) Additional Investor

Subject to the Admission Conditions³⁵ having been satisfied, the Parties may admit an additional investor (“Additional Investor”), to invest cash into the Company in exchange for new Shares. As and from the Admission Date any such Additional Investor shall be deemed to be party to this Agreement. The Shareholders shall procure that on the Admission Date each Additional Investor shall execute a Deed of Adherence as set forth in Annex 3.

6.10 (Optional) Anti-dilution

As long as permitted under the applicable Law, the Investor shall have the right (pre-emptive right) to subscribe new Shares in case of capital increases and issuance of new Shares at the same price and on the same terms as applicable to the other Shareholders of the Company.

6.11 (Optional) Share Option

1. Subject to the Board of Directors’ approval, the Parties hereby agree and undertake that they will prepare in good faith an incentive plan for the Company’s key people, including its employees, who are designated by the Entrepreneurs (“Key People”) which may include a right to exercise warrants on the Company capital or share option right through issuing new Shares through capital increase.³⁶
2. The actual number of Share options to be granted to the Key People shall be determined by the share option plan to be implemented with the approval of the Board. The share option plan may be amended from time to time, providing for the issuance of Shares to eligible Key People or any other persons approved by the Board. Unless otherwise set forth by the share option plan, Share options to be granted to the Key People shall not exceed a total of% (*ratio*) of the Shares in the Company and the Share option to be granted to a single Key People shall be no more than% (*ratio*) of the Shares in the Company.

Article 7 Governance and management of the Company³⁷

7.1 Board of Directors

- 7.1.1 Unless otherwise decided by the Parties and as long as permitted under applicable Law, the Board of Directors shall be composed of (number) members of which: (number) director(s) will be named by the Entrepreneurs; and (number) director(s) will be named by the Investor.
- 7.1.2 The Parties agree to take all actions necessary to ensure the election of the respective Board Members nominated by them. Either Party may require the removal or substitution of Director(s) they have appointed.
- 7.1.3 With regard to election of Board Members, no Party shall vote (i) in a manner contrary to nomination rights; (ii) in a manner resulting in more or fewer Members of the Board of Directors than foreseen in this Agreement; or (iii) for the removal of a Board Member nominated by the other Party unless the other Party intends to have such Board Member removed. Whenever a vacancy occurs on the Board for any reason, the nominating Party shall have the right to nominate the successor of the relevant Board Member and the Board of Directors shall appoint such nominee to fill such vacancy. He or she shall serve for the remaining term of office of its predecessor.

35 The Admission Conditions can be redefined based on the needs of the additional investor and the Company.

36 When issuing new Shares through capital increase for granting share option right, the Share ratio of the Shareholders should be kept the same as the Share ratio prior to the capital increase.

37 Parties are always advised to obtain legal advice as to the governance and management of the Company as requirements may differ from jurisdiction to jurisdiction.

- 7.1.4 (Optional) The position of chairman and vice-chairman shall be held for a renewable term of³⁸ (*duration*) by a Board Member nominated by (*Investor or Entrepreneurs*) and a Board Member nominated by (*Investor or Entrepreneurs*) respectively. The initial chairman shall be designated from among the Board of Directors nominated by (*Investor or Entrepreneurs*) and the vice-chairman shall be designated from among the Board of Directors nominated by the (*Investor or Entrepreneurs*).
- 7.1.5 (Optional) In the event that the Company is required by mandatory applicable Law to have independent Board Members on the Board, the Parties shall in good faith consider such amendments to this Agreement as may be necessary to accommodate such changes without prejudicing in any respect the governance principles set forth herein.
- 7.1.6 Any Board of Directors meetings will be considered duly convened only if the provisions of the Articles of Association and this Agreement are respected.
- 7.1.7 Other than the Reserved Matters stipulated under Article 7.4., the meeting quorum for all meetings of the Board of Directors shall be attendance of at least (*number*) Board Members and the decisions shall require the affirmative votes of at least (*number*) Board Members.
- 7.1.8 The Board of Directors shall meet, whenever the business of the Company so necessitates and at least (*number*) times within a year.
- 7.1.9 The Board of Directors shall have full responsibility, authority and control over the management and representation of the Company and shall have full authority to take all decisions relating thereto which are not expressly reserved for the General Assembly pursuant to the applicable Laws or the Articles of Association.³⁹
- 7.1.10 If a Shareholder sells or disposes of all or part of its Shares so that following completion of the relevant sale or disposal it holds less than% (*ratio*) in nominal value of the Shares (within the meaning given in applicable Law) in the capital of the Company, it shall immediately resign any office and employment with the company without claim for compensation.

7.2 (Optional) **Supervisory Body**

Unless otherwise decided by the Parties and as long as permitted under the applicable Law, the Supervisory Body will be composed of one auditor appointed by Investor. If the applicable Law so requires, the Supervisory Body will be composed of a Board of Auditors of three statutory (and two alternate) members, of which Entrepreneurs will appoint two statutory auditors and one alternate auditor and Investor will appoint one statutory auditor (who will act as Chairman of the Board of Auditors) and one alternate auditor.

7.3 **General Assembly**

- 7.3.1 The annual General Assembly of the Shareholders will be held within (*number*) months after the end of each Fiscal Year. Any General Assembly of Shareholders will be considered duly convened only if (i) the provisions of the Articles of Association are respected; and (ii) an invitation including the date and agenda of the meeting is sent to the Shareholders, at least (*number*) Business Days prior to such meeting, via fax, email and/or registered mail.⁴⁰
- 7.3.2 The General Assembly of Shareholders shall have the powers defined by the applicable Law and the Articles of Association.
- 7.3.3 The meetings of the General Assembly of Shareholders shall be held at⁴¹ as shall be determined by the Board of Directors.
- 7.3.4 The Board of Directors shall give notice of the General Assembly meetings, whether ordinary or extraordinary, to all the Shareholders in advance and in accordance with the relevant provisions of this Agreement, the applicable Law and the Articles of Association. Announcements pertaining to call upon the Shareholders to hold a General Assembly meeting shall be made at least (*number*) Business Days prior to the scheduled meeting date.

38 For example "one year on a rotating basis".

39 As long as permitted under applicable Law, the directors may access to the Company's books and records, and obtain information on Company's business.

40 The procedures of the General Assembly meeting of the Shareholders will be determined in accordance with the applicable Law where the Company is/will be established in.

41 For instance, "the Company's registered office or at a suitable place within the province of the Company's registered address". The place of the General Assembly will be determined in accordance with the applicable Law where the Company is/will be established in.

7.3.5 For the meeting and decision quorums of the General Assembly meetings of the Company, except those with respect to the Reserved Matters listed under Article 7.4., any resolutions to be adopted by the General Assembly shall require the affirmative votes of the Shareholders representing at least (*number*) of Company's total share capital.

7.4 Reserved Matters⁴²

As long as permitted under the applicable Law, the Parties agree and undertake that the authorised body⁴³ of the Company shall take or agree to take any of the following decisions ("Reserved Matters") unanimously (or by qualified majority).⁴⁴

1. sale, transfer, lease or disposal of all or a material portion of the Company's assets;
2. transfer of any Share;⁴⁵
3. acquisition and/or sale of interests in companies, businesses or lines of business;
4. creating, incurring, assuming or permitting any encumbrances upon or with respect to any of the Shares;
5. granting of real guarantees of any kind on the Company's assets;
6. purchasing of a real estate or material assets by the Company;
7. merger, participate in a share exchange with any other corporation, spin-off, conversion of type of the Company;
8. establishment of company/companies;
9. any change of Company's nationality;
10. proceeding with any capital increase or capital decrease;
11. assumption of any debt and/or standing surety or other forms of personal guarantee in an amount exceeding [EUR] (*amount*) per year;
12. assumption of liabilities not contemplated in the latest approved Business plan in a total amount exceeding [EUR] (*amount*);
13. execution of agreements whose total value exceeds [EUR] (*amount*) per year;
14. any material changes to the nature of the Company business that are not contemplated by the Business;
15. contracting with any third party other than contemplated by the Business;
16. payments of the salary of any employee or manager (including bonuses, fees or benefits) whose total annual remuneration exceeds [EUR] (*amount*);
17. appointment of the managing director of the Company and determination of its powers;
18. payments to the Company members (or to any company in which the Company has an interest);
19. distribution of dividends;
20. granting of options or incentives to the Company members, Key People or partners;
21. sale, transfer or licensing of any and all Intellectual Property Rights and Works of the Company;
22. liquidation or revocation of the liquidation of the Company, the appointment or revocation of the liquidator and the determination of its fee;
23. any amendments to the Articles of Association.

7.5 Deadlock

7.5.1 The Shareholders shall seek to agree in good faith and in a manner so as not to block or otherwise jeopardize the co-operation of the Shareholders in the Company on issues arising under or requiring their agreement hereunder. The Shareholders agree to resolve disputes, which are not legal disputes, in accordance with the following provisions.

7.5.2 A deadlock event occurs if the Shareholders or their representatives fail to reach an adequate affirmative vote in the Company's Board of Directors or General Assembly (*number*) consecutive meetings on a proposed decision ("Deadlock Event").

42 Each of the items listed under the Reserved Matters are optional. The Parties, upon their agreement may add into or remove certain items from the Reserved Matters.

43 General Assembly or the Board of Directors.

44 The choice is left to the Parties according to the corporate structure they decide to agree upon.

45 Please check the relevant national mandatory laws on transfer of Share.

- 7.5.3 If a Deadlock Event has occurred, either Party (“Notifying Party”) may within (*number*) Business Days after the occurrence of a Deadlock Event, send a notice to the other Party notifying that a Deadlock Event has occurred and describing in reasonable detail the Deadlock Event and the reasons that led to it (“Deadlock Notice”).
- 7.5.4 The existence of a Deadlock Event, delivery of a Deadlock Notice or other dispute resolution procedures set out hereunder shall not relieve or excuse any Party from its ongoing duties and obligations under this Agreement.
- 7.5.5 After a Deadlock Notice has been sent and for as long as it remains unresolved, each Party undertakes to take such actions as may be necessary in order to:
- a) refrain from taking any action or decision at the Company’s Board of Directors or General Assembly regarding the issues at stake;
 - b) minimise any adverse consequences of the underlying Deadlock Event for the Company and ensure to the extent possible under the circumstances that the corporate governance of the Company is not materially affected by such Deadlock Event; and
 - c) procure that the Company be operated in the ordinary course of Business and in accordance with past practices.
- 7.5.6 If the Parties cannot agree on any resolution for solving a Deadlock Event, any of the Parties shall be entitled to submit the Deadlock Event to (*resolution of dispute*) in accordance with Article 12 below.

Article 8 Dividend policy⁴⁶

Option A⁴⁷

As long as permitted under the applicable Law, the authorised body⁴⁸ of the Company shall determine and cause to payout dividend to its Shareholders every year, after the end of each Fiscal Year or at such other time(s) specified.

Option B⁴⁹

As long as permitted under the applicable Law, the authorised body⁵⁰ of the Company shall determine and cause to payout% (*a fixed percentage*) of profits as dividends to its Shareholders every year, after the end of each Fiscal Year or at such other time(s) specified.

Option C⁵¹

As long as permitted under the applicable Law, the authorised body⁵² of the Company is under no obligation to payout dividends to the Shareholders regularly.

Article 9 Termination & liquidation of the Company⁵³

- 9.1 Termination and liquidation of the Company and the procedures on how the liquidation shall be carried out, and the responsibilities of the liquidators, shall be determined according to the relevant provisions contained in the applicable Law.

46 Parties are always advised to obtain legal advice as to the dividend policy of the Company. The scope of the dividend policy can be elaborated in accordance with the applicable Law where the Company is/will be established. Also, in line with the applicable Law, the circumstances that the Shareholders can waive to receive dividend payout can be listed under this Article as well.

47 This type of regular dividend policy is generally adopted by companies having stable earnings and steady cash flow.

48 General Assembly or the Board of Directors.

49 Under the stable dividend policy, the percentage of profits to be paid out as dividends is fixed and therefore the amount of dividend fluctuates from year to year with the level of profit.

50 General Assembly or the Board of Directors.

51 This type of irregular dividend policy is generally adopted by companies that do not enjoy a steady cash flow or lack liquid funds.

52 General Assembly or the Board of Directors.

53 Parties are always advised to obtain legal advice as to the termination and liquidation of the Company as requirements may differ from jurisdiction to jurisdiction.

9.2 As long as permitted under the applicable Law, if a Liquidation Event occurs, the Investor will be entitled to a *non-participating liquidation preference* by virtue of which the Investor will receive, on a preference basis with respect to other Shareholders of the Company, a portion of the proceeds arising from the Liquidation Event in an amount equal to: (i) the capital paid in by Investor, multiplied by⁵⁴; or (ii) the amount of the proceeds arising from a Liquidation Event that would be owed to Investor in proportion to its Shares in the Company, whichever is higher.

9.3 Following a Liquidation Event, as long as permitted under the applicable Law, the Parties shall endeavour to ensure that before dissolution:

- a) all existing contracts of the Company are performed to the extent that there are sufficient resources;
- b) the Company shall not enter into any new contractual obligations; and
- c) the Company's assets are distributed as soon as practical.

Article 10 Term and Termination

10.1 Effectiveness and Duration

10.1.1 The Parties intend to bind themselves for as long as permitted under applicable Law and therefore agree that this Agreement shall remain valid as long as the Parties are Shareholders.⁵⁵

10.1.2 This Agreement shall be terminated, for the following limited reasons:

- a) upon a written agreement of the Parties to terminate this Agreement, or
- b) upon compulsory and voluntary liquidation of the Company, or
- c) upon sale of the Company to another person; or
- d) (Optional) upon the Company's not being established in accordance with Articles 4.1. and 4.2.

Notwithstanding the above, subject to the limitations as set forth in this Agreement, all other provisions of this Agreement providing for any obligation of the Parties to be performed after the termination shall remain in full force and effect after the termination, without the necessity for either of the Parties to reiterate or otherwise confirm its commitment with respect thereto.

10.2 Effect of Termination

Unless otherwise agreed upon by the Parties, termination of this Agreement shall not affect any rights remedies, obligations or liabilities of any of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of completion.

10.3 Indemnification

In case one or more Party(ies) commit a substantial breach⁵⁶ of this Agreement, the non-breaching Party(ies) shall send a written notice to the breaching Party(ies) notifying it of such breach. If the breaching Party does not or cannot remedy such breach within (*duration*) Business Days upon receipt of such notice, the breaching Party(ies) shall pay a contractual penalty amounting to (*currency and amount*) per infringement to the non-breaching Party(ies).

Article 11 Miscellaneous

11.1 Severability

Should any provision of this Agreement be considered invalid or unenforceable by the judgment of a court of competent jurisdiction or award of an arbitral tribunal, all other provisions shall remain in full force and effect and shall not be affected. The Parties agree, however, to replace, when possible, any provision declared invalid by a provision which shall reflect their initial intent, as objectively and consistently as possible and in accordance with the basic relationship existing between the Parties.

⁵⁴ For example, 1.5. The criteria stated under Article 9.2 may change depending on the type of the Investor.

⁵⁵ Parties are always advised to obtain legal advice with regard to the actual term of the Agreement since certain jurisdictions may include restrictions on term length.

⁵⁶ If the other Party is in breach of all or part of its obligations under the Agreement resulting in such detriment to the terminating party as to substantially deprive it of what it is entitled to expect under the Agreement. Events of 'substantial breach' can be defined under this Agreement.

11.2 Entire Agreement

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, between the Parties.

11.3 Counterparts

If the Parties sign this Agreement in several counterparts, each will be deemed an original but all counterparts together will constitute one instrument.

11.4 Association

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties or constitute any Party the agent of another Party.

11.5 Intellectual Property Rights

11.5.1 The Parties hereby agree and undertake that any and all Intellectual Property Rights and Works in and to the current and future description of Business of the Company shall at all times vest in the Company.

11.5.2 (Optional) The Parties hereby unconditionally and irrevocably assign all Intellectual Property Rights and Works, including but not limited to the Intellectual Property Rights and Works described in Annex 5, to the Company. This assignment includes any and all current and future forms of exploitation of the Intellectual Property Rights and the Works.

11.5.3 After the Parties have transferred the Intellectual Property Rights and Works to the Company those Parties unconditionally and irrevocably waive all rights which they may have in connection with the Intellectual Property and the Works.

11.5.4 The Parties agree that they eventually may make, discover or create Intellectual Property Rights in the course of or in connection with the Company, and agree that in this respect those Parties have an obligation to immediately transfer these Intellectual Property Rights to the Company.

11.6 Information Duties

As long as permitted under the applicable Law, the Entrepreneurs shall exchange with the Investor any information on the financial, accounting and strategic position of the Company and such other financial and business information as may be reasonably requested from time to time by means of reports that shall be in compliance with the forms and time schedules agreed with the Investor.

11.7 Non-competition

11.7.1 As a separate and independent provision, the Parties hereby agree that, for the duration of this Agreement, and for (*duration*) if the Parties cease to be Shareholders of the Company without unanimous approval by the Board of Directors, they will not in any way, directly or indirectly, for the purpose of conducting or engaging in any Business carried out by the Company, call upon, solicit, advise or otherwise do, or attempt to do, business with any customers of the Company with whom the Company had any dealings, or take away or interfere or attempt to interfere with any custom, trade, business or patronage of the Company, or interfere with or attempt to interfere with any officers, employees, representatives or agents of the Company, or induce or attempt to induce any of them to leave the employ of the Company or violate the terms of their contracts, or any employment arrangements, with the Company in (*country*) or in any other country where the Parties agree on establishing a company directly or indirectly, as owner, manager, consultant, employee or otherwise.

11.7.2 Each of the Parties acknowledges that this Article 11.7. constitutes an independent provision and shall not be affected by performance or non-performance of any other provision of this Agreement.

11.7.3 The Parties shall report the Company in writing within (*duration*) Business Days following the Execution Date, all the legal persons that are registered on behalf of them in the country or abroad before the Execution Date and to which they are Shareholders and/or in which they are in an organ including the Board of Directors. Behaviours contrary to this provision shall constitute a breach of the Agreement.

11.8 Confidentiality

Each Party agrees not to disclose to third parties any Confidential Information disclosed to it by the other Party in the context of this Contract in conformity with the ICC Model Confidentiality Clause at Annex 4. This Article 11.8. survives the termination or expiry of this Contract, whatever the reason thereof.

11.9 Assignment

Except as otherwise expressly provided herein and except with the prior written consent of the other Party, each Party shall not transfer to any other person, including by merger (whether that Party is the surviving or disappearing entity), consolidation, dissolution, or operation of law, (1) any discretion granted under this Agreement, (2) any right to satisfy a condition under this Agreement, (3) any remedy under this Agreement, or (4) any obligation imposed under this Agreement.

11.10 Modification and waiver

No amendment to this Agreement will be effective unless it is in writing and signed by the Parties. No waiver under this Agreement will be effective unless it is in writing and signed by the Party granting the waiver. A waiver granted on one occasion will not operate as a waiver on other occasions. A failure or delay by any Party to exercise any right or remedy provided under this Agreement or by applicable Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

11.11 Notices

11.11.1 For a notice or other communication under this Agreement to be valid, it must be in writing and delivered either (1) by hand, (2) by a national transportation company (with all fees prepaid), (3) by registered or certified mail, return receipt requested and postage prepaid, or (4) by email with electronic signature.

11.11.2 For a notice or other communication to a Party under this Agreement to be valid, it must be addressed using the information specified below for that Party or any other information specified by that Party in a notice in accordance with this article.

To [insert 1st Party]:
..... [Name]
..... [Address]
..... [Contact Person]

To [insert 2nd Party]:
..... [Name]
..... [Address]
..... [Contact Person]

11.12 Expenses and Fees

Except as otherwise provided herein, each of the Parties shall bear its own legal, accountancy and other costs and expenses incurred by it in connection with the negotiation, preparation, execution and performance of the Agreement.

Survival

Article 11.7. (*Non-competition*), Article 11.8. (*Confidentiality*) and Article 12. (*Resolution of Disputes*) shall survive the termination or expiry of this Agreement, whatever the reason thereof.

Article 12 Resolution of Disputes

In the event of any dispute arising out of or in connection with [Article 4] of the present contract, the parties agree to submit the dispute to ad hoc expert valuation proceedings. The expert shall be appointed by the ICC International Centre for ADR in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chamber of Commerce.

“Valuation Expert means any one of (i) (number) independent reputable investment banks of appropriate expertise in the same industry as that of the Company; or (ii) a financial advisor jointly selected by the Parties. Should the parties fail to agree on the Valuation Expert, from, the Valuation Expert shall be appointed by the ICC ADR Centre in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chamber of Commerce.”

12.1 In the event of any dispute arising out of or in connection with the present contract, the parties shall first refer the dispute to proceedings under the ICC Mediation Rules.⁵⁷ The commencement of proceeding under the ICC Mediation Rules shall not prevent any party from commencing arbitration/litigation in accordance with Article 12.2 below.

12.2

<input type="checkbox"/> Option A: ICC Arbitration	<input type="checkbox"/> Option B: Litigation (Ordinary Courts)
<p>All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.⁵⁸</p>	<p>In case of dispute the courts of (place) (country) shall have exclusive jurisdiction.</p>

Article 13 Applicable Law

<input type="checkbox"/> Option A: International Principles⁵⁹	<input type="checkbox"/> Option B: National Laws⁶⁰
<p>Any questions relating to this Agreement which are not expressly or implicitly settled by the provisions contained in this Agreement shall be governed, in the following order:</p> <ul style="list-style-type: none"> (a) by the principles of law generally recognised in international trade as applicable to international contracts involving shareholders, (b) by the relevant trade usages, and (c) by the UNIDROIT Principles, <p>with the exclusion—subject to Article 12.2 hereunder—of national laws.</p> <p>The Parties agree that in any event consideration shall be given to mandatory provisions of the law of the country where the Business is rendered which would be applicable even if the Agreement is governed by a foreign law (overriding mandatory rules). Any such provisions will be taken into account to the extent that they embody principles which are universally recognised and provided their application appears reasonable in the context of international trade.</p>	<p>This Agreement is governed by the laws of (name of the country the law of which is to apply) regardless of the conflict of law rules of that country.</p>

57 The ICC Mediation Rules (Publication 865) which replace the ICC ADR Rules, effective as of 1 January 2014, can be found on the [ICC website](#). The above is model Clause C: Obligation to Refer Dispute to ICC Mediation Rules, while permitting parallel ICC Arbitration proceedings if required. Other options are available for the parties to select, such as model Clause A (Option to Use ICC Mediation Rules), model Clause B (Obligation to Consider ICC Mediation Rules) or model Clause D (Obligation to Refer Dispute to the ICC Mediation Rules, followed by ICC Arbitration if required). See also [Mediation Guidance Notes](#).

58 The ICC Arbitration Rules, effective as of 1 January 2021, can be found on the [ICC website](#). Parties are free to adapt the clause to their particular circumstances: standard clauses are available in the previous link. For instance, they may wish to stipulate the number of arbitrators, given that the ICC Arbitration Rules contain a presumption in favour of a sole arbitrator. Also, it may be desirable for them to stipulate the place and language of the arbitration and the law applicable to the merits. The ICC Arbitration Rules do not limit the parties' free choice of the place and language of the arbitration or the law governing the contract. Parties should also consider the guidance provided for emergency arbitrator, expedited proceedings, publication of awards and multi-tier clauses. When adapting the clause, care must be taken to avoid any risk of ambiguity. Unclear wording in the clause will cause uncertainty and delay and can hinder or even compromise the dispute resolution process. Parties should also take account of any factors that may affect the enforceability of the clause under applicable law. These include any mandatory requirements that may exist at the place of arbitration and the expected place or places of enforcement.

59 In case this alternative is chosen, it is advisable to choose arbitration (Article 12.2.A) for the resolution of disputes. In fact, it is doubtful whether ordinary courts would apply general principles instead of a national law.

60 This model form has been prepared on the assumption that it would not be governed by a specific national law (as stated in Option A of Article 13.1). If the Parties prefer nevertheless to submit the Agreement to a national law, they should carefully check in advance, if the clauses of the model conform to the mandatory provisions of the law they have chosen.

Article 14 Authentic Text

The English text of this Agreement is the only authentic text.⁶¹

Made in (*place*) on the (*date*).

(*Party*)

(*Party*)

.....

61 If the Agreement is written in another language this Article should of course be modified to indicate the language of the Agreement.

Annex 1 to the Model Shareholders Agreement for Start-Up Companies

Cap Table

Name	Capital Share in nominal value	Capital Share %
First and Last Name of Entrepreneur	<i>capital share in nominal value held after the Investor's entry</i>	<i>Capital share percentage held after the Investor's entry</i>
First and Last Name of Entrepreneur	<i>capital share in nominal value held after the Investor's entry</i>	<i>Capital share percentage held after the Investor's entry</i>
Investor	<i>capital share in nominal value held after the Investor's entry</i>	<i>Capital share percentage held after the Investor's entry</i>

Annex 2 to the Model Shareholders Agreement for Start-Up Companies

Articles of Association of the Company

[.]¹

1 Articles of Association of the Company will be inserted.

Annex 3 to the Model Shareholders Agreement for Start-Up Companies

Form of Deed of Adherence

This Adherence Agreement (“Agreement”) is made on _____, by and between:

1. Option A

_____, [a citizen of _____ with national citizenship number _____] / [_____, a company incorporated in _____ registered with the _____ Trade Registry under number [_____] , [residing at] / [having its registered office at] [_____] (**Accessor**); and

Option B

_____, [a company incorporated in _____ whose registered office is at _____] / [an individual who is a citizen of _____, with [identity] / [passport] number _____, residing at _____] (**Accessor**); and

2. Option A

_____, [a company incorporated in _____ whose registered office is at _____] / [an individual who is a citizen of the _____, with [identity] / [passport] number of _____, residing at _____] (**Transferring Shareholder**).

Option B

_____, [a citizen of _____ with national citizenship number of _____] / [_____, a company incorporated in _____ registered with the _____ Trade Registry under number _____, [residing at] / [having its registered office at] _____] (**Transferring Shareholder**).

[insert name/Title of the Existing Shareholders] shall be collectively referred as the “**Existing Shareholders**”.

Supplemental to the Shareholders Agreement, dated _____, between Existing Shareholders (**Shareholders Agreement**) and entered into pursuant to Article 5 thereof.

It is agreed as follows:

1. The Accessor acknowledges and undertakes that it has been given and read a copy of the Shareholders Agreement and hereby acknowledges and undertakes to observe, perform and be bound by all of the terms of the Shareholders Agreement which are capable of applying to the New Shareholder and which have not been performed at the date of this Agreement to the intent and effect that the Accessor shall be deemed with effect from the date of this Agreement as a registered shareholder of the Company and that it shall have the rights and be subject to the obligations of a Shareholder under the terms of the Shareholders Agreement.
2. The Accessor, by execution of this Agreement, makes the representations and warranties contained under Article 2 of the Shareholders Agreement for the benefit of the Existing Shareholders, provided that such representations and warranties shall be made as of the date of this Agreement and not as of the date of the Shareholders Agreement.
3. The Accessor confirms that it shall be jointly and severally liable with Transferring Shareholder under the Shareholders Agreement for such time as it owns any Shares (as such term is defined in the Shareholders Agreement).
4. For the purposes of the Shareholders Agreement, a notice to the Accessor shall be sent to the following addresses, or such other person or address as the Accessor may notify to Existing Shareholders from time to time:

Address: _____

E-mail: _____

Attention: _____

All disputes arising out of or in connection with the present Agreement shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration is(place).....(country).

5. This Agreement, and all non-contractual obligations arising out of or in connection with it, shall be governed by law.

In witness whereof this Agreement has been duly executed.

Signed for and on behalf of [**Accessor**]

Signed for and on behalf of [**Transferring Shareholder**]

Transferor	Accessor	Shares	Price
[.]	[.]	[.]	[.]

Annex 4 to the Model Shareholders Agreement for Start-Up Companies

ICC Confidentiality Clause 2016

1.1 Definitions

Agreement means the contract incorporating this Clause.

Purpose means the purpose of the Agreement.

Disclosing Party means the Party disclosing Confidential Information to the Receiving Party.

Permitted Recipients means any director, officer, employee, adviser or auditor of the Receiving Party or any of its Related Companies who reasonably needs to know Confidential Information for the Purpose.

Receiving Party means the Party receiving Confidential Information from the Disclosing Party.

Related Company means any corporation, company or other entity that controls, or is controlled by, one Party or by another Related Company of that Party, where control means ownership or control, direct or indirect, of more than fifty (50) per cent of that corporation's, company's or other entity's voting capital.

Confidential Information¹ means any information or data, or both, communicated by or on behalf of the Disclosing Party to the Receiving Party, including, but not limited to, any kind of business, commercial or technical information and data in connection with the Purpose, except for such information that is demonstrably non-confidential in nature. The information shall be Confidential Information, irrespective of the medium in which that information or data is embedded, and whether the Confidential Information is disclosed orally, visually or otherwise.

Confidential Information shall include any copies or abstracts made of it as well as any products, apparatus, modules, samples, prototypes or parts that may contain or reveal the Confidential Information.

Confidential Information is limited to information disclosed on or after the date of signature of this Agreement.

1.2 The Receiving Party shall:

- a) not disclose any Confidential Information to anyone except to the Permitted Recipients, who are bound to the same level of confidentiality obligations as set forth by this Clause;
- b) use any Confidential Information exclusively for the Purpose; and
- c) keep confidential and hold all Confidential Information with no less a degree of care as is used for the Receiving Party's own confidential information and at least with reasonable care.

1.3 Any obligation to keep confidential all Confidential Information shall not apply to the extent that the Receiving Party can prove that any of that information:

- a) was in the Receiving Party's possession without an obligation of confidentiality prior to receipt from the Disclosing Party;
- b) is at the time of disclosure, or subsequently becomes, generally available to the public through no breach of this Agreement by the Receiving Party or any Permitted Recipient;
- c) is lawfully obtained by the Receiving Party from a third party without an obligation of confidentiality, provided that third party is not, to the Receiving Party's best knowledge, in breach of any obligation of confidentiality to the Disclosing Party relating to that information; or
- d) is developed by the Receiving Party or its Related Companies independent of any Confidential Information.

1 Please be aware that the ICC Confidentiality Clause adopts the default option A for definition of Confidential Information from the ICC Model Confidentiality Agreement. The Parties may consider using the alternative option B: "Confidential Information" means any information or data, or both, communicated by or on behalf of the Disclosing Party to the Receiving Party, including, but not limited to, any kind of business, commercial or technical information and data disclosed between the Parties in connection with the Purpose provided that:

- a) when disclosed in tangible form or via electronic communication it is marked or otherwise identified as "Confidential" by the Disclosing Party; or
- b) when disclosed orally or visually it is identified as "Confidential" prior to disclosure and subsequently summarized in writing by the Disclosing Party and such summary is given to the Receiving Party marked or otherwise identified as "Confidential" within thirty (30) days after that disclosure. In case of disagreement relating to the summary, the Receiving Party must present its objections to the summary in writing within thirty (30) days of receipt.

- 1.4** Unless otherwise specified by the Disclosing Party at the time of disclosure, the Receiving Party may make copies of the Confidential Information to the extent necessary for the Purpose.
- 1.5** Nothing in this Agreement shall obligate either Party to disclose any information. Each Party has the right to refuse to accept any information under this Agreement prior to any disclosure. Confidential Information disclosed despite an express prior refusal is not covered by the obligations under this Clause.
- 1.6** Nothing in this Agreement shall affect any rights the Disclosing Party may have in relation to the Confidential Information, neither shall this Agreement provide the Receiving Party with any right or license under any patents, copyrights, trade secrets, or the like in relation to the Confidential Information, except for the use of Confidential Information in connection with the Purpose and in accordance with this Clause.
- 1.7** The Disclosing Party makes available the Confidential Information as is and does not warrant that any of this information that it discloses is complete, accurate, free from defects or third party rights, or useful for the Purpose or other purposes of the Receiving Party.
- 1.8** This Clause does not:
- a) create any other relationship between the Parties;
 - b) oblige a Party to enter into any other contract; or
 - c) require consideration for any information received.
- 1.9** In addition to any remedies under the applicable law,² the Parties recognize that any breach or violation of any provision of this Clause may cause irreparable harm to the other Party, which money damages may not necessarily remedy. Therefore, upon any actual or impending violation of any provision of this Clause, either Party may obtain from any court of competent jurisdiction a preliminary, temporary or permanent injunction, restraining or enjoining such violation by the other Party or any entity or person acting in concert with that Party.
- 1.10** Within ninety (90) days of termination of this Agreement, the Disclosing Party may request the disposal of the Confidential Information. Disposal means execution of reasonable measures to return or destroy all copies including electronic data. Destruction shall be confirmed in writing. Disposal shall be effected within thirty (30) days of the request³ being made.
- The provisions for disposal shall not apply to copies of electronically communicated Confidential Information made as a matter of routine information technology back-up and to Confidential Information or copies of it that must be stored by the Receiving Party or its advisers according to provisions of mandatory law, provided that this Confidential Information or copies of it shall be subject to continuing obligations of confidentiality under this Agreement; but no further use shall be permitted as from the date of the request.
- 1.11** Neither Party shall be in breach of this Clause to the extent that it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or other obligation of a mandatory nature, afterwards referred to as "Mandatory Obligation". Where a disclosure is made for these reasons, the Party making the disclosure shall ensure that the recipient of the Confidential Information is made aware of and asked to respect its confidentiality. This disclosure shall in no way diminish the obligations of the parties under this Clause except to the extent that a Party is compelled by any Mandatory Obligation to disclose Confidential Information without restriction.
- To the extent permitted by any Mandatory Obligation, the Receiving Party shall notify the other Party without delay in writing as soon as it becomes aware of an enquiry or any process of any description that is likely to require disclosure of the other Party's Confidential Information in order to comply with any Mandatory Obligation.
- 1.12** Upon termination, the Receiving Party shall stop making use of the Confidential Information. The obligations of the Parties under this Agreement shall survive indefinitely or to the extent permitted by the applicable mandatory law.

² The Parties may consider also inserting a penalty or liquidated damages clause. Any clause of this type should be checked with local counsel to verify its validity and compliance with applicable laws and regulations.

³ In most cases it is not practical to return electronic communication. All copies of electronic data that with reasonable efforts can be expunged from storage, should be (this will involve more than removing the file from the File Allocation Table to ensure that the file is irretrievable). However, in some cases, as a matter of company policy, back-up copies are kept for disaster recovery purposes only and it would not be practical to identify the specific data and delete it. In such cases, deletion is not required.

Annex 5 to the Model Shareholders Agreement for Start-Up Companies

Intellectual Property Rights and Works

[.]¹

1 Intellectual Property Rights and Works to be assigned by the Parties to the Company will be inserted. However, this part is optional.

ICC Model Directors Services/ Management Agreement

Drafting notes

- This Directors Services/Management Agreement is a template; consequently, it may be amended to include any adjustments required from time to time and case by case. We suggest that this model Agreement (as amended after negotiations) be submitted to legal counsel before it is signed, to ensure that all expectations and requirements of those concerned are reflected therein.
- This Directors Services/Management Agreement has been drawn up based on common practice, considering however that this document is structured to balance the interests of all parties concerned and thus does not contain clauses which strongly weigh in favour of one or the other party.
- This Directors Services/Management Agreement may depend on special requirements of form, for example notarial certification.

ICC Model Directors Services/Management Agreement Agreement to provide [advisory][directors][management] services

Between

whose registered office is at

(hereinafter called "the Company")

Legal form

Registration No

and

whose registered office is at

(hereinafter called "the Consultant")

Legal form

Registration No

each a "Party" and collectively the "Parties".

Whereas:

1. The Company is a [insert citizenship] company whose object consists of ("the Business").
2. The Company requires certain [advisory] [directorship] [general management] services to assist in the expansion of the Business, for which reason it requires a person with expertise in the area of the Business.
3. The Consultant is a person with expertise in the mentioned industry area.
4. Accordingly, the Parties recognise their legal and reciprocal capacity to bind themselves and agree to sign this commercial services agreement (hereinafter, the "**Agreement**"), governed by civil and commercial provisions that are applicable and, in particular, by the following:



Articles

Article 1 Purpose

- 1.1** By means of this Agreement, the Company appoints the Consultant to the office of *[Advisor]* *[Director]* *[General Manager]*, and the Consultant agrees to perform the duties of that office well and faithfully and the tasks pertaining to that office in the broadest possible terms. Subject to the terms and conditions agreed in this Agreement, the Consultant undertakes to provide to the Company services in the following fields of activity of the Business (hereinafter “the Services”)¹:
- a) General market strategies and corporate policies designed to increase and expand the Business in
 - b) Contacts with present and potential clients in, with suppliers, management of payments from clients and claims, etc.
 - c) Daily business operations, such as issuance of invoices, compliance with tax duties, labour and social security, contacts with current and potential customers, suppliers, agents, officers, manufacturing processes, storage, etc.
 - d) Marketing strategies to increase sales, productivity and quality levels.
 - e) Search and analysis of new markets and growth.
- 1.2** The Consultant shall render the Services in the best interests of the Business and of the Company. In carrying out their obligations under this Agreement, the Parties will act in accordance with the principles of good faith and fair dealing.
- 1.3** In order to adequately provide the Services, and without prejudice to the travelling required in this connection, the Consultant shall *[regularly]* *[have the option to]* work from the Company’s corporate offices in, where adequate space and equipment shall be supplied.

Article 2 Method of providing Services

- 2.1** The Consultant will devote *[..... percent (.....%) of his/her personal capacity]* *[..... weekly hours (with a week of 5 days for these purposes)]* to provide the Services under this Agreement during the usual Business hours. Without prejudice to its full autonomy, the Consultant shall procure that it renders the Services in accordance with the working times, schedules, rest periods and festivities which are usual in the Company. In any event, the Consultant shall personally attend regular meetings with the Company, to be held on the premises of the Business in, or at other locations.
- 2.2** Notwithstanding the provisions of Article 2.1, given the special services to be rendered, the Consultant shall be at all times at the Company’s disposal, and may be asked to provide Services even during festivities if need be. Such hours or days worked on non-business days will be compensated with hours or days of leave with the prior agreement of the Company.
- 2.3** The Consultant may interrupt the rendering of his/her services during a maximum of Business days for each year of duration of this Agreement, in one or more periods and preferably during the month of When determining the length and dates of such interruptions, the Consultant shall take into account the needs of the Company. In any event, the Consultant shall immediately report to the Company any event or circumstance (such as accident, illness, incapacity, etc.) which might prevent the Consultant from providing the Services in accordance with the terms of this Agreement for more than consecutive days.
- 2.4** Each of the contracting Parties shall bear their respective legal obligations regarding affiliation and contribution to the Special Scheme for self-employed Social Security, withholding of income tax of individual persons and any other obligation that results from current regulations in force. The Consultant confirms that it is duly registered with the Social Security and tax authorities of as an independent entrepreneur and undertakes to comply with legislation in force in this respect.

¹ These are just some examples—a long list of potential services could be attached as an annex to the form so that the parties would only have to select the applicable ones.

- 2.5** The Consultant will perform the Services under the supervision and direction of the Company's Board of Directors². The Consultant's duties include reporting and giving account to the Company's governing body (or to the director delegated by that body), and his/her actions will be limited by that body's direct instructions and criteria.
- 2.6** The Company will grant the Consultant any necessary powers of attorney for representation pertaining to the legal owners of the Company to perform its duties, subject to the limits imposed by the Company's current policy on granting powers of attorney.
- 2.7** The provision of services by the Consultant to the Company will be exclusive with respect to the field of Business of the Company. The Consultant hereby states that, from the moment of the signature of this Agreement, it will have no connection, directly or indirectly with any other company, partnership, civil or commercial entity or public body, and that neither personally nor through third parties it has an interest of any kind with any company, civil or commercial partnership or government agency or entity from which a conflict of interest may arise. The Consultant undertakes not to engage in any kind of activity that poses or could give rise to a conflict of interest in respect of his/her obligations to the Company without the prior written consent of the Company. The Consultant will immediately report to the Company's Board of Directors any situation of conflict of interest, and must not attend nor take any part in deliberations concerning matters in which it has a personal interest.
- As an exception, the Consultant is hereby authorised to render services to its family-owned companies and, provided always that (i) such companies, when directly or indirectly controlled by the Consultant and/or persons related to him, do not compete, directly or indirectly, with the Company's Business; and (ii) the Consultant's dedication to the said companies does not, in any way, jeopardize or limit the fulfilment of his/her obligations towards the Company.
- 2.8** The Consultant will provide services corresponding to the nature of its office and duties with due diligence and in keeping with the principles of good faith, integrity and loyalty. The Consultant will offer the Company (and those companies belonging to the same corporate group) all business opportunities that arise and are offered to it when these opportunities relate to activities falling within the scope of the corporate purpose of those companies.
- 2.9** Unless provided in this Agreement or previously approved in writing by the Company's Board of Directors, the Consultant is not entitled to make use of the Company's assets or its employees' services (or those of its corporate group), nor to take advantage of his/her status to obtain any unjustified enrichment for himself/herself, for his/her relatives or for any entity linked to any of them.
- 2.10** The Consultant will abide by the law when performing his/her duties, taking the necessary measures to ensure that the Company's executives and employees do the same, and will report to the Company's management any action or situation it is aware of that might violate the law.

Article 3 Compensation for Services rendered

- 3.1** As consideration for the Services provided under this Agreement, the Company agrees to pay to the Consultant the fixed and variable fees set out in Annex 1 ("the Fee")³.
- 3.2** The Company shall be liable to pay each Fee upon the receipt of a duly issued invoice by the Consultant in immediately available funds via wire transfer to the bank account of the Consultant, details of which shall be notified by the Consultant to the Company in writing at least seven (7) calendar days prior to each corresponding payment date. Each such invoice shall include the name, address, tax identification number of the Consultant and of the Company, a description of the Services, the amount of the invoice and any other information which is deemed compulsory by the applicable laws. The Company shall be deemed to have performed its payment obligations when the respective sums due have been received by the Consultant's bank in immediately available funds.

² Alternatively, any other body foreseen in the Shareholders Agreement may be inserted.

³ Given the large number of possibilities concerning the fee schemes, the parties may reflect their understandings in an annex to the model agreement.

- 3.3** The Consultant shall bear all expenses incurred in connection with its rendering of the Services, including out-of-pocket expenses. This notwithstanding, the Company will pay or reimburse to the Consultant the duly justified expenses of travelling, lodging, food & beverage, outlays and other expenses incurred by it in carrying out the functions entrusted to him/her under this Agreement, in accordance with the general policies established by the Company; the Consultant shall include the amount of these expenditures in his/her invoices issued to the Company, attaching a copy of the invoices for expenses incurred.
- 3.4** All the amounts included in the invoices issued by the Consultant concerning remuneration for Services rendered or in respect of costs impact referred to in this Agreement, will be increased with their respective Value Added Tax (or equivalent tax). Also, the Company will make the deductions in respect of advance payment of Personal Income Tax (or equivalent tax) at the rate prevailing at the time, and any others that are required by the legislation in force.

Article 4 Term and Termination of the Agreement

- 4.1** This Agreement shall enter into force on and is entered into for a period of months. From that date, the agreement will be automatically renewed for successive monthly periods, unless either Party states in writing to the other its intention not to extend the agreement, with at least months before the expiration date initially agreed or any of its extensions.
- 4.2** Without prejudice to the provisions of Article 4.1, given the special relationship of mutual trust and confidence upon which this Agreement is based, either Party shall be entitled to terminate this Agreement with at least days' prior written notice addressed to the other Party.
- 4.3** Either party may terminate this agreement with immediate effect if the other party breaches its obligation to comply with the terms of this Agreement and does not remedy such breach within days from being requested to do so.
- 4.4** The Parties agree that the following situations shall be considered as exceptional circumstances which justify the earlier termination by the other Party: bankruptcy, moratorium, receivership, liquidation or any kind of composition between the debtor and the creditors, or any other circumstances which are likely to affect substantially that Party's ability to carry out its obligations under this Agreement. Furthermore, the Company may also terminate this Agreement with immediate effect in case of change of control, ownership and/or management of the Consultant (if the Consultant is a legal entity) or of the Company itself.
- 4.5** In the event of the death of the Consultant, or of the illness, incapacity or inability to provide the Services for any reason for more than consecutive days, the Company shall have the option to terminate this Agreement with immediate effect or to suspend this Agreement until the Consultant is capable or able to render the Services again. During such suspension period, the Company's duty to pay the Fee and any other costs and expenses of the Consultant contemplated in this Agreement shall be suspended.
- 4.6** If this Agreement is extinguished or terminated by either Party in accordance with Articles 4.1, 4.2, 4.4 or 4.5 above, then neither of the Parties shall be entitled to any compensation or indemnification of any kind for the termination of this Agreement.
- 4.7** If this Agreement is terminated for any reason, the Consultant must immediately return to the Company all assets, files, information (regardless of the medium used), documents, credit cards, mobile devices and property belonging to the Company that it has in its possession or has been using due to his/her office. In addition, if this Agreement is terminated for any reason, the Consultant must make a detailed accounting to the Company of the use that it has made of the authority and duties conferred, and of the transactions accomplished within the framework of this Agreement.

Article 5 Confidentiality

- 5.1** Each Party agrees not to disclose to third parties any Confidential Information disclosed to it by the other Party in the context of this Agreement in conformity with the ICC Model Confidentiality Clause 2016 at Annex 2. This Article 5 survives the termination or expiry of this Agreement, whatever the reason thereof.

- 5.2** The Consultant also agrees not to make any kind of statement, inside or outside of the Company, which may harm the image, reputation, brand or quality of the Company, as well as that of any of its managers or group companies.

Article 6 Post-Contractual Non-Competition Covenant

- 6.1** For a period of months from termination of this Agreement, the Consultant must not:
- a) provide services directly or indirectly to any person, business or company whether as partner, senior manager, employee, consultant, investor, lender or in any other way, that competes with the Company's Business, unless with the express consent of the Company;
 - b) hold a direct or indirect stake in the share capital of any company or entity that competes with the Company's Business; and
 - c) (i) employ or attempt to employ members of the staff or of the management team of the Company or of any other company belonging to the group in or persuade them to resign from their position, and (ii) persuade or attempt to persuade any agents, customers, suppliers or associates of the Company or of the group in to cease their relationship with it.
- 6.2** As compensation for this post-contractual non-compete covenant, the Consultant will be receiving a lump sum payment of per each year of duration of this Agreement, included in its Fee, as indicated under Article 3.1.⁴
- 6.3** If the Consultant breaches the post-contractual non-compete covenant of this Article 6, the Company will be entitled not to pay any unpaid amount as compensation for the post contractual covenant. In addition, the Consultant must return the amounts received for the post-contractual non-compete covenant and indemnify the Company with an amount equivalent to the amount of such compensation received for the months preceding termination of the Agreement, without prejudice to the Company's right to claim for any damages, in excess of the indicated penalty, caused directly or indirectly by that breach. The Consultant acknowledges that the indemnity agreed for the event of breach is appropriate, considering the essential nature of the post-contractual non-compete covenant in this Article 6, as well as the remuneration the Consultant will receive.

Article 7 Assignment of Intellectual Property rights

- 7.1** For the purposes of this Agreement, the term "IP rights" shall comprise (without limitation) any and all patents, trademarks, service marks, business names, domain names, designs, software, databases, utility models, discoveries, creations, inventions, processes or improvements or additions to an invention, confidential information, know-how, trade secrets, logos, or goodwill, in any part of the world, whether or not being capable of being patented, protected by trademarks, copyrighted or otherwise recorded, and any other similar rights in any country; in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 7.2** The Consultant hereby assigns to the Company, to the largest extent admissible under applicable law, all existing and future rights of ownership over any IP Rights which the Consultant may conceive, make, develop, author, or work on, in whole or in part, independently, or jointly with others in the course of providing services to the Company or in consequence of providing the services to the Company or related in any way to the services provided under this Agreement. This assignment shall include, for the avoidance of doubt, the assignment of any right to use and exploit the results of its Services which may be eligible to be protected as IP rights and/or which may be developed during or in connection with the rendering of the Services to the Company. The Consultant agrees to promptly make available to the Company all such results. The Consultant further agrees hereby that it shall carry out all actions reasonably requested by the Company regarding such IP rights and to transfer the ownership over such IP Rights to the Company or such other person as the Company may designate.

⁴ In certain jurisdictions there is a requirement that post-contractual non-compete covenants be remunerated, particularly where the borders between consultancy agreements and employment agreements are unclear. It is therefore recommended to review this issue under local laws.

7.3 The Consultant undertakes:

- a) to notify to the Company in writing full details of any IP Rights promptly on their creation;
- b) to keep confidential details of all IP Rights;
- c) whenever requested to do so by the Company, and in any event on the termination of this Agreement, promptly to deliver to the Company all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in its possession, custody or power; and
- d) not to register nor attempt to register any of the IP Rights, unless requested to do so by the Company.

7.4 The Consultant warrants to the Company that:

- a) he has not given and will not give permission to any third party to use any of the IP Rights;
- b) he is unaware of any use by any third party of any of the IP Rights; and
- c) the use of the IP Rights by the Company will not infringe the rights of any third party.

7.5 The assignment of the IP Rights to the Company is made on an exclusive and unconditional basis and subject to the following terms:

- **Term:** for an unlimited period of time; should a maximum term be required by applicable law, for the maximum period of time permitted by such applicable law.
- **Territorial scope:** all the countries of the world;
- **Contents:** the object of the assignment is all the rights of use and exploitation, in any language, support or form actually known or as may be developed in the future, including in particular, as regards author rights, the rights of reproduction, distribution, public communication, transformation and any others recognised by law whether at present or in the future;
- **Moral rights:** to the widest extent permitted under applicable law, the moral rights over the IP Rights are also assigned to the Company.⁵ The Consultant thus waives any moral rights in the IP Rights to which it is now or may at any future time be entitled, under provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such IP Rights or other materials infringes the Consultant's moral rights.

7.6 This assignment of the IP Rights also includes, in particular, the authorisation to grant, cancel, administer and manage, to the widest extent permitted by applicable law, all kinds of licenses to third parties, with authority to grant sub-licenses as well.**7.7** The assignment of IP Rights and in general the contents of the above terms are deemed to be fully remunerated and compensated by means of the Fee agreed in this Agreement.**7.8** The Consultant agrees to indemnify and keep indemnified the Company at all times against all or any costs, claims, damages or expenses incurred by the Company, or for which the Company may become liable, with respect to any intellectual property infringement claim or other claim relating to the IP Rights supplied by the Consultant to the Company during the course of providing the Services. The Consultant shall maintain adequate liability insurance coverage and ensure that the Company's interest is noted on the policy, and shall supply a copy of the policy to the Company on request. The Company may at its option satisfy this indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.

⁵ The issue of moral rights needs to be analysed on a country-by-country basis.

Article 8 Notices

- a) For a notice or other communication under this Agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company (with all fees prepaid), (3) by registered or certified mail, return receipt requested and postage prepaid, or (4) by email with electronic signature.
- b) For a notice or other communication to a Party under this Agreement to be valid, it must be addressed using the information specified below for that Party or any other information specified by that Party in a notice in accordance with this article.

To [insert 1st Party]:

.....[Name]
[Address]
[Contact Person]

To [insert 2nd Party]:

.....[Name]
[Address]
[Contact Person]

Article 9 Assignment

Except as otherwise expressly provided herein and except with the prior written consent of the other Party, each Party shall not transfer to any other person, including by merger (whether that Party is the surviving or disappearing entity), consolidation, dissolution, or operation of law: (1) any discretion granted under this Agreement, (2) any right to satisfy a condition under this Agreement, (3) any remedy under this Agreement, or (4) any obligation imposed under this Agreement.

Article 10 Other Provisions

- 10.1** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, between the Parties.
- 10.2** No amendment to this Agreement will be effective unless it is in writing and signed by the Parties. No waiver under this Agreement will be valid unless it is in writing and signed by the Party granting the waiver. A waiver granted on one occasion will not operate as a waiver on other occasions. A failure or delay by any Party to exercise any right or remedy provided under this Agreement or by applicable Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 10.3** Should any provision of this Agreement be considered invalid or unenforceable by the judgment of a Court of competent jurisdiction or award of an arbitral tribunal, all other provisions shall remain in full force and effect and shall not be affected. The Parties agree, however, to replace, when possible, any provision declared invalid by a provision which shall reflect their initial intent, as objectively and consistently as possible and in accordance with the basic relationship existing between the Parties.
- 10.4** The annexes attached to this Agreement form an integral part of the agreement.

Article 11 Resolution of Disputes

- 11.1** In the event of any dispute arising out of or in connection with the present contract, the parties shall first refer the dispute to proceedings under the ICC Mediation Rules.⁶ The commencement of proceeding under the ICC Mediation Rules shall not prevent any party from commencing arbitration/litigation in accordance with Article 11.2 below.

⁶ The ICC Mediation Rules (Publication 865) which replace the ICC ADR Rules, effective as of 1 January 2014, can be found on the [ICC website](#). The above is model Clause C: Obligation to Refer Dispute to ICC Mediation Rules, while permitting parallel ICC Arbitration proceedings if required. Other options are available for the parties to select, such as model Clause A (Option to Use ICC Mediation Rules), model Clause B (Obligation to Consider ICC Mediation Rules) or model Clause D (Obligation to Refer Dispute to the ICC Mediation Rules, followed by ICC Arbitration if required). See also [Mediation Guidance Notes](#).

11.2

<input type="checkbox"/> Option A: ICC Arbitration	<input type="checkbox"/> Option B: Litigation (Ordinary Courts)
<p>All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.⁷</p>	<p>In case of dispute the courts of (<i>place</i>), (<i>country</i>) shall have exclusive jurisdiction.</p>

Article 12 Applicable Law

12.1

<input type="checkbox"/> Option A: International Principles ⁸	<input type="checkbox"/> Option B: National Laws ⁹
<p>Any questions relating to this Agreement which are not expressly or implicitly settled by the provisions contained in this Agreement shall be governed, in the following order:</p> <p>(a) by the principles of law generally recognised in international trade as applicable to international contracts with consultants,</p> <p>(b) by the relevant trade usages, and</p> <p>(c) by the UNIDROIT Principles,</p> <p>with the exclusion—subject to the Article 12.2—of national laws.</p>	<p>This Agreement is governed by the laws of (<i>name of the country the law of which is to apply</i>) regardless of the conflict of law rules of that country.</p>

12.2 The Parties agree that in any event consideration shall be given to mandatory provisions of the law of the country where the Consultant renders the Services which would be applicable even if the Agreement is governed by a foreign law (overriding mandatory rules). Any such provisions will be taken into account to the extent that they embody principles which are universally recognised and provided their application appears reasonable in the context of international trade.

⁷ The ICC Arbitration Rules, effective as of 1 January 2021, can be found on the [ICC website](#). Parties are free to adapt the clause to their particular circumstances: standard clauses are available in the previous link. For instance, they may wish to stipulate the number of arbitrators, given that the ICC Arbitration Rules contain a presumption in favour of a sole arbitrator. Also, it may be desirable for them to stipulate the place and language of the arbitration and the law applicable to the merits. The ICC Arbitration Rules do not limit the parties' free choice of the place and language of the arbitration or the law governing the contract. Parties should also consider the guidance provided for emergency arbitrator, expedited proceedings, publication of awards and multi-tier clauses. When adapting the clause, care must be taken to avoid any risk of ambiguity. Unclear wording in the clause will cause uncertainty and delay and can hinder or even compromise the dispute resolution process. Parties should also take account of any factors that may affect the enforceability of the clause under applicable law. These include any mandatory requirements that may exist at the place of arbitration and the expected place or places of enforcement.

⁸ In case this alternative is chosen, it is advisable to choose arbitration for the resolution of disputes. In fact, it is doubtful whether ordinary courts would apply general principles instead of a national law.

⁹ This model form has been prepared on the assumption that it would not be governed by a specific national law (as stated in Option A of Article 12.1). If the Parties prefer nevertheless to submit the Agreement to a national law, they should carefully check in advance, if the clauses of the model conform to the mandatory provisions of the law they have chosen.

Article 13 Parties’ Independence

This Agreement shall not result in employment relationship between the Company and the Consultant or the professionals allocated by the Consultant, which solely and exclusively assume all responsibility for labour and social security obligations with regard to their representatives, employees, subcontracting and/or contractors with a relationship therewith. Furthermore, the relationship between the Company and the Consultant shall be that of independent contractors and not of employment or partner of the other for any purpose whatsoever.

Article 14 Anti-Bribery and Anti-Corruption

<input type="checkbox"/> Option A	<input type="checkbox"/> Option B
<p>The Parties agree that, at all times in connection with and throughout the course of the Agreement and thereafter, they will comply with and take reasonable measures to ensure that their subcontractors, agents or other third parties, subject to their control or determining influence, will comply with Part I of the then-current version of the ICC Rules on Combating Corruption, as set out in full in Option II of the ICC Anti-corruption Clause 2023, which is attached as Annex 3, forming, as a whole, part of this Agreement.</p>	<p>The Parties agree that any business activity carried out under this Agreement shall be legally correct in the Territory. This means, among other things, that any side-agreement that grants compensation to any third party in connection with, for example, sales, service, purchasing, delivery and/or payment, which is not reasonable in light of the value of the services rendered, is strictly prohibited.</p>

Made in on the

The Company
.....

The Consultant
.....

Annex 1 to the Directors Services/Management Agreement

Fee to be paid to Consultant

[.]¹

1 Fixed and variable fees to be paid by the Company as consideration for the Services provided by the Consultant under this Agreement to be inserted.

Annex 2 to the Directors Services/Management Agreement

ICC Confidentiality Clause 2016

1.1 Definitions

Agreement means the contract incorporating this Clause.

Purpose means the purpose of the Agreement.

Disclosing Party means the Party disclosing Confidential Information to the Receiving Party.

Permitted Recipients means any director, officer, employee, adviser or auditor of the Receiving Party or any of its Related Companies who reasonably needs to know Confidential Information for the Purpose.

Receiving Party means the Party receiving Confidential Information from the Disclosing Party.

Related Company means any corporation, company or other entity that controls, or is controlled by, one Party or by another Related Company of that Party, where control means ownership or control, direct or indirect, of more than fifty (50) per cent of that corporation's, company's or other entity's voting capital.

Confidential Information¹ means any information or data, or both, communicated by or on behalf of the Disclosing Party to the Receiving Party, including, but not limited to, any kind of business, commercial or technical information and data in connection with the Purpose, except for such information that is demonstrably non-confidential in nature. The information shall be Confidential Information, irrespective of the medium in which that information or data is embedded, and whether the Confidential Information is disclosed orally, visually or otherwise.

Confidential Information shall include any copies or abstracts made of it as well as any products, apparatus, modules, samples, prototypes or parts that may contain or reveal the Confidential Information.

Confidential Information is limited to information disclosed on or after the date of signature of this Agreement.

1.2 The Receiving Party shall:

- a) not disclose any Confidential Information to anyone except to the Permitted Recipients, who are bound to the same level of confidentiality obligations as set forth by this Clause;
- b) use any Confidential Information exclusively for the Purpose; and
- c) keep confidential and hold all Confidential Information with no less a degree of care as is used for the Receiving Party's own confidential information and at least with reasonable care.

1.3 Any obligation to keep confidential all Confidential Information shall not apply to the extent that the Receiving Party can prove that any of that information:

- a) was in the Receiving Party's possession without an obligation of confidentiality prior to receipt from the Disclosing Party;
- b) is at the time of disclosure, or subsequently becomes, generally available to the public through no breach of this Agreement by the Receiving Party or any Permitted Recipient;
- c) is lawfully obtained by the Receiving Party from a third party without an obligation of confidentiality, provided that third party is not, to the Receiving Party's best knowledge, in breach of any obligation of confidentiality to the Disclosing Party relating to that information; or
- d) is developed by the Receiving Party or its Related Companies independent of any Confidential Information.

1 Please be aware that the ICC Confidentiality Clause adopts the default option A for definition of Confidential Information from the ICC Model Confidentiality Agreement. The Parties may consider using the alternative option B: "Confidential Information" means any information or data, or both, communicated by or on behalf of the Disclosing Party to the Receiving Party, including, but not limited to, any kind of business, commercial or technical information and data disclosed between the Parties in connection with the Purpose provided that:

- a) when disclosed in tangible form or via electronic communication it is marked or otherwise identified as "Confidential" by the Disclosing Party; or
- b) when disclosed orally or visually it is identified as "Confidential" prior to disclosure and subsequently summarized in writing by the Disclosing Party and such summary is given to the Receiving Party marked or otherwise identified as "Confidential" within thirty (30) days after that disclosure. In case of disagreement relating to the summary, the Receiving Party must present its objections to the summary in writing within thirty (30) days of receipt.

- 1.4** Unless otherwise specified by the Disclosing Party at the time of disclosure, the Receiving Party may make copies of the Confidential Information to the extent necessary for the Purpose.
- 1.5** Nothing in this Agreement shall obligate either Party to disclose any information. Each Party has the right to refuse to accept any information under this Agreement prior to any disclosure. Confidential Information disclosed despite an express prior refusal is not covered by the obligations under this Clause.
- 1.6** Nothing in this Agreement shall affect any rights the Disclosing Party may have in relation to the Confidential Information, neither shall this Agreement provide the Receiving Party with any right or license under any patents, copyrights, trade secrets, or the like in relation to the Confidential Information, except for the use of Confidential Information in connection with the Purpose and in accordance with this Clause.
- 1.7** The Disclosing Party makes available the Confidential Information as is and does not warrant that any of this information that it discloses is complete, accurate, free from defects or third party rights, or useful for the Purpose or other purposes of the Receiving Party.
- 1.8** This Clause does not:
- a) create any other relationship between the Parties;
 - b) oblige a Party to enter into any other contract; or
 - c) require consideration for any information received.
- 1.9** In addition to any remedies under the applicable law,² the Parties recognize that any breach or violation of any provision of this Clause may cause irreparable harm to the other Party, which money damages may not necessarily remedy. Therefore, upon any actual or impending violation of any provision of this Clause, either Party may obtain from any court of competent jurisdiction a preliminary, temporary or permanent injunction, restraining or enjoining such violation by the other Party or any entity or person acting in concert with that Party.
- 1.10** Within ninety (90) days of termination of this Agreement, the Disclosing Party may request the disposal of the Confidential Information. Disposal means execution of reasonable measures to return or destroy all copies including electronic data. Destruction shall be confirmed in writing. Disposal shall be effected within thirty (30) days of the request³ being made.
- The provisions for disposal shall not apply to copies of electronically communicated Confidential Information made as a matter of routine information technology back-up and to Confidential Information or copies of it that must be stored by the Receiving Party or its advisers according to provisions of mandatory law, provided that this Confidential Information or copies of it shall be subject to continuing obligations of confidentiality under this Agreement; but no further use shall be permitted as from the date of the request.
- 1.11** Neither Party shall be in breach of this Clause to the extent that it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or other obligation of a mandatory nature, afterwards referred to as “Mandatory Obligation”. Where a disclosure is made for these reasons, the Party making the disclosure shall ensure that the recipient of the Confidential Information is made aware of and asked to respect its confidentiality. This disclosure shall in no way diminish the obligations of the parties under this Clause except to the extent that a Party is compelled by any Mandatory Obligation to disclose Confidential Information without restriction.
- To the extent permitted by any Mandatory Obligation, the Receiving Party shall notify the other Party without delay in writing as soon as it becomes aware of an enquiry or any process of any description that is likely to require disclosure of the other Party’s Confidential Information in order to comply with any Mandatory Obligation.
- 1.12** Upon termination, the Receiving Party shall stop making use of the Confidential Information. The obligations of the Parties under this Agreement shall survive indefinitely or to the extent permitted by the applicable mandatory law.

² The Parties may consider also inserting a penalty or liquidated damages clause. Any clause of this type should be checked with local counsel to verify its validity and compliance with applicable laws and regulations.

³ In most cases it is not practical to return electronic communication. All copies of electronic data that with reasonable efforts can be expunged from storage, should be (this will involve more than removing the file from the File Allocation Table to ensure that the file is irretrievable). However, in some cases, as a matter of company policy, back-up copies are kept for disaster recovery purposes only and it would not be practical to identify the specific data and delete it. In such cases, deletion is not required.

Annex 3 to the Directors Services/Management Agreement

ICC Anti-corruption Clause

Prepared by the ICC Commission on Corporate Responsibility and Anti-corruption and the ICC Commission on Commercial Law and Practice

Download the ICC Anti-corruption Clause from the ICC website here:

<https://iccwbo.org/business-solutions/model-contracts-clauses/icc-anti-corruption-clause/>

Download the ICC Rules on Combating Corruption from the ICC website here:

<https://iccwbo.org/news-publications/policies-reports/icc-rules-on-combating-corruption/>



Highlights

- Clause to be included in contracts whereby parties commit to complying with ICC Rules on Combating Corruption or commit to put in place and maintain a corporate anti-corruption compliance programme
- Helps preserve trust between parties and prevents corruption in both the negotiation and performance of contracts

The International Chamber of Commerce has prepared over the years a large number of model contracts and clauses. These documents reflect best international corporate practice in transactional work, facilitate business negotiations and improve the drafting of the numerous contractual documents companies are processing.

At the same time, ICC has been concerned about the devastating effects on business of corruptive practices. It has become clear that corruption constitutes an obstacle to the creation of the level playing field all corporations want to see materialize, and runs counter to international public order.

Therefore, ICC in 1977 issued the ICC Rules on Combating Corruption (the 'Rules'), thereby becoming the first international organization to issue rules condemning all forms of corruption and urging companies to put into place preventive measures to ban corruption from their transactions.

The voluntary ICC Rules were regularly revised to reflect best corporate practice and to mirror the provisions of key international anti-bribery instruments, such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) and the United Nations Convention against Corruption (2003).

To consolidate the progress made by the business world in its corporate practice, the ICC Rules were rewritten most recently in 2023. The 2023 edition of the Rules contains four parts: Part I states the Rules proper, Part II deals with policies that enterprises should enact to support compliance with the Rules, Part III lists the suggested elements of an effective corporate compliance programme, and Part IV sets out definitions. The 2023 Rules are designed to be applied by enterprises of any size, whether large, medium or small.

The International Chamber of Commerce considers that its mission does not stop at prescribing voluntary anti-corruption norms, but also includes urging companies to incorporate in their agreements, in full or by reference, anti-corruption provisions either in the form of the core ICC anti-corruption standards, listed in Part I of the 2023 Rules or by the adoption of a corporate compliance programme, as recommended by Article 4 of the 2023 Rules.

The present ICC Anti-corruption Clause will help business people and their advisors to make such essential reference, with the aim of creating trust and preventing their contractual relationships from being affected by corruptive practice.

ICC Model Employment Agreement



Drafting notes

- This Employment Agreement is a template; consequently, it may be amended to include any adjustments required from time to time and case by case. We suggest that this model Agreement (as amended after negotiations) be submitted to legal counsel before it is signed, to ensure that all expectations and requirements of those concerned are reflected therein, particularly regarding the mandatory nature of laws concerning employment matters in many jurisdictions. Since this model agreement does not focus on specific sectors or industries, additional provisions may be relevant to meet the needs of particular sectors (for example, IP matters for the technology sector). The model is especially suited for the full-time employment of junior or mid-level employees.
- This Employment Agreement has been drawn up based on common practice, considering however that this document is structured to balance the interests of all parties concerned and thus does not contain clauses which strongly weigh in favour of one or the other party.
- This Employment Agreement may depend on special requirements of form, for example notarial certification.
- Parties may wish to add a provision setting out rights and obligations, if any, regarding teleworking.



ICC Model Employment Agreement

Between:

.....

Employer

whose registered address is at:

.....

with Registration Number:

.....

and

.....

Employee (*name of employee*)

each a “Party” and collectively the “Parties”.

This is the Employment Agreement between the Parties. It contains the terms of the employee’s employment [as required by (*country/jurisdiction*)’s employment laws].¹

Article 1 Commencement of Employment

1.1 Your employer is (*name of company*) (Employer, Company or we). Your employment with the Company commences on (*date/month/year*).

1.2 Probationary period.² The first (*period of time*) of your employment shall be a probationary period and your employment may be terminated during this period at any time on (*number*) week(s)’ prior written notice. We may at our discretion extend this period for up to a further (*number*) month(s). During this probationary period your performance and suitability for continued employment will be monitored. At the end of the probationary period, we will inform you in writing whether you have successfully completed your probationary period and matters for moving forward.

1 Consider this statement with reference to Article 3 and its related footnote. Also consider conditions relating to satisfactory references, right to work in the country, criminal record checks, credit checks, medical fitness, confidentiality agreement, qualifications, etc., prior to the parties’ validly entering into the employment agreement.

2 Probationary provision must satisfy the mandatory requirements of specific national laws, if any. Probationary period will not be relevant if there is no such requirement for the new employee to fulfil, or if the agreement is used for an existing employee who has already fulfilled the probationary period.

Article 2 Job Title³

- 2.1** You are employed as full-time (*job title*) and report to (*title/name of person within the Company*). Your duties are set out in the attached job description⁴ at Annex 1 to this Agreement.
- 2.2** You may be required to undertake other duties from time to time as we may reasonably require and where such duties fit in your skills as required and approved.⁵
- 2.3** You warrant that you have the requisite social status to work and are entitled to work in (*name of the country*) without any additional approvals and will notify the Company immediately if you cease to be so entitled at any time during your employment with the Company.⁶
- 2.4** You shall not take on any work for anyone or anywhere else while you are employed by the Company.⁷
- 2.5** In performing your tasks and duties under this agreement, you shall always observe the interests of the Company and perform your duties assigned to you by the Company with diligence and good faith.
- 2.6** You shall devote all of your working time to the business of the Company (and where applicable its affiliated companies) and shall use your best endeavours where possible to promote and develop the interests of the Company.
- 2.7** You warrant to the Company that by entering into this agreement or performing your obligations you will not be in breach of any court order or any express or implied terms of any contract or obligations which prohibit you from performance.

Article 3 Place of Work

Your normal place of work is (*location*) in (*country*). You may be required to work at another location as directed by the Employer from time to time.⁸

Article 4 Salary⁹

- 4.1** Your salary will be (*currency and amount*) per year which shall accrue from day to day at a rate of [1/365]¹⁰ of your annual salary and be payable monthly in arrears on or about the last day of each month directly into your bank account.
- 4.2** We shall be entitled to deduct from your salary or other payments due to you any money which you may owe to the Company at any time.¹¹
- 4.3** Where you have incurred reasonable expenses during the course of performing your tasks and duties under your employment, the Company shall reimburse you all reasonable expenses subject to your production of receipts or such other appropriate evidence as the Company requires.

3 Some countries require a statement in relation to job titles. Please check the relevant national mandatory laws on this. Making the job title as general as possible may give the employer flexibility.

4 Please check the relevant national mandatory laws on provision of job description. Make any job description as general as possible may give the employer more flexibility.

5 This clause gives the employer further scope to revise the employee's duties, subject to the requirements by national laws on the obligations of the employer.

6 This clause relates to migrant workers. Check national laws on the employee's right to work where the employee is subject to the country's immigration laws. The employee must have the right immigration status to be able to take on jobs in the country. Such a warranty is advisable if the employer negligently employs someone without the appropriate immigration status and will be liable to a civil liability or a criminal liability or both, depending on the specific national mandatory laws.

7 Check national laws on working time regulations. Any work the employee does for another employer may be counted when calculating working time. An alternative to this clause might be to allow the employee to carry on certain activities and require detailed time recording.

8 Check national laws if any on mobility, for example, any flexibility in mobility, working outside the country, etc.

9 Check national laws on whether the employer has an obligation to increase the employee's salary on any (e.g. annual) basis. To achieve certainty, it is advisable to include express wording to the effect of employer's conducting salary review and awarding salary increase.

10 Check national laws if any on the basis on which salary accrues.

11 Check national laws on whether the employer has a right to deduct from an employee's wages, in order to avoid unlawful deductions.

Article 5 Working Hours and Procedures¹²

- 5.1** Your normal hours of work will be between [09.00 to 18.00 from Monday to Friday], inclusive, with a [one-hour] unpaid lunch break each working day. The weekly working hours are(number) hours. You may be required to work such additional hours as may be necessary [without extra remuneration **OR** with additional pay on a pro rata hourly basis].
- 5.2** You are required at all times to comply with our rules, policies and procedures which are in force from time to time. If you have any questions about this, you should contact(title/name of person within the Company).

Article 6 Holidays¹³

You will be entitled to(number) days of paid holidays each year in addition to the public holidays in(country) [or a day in lieu where we require you to work on a public holiday]. If your employment starts or finishes part way through the holiday year, your holiday entitlement during that year shall be calculated on a pro-rata basis rounded up to the nearest day [or half day].

Article 7 Incapacity¹⁴

- 7.1** If you are absent from work due to incapacity, you must notify(title/name of person within the Company) of the reason for your absence as soon as possible but no later than 09:00 on the first day of absence.
- 7.2** You shall certify your absence and provide evidence in accordance with the applicable national sick pay provisions and the Employer's policy and Company's sickness policy.
- 7.3** Should the Company so require, you agree to consent to a medical examination at the Company's expense by a doctor nominated by the Company.
- 7.4** Where applicable, you shall immediately notify the Company of any fact or claim of any actionable breach of any statutory duty on a third party where damages may be recoverable. You shall also co-operate in any related legal proceedings, and refund the Company the part of damages or compensation recovered by you relating to the loss of earnings for the period of your absence less any relevant costs borne by you. The amount to be refunded shall not exceed the total amount paid to you by the Company in respect of the period of absence.¹⁵

Article 8 Termination and Notice Period¹⁶

- 8.1** After the successful completion of your probationary period referred to in Article 1.2 above, the prior written notice required from you or the Company to terminate your employment shall be as follows:
 - a) in the first(number) years of continuous employment: notice of(number) calendar months; and
 - b) after(number) of complete years:(number) additional weeks for each complete year of continuous employment up to a maximum of(number) weeks' notice.
- 8.2** This Agreement may be terminated by mutual consent of the Parties.
- 8.3** If you commit a serious breach of your obligations as an employee, or if you cease to be entitled to work in the country set out in Article 2.3, above, we shall be entitled to terminate your employment summarily at any time without notice and payment in lieu.¹⁷

¹² Check national laws on mandatory requirements for hours of work, including working overtime, hours each week (e.g. 48-hour week), etc.

¹³ Check national laws on this article such as provisions for holiday year, employee's holiday entitlement, national / statutory holidays, notification requirements for taking holidays, carrying-over of holidays to the next holiday year, calculation of holiday pay, calculation of holiday pay on termination of the employment agreement or on dismissal, payment in lieu of holiday, recoupment of excess holiday pay, and any rights the employer may wish to reserve within the scope allowed by the specific national laws, etc.

¹⁴ Check national laws on incapacity.

¹⁵ Check national laws on social security contributions and benefits.

¹⁶ Check national laws on this point, including the required length of notice and default retirement age.

¹⁷ Check national laws on dismissal and on whether employers may terminate the employee's employment without giving notice, and on payment in lieu of notice.

Article 9 Disciplinary and Grievance Procedures¹⁸

- 9.1** If you wish to raise a grievance you may apply in writing to
(*title/name of person within department*).
- 9.2** We reserve the right to suspend you with pay for no longer than is necessary to investigate any allegation of misconduct against you or so long as is otherwise reasonable while any disciplinary procedure against you is outstanding.
- 9.3** If you wish to appeal against a disciplinary decision you may apply in writing to (*title/name of person within department*) in accordance with our disciplinary procedure.

Article 10 Data Protection¹⁹

- 10.1** We will collect and process data relating to you according to the Company’s privacy policy. We will provide you a copy of the privacy policy together with a notice which you are required to sign and return to us.
- 10.2** You shall comply with the data protection policy of the Company when handling personal data in the course of employment including personal data relating to any employee, worker, contractor, customer, client, supplier or agent of the Company.
- 10.3** Failure to comply with our data protection policy or any policy relating to any data listed (but not limited to the) above in Article 10.1 may be dealt with under our disciplinary procedure. Depending on the seriousness of the failure, it may be treated as gross misconduct by you, which may even lead to immediate summary dismissal.²⁰
- 10.4** In carrying out their obligations under this agreement, the Parties shall act with fairness and good faith. The provisions of this agreement and any statements by the Parties in connection with this agreement shall be interpreted in accordance with the principles of good faith and fair dealing.
- 10.5** All intellectual property rights in anything produced by you for the purpose of delivering the tasks and duties under your employment and/or during the course of your employment belong to the Company.²¹

Article 11 Changes to Your Terms of Employment²²

We reserve the right to make reasonable changes to any of your terms of employment. You will be notified in writing of any change as soon as possible in advance, and in any event within one month of the change.

Article 12 Confidentiality²³

Each Party agrees not to disclose to third parties any Confidential Information disclosed to it by the other Party in the context of this agreement in conformity with the ICC Model Confidentiality Clause at Annex 2. This Article 12 survives the termination or expiry of this agreement, whatever the reason thereof.

Article 13 Restrictive Covenant²⁴

- 13.1** You shall not disclose any detail and/or description of any trade secret or any confidential information of the Company to any party.

18 Check national laws on disciplinary and grievance requirements.

19 Check national laws on data protection, e.g. the General Data Protection Regulation (EU) 2016/679 (GDPR) have been implemented into national laws in EU countries. Take note whether there are limited circumstances where the employer is required by national laws to seek consent of the employee for a particular purpose.

20 Check national laws on this to ensure it is non conflicting.

21 Check national laws on the Company’s IP rights in this respect.

22 Check national laws on whether one party (e.g. the employer) can unilaterally alter terms of this agreement without consent of the other party (e.g. employee).

23 Check national laws on whether the employee has a duty (or implied duty) to keep confidential information confidential during the course of employment. Check the scope of “confidential information” herewith to ensure that all types of information the employer considers confidential to which the employee has access are covered in this clause.

24 Check national laws on restrictive covenant and its validity.

13.2 You shall not enter into any business activities in direct or indirect competition with the Company at any time during the term of this agreement, and also for a period of (number) year(s)²⁵ after the termination of this agreement.

13.3 You shall not solicit, entice away, attempt to employ, or employ any person who is or has been engaged with the Company as an employee or subcontractor at any time during the period of this agreement, and also for a period of (number) year(s) after the termination of this agreement.

Article 14 Company Property

14.1 All documents, manuals, hardware and software provided for your use by the Company, and any data or documents (including copies) produced, maintained or stored on the Company’s computer systems or other electronic equipment (including mobile devices), remain as property of the Company.

14.2 Any Company property in your possession and any original or copy of documents obtained by you in the course of your employment shall be returned to (title/name of person within the Company) at any time on request, and in any event prior to the termination of your employment with the Company.

14.3 All the Company’s material is protected by intellectual property rights and shall not be copied, stored, reproduced, printed or distributed without the Company’s prior written authorisation.

Article 15 Anti-Bribery and Anti-Corruption²⁶

<input type="checkbox"/> Option A	<input type="checkbox"/> Option B
<p>The Parties agree that, at all times in connection with and throughout the course of the agreement and thereafter, they will comply with and take reasonable measures to ensure that their subcontractors, agents or other third parties, subject to their control or determining influence, will comply with Part I of the then-current version of the ICC Rules on Combating Corruption, as set out in full in Option II of the ICC Anti-corruption Clause 2023, which is attached as Annex 3, forming, as a whole, part of this agreement.</p>	<p>The Parties agree that any business activity carried out under this agreement shall be legally correct in the Territory. This means, among other things, that any side-agreement that grants compensation to any third party in connection with, for example, sales, service, purchasing, delivery and/or payment, which is not reasonable in light of the value of the services rendered, is strictly prohibited.</p>

Article 16 Third Party Rights²⁷

No one other than you and the Company shall have any right to enforce any of the terms of this agreement.

25 Note: different jurisdictions take a different approach to restrictive covenants which affect the validity/invalidity of the restrictive covenant. A number of jurisdictional positions are provided herewith for users reference. Under English law, a restrictive covenant protects the employer’s legitimate interest and should satisfy the “reasonableness” test based on the specific case and circumstances, usually not longer than 12 months as otherwise it may be regarded as invalid; does not necessarily have compensation to be payable to the employee after the termination for the duration of the restricted period, and, for best practice and the purpose of enforceability, the restrictive covenant should be signed by the employee. Under Swedish law, the period of restricting non-competition varies from 6-18 months, with financial compensation to be provided by the Company to the employee with normally 60% of the employee’s monthly salary. Under Turkish law, restrictive covenants such as non-competition agreements should not include unfair restrictions in terms of place, time or type of activities which would unfairly jeopardize the economic future of the employee; except in special circumstances and conditions, duration of restricting non-competition must not exceed two years, the court may always limit the scope and duration of the non-competition covenant if regarded as excessive. Under Spanish Law, article 21.2 of the Royal Decree-Law 2/2015 (“Workers’ Statute”) stipulates that, for the purpose of effectively protecting the interest of the employer after the employment contract is terminated, the non-competition agreement may not be longer than two years for technicians and six months for other workers, subject to further legal requirements for the employer’s effective industrial or commercial interest and the work is adequately compensated financially; in practice, the term could be two years for senior employees such as executives or employees having specific technical qualifications which may justify such a long term, financial compensation (c. 20%-30% of the employee’s salary, as a rule of thumb in practice) to be provided by the company to the employee. Under Italian Law, article 2125 of the Italian Civil Code stipulates that post-employment non-competition covenant would be valid only if: a) is in writing; b) is rewarded and c) has established limits of object, period or area; the maximum duration is five years for managers and three years for all other workers, and if the parties agreed to a longer period then it is automatically reduced to the maximum duration prescribed by law.

26 Check national laws on mandatory requirements for anti-corruption.

27 Check national laws on the rights of a third party who is not a party to this agreement but may enforce a term of this agreement against the employer, and where possible exclude the third parties’ rights. Take note of confidentiality and restrictive covenants in respect of termination and third-party rights, including settlement agreement on termination of employment.

Article 17 Applicable Law

17.1 **Option A:** International Principles²⁸

Any questions relating to this agreement which are not expressly or implicitly settled by the provisions contained in this agreement shall be governed, in the following order:

- a) by the principles of law generally recognised in international trade as applicable to international contracts with consultants,
- b) by the relevant trade usages, and
- c) by the UNIDROIT Principles,

with the exclusion—subject to Article 17.2 hereunder—of national laws.

Option B: National Laws

This agreement is governed by the laws of (*name of the country the law of which is to apply*),²⁹ regardless of the conflict of law rules of that country.

17.2 The Parties agree that in any event consideration shall be given to mandatory provisions of the law of the country where the Company operates which would be applicable even if the agreement is governed by a foreign law (overriding mandatory rules). Any such provisions will be taken into account to the extent that they embody principles which are universally recognised and provided their application appears reasonable in the context of international trade.

Article 18 Resolution of Disputes

18.1 In the event of any dispute arising out of or in connection with the present contract, the parties shall first refer the dispute to proceedings under the ICC Mediation Rules.³⁰ The commencement of proceeding under the ICC Mediation Rules shall not prevent any party from commencing arbitration/litigation in accordance with Article 18.2 below.

18.2 **Option A:** ICC Arbitration

All disputes arising out of or in connection with the present agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.³¹

Option B: Litigation (Ordinary Courts)

In case of dispute the courts of (*place*),
..... (*country*) shall have exclusive jurisdiction.

Article 19 Acceptance

By signing and returning to us the attached copy you indicate your acceptance of these terms. (*full name of person*) for and on behalf of the Employer

I, (*employee's full name*) (Employee) agrees to all the above terms

Signature:

(*Employee's full name*) (Employee)

Date

28 In case this alternative is chosen, it is advisable to choose arbitration (Article 18.2.A) for the resolution of disputes. In fact, it is doubtful whether ordinary courts would apply general principles instead of a national law.

29 This model form has been prepared on the assumption that it would not be governed by a specific national law (as stated in Option A of Article 17.1). If the Parties prefer nevertheless to submit the Agreement to a national law, they should carefully check in advance, if the clauses of the model conform to the mandatory provisions of the law they have chosen.

30 The ICC Mediation Rules (Publication 865) which replace the ICC ADR Rules, effective as of 1 January 2014, can be found on the [ICC website](#). The above is model Clause C: Obligation to Refer Dispute to ICC Mediation Rules, while permitting parallel ICC Arbitration proceedings if required. Other options are available for the parties to select, such as model Clause A (Option to Use ICC Mediation Rules), model Clause B (Obligation to Consider ICC Mediation Rules) or model Clause D (Obligation to Refer Dispute to the ICC Mediation Rules, followed by ICC Arbitration if required). See also [Mediation Guidance Notes](#).

31 The ICC Arbitration Rules, effective as of 1 January 2021, can be found on the [ICC website](#). Parties are free to adapt the clause to their particular circumstances: standard clauses are available in the previous link. For instance, they may wish to stipulate the number of arbitrators, given that the ICC Arbitration Rules contain a presumption in favour of a sole arbitrator. Also, it may be desirable for them to stipulate the place and language of the arbitration and the law applicable to the merits. The ICC Arbitration Rules do not limit the parties' free choice of the place and language of the arbitration or the law governing the contract. Parties should also consider the guidance provided for emergency arbitrator, expedited proceedings, publication of awards and multi-tier clauses. When adapting the clause, care must be taken to avoid any risk of ambiguity. Unclear wording in the clause will cause uncertainty and delay and can hinder or even compromise the dispute resolution process. Parties should also take account of any factors that may affect the enforceability of the clause under applicable law. These include any mandatory requirements that may exist at the place of arbitration and the expected place or places of enforcement.

Annex 1 to the ICC Model Employment Agreement

Job Description

[Details of the employee's duties and responsibilities]

Annex 2 to the ICC Model Employment Agreement

ICC Confidentiality Clause 2016

1.1 Definitions

Agreement means the contract incorporating this Clause.

Purpose means the purpose of the Agreement.

Disclosing Party means the Party disclosing Confidential Information to the Receiving Party.

Permitted Recipients means any director, officer, employee, adviser or auditor of the Receiving Party or any of its Related Companies who reasonably needs to know Confidential Information for the Purpose.

Receiving Party means the Party receiving Confidential Information from the Disclosing Party.

Related Company means any corporation, company or other entity that controls, or is controlled by, one Party or by another Related Company of that Party, where control means ownership or control, direct or indirect, of more than fifty (50) per cent of that corporation's, company's or other entity's voting capital.

Confidential Information¹ means any information or data, or both, communicated by or on behalf of the Disclosing Party to the Receiving Party, including, but not limited to, any kind of business, commercial or technical information and data in connection with the Purpose, except for such information that is demonstrably non-confidential in nature. The information shall be Confidential Information, irrespective of the medium in which that information or data is embedded, and whether the Confidential Information is disclosed orally, visually or otherwise.

Confidential Information shall include any copies or abstracts made of it as well as any products, apparatus, modules, samples, prototypes or parts that may contain or reveal the Confidential Information.

Confidential Information is limited to information disclosed on or after the date of signature of this Agreement.

1.2 The Receiving Party shall:

- a) not disclose any Confidential Information to anyone except to the Permitted Recipients, who are bound to the same level of confidentiality obligations as set forth by this Clause;
- b) use any Confidential Information exclusively for the Purpose; and
- c) keep confidential and hold all Confidential Information with no less a degree of care as is used for the Receiving Party's own confidential information and at least with reasonable care.

1.3 Any obligation to keep confidential all Confidential Information shall not apply to the extent that the Receiving Party can prove that any of that information:

- a) was in the Receiving Party's possession without an obligation of confidentiality prior to receipt from the Disclosing Party;
- b) is at the time of disclosure, or subsequently becomes, generally available to the public through no breach of this Agreement by the Receiving Party or any Permitted Recipient;
- c) is lawfully obtained by the Receiving Party from a third party without an obligation of confidentiality, provided that third party is not, to the Receiving Party's best knowledge, in breach of any obligation of confidentiality to the Disclosing Party relating to that information; or
- d) is developed by the Receiving Party or its Related Companies independent of any Confidential Information.

1 Please be aware that the ICC Confidentiality Clause adopts the default option A for definition of Confidential Information from the ICC Model Confidentiality Agreement. The Parties may consider using the alternative option B: "Confidential Information" means any information or data, or both, communicated by or on behalf of the Disclosing Party to the Receiving Party, including, but not limited to, any kind of business, commercial or technical information and data disclosed between the Parties in connection with the Purpose provided that:

- a) when disclosed in tangible form or via electronic communication it is marked or otherwise identified as "Confidential" by the Disclosing Party; or
- b) when disclosed orally or visually it is identified as "Confidential" prior to disclosure and subsequently summarized in writing by the Disclosing Party and such summary is given to the Receiving Party marked or otherwise identified as "Confidential" within thirty (30) days after that disclosure. In case of disagreement relating to the summary, the Receiving Party must present its objections to the summary in writing within thirty (30) days of receipt.

- 1.4** Unless otherwise specified by the Disclosing Party at the time of disclosure, the Receiving Party may make copies of the Confidential Information to the extent necessary for the Purpose.
- 1.5** Nothing in this Agreement shall obligate either Party to disclose any information. Each Party has the right to refuse to accept any information under this Agreement prior to any disclosure. Confidential Information disclosed despite an express prior refusal is not covered by the obligations under this Clause.
- 1.6** Nothing in this Agreement shall affect any rights the Disclosing Party may have in relation to the Confidential Information, neither shall this Agreement provide the Receiving Party with any right or license under any patents, copyrights, trade secrets, or the like in relation to the Confidential Information, except for the use of Confidential Information in connection with the Purpose and in accordance with this Clause.
- 1.7** The Disclosing Party makes available the Confidential Information as is and does not warrant that any of this information that it discloses is complete, accurate, free from defects or third party rights, or useful for the Purpose or other purposes of the Receiving Party.
- 1.8** This Clause does not:
- a) create any other relationship between the Parties;
 - b) oblige a Party to enter into any other contract; or
 - c) require consideration for any information received.
- 1.9** In addition to any remedies under the applicable law,² the Parties recognize that any breach or violation of any provision of this Clause may cause irreparable harm to the other Party, which money damages may not necessarily remedy. Therefore, upon any actual or impending violation of any provision of this Clause, either Party may obtain from any court of competent jurisdiction a preliminary, temporary or permanent injunction, restraining or enjoining such violation by the other Party or any entity or person acting in concert with that Party.
- 1.10** Within ninety (90) days of termination of this Agreement, the Disclosing Party may request the disposal of the Confidential Information. Disposal means execution of reasonable measures to return or destroy all copies including electronic data. Destruction shall be confirmed in writing. Disposal shall be effected within thirty (30) days of the request³ being made.
- The provisions for disposal shall not apply to copies of electronically communicated Confidential Information made as a matter of routine information technology back-up and to Confidential Information or copies of it that must be stored by the Receiving Party or its advisers according to provisions of mandatory law, provided that this Confidential Information or copies of it shall be subject to continuing obligations of confidentiality under this Agreement; but no further use shall be permitted as from the date of the request.
- 1.11** Neither Party shall be in breach of this Clause to the extent that it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or other obligation of a mandatory nature, afterwards referred to as “Mandatory Obligation”. Where a disclosure is made for these reasons, the Party making the disclosure shall ensure that the recipient of the Confidential Information is made aware of and asked to respect its confidentiality. This disclosure shall in no way diminish the obligations of the parties under this Clause except to the extent that a Party is compelled by any Mandatory Obligation to disclose Confidential Information without restriction.
- To the extent permitted by any Mandatory Obligation, the Receiving Party shall notify the other Party without delay in writing as soon as it becomes aware of an enquiry or any process of any description that is likely to require disclosure of the other Party’s Confidential Information in order to comply with any Mandatory Obligation.
- 1.12** Upon termination, the Receiving Party shall stop making use of the Confidential Information. The obligations of the Parties under this Agreement shall survive indefinitely or to the extent permitted by the applicable mandatory law.

² The Parties may consider also inserting a penalty or liquidated damages clause. Any clause of this type should be checked with local counsel to verify its validity and compliance with applicable laws and regulations.

³ In most cases it is not practical to return electronic communication. All copies of electronic data that with reasonable efforts can be expunged from storage, should be (this will involve more than removing the file from the File Allocation Table to ensure that the file is irretrievable). However, in some cases, as a matter of company policy, back-up copies are kept for disaster recovery purposes only and it would not be practical to identify the specific data and delete it. In such cases, deletion is not required.

Annex 3 to the ICC Model Employment Agreement

ICC Anti-corruption Clause

Prepared by the ICC Commission on Corporate Responsibility and Anti-corruption and the ICC Commission on Commercial Law and Practice

Download the ICC Anti-corruption Clause from the ICC website here:

<https://iccwbo.org/business-solutions/model-contracts-clauses/icc-anti-corruption-clause/>

Download the ICC Rules on Combating Corruption from the ICC website here:

<https://iccwbo.org/news-publications/policies-reports/icc-rules-on-combating-corruption/>



Highlights

- Clause to be included in contracts whereby parties commit to complying with ICC Rules on Combating Corruption or commit to put in place and maintain a corporate anti-corruption compliance programme
- Helps preserve trust between parties and prevents corruption in both the negotiation and performance of contracts

The International Chamber of Commerce has prepared over the years a large number of model contracts and clauses. These documents reflect best international corporate practice in transactional work, facilitate business negotiations and improve the drafting of the numerous contractual documents companies are processing.

At the same time, ICC has been concerned about the devastating effects on business of corruptive practices. It has become clear that corruption constitutes an obstacle to the creation of the level playing field all corporations want to see materialize, and runs counter to international public order.

Therefore, ICC in 1977 issued the ICC Rules on Combating Corruption (the 'Rules'), thereby becoming the first international organization to issue rules condemning all forms of corruption and urging companies to put into place preventive measures to ban corruption from their transactions.

The voluntary ICC Rules were regularly revised to reflect best corporate practice and to mirror the provisions of key international anti-bribery instruments, such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) and the United Nations Convention against Corruption (2003).

To consolidate the progress made by the business world in its corporate practice, the ICC Rules were rewritten most recently in 2023. The 2023 edition of the Rules contains four parts: Part I states the Rules proper, Part II deals with policies that enterprises should enact to support compliance with the Rules, Part III lists the suggested elements of an effective corporate compliance programme, and Part IV sets out definitions. The 2023 Rules are designed to be applied by enterprises of any size, whether large, medium or small.

The International Chamber of Commerce considers that its mission does not stop at prescribing voluntary anti-corruption norms, but also includes urging companies to incorporate in their agreements, in full or by reference, anti-corruption provisions either in the form of the core ICC anti-corruption standards, listed in Part I of the 2023 Rules or by the adoption of a corporate compliance programme, as recommended by Article 4 of the 2023 Rules.

The present ICC Anti-corruption Clause will help business people and their advisors to make such essential reference, with the aim of creating trust and preventing their contractual relationships from being affected by corruptive practice.

ICC Model Confidentiality Agreement

Contents

Parties	69
Preamble	69
Articles	
1 Definitions	69
2 Definition of Confidential Information	69
3 Obligation to keep confidential and restrictive use	70
4 Exclusions from obligation to keep confidential and restrictive use	70
5 Copies	70
6 Refusal	70
7 No license or ownership	70
8 No warranty	70
9 No further obligations	71
10 Term and termination	71
11 Survival of obligations	71
12 Breach and remedies	71
13 Disposal	71
14 Protective order	71
15 Good faith and fair dealing	72
16 Dispute resolution	72
17 Applicable law	72
18 No assignment	72
19 Written form	72
20 Default rules	73
ICC Confidentiality Clause 2016	73

I. Introduction

The ICC Commission on Commercial Law and Practice (CLP) Task Force on Confidentiality Agreements first prepared the ICC Model Confidentiality Agreement and ICC Model Confidentiality Clause in 2006, in response to a request from a large number of companies that had expressed a need for a global, cross-sectoral confidentiality agreement. The 2006 models were recently updated to reflect changes in practice.

Protecting all kinds of confidential business information (be it technical, commercial or financial) is a legitimate business concern in various industries and branches of trade and arises in relation to a variety of business transactions. Confidentiality agreements are often concluded prior to passing on any confidential information and many international contracts contain general confidentiality clauses.

There are many models in use; each company tends to treat its own confidentiality agreement with great pride and possessiveness, which causes delays, discussions, negotiations and higher transaction costs.

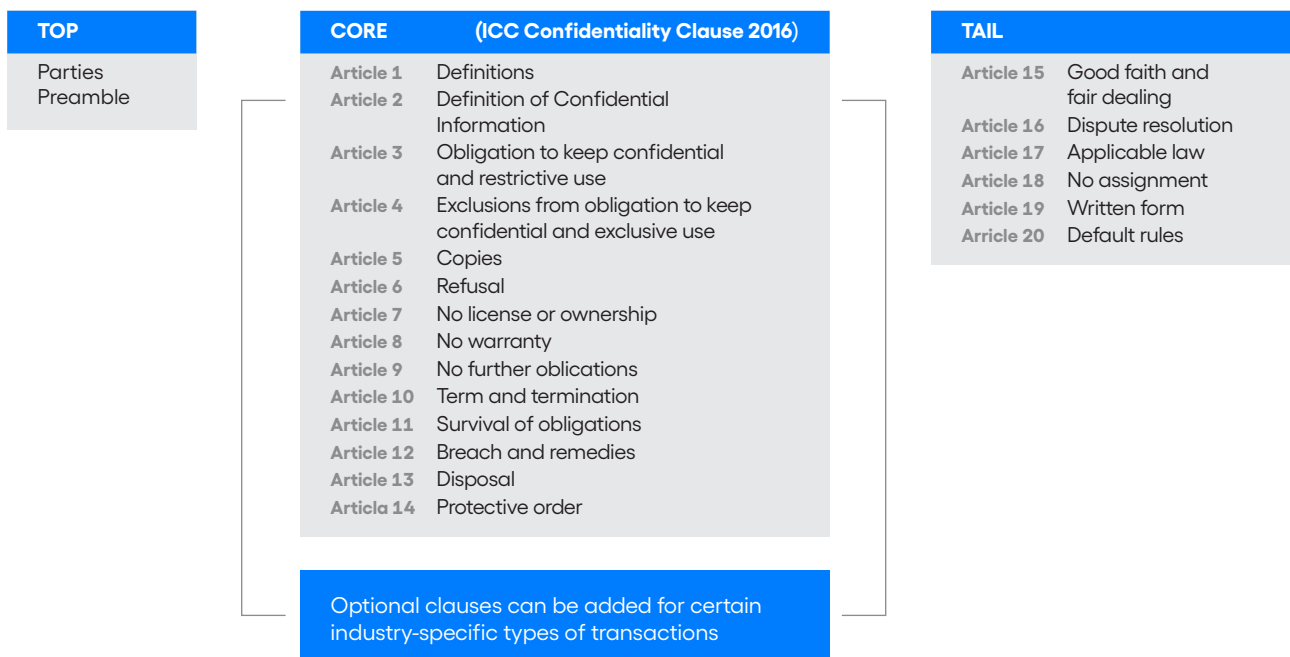
The ICC Model Confidentiality Agreement and the ICC Model Confidentiality Clause 2016 attempt to provide to industry and commerce a common platform for confidentiality obligations, which may be acceptable in various industries and transactions or, at least, reduce the scope of discussions and negotiations regarding confidentiality agreements and clauses.

Notwithstanding the obvious advantages of standardization, a number of qualifications must be made.

First, the two models presented here have not been drafted with any particular industries in mind and the models may have to be adjusted to reflect the specific needs of certain industries.

Second, the two models have been designed to apply to a wide variety of situations, but may well need adaptation for certain specific contracts or to better reflect the particular nature of certain transactions.

These two elements are reflected in the following chart:



In addition to the two qualifications above, three more elements may be noted.

First, the ICC Model Confidentiality Agreement and the ICC Model Confidentiality Clause contain, of course, non-mandatory provisions and parties considering using these models may thus depart from any of their provisions. In this respect, the Task Force has attempted to strike a fair balance between the interests of the Disclosing Party and the Receiving Party, but the parties, on the basis of their respective bargaining positions or for any other reason, may opt for other solutions.

Second, both models have been drafted in order to accommodate business parties in different jurisdictions and, thus, may provide a common platform for parties from different countries. However, the parties are advised always to consult local counsel to have the models reviewed against any applicable rules (such as contract law rules or regulatory rules such as export control rules).

Third, the Task Force has refrained from specifically addressing questions as to third party effects of the two models presented, because these effects were considered to be too different from one jurisdiction to another. Thus, it is recommended always to consult local counsel to reflect upon proper contract language and mechanisms where it is desired to bind third parties to confidentiality obligations, or to achieve any other third party effects (such as specific confidentiality agreements with third parties or accessions or assignments to have similar effects).

II. ICC Model Confidentiality¹ Agreement

Parties

Non-disclosure and restricted use agreement by and between²

.....,
 and

 hereinafter referred to as “Party” or “Parties” respectively.

Preamble

1. The Parties³
 (the “Purpose”);
2. In relation to the Purpose, information has been or will be disclosed by either or both Parties;
3. The Parties want to ensure that such information, which each may disclose to the other, is used only for the Purpose and protected from further disclosure.

The Parties enter into the following agreement (“Agreement”):

Article 1 Definitions

In this Agreement unless the context otherwise requires:

Disclosing Party means the Party disclosing Confidential Information to the Receiving Party.

Permitted Recipients means any director, officer, employee, adviser or auditor⁴ of the Receiving Party or any of its Related Companies who reasonably needs to know Confidential Information for the Purpose.

Receiving Party means the Party receiving Confidential Information from the Disclosing Party.

Related Company means any corporation, company or other entity that controls, or is controlled by, one Party or by another Related Company of that Party, where control means ownership or control, direct or indirect, of more than fifty (50) per cent of that corporation’s, company’s or other entity’s voting capital.

Article 2 Definition of Confidential Information⁵

Option A “Confidential Information” means any information or data, or both, communicated by or on behalf of the Disclosing Party to the Receiving Party, including, but not limited to, any kind of business, commercial or technical information and data in connection with the Purpose, except for information that is demonstrably non-confidential in nature. The information shall be Confidential Information, irrespective of the medium in which that information or data is embedded, and whether the Confidential Information is disclosed orally, visually or otherwise.

Option B “Confidential Information” means any information or data, or both, communicated by or on behalf of the Disclosing Party to the Receiving Party, including, but not limited to, any kind of business, commercial or technical information and data disclosed between the Parties in connection with the Purpose, provided that:

- a) when disclosed in tangible form or via electronic communication it is marked or otherwise identified as “Confidential” by the Disclosing Party; or
- b) when disclosed orally or visually it is identified as “Confidential” prior to disclosure and subsequently summarized in writing by the Disclosing Party, and that summary is given to the Receiving Party marked or otherwise identified as “Confidential” within thirty (30) days after that disclosure. In case of disagreement relating to the summary, the Receiving Party must present its objections to the summary in writing within thirty (30) days of receipt.

1 The word “confidential” can be problematic for certain industries in some countries where it has connotations with national security classifications—which need to be kept distinct from commercially sensitive materials. In those cases, the Parties may wish to consider designating the information as, for example, “proprietary”.

2 To the extent possible, this Agreement has been drafted to apply in a mutual way.

3 For example: “intend to engage in discussions and/or possible business relationships concerning” the “Purpose”. The Parties should consider whether they prefer a precise description of the “Purpose” or whether it should be kept broad. The definition of the Purpose is a key issue, and it is highly recommended to pay proper attention to the drafting of this part of the Agreement.

4 The Parties may wish to consider whether contractors, sub-contractors and other third parties should be within the scope of the Permitted Recipients.

5 Article 2 has been drafted to provide the Parties with two options. If no clear preference is indicated by the Parties, Article 20 of this Agreement states that option A will be the default choice.

Confidential Information shall include any copies or abstracts made of it as well as any products, apparatus, modules, samples, prototypes or parts that may contain or reveal the Confidential Information.

Confidential Information is limited to information disclosed on or after the date of signature of this Agreement.⁶

Article 3 Obligation to keep confidential and restrictive use

The Receiving Party shall:

- a) not disclose any Confidential Information to anyone except to the Permitted Recipients, who are bound to the same level of confidentiality obligations as set forth by this Agreement;
- b) use any Confidential Information exclusively for the Purpose; and
- c) keep confidential and hold all Confidential Information with no less a degree of care as is used for the Receiving Party's own confidential information and at least with reasonable care.

Article 4 Exclusions from obligation to keep confidential and restrictive use

The obligations under Article 3 to keep confidential all Confidential Information shall not apply to the extent that the Receiving Party can prove that any of that information:

- a) was in the Receiving Party's possession without an obligation of confidentiality prior to receipt from the Disclosing Party;
- b) is at the time of disclosure, or subsequently becomes, generally available to the public through no breach of this Agreement by the Receiving Party or any Permitted Recipient;
- c) is lawfully obtained by the Receiving Party from a third party without an obligation of confidentiality, provided that third party is not, to the Receiving Party's best knowledge, in breach of any obligation of confidentiality to the Disclosing Party relating to that information; or
- d) is developed by the Receiving Party or its Related Companies independent of any Confidential Information.

Article 5 Copies

Unless otherwise specified by the Disclosing Party at the time of disclosure, the Receiving Party may make copies of the Confidential Information to the extent necessary for the Purpose.

Article 6 Refusal

Nothing in this Agreement shall obligate either Party to disclose any information.

Each Party has the right to refuse to accept any information under this Agreement prior to any disclosure. Confidential Information disclosed despite an express prior refusal is not covered by the obligations under this Agreement.

Article 7 No license or ownership

Nothing in this Agreement shall affect any rights the Disclosing Party may have in relation to the Confidential Information, neither shall this Agreement provide the Receiving Party with any right or license under any patents, copyrights, trade secrets, or the like in relation to the Confidential Information, except for the use of Confidential Information in connection with the Purpose and in accordance with this Agreement.

Article 8 No warranty⁷

The Disclosing Party makes available the Confidential Information as is and does not warrant that any of this information that it discloses is complete, accurate, free from defects or third party rights, or useful for the Purpose or other purposes of the Receiving Party.

⁶ The Parties may also specify any other effective date and/or extend the scope of the definition to include information disclosed in the past.

⁷ Depending on the nature of the transaction, the Parties may wish to consider revising this clause to reflect situations where the correctness of the data or the existence of third party rights is important to the project or relationship between the Parties, or both.

Article 9 No further obligations

This Agreement does not:

- a) create any other relationship;
- b) oblige a Party to enter into any other contract; or
- c) require consideration for any information received.

Article 10 Term and termination

This Agreement enters into force by signing of all Parties and can be terminated by either Party with immediate effect by giving a written notice to the other Party.

Article 11 Survival of obligations⁸

- Option A** Upon termination, the Receiving Party shall stop making use of the Confidential Information. The obligations of the Parties under this Agreement shall survive indefinitely or to the extent permitted by the applicable mandatory law.
- Option B** Upon termination, the Receiving Party shall stop making use of the Confidential Information. The obligations of the Parties under this Agreement shall survive its termination for years.

Article 12 Breach and remedies

In addition to any remedies under the applicable law,⁹ the Parties recognize that any breach or violation of any provision of this Agreement may cause irreparable harm to the other Party, which money damages may not necessarily remedy. Therefore, upon any actual or impending violation of any provision of this Agreement, either Party may obtain from any court of competent jurisdiction a preliminary, temporary or permanent injunction, restraining or enjoining such violation by the other Party or any entity or person acting in concert with that Party.

Article 13 Disposal

Within ninety (90) days of termination of this Agreement, the Disclosing Party may request the disposal of the Confidential Information. Disposal means execution of reasonable measures to return or destroy all copies including electronic data. Destruction shall be confirmed in writing. Disposal shall be effected within thirty (30) days of the request being made.¹⁰

The provisions for disposal shall not apply to copies of electronically communicated Confidential Information made as a matter of routine information technology back-up, and to Confidential Information or copies of it that must be stored by the Receiving Party or its advisers according to provisions of mandatory law, provided that this Confidential Information or copies of it shall be subject to continuing obligations of confidentiality under this Agreement; but no further use shall be permitted as from the date of the request.

Article 14 Protective order

Neither Party shall be in breach of this Agreement to the extent that it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or other obligation of a mandatory nature, afterwards referred to as “Mandatory Obligation”. Where a disclosure is made for these reasons, the Party making the disclosure shall ensure that the recipient of the Confidential Information is made aware of and asked to respect its confidentiality. This disclosure shall in no way diminish the obligations of the parties under this Agreement except to the extent that a Party is compelled by any Mandatory Obligation to disclose Confidential Information without restriction.

To the extent permitted by any Mandatory Obligation, the Receiving Party shall notify the other Party without delay in writing as soon as it becomes aware of an enquiry or any process of any description that is likely to require disclosure of the other Party’s Confidential Information in order to comply with any Mandatory Obligation.

⁸ Depending on the nature of the data, the Parties may wish to specify the time period for confidentiality (option B) or even extend it indefinitely (option A). If no clear preference is indicated by the Parties, Article 20 of this Agreement states that option A will be the default choice.

⁹ The Parties may consider also inserting a penalty or liquidated damages clause. Any clause of this type should be checked with local counsel to verify its validity and compliance with applicable laws and regulations.

¹⁰ In most cases it is not practical to return electronic communication. All copies of electronic data that with reasonable efforts can be expunged from storage, should be (this will involve more than removing the file from the File Allocation Table to ensure that the file is irretrievable). However, in some cases, as a matter of company policy, back-up copies are kept for disaster recovery purposes only and it would not be practical to identify the specific data and delete it. In such cases, deletion is not required.

Article 15 Good faith and fair dealing

In carrying out their obligations under this Agreement, the Parties will act in accordance with the principles of good faith and fair dealing. The provisions of this Agreement, as well as any statements made by the Parties in connection with this Agreement, shall be interpreted in accordance with the principles of good faith and fair dealing.

Article 16 Dispute resolution

- 16.1** In the event of any dispute arising out of or in connection with the present contract, the parties shall first refer the dispute to proceedings under the ICC Mediation Rules.¹¹ The commencement of proceeding under the ICC Mediation Rules shall not prevent any party from commencing arbitration/litigation in accordance with Article 16.2 below.
- 16.2** All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.¹²

Article 17 Applicable law¹³

- Option A** Any questions relating to this Agreement that are not expressly or implicitly settled by the provisions contained in this Agreement shall be governed by, in the following order:
- a) the principles of law generally recognized in international trade as applicable to international confidentiality agreements;
 - b) the relevant trade usages; and
 - c) the UNIDROIT Principles.
- Option B** This Agreement is governed by the substantive laws of
(name of the country whose law is to apply).

Article 18 No assignment

This Agreement may not be assigned by either Party without the prior written consent of the other Party, which shall not unreasonably be withheld. No assignment shall relieve a Party of its obligations under this Agreement with respect to Confidential Information disclosed to that Party prior to the agreed assignment.

Article 19 Written form

This Agreement may not be modified or amended except in writing, signed by authorized representatives of the Parties.

-
- 11 The ICC Mediation Rules (Publication 865) which replace the ICC ADR Rules, effective as of 1 January 2014, can be found on the [ICC website](#). The above is model Clause C: Obligation to Refer Dispute to ICC Mediation Rules, while permitting parallel ICC Arbitration proceedings if required. Other options are available for the parties to select, such as model Clause A (Option to Use ICC Mediation Rules), model Clause B (Obligation to Consider ICC Mediation Rules) or model Clause D (Obligation to Refer Dispute to the ICC Mediation Rules, followed by ICC Arbitration if required). See also [Mediation Guidance Notes](#).
- 12 The ICC Arbitration Rules, effective as of 1 January 2021, can be found on the [ICC website](#). Parties are free to adapt the clause to their particular circumstances: standard clauses are available in the previous link. For instance, they may wish to stipulate the number of arbitrators, given that the ICC Arbitration Rules contain a presumption in favour of a sole arbitrator. Also, it may be desirable for them to stipulate the place and language of the arbitration and the law applicable to the merits. The ICC Arbitration Rules do not limit the parties' free choice of the place and language of the arbitration or the law governing the contract. Parties should also consider the guidance provided for emergency arbitrator, expedited proceedings, publication of awards and multi-tier clauses. When adapting the clause, care must be taken to avoid any risk of ambiguity. Unclear wording in the clause will cause uncertainty and delay and can hinder or even compromise the dispute resolution process. Parties should also take account of any factors that may affect the enforceability of the clause under applicable law. These include any mandatory requirements that may exist at the place of arbitration and the expected place or places of enforcement.
- 13 Article 17 has been drafted to provide the Parties with two options. If no clear preference is indicated by the Parties, Article 20 of this Agreement states that option A will be the default choice.

Article 20 Default rules

Where no clear preference is indicated by the Parties between the options provided for in this Agreement, option A shall apply.

In witness whereof the duly authorized representatives of the Parties have executed this Agreement on the day and year written below.

.....
(Day/Month/Year)

.....
(Signature)

.....
(Signature)

iii.**ICC Confidentiality Clause 2016**

This clause, known as the “ICC Confidentiality Clause 2016”, is intended to apply to any contract that incorporates it either expressly or by reference. While parties are encouraged to incorporate the Clause into their contracts by its full name, it is anticipated that any reference in a contract to the “ICC Confidentiality Clause” shall, in the absence of evidence to the contrary, be deemed to be a reference to this Clause.

1.1 Agreement means the contract incorporating this Clause.

Purpose means the purpose of the Agreement.

Disclosing Party means the Party disclosing Confidential Information to the Receiving Party.

Permitted Recipients means any director, officer, employee, adviser or auditor of the Receiving Party or any of its Related Companies who reasonably needs to know Confidential Information for the Purpose.

Receiving Party means the Party receiving Confidential Information from the Disclosing Party.

Related Company means any corporation, company or other entity that controls, or is controlled by, one Party or by another Related Company of that Party, where control means ownership or control, direct or indirect, of more than fifty (50) per cent of that corporation’s, company’s or other entity’s voting capital.

Confidential Information¹⁴ means any information or data, or both, communicated by or on behalf of the Disclosing Party to the Receiving Party, including, but not limited to, any kind of business, commercial or technical information and data in connection with the Purpose, except for such information that is demonstrably non-confidential in nature. The information shall be Confidential Information, irrespective of the medium in which that information or data is embedded, and whether the Confidential Information is disclosed orally, visually or otherwise.

Confidential Information shall include any copies or abstracts made of it as well as any products, apparatus, modules, samples, prototypes or parts that may contain or reveal the Confidential Information.

Confidential Information is limited to information disclosed on or after the date of signature of this Agreement.

1.2 The Receiving Party shall:

- a) not disclose any Confidential Information to anyone except to the Permitted Recipients, who are bound to the same level of confidentiality obligations as set forth by this Clause;
- b) use any Confidential Information exclusively for the Purpose; and
- c) keep confidential and hold all Confidential Information with no less a degree of care as is used for the Receiving Party’s own confidential information and at least with reasonable care.

14 Please be aware that the ICC Confidentiality Clause adopts the default option A for definition of Confidential Information from the ICC Model Confidentiality Agreement. The Parties may consider using the alternative option B: “Confidential Information” means any information or data, or both, communicated by or on behalf of the Disclosing Party to the Receiving Party, including, but not limited to, any kind of business, commercial or technical information and data disclosed between the Parties in connection with the Purpose provided that:
a) when disclosed in tangible form or via electronic communication it is marked or otherwise identified as “Confidential” by the Disclosing Party; or
b) when disclosed orally or visually it is identified as “Confidential” prior to disclosure and subsequently summarized in writing by the Disclosing Party and such summary is given to the Receiving Party marked or otherwise identified as “Confidential” within thirty (30) days after that disclosure. In case of disagreement relating to the summary, the Receiving Party must present its objections to the summary in writing within thirty (30) days of receipt.

- 1.3** Any obligation to keep confidential all Confidential Information shall not apply to the extent that the Receiving Party can prove that any of that information:
- a) was in the Receiving Party's possession without an obligation of confidentiality prior to receipt from the Disclosing Party;
 - b) is at the time of disclosure, or subsequently becomes, generally available to the public through no breach of this Agreement by the Receiving Party or any Permitted Recipient;
 - c) is lawfully obtained by the Receiving Party from a third party without an obligation of confidentiality, provided that third party is not, to the Receiving Party's best knowledge, in breach of any obligation of confidentiality to the Disclosing Party relating to that information; or
 - d) is developed by the Receiving Party or its Related Companies independent of any Confidential Information.
- 1.4** Unless otherwise specified by the Disclosing Party at the time of disclosure, the Receiving Party may make copies of the Confidential Information to the extent necessary for the Purpose.
- 1.5** Nothing in this Agreement shall obligate either Party to disclose any information. Each Party has the right to refuse to accept any information under this Agreement prior to any disclosure. Confidential Information disclosed despite an express prior refusal is not covered by the obligations under this Clause.
- 1.6** Nothing in this Agreement shall affect any rights the Disclosing Party may have in relation to the Confidential Information, neither shall this Agreement provide the Receiving Party with any right or license under any patents, copyrights, trade secrets, or the like in relation to the Confidential Information, except for the use of Confidential Information in connection with the Purpose and in accordance with this Clause.
- 1.7** The Disclosing Party makes available the Confidential Information as is and does not warrant that any of this information that it discloses is complete, accurate, free from defects or third party rights, or useful for the Purpose or other purposes of the Receiving Party.
- 1.8** This Clause does not:
- a) create any other relationship between the Parties;
 - b) oblige a Party to enter into any other contract; or
 - c) require consideration for any information received.
- 1.9** In addition to any remedies under the applicable law,¹⁵ the Parties recognize that any breach or violation of any provision of this Clause may cause irreparable harm to the other Party, which money damages may not necessarily remedy. Therefore, upon any actual or impending violation of any provision of this Clause, either Party may obtain from any court of competent jurisdiction a preliminary, temporary or permanent injunction, restraining or enjoining such violation by the other Party or any entity or person acting in concert with that Party.
- 1.10** Within ninety (90) days of termination of this Agreement, the Disclosing Party may request the disposal of the Confidential Information. Disposal means execution of reasonable measures to return or destroy all copies including electronic data. Destruction shall be confirmed in writing. Disposal shall be effected within thirty (30) days of the request¹⁶ being made.
- The provisions for disposal shall not apply to copies of electronically communicated Confidential Information made as a matter of routine information technology back-up and to Confidential Information or copies of it that must be stored by the Receiving Party or its advisers according to provisions of mandatory law, provided that this Confidential Information or copies of it shall be subject to continuing obligations of confidentiality under this Agreement; but no further use shall be permitted as from the date of the request.

¹⁵ The Parties may consider also inserting a penalty or liquidated damages clause. Any clause of this type should be checked with local counsel to verify its validity and compliance with applicable laws and regulations.

¹⁶ In most cases it is not practical to return electronic communication. All copies of electronic data that with reasonable efforts can be expunged from storage, should be (this will involve more than removing the file from the File Allocation Table to ensure that the file is irretrievable). However, in some cases, as a matter of company policy, back-up copies are kept for disaster recovery purposes only and it would not be practical to identify the specific data and delete it. In such cases, deletion is not required.

1.11 Neither Party shall be in breach of this Clause to the extent that it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or other obligation of a mandatory nature, afterwards referred to as “Mandatory Obligation”. Where a disclosure is made for these reasons, the Party making the disclosure shall ensure that the recipient of the Confidential Information is made aware of and asked to respect its confidentiality. This disclosure shall in no way diminish the obligations of the parties under this Clause except to the extent that a Party is compelled by any Mandatory Obligation to disclose Confidential Information without restriction.

To the extent permitted by any Mandatory Obligation, the Receiving Party shall notify the other Party without delay in writing as soon as it becomes aware of an enquiry or any process of any description that is likely to require disclosure of the other Party’s Confidential Information in order to comply with any Mandatory Obligation.

1.12 Upon termination, the Receiving Party shall stop making use of the Confidential Information. The obligations of the Parties under this Agreement shall survive indefinitely or to the extent permitted by the applicable mandatory law.

Checklist for Start-ups on IP assignment and licensing¹

I.

General information

1. This checklist is intended to provide the parties of start-up companies with a useful tool concerning the assignment (i.e. a transfer of an owner's rights) and licensing (i.e. granting permission to use the intellectual property under certain conditions) of intellectual property ("IP") rights. In this context, it aims to assist start-up companies to better understand and be vigilant regarding some key IP law matters while running their business.
2. Many of the issues flagged below may differ from jurisdiction to jurisdiction and vary enormously depending on the type of IP asset, industry and type of business or other parties concerned. Such start-up companies should be conscious that national jurisdictions often make changes to their own rules of practice with respect to IP rights, registration requirements and ownership obligations and this may affect assignment and licensing.

II.

Assignment of IP rights

1. The parties are always advised to obtain legal advice as to the drafting of IP assignment agreements since the assignment of IP may differ from jurisdiction to jurisdiction. However, it is always good to know that an IP assignment agreement should cover certain issues, including but not limited to the following:
 - **Form of the assignment**
Subject to the requirements of the applicable law and assignment formalities, an IP assignment agreement can be executed in writing and signed by both parties.
 - **Identification of the parties**
It is important to define the party who owns and then will assign the relevant IP rights as the assignor, and the party who will become the new owner of the IP as the assignee.
 - **Identification of the IP to be assigned**
The IP to be assigned to the company should be clearly identified.
 - **Governing law and resolution of disputes**
The parties must confirm that the intended IP right is protectable within the relevant jurisdiction and find out what rules should be applied in the event of any disputes. Parties should also define the way how disputes arising out of or in connection with the assignment agreement will be resolved (e.g. settlement proceedings under the ICC ADR Rules, arbitration or litigation (by ordinary courts)).
 - **Scope of rights**
The parties must determine the rights and obligations of the parties. The assignor is under the obligation to assign its IP ownership to the assignee and the assignee may have the obligation to make payment in return. Additionally, the rights of the assignee such as: right to produce, use, sell, transfer, lend, license, perform, display, take all necessary proceedings in respect of any infringement, or any other cause of action arising from ownership, etc., can be listed under the agreement. The assignor may not limit the scope of rights (methods of authorised use of the IP) which are transferred to the assignee. In certain jurisdictions an IP assignment agreement that features such limitations may be construed as an IP license agreement.

¹ ICC's flagship IP publications consisting of "The ICC Intellectual Property Roadmap—Current and emerging issues for business and policymakers", "Intellectual Property: Source of innovation, creativity, growth and progress" and "The ICC Intellectual Property Roadmap" have been used references while preparing this checklist.

- **Representations and warranties**

The terms of an IP assignment agreement should include specific representations and warranties, including specific representations and warranties directed to the assigned IP right(s), i.e. the assigner is the sole legal and beneficial owner of the assigned IP right(s), the assigned IP right(s) have not been licensed or assigned and are free from any security interest, option, mortgage, charge or lien, free of any burdens, such as infringements to third-party rights, the assigned IP right(s) are not subject to any claims, challenges, disputes or proceedings, pending or threatened, in relation to their ownership, validity or use, etc., though such terms are no substitute for thorough due diligence before the agreement is executed. Related to such representations, the parties should negotiate any indemnification provisions and limitations of liability, as well as the duties and obligations to enforce and protect the IP right(s) and comply with any governmental regulations or registration requirements. The key goal in mind should be risk allocation at the outset rather than waiting for a dispute to arise.

- **Registration of the assignment agreement**

If required by the applicable law, an IP assignment agreement itself—separate from the actual IP right—must be registered at the relevant IP offices.

- **Registration of the assignee**

If required by the applicable law, the assignee of the IP should be registered at the relevant IP offices as the new owner of the IP.

- **Payment**

The price of the assignment and terms of payment (if any) must be defined. If the assignment agreement will be executed by and between the founders and the company, the consideration between the assignor and assignee may be the exchange of company shares for the IP. If permitted by the applicable law, the IP assignment may be free of charge.

- **Evaluation and tax assessment**

Each IP object is a non-material asset with a market price. The price is normally a matter of commercial arrangement between the parties. In certain instances, a professional appraiser may be required to determine a fair market-price fee. The parties should also consider possible tax consequences of the assignment, especially in the case of a free-of-charge assignment.

- **Term**

Unless otherwise provided under the applicable law, assignment of the IP remains valid for the legal duration of the IP rights. Therefore the term of the agreement only determines the effective date of the assignment.

III.

Licensing of IP rights

1. The parties are always advised to obtain legal advice as to the drafting of IP license agreements since licensing of IP may differ from jurisdiction to jurisdiction. However, it is always good to know that an IP license agreement should cover certain issues, including but not limited to the following:

- **Identification of the parties**

It is important to define the parties who own the relevant IP rights, which parties will exercise the rights, which parties have registered relevant IP rights, and whether third parties—affiliated or not—have any rights that can affect the license terms. Resolution of such issues up front ensures that the parties can grant the IP rights as intended, without interference and unintended consequences.

- **Identification of the IP to be licensed**

The license can be granted to the licensee exclusively or non-exclusively. Exclusive license enables the licensee to solely use the licensed IP. However, if the license is granted to the licensee non-exclusively, the licensor can grant further non-exclusive licenses to other persons. If required by the applicable law, the licensor may not use the IP licensed under an exclusive license agreement unless the license agreement provides for otherwise. In certain jurisdictions, licensing of unregistered patent and trademark rights is not allowed.

- **Scope of rights**

The parties must determine whether a licensee is entitled to use the full field of the invention or the entire category of goods and services denominated by a trademark, or only some subset of those rights. Will there be any territorial restrictions or rights to sub-license? Where the licensor intends to place some limits on the IP right being licensed, careful drafting of the grant of a license is critical, especially because many restrictions raise antitrust and other anti-competition concerns in many jurisdictions. IP license agreements between competitors are generally more heavily scrutinized than those between non-competitors, therefore careful descriptions of each of the parties' fields of operation and expertise may help any license agreement withstand such scrutiny. Moreover, the rights of the licensee such as: right to make, use, sell, perform, display, reproduce, sub-license, etc. can be listed under the agreement.
- **Governing law and resolution of disputes**

The parties must confirm that the intended IP right is protectable within the relevant jurisdiction and find out what the rules are for its registration. Parties should also define which way disputes arising out of or in connection with the license agreement will be resolved (e.g. settlement proceedings under the ICC ADR Rules, arbitration or litigation (by ordinary courts)).
- **Representations and warranties**

The terms of an IP license agreement should include specific representations and warranties, including specific representations and warranties directed to the licensed IP right(s), i.e. ownership, full scope of rights, etc., though such terms are no substitute for thorough due diligence before the agreement is executed. Related to such representations, the parties should negotiate any indemnification provisions and limitations of liability, as well as the duties and obligations to enforce and protect the IP right(s) and comply with any governmental regulations or registration requirements. The key goal in mind should be risk allocation at the outset rather than waiting for a dispute to arise.
- **Registration of the license agreement**

Different jurisdictions have different rules about whether an IP license agreement itself—separate from the actual IP right—must be registered, typically depending on the type of IP right at issue. If required by the applicable law, an IP license agreement itself must be registered at the relevant IP offices.
- **Payment**

The amount and terms of payment must be defined.
- **Evaluation and tax assessment**

The amount of a license fee (royalty) payable under the agreement is normally a matter of commercial arrangement between the parties. In certain instances, a professional appraiser will be required in order to determine a fair license fee. The parties should also consider possible tax consequences of the licensing arrangement, especially in the case of a free-of-charge license.
- **Term and termination**

The parties should give significant consideration to the length of an IP license agreement, and to provisions for the termination of the agreement, which can be complicated if not due to the expiration of the agreement or pursuant to defined terms. Negotiating rights and obligations arising from the termination can eliminate, or at least reduce, disputes that frequently arise upon termination of a license agreement. The term of an IP license agreement may not exceed the term of validity of the licensed IP right.

ICC Principles to facilitate commercial negotiation

Introduction

Business in an integrated world economy brings together negotiating partners from very different cultures and business traditions, with different interests and a wide range of negotiating styles and experience. While this rich variety is a foundation of today's vibrant trading community, it also increases the chances for costly misunderstandings that impede the smooth flow of business.

In keeping with its mission to promote efficient and effective global trade, ICC has consulted with negotiators from businesses large and small, across sectors and around the world, to develop the following set of principles to help facilitate the process of commercial negotiations.

The ICC Principles to Facilitate Commercial Negotiation are based on the idea that the best deals are struck between negotiating partners that not only want or need to collaborate, but also respect and trust one another. Business increasingly involves sustainable partnerships and business arrangements that may need to evolve over time — in such situations, a respectful, communicative relationship with your negotiating partner can be an invaluable outcome in its own right.

The ICC Principles provide the direction for creating or enhancing a productive working relationship, for transactions of any size or length.

Every deal and set of negotiating parties is different, and the ICC Principles may be useful in different ways for different deals. The Principles may be used as:

- a **checklist** of considerations for a party to take into account during preparation for and conduct of negotiations
- a basic set of **guidelines** the parties can agree to use as a reference point for the conduct of negotiations¹
- a **benchmark** for guiding a party's own conduct during negotiations

Where the ICC Principles are used in the context of negotiating and drafting an agreement, parties may wish to consult the range of relevant ICC tools — including a variety of model contracts; the Incoterms® rules; ICC rules on documentary credits (UCP) and guarantees (URDG); and the ICC Rules on Arbitration and ADR — which reflect international trade practice and are accepted

1. Prepare carefully

- Engage the right people within your organization, define your objectives clearly, and review any history of dealings with your counterparty
- Learn all you can about your negotiating partners and the reality of the commercial context in which they operate. Imagine their likely interests, priorities, limitations and scope of authority
- Be ready to explore with your counterparty the various legal rules available to govern your deal

2. Take cultural differences into account

- Educate yourself on the local business practices of your negotiating partner
- Be sensitive to your own culturally-rooted habits and assumptions about how to conduct business
- Develop a practice that encourages you continually to question your assumptions and probe for assumptions your negotiating partner may be making about you
- Keep in mind the value of being able to deal well with difference

3. Make early agreements with a negotiating partner about a process to guide the logistics of the negotiation, which paves the way for making agreements about more substantive topics

- Decide early on with your negotiating partner on procedural questions such as timeline, venues and agendas for meetings, language of proceedings, attendees at meetings and drafting responsibilities

¹ The ICC Principles are not intended to impose a legally binding obligation on the parties.

4. Allocate appropriate human and technical resources to a negotiation

- Anticipate the people you'll need to have in the room or on standby to support negotiations, such as people with decision-making authority on issues at hand, specialized technical experts, translators, legal drafters, tax advisors, and local counsel
- Aim to maintain consistency on the negotiating team—avoid presenting a revolving cast of characters

5. Aim to develop an open and reliable working relationship with a negotiating partner

- Deals are often on-going commitments that evolve over time as circumstances change. A good working relationship between the parties will make it easier to address both sides' future needs efficiently and effectively
- Acting with transparency and the genuine desire to understand and find solutions can help focus discussions on substance
- Negotiation partners need not be friends to create a productive working environment

6. Behave with integrity

- You don't need to reveal everything, but everything you say should be true
- Lying or misleading imperils the deal, the working relationship at hand and your reputation in the trading community, and may ultimately lead to legal sanctions
- Your willingness to bring your values and integrity to the table is a signal to your negotiating partner of how seriously you are approaching the negotiation

7. Manage your emotions

- Act rather than react—modeling that you are acting independently of a counterparty's provocation is powerful
- A counterparty that views you as reasonable may ask for help, allowing you to collaborate on a solution, rather than hiding information out of pride or fear, which may lead to an unrealizable agreement or no agreement at all

8. Be flexible

- Be open to thinking creatively with your negotiating partner about how your interests may complement each other and be satisfied without diminishing value for either party
- Only a mutually beneficial deal will be sustainable over time — if one party receives disproportionate benefit, the other party may be unable to implement the agreement
- Understanding the difficulties your negotiating partner may be facing is an important element in building a realistic, durable deal

9. Make realistic commitments

- Agree to only those things you genuinely intend to undertake, as you would expect your negotiating partner to do
- Clarify your negotiating partner's scope of authority: people may overstate their authority and make commitments they can't make or keep
- Know your alternatives, and know when to leave the table because you can find a more suitable deal elsewhere

10. Confirm the agreement to ensure a common understanding

- Review carefully what was agreed with your negotiating partner at the end of a negotiating session, resolving any details on which your views diverge

11. Be ready for the case where negotiations do not succeed

- Negotiations may not reach conclusion for a variety of reasons, either within or beyond the control of the parties
- Anticipate such situations, prepare and be ready to discuss alternative options with your negotiating partner

About the International Chamber of Commerce (ICC)

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 170 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.

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ICC Publications



ICC Model Contract | International Sale (Manufactured Goods)

ICC Pub. No. 828E ISBN: 978-92-842-0674-2 €49

An international business transaction requires a precise and detailed underlying contract. However, it can be expensive and time-consuming to draft such a contract. With the ICC Model Contract International Sale, the International Chamber of Commerce (ICC) provides a solution in presenting a set of clear and concise standard contractual conditions for the most basic international trade agreement.

Although this model is denominated a sale contract, it is equally appropriate for use by buyers as it balances the interests of exporters (sellers) and importers (buyers). It may therefore also be used for a so-called purchase agreement.

The model contract is divided into two parts: specific conditions and general conditions. The specific conditions allow the parties to use the model directly by filling in the blanks, while the general conditions provide a platform of standard legal terms, serving as a reference tool for contract drafting or negotiation. These general conditions may be used together with the specific conditions, or independently.

The model contract is specifically adapted for transactions governed by the UN Convention for the International Sale of Goods which applies to an increasingly large volume of international sales.

Each ICC Model Contract includes a fully editable version in Microsoft Word, permitting you to easily adapt the contract to your specific case.



ICC Model Contract | Commercial Agency

ICC Pub. No. 838E ISBN: 978-92-842-0684-1 €49

Virtually every company engaged in international trade makes use of agents and therefore must face the problem of drafting an international agency agreement. In the absence of internationally agreed legislation on commercial agency, the International Chamber of Commerce (ICC) drafted the ICC Model Contract Commercial Agency to address, among others, questions of sales through the Internet, indemnity, arbitration and the principles of law generally applicable to agency contracts (“lex mercatoria”). Concise and practical, the model meets the needs of both individuals and exporting companies as well as lawyers.

This model contract is not based on specific national laws. Instead it incorporates the prevailing practice in international trade as well as the principles recognised by the domestic laws on agency.

Each ICC Model Contract includes a fully editable version in Microsoft Word, permitting you to easily adapt the contract to your specific case.



ICC Model Contract | Distributorship

ICC Pub. No. 836E ISBN: 978-92-842-0682-7 €49

Distributorship contracts are one of the most frequently used means for organising the distribution of goods in a foreign country. Almost every company engaged in international trade has some distributors abroad, which means that most exporters will be faced with drafting an international distributorship agreement at some point.

One of the difficulties that traders face when drawing up contracts is the lack of uniform regulations. This means that parties must refer primarily to the rules set out in their agreements, which in turn makes the careful drafting of such contracts vital.

The International Chamber of Commerce (ICC) provides the ICC Model Contract Distributorship, a uniform contractual framework to help exporters and their distribution partners establish and maintain a durable and balanced distribution system for goods abroad. It specifically applies to agreements under which the distributors act either as buyers and resellers, or as importers who organise distribution in the country in which they operate. This new revised version takes into account recent developments in the laws affecting distribution and prevailing practice of international trade.

Each ICC Model Contract includes a fully editable version in Microsoft, permitting you to easily adapt the contract to your specific case.



ICC Short Form Model Contract: International Commercial Agency, International Distributorship

ICC Pub. No. 832E ISBN: 978-92-842-0678-0 €49

Practice has shown that companies and businesses involved in international trade frequently use commercial agency and distributorship contracts to distribute their products abroad. However, users should bear in mind fundamental differences in purpose and substance between these contracts when deciding which one to choose.

The International Chamber of Commerce (ICC) offers the ICC Short Form Model Contract International Commercial Agency, International Distributorship. This simplified contract is intended for parties who do not want a detailed commercial agency contract or distributorship contract, but prefer a shorter simpler form covering only the most typical issues arising between the parties.

This publication complements the ICC Model Commercial Agency Contract (Pub No. 838E) and the ICC Model Distributorship Contract (Pub No. 836E) covering a broader range of issues.

Each ICC Model Contract includes a fully editable version in Microsoft Word, permitting you to easily adapt the contract to your specific case.



ICC Model Contract | Occasional Intermediary (Non-Circumvention Non-Disclosure)

ICC Pub. No. 837E ISBN/ 978-92-842-0683-4 €49

The International Chamber of Commerce (ICC) created the ICC Model Contract Occasional Intermediary to cover the most common varieties of international contracts to which an occasional intermediary is a party. This model contract is the result of an extensive comparative study of non-circumvention and non-disclosure agreements that are used on a daily basis worldwide. The model provides a unique and balanced legal platform that takes into account the interest of all parties involved in non-circumvention and nondisclosure agreement and minimises the risks of fraud and misunderstanding.

This model is part of a series of respected model contracts on international distribution covering commercial agency, distributorship, franchising and selective distributorship. These important tools provide confidence to the parties and the marketplace that commercial transactions can be conducted according to internationally accepted principles.

Each ICC Model Contract includes a fully editable version in Microsoft, permitting you to easily adapt the contract to your specific case.



ICC Model Contract | International Consulting Services—Expanding Into A New Market

ICC Pub. No. 831E ISBN: 978-92-842-0677-3 €49

When negotiating consultancy agreements abroad, one of the main difficulties faced by parties engaged in international trade is the lack of standard provisions for agreements of this type. Also, consultancy agreements are often not governed by specific statutory provisions. Companies looking to expand their operations often rely on a local consultant to provide guidance on issues related to the new market, including brand promotion, market research or local incentive schemes.

The International Chamber of Commerce (ICC) provides companies and their advisors with an internationally applicable, fair and balanced template.

Each ICC Model Contract includes a fully editable version in Microsoft Word, permitting you to easily adapt the contract to your specific case.



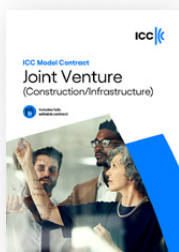
ICC Model Contract | Selective Distribution

ICC Pub. No. 834E ISBN: 978-92-842-0680-3 €49

The ICC Model Contract Selective Distribution provided by the International Chamber of Commerce (ICC) facilitates the marketing of products through a network of qualified retailers. Selective distribution agreements allow the exporter to better control the way their products are marketed by creating a direct link between the exporter and the retailers who sell the products to the final consumer.

This model covers selection criteria, the distributor's minimum purchase obligation, the supplier's general conditions of sale and after-sale service. It provides a sound legal basis upon which parties can quickly establish an even-handed agreement acceptable to both sides. It saves resources for companies and their legal advisors.

Each ICC Model Contract includes a fully editable version in Microsoft Word, permitting you to easily adapt the contract to your specific case.



ICC Model Contract | Joint Venture

ICC Pub. No. 830E ISBN: 978-92-842-0676-6 €49

In complex transactions, international as well as national cooperation between companies requires solid and balanced terms and conditions. The International Chamber of Commerce (ICC) provides small-, medium-sized and large companies with the ICC Model Contract Joint Venture, a unique, balanced framework that ensures fairness for all involved parties.

The model is intended for parties that wish to cooperate in major construction projects as joint operators rather than on a sub-contract basis. It satisfies the needs of employers undertaking major projects who do not want to use a multi-contracting structure with several contracts and contractors.

The model allows for a solid decision-making process, clear allocation of participation and provision of resources while considering the need for swift and effective dispute resolution and for complete and informed allocation of risks.

Each ICC Model Contract includes a fully editable version in Microsoft Word, permitting you to easily adapt the contract to your specific case.



ICC Model Contract | Consortium Agreement

ICC Pub. No. 835E ISBN: 978-92-842-0681-0 €49

Companies of all sizes wanting to cooperate on major construction projects, whether international or domestic, require solid and balanced terms and conditions for such cooperation. It is vital that the arrangements put in place be durable, clear and equitable thereby enhancing business in general.

The ICC Model Contract Consortium Agreement created by the International Chamber of Commerce (ICC) addresses these needs by providing a unique, balanced platform that is fair to all parties and enables participation and governance as a consortium. The model accommodates the desire of all parties for a solid unanimous decision-making process, a clear allocation of participation and provision of resources, while considering the need for swift and effective dispute resolution and for complete and informed allocation of risks.

Each ICC Model Contract includes a fully editable version in Microsoft Word, permitting you to easily adapt the contract to your specific case.



ICC Model Contract | International Franchising

ICC Pub. No. 839E ISBN: 978-92-842-0685-8 €49

Designed by the International Chamber of Commerce (ICC) for non-specialists who are seeking an adaptable contractual framework, the ICC Model Contract International Franchising covers distribution franchise arrangements.

It helps franchisors and franchisees across a range of industries overcome difficulties caused by the lack of uniform international rules, by providing guidance on anti-trust rules and questions of laws applicable to franchises, among others. A commentary offers alternative drafting solutions adapted to more specific needs and identifies potential pitfalls.

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ICC Model Contract | Turnkey for Major Projects

ICC Pub. No. 829E ISBN: 978-92-842-0675-9 €49

With the ICC Model Turnkey Contract for Major Projects, the International Chamber of Commerce (ICC) provides a uniquely balanced model that is fair to both contractors and employers. It accommodates the desire of all parties for price and scope certainty and the need for swift and effective dispute resolution and complete and informed allocation of risks.

Balance between the parties has been provided through the inclusion of a good faith concept, explanation of the purpose of certain provisions to avoid misinterpretation and the use, where possible, of equal and mirrored obligations of the parties.

This model takes an innovative approach, reflecting the growing importance of information technology through inclusion of detailed provisions on software issues. The model also addresses bribery and corruption, in keeping with the ICC approach in favour of transparency.

Equally intended for use in public and private contracts—whether tendered or individually negotiated, as part of the “BOT/DBFM” project documentation, and in externally financed projects—the model contract was prepared with a view to furthering the proper functioning of the construction industry, particularly within the context of international development. In setting out the parties’ obligations in a clear and succinct fashion, it is intended to minimise recourse to national law.

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ICC Model Contract | Turnkey Supply of an Industrial Plant

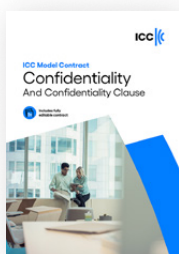
ICC Pub. No. 843E ISBN: 978-92-842-0689-6 €49

Turnkey contracts take a range of forms and at present no single model contract covers them all. As part of the suite of model construction contracts, the International Chamber of Commerce (ICC) developed the ICC Model Contract Turnkey Supply of an Industrial Plant. The model contract was designed specifically for turnkey contracts involving the supply of industrial plants or production lines to be erected within facilities which already exist or which are constructed by the purchaser.

The model has special characteristics: The supplier is obliged to supply the equipment and assist the purchaser, and performs these obligations within facilities that are under the purchaser's control.

This model contract takes account of all of these specifics and contains enough flexibility for the parties to work out special situations for themselves. To leave the greatest possible space to alternative solutions, many issues including raw materials, time schedule, erection equipment, among others, are covered in the annexes.

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ICC Model Contract | Confidentiality and Confidentiality Clause

ICC Pub. No. 833E ISBN: 978-92-842-0679-7 €49

Before entering a business transaction, companies of all sizes have to consider how to protect sensitive information by drafting a non-disclosure agreement. As each company tries to build a confidentiality contract in its favour, the process may often cause long discussions, delays and higher transaction costs.

To minimise the time and efforts spent on negotiations, the International Chamber of Commerce (ICC) has developed two model contracts – the ICC Model Confidentiality Agreement and ICC Model Confidentiality Clause. Aimed to assist business people and lawyers who are not necessarily experts on the subject, ICC offers a balanced cross-sectorial model taking into account interests of both disclosing and receiving parties.

Moreover the models can be used in relation to all kinds of confidential information and a wide variety of business transactions. They provide to industry and commerce a common platform acceptable in different jurisdictions and countries.

Each ICC Model Contract includes a fully editable version in Microsoft Word, permitting you to easily adapt the contract to your specific case.



ICC Model Contract | International Transfer of Technology

ICC Pub. No. 840E ISBN: 978-92-842-0686-5 €49

Designed by the International Chamber of Commerce (ICC), the ICC Model Contract International Transfer of Technology is tailored to non-specialists who are seeking an adaptable contractual framework. The model contract covers situations where a manufacturing company licenses to another company a global package of information and intellectual property rights. The licensee can then also manufacture the products using the licensor's technology.

The model contract explains in detail what you need to take into account when transferring technology: from anti-trust to tax issues and other pitfalls. As with existing ICC model contracts, the model seeks to balance the interests of the licensor and licensee across a range of industries, and provides comprehensive notes and guidance regarding issues requiring consideration by the parties.

Each ICC Model Contract includes a fully editable version in Microsoft Word, permitting you to easily adapt the contract to your specific case.



ICC Model Contract | International Trademark License

ICC Pub. No. 841E ISBN: 978-92-842-0687-2 €49

The ICC Model International Trademark License provided by the International Chamber of Commerce (ICC) addresses the situation where the owner of a well-known trademark licenses the trademark to a company to use it on products other than those manufactured or sold by the licensor. In this case, it is assumed that the licensed products will be designed and developed by the licensee. The main preoccupation of the licensor is to ensure that the licensed products conform to the overall image of the licensor and its trademarks.

In other cases, the licensor may want to participate directly in the development of the licensed products, particularly with respect to their design. The licensed product would be the result of a cooperation between the parties, which might give rise to a number of issues the parties should consider in the contract.

Parties are advised to use the model contract as a basis for negotiation and for drawing up their own contract, possibly with the assistance of a lawyer with expertise in international contracts.

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ICC Model Contract | Mergers And Acquisitions

ICC Pub. No. 842E ISBN: 978-92-842-0688-9 €49

Merger and acquisition agreements cover a variety of contracts to transfer businesses or companies. This share purchase agreement developed by the International Chamber of Commerce (ICC) becomes extremely useful in any situation where the entire issued share capital of a company or business is acquired by another.

The ICC Model Contract Mergers and Acquisitions is an invaluable tool helping parties and lawyers who are not specialised in merger and acquisition contracts draft a simple contract. It covers the most common issues involved while leaving enough flexibility for the parties to work out special situations for themselves.

Buyers, sellers, lawyers and scholars will find in this model contract a useful companion in their daily work which will help them deal with pre-closing and post-closing undertakings, price and closing, warranties, indemnification, restrictive covenants and confidentiality, among other issues covered in the annexes and schedules.

Each ICC Model Contract includes a fully editable version in Microsoft Word, permitting you to easily adapt the contract to your specific case.