

**JOINT VENTURE AGREEMENT**  
**BETWEEN**  
**ABC CORPORATION, INC.**  
**AND**  
**XYZ CORPORATION, INC.**

This Joint Venture Agreement (“Agreement”) is made and entered in this [insert date] day of [insert month], 20[insert year], by and between ABC Corporation, Inc., a [insert State of incorporation] corporation with its principal place of business at [insert Address] (“ABC”) and XYZ Corporation, Inc., a [insert State of incorporation] corporation with its principal place of business at [insert Address] (“XYZ”) (collectively referred to as the “Parties”).

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ABC and XYZ hereby agree as follows:

**1.0 Purpose.** The purpose of the Joint Venture shall be to submit a proposal in response to RFP # [insert RFP number] <sup>1</sup>(hereinafter the resultant award of such RFP will be referred to as “the Contract”), and, if successful, to enter into and deliver [insert description of supplies/services] to [insert Agency] for the term of the Contract and any option which might be tendered.

**1.1 Name.** To this purpose, ABC and XYZ do hereby set forth in this Agreement the terms and conditions of their Joint Venture to be known as the [insert Joint Venture name] Joint Venture (“Joint Venture”).

**2.0 Managing Venturer.** ABC, the small business participant, is the Managing Venturer of the Joint Venture.

**2.1 Project Manager.** Ms. Sally Smith is an employee of ABC and is the Project Manager of this Joint Venture. She is also responsible for the performance of the Contract, overseeing the jobsite, and reporting to and implementing the instructions of the Joint Venture.

**3.0 Percentage Ownership.** Each Venturer’s respective interest in the Joint Venture (hereinafter called “Percentage Ownership Interest”) is indicated below:

ABC – Fifty-one percent (51%)

XYZ – Forty-nine percent (49%).

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<sup>1</sup> If the joint venture is being formed in response to a specific solicitation or the purpose of the Joint Venture is to pursue contract opportunities to [insert Joint Venture purpose].

**4.0 Distributive Share.** The net operating income and net operating loss of the Joint Venture shall be allocated and shared between and shared by the Joint Venture Parties in proportion to their performance of work.

**5.0 Bank Account.** The operating account (“Operating Account”) for this Joint Venture shall be set up at [insert name of bank]. The Operating Account shall be established in the name of the Joint Venture.

All payments due the Joint Venture for performance on the Contract shall be deposited into the Operating Account, and all expenses incurred under the Contract shall be paid out from the Operating Account.

**6.0 Resources.** Major equipment, facilities and all other resources will be furnished as detailed in Appendix A by each Joint Venturer.

**7.0 Contract Oversight.** As the Managing Venturer, ABC is primarily responsible for Contract oversight. The Project Manager will be responsible for day-to-day management and administration of the Contract. Each Joint Venturer will have the right to visit the Contract site to evaluate the Contract performance.

**8.0 Source of Labor.** The Joint Venture will allow for a blended pool of labor employees of both parties. As the Managing Venturer, ABC will have the first right to refuse employment during the performance phase of the Contract. The Joint Venturers will ensure that the Joint Venture and the small business partner(s) to the Joint Venture will meet the performance of work requirements set forth in 13 CFR 125.8(c).

The work performed by ABC will be more than administrative or ministerial functions so that it gains substantive experience.<sup>2</sup> The amount of work done by the Joint Venturers will be aggregated and the work done by the small business protégé partner must be at least 40% of the total done by the Joint Venture. All work done by the mentor and any of its affiliates at any subcontracting tier will be counted.

**9.0 Negotiating Small Business Contract.** As the representative of ABC and Joint Venture Project Manager, Ms. Sally Smith will be responsible for negotiating the original Contract, should negotiations be required by [insert Agency], and for any other subsequent negotiations.

**10.0 Ensured Performance.** ABC and XYZ are obligated to ensure performance of the Contract and to complete performance despite the withdrawal of any party to the Joint Venture.

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<sup>2</sup> Performance of work should be spelled out more specifically by task, to demonstrate that the small business in fact is doing more than mere ministerial or administrative functions.

**11.0 Administrative Records.** Accounting and other administrative records including the books of the Joint Venture and any other records relating to the Joint Venture shall be kept and maintained at the office of ABC.

Each Joint Venturer shall, during regular business hours, have access to and may inspect and copy any and all such books and records. The Project Manager shall promptly send to each Joint Venturer copies of all reports, correspondence, documents and other information sent or received by the Joint Venture.

**12.0 Retention of Final Records.** Accounting and other administrative records including the final original records of the Joint Venture and any other records relating to the Joint Venture shall be retained at the office of ABC upon completion of the Contract performed by the Joint Venture.

**13.0 Quarterly Financial Statements.** Quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the Joint Venture's principals) will be submitted to SBA no later than forty-five (45) days after each operating quarter of the Joint Venture.

**14.0 Project-End Statements.** Within ninety (90) days of completion of the Contract, the project-end profit and loss statement, including a statement of final profit distribution, shall be submitted to SBA.

**15.0 Certification of Compliance.** Prior to the performance of the Contract, ABC will submit a written certification to the contracting officer and SBA, signed by an authorized official of each Joint Venturer, stating as follows:

(1) The parties have entered into a Joint Venture Agreement that fully complies with 13 CFR 125.8(b) (or 124.513(j), 125.18(b)(4), 126.616(e), or 127.506(e), as applicable); and

(2) The parties will perform the Contract in compliance with the Joint Venture Agreement and with the performance of work requirements set forth in 13 CFR 125.8(c) (or 124.510, 125.18(b)(3), 126.616(d), or 127.506(d0), as applicable).

**16.0 SBA Inspection Rights.** The Joint Venturers will allow SBA's authorized representatives, including representatives authorized by the SBA Office of Inspector General (OIG) access to its files to inspect and copy all records and documents relating to the Joint Venture during normal business hours<sup>3</sup>.

**17.0. Performance of Work Reports.** The Managing Venturer will describe how it is meeting or has met the applicable performance of work requirements for the Contract by annually submitting a report to the Contracting Officer and to the SBA, signed by an authorized official of

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<sup>3</sup> If the OIG has reason to inspect the records, they should not be required to provide "reasonable notice".

each Joint Venturer, explaining how the performance of work requirements are being met for the Contract.

At the completion of the Contract, the Managing Venturer will submit a report to the Contracting Officer and to the SBA, signed by an authorized official of each Joint Venturer, explaining how and certifying that the performance of work requirements were met for the Contract, and further certifying that the Contract was performed in accordance with the provisions of the Joint Venture Agreement.

## **18.0 Miscellaneous.**

**18.1 Notices.** Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and if (i) sent by registered or certified mail to the other party's place of business contained, or (ii) hand delivered to the intended party and written evidence thereof is obtained.

**18.2 Governing Law and Forum.** This Agreement shall be construed and administered in accordance with the laws of the State of [insert State of formation].

**18.3 Assignment.** The rights and obligations of either party under this Agreement may not be assigned without prior written consent of the other party.

**18.4 Severability.** In the event that any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall be unimpaired and shall continue in full force and effect.

**18.5 Mediation.** If any controversy or claim arising cannot be agreed upon by the Joint Venturers, the controversy or claim shall be resolved by [insert name of Mediator] ("Mediator"). The Mediator shall decide, resolve, and determine the claim or controversy. The mediator cannot make a finding, ruling, or enter an order that would be in conflict with or prohibited by SBA regulations, guidance, or information notices governing joint ventures. The written decision of the Mediator shall be final and conclusive upon the Venturers. Any ruling or finding by the mediator that amends the joint venture agreement must be approved by SBA. If not approved by SBA such ruling(s) or finding(s) shall have no effect. Judgment on such decision may be entered in the highest court or forum having jurisdiction. While the mediation proceeding is pending, work on the Contract will continue without interruption until completion. The cost of the mediation shall be borne equally between the Joint Venturers.

**18.6 Conflict with SBA's Rules.** If any provision contained in this agreement is in conflict with or prohibited by SBA rules, regulations, information notices or guidance concerning joint ventures, such provision(s) shall be null and void ab initio or interpreted in a manner that is consistent with SBA rules, regulations, information notices or guidance.

**18.7 Entire Agreement.** This Agreement, together with the Contract, contains the entire understanding of the parties with respect to the subject matter. All prior promises, understandings, or agreements are merged into this Agreement.

The Agreement is officially signed and executed by officials duly authorized to bind the Parties this [insert date] day of [insert month], 20[insert year].

[ABC Principal Sign Here]      [XYZ Principal Sign Here]

Signatory, **ABC**                      Signatory, **XYZ**

Signatory Information              Signatory Information

**Date: [Insert date here]**      **Date [Insert date here]**