# Joint Venture Agreement Checklist

Last Verified: 2008-08-01

Repeated reference has been made to the importance joint venture agreements play in the formation and implementation of the joint venture.

The Joint Venture Agreement legally creates the joint venture through the process of contract, and identifies the major rights, duties and obligations of the participants of the joint venture.

## The Joint Agreement identifies:

- the project or object of the joint venture;
- the contribution, role and involvement of each co-venturer;
- the terms or duration for which the joint venture will exist;
- the provisions for management and performance of joint venture obligations; and
- allocation of revenues and expenses from the project.

## The Joint Agreement Checklist:

1. The date on which the agreement is established and executed.
2. The names, addresses and identification of the parties, including the type of business of each member of the joint venture.
3. The name under which the joint venture will do business.
4. The principal place of business of the joint venture.
5. The purpose of the joint venture. If the purpose is to access a specific project, a full description of that project is required.
6. The terms of the joint venture: when and how the joint venture is terminated; and, how such items as guarantees, defects, and insurance will be handled after termination.
7. A statement that the parties are actually co-ventures for the project whether or not the contract is in the name of all members.
8. A declaration that the organization is a joint venture, not a partnership.
9. The establishment of a fund by the parties to finance the work, together with the amounts to be contributed by each party, with the fund being deposited in a special bank account under dual control and all progress payments and other revenues being deposited in such account.
10. A clause providing that, if additional working capital is required, the parties will proportionally contribute additional funds, as needed and naming the penalty for failure to contribute.

11. A declaration of the participation of the parties and percentage in which profits and losses are shared. Usually these percentages are proportional to the contributions to the working fund, but the amount of contribution of funds by parties can be increased or decreased depending on the contributions of equipment or expertise which also must be considered.
12. Payment of any fee to the controlling co-venturer or sponsor should be specified; whether a share of the profits in excess of that contemplated is given to the controlling manager or a flat dollar sum is paid.
13. If equipment is involved, a specific clause should be inserted especially where the parties contribute varying amounts of equipment.
14. The parties to the joint venture should agree to sign all necessary documents relating to the contract, bank loans, bonds, indemnity agreements and the like.
15. Control management committee may be determined. A management committee may be established with provision for remuneration. Alternatively one of the co-venturers should be designated as general manger of the project, with authority to bind the joint venture. A provision to clearly define not only the management duties, but all other duties of the co-venturers and procedures to be followed in dealing with unusual situations or problems that may develop.
16. A regular meeting schedule should be considered.
17. A financial and periodic joint venture and progress reporting procedure should be implemented.
18. Establishment of a joint venture bank account, and the appointment of a chartered accountant and lawyer.
19. The possibility of the death, bankruptcy or insolvency of a member must be handled.
20. The acquisition of equipment and materials by the joint venture and the disposal of such equipment and material either by sale with the proceeds treated as ordinary revenues, or by distributing the funds to the co-venturers on a pro-rata basis.
21. Provide for the acquisition of licenses in the name of the joint venture or each co-venturer as required.
22. Specify the type of insurance carried by the joint venture and clearly define the liabilities that are to be insured against by each participant.
23. Define items which are to be considered as costs to the joint venture for the purpose of determining profit or loss and describe those items which are not reimbursable to members of the joint venture.
24. A clause should be included respecting the confidentiality of trade information passed between the co-venturers.
25. Ownership or retention of patents, technology, and consultant reports should be addressed.
26. Establish the performance security requirements of the project and the bonding obligations of the co-ventures.
27. State that undivided pro-rata interests are held by the co-venturers on all assets of the joint venture.
28. Restriction should be considered regarding assignment of co-venturers undivided pro-rata interests in assets of the joint venture.
29. Indemnification.
30. Substitution or addition of co-venturers.
31. Payout of funds.
32. Disputes arbitration clause.
33. Winding up, final performance and financial statements for the joint venture.
34. Notice clause.
35. The applicable jurisdiction of the Agreement should be stated.

The nature, size and complexity of the project together with the sophistication of the parties will determine the detail in which the Joint Venture Agreement is prepared and aforementioned topics dealt with. This checklist is meant only as a guide to putting a Joint Venture Agreement together. The appropriate professional services, such as legal counsel should be sought out and utilized.

Source: "How to Use Joint Ventures - A handbook for firms bidding on major projects", A Government of Saskatchewan publication. Prepared by Thomas Pavlovsky, B. Admin., C.A. and Ted C. Zarzeczny, Jr.,B.A., LL.B. for the Major Projects Branch

Originally prepared by the Government of Saskatchewan.

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