

Orchestration of Renewable Integrated Generation in Neighbourhoods

Grant Agreement Number: 314742



D7.6 – Joint Venture Company

WP7 – Community Energy Business Models and Commercialisation

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D7.6 - Joint Venture Company

Joint Venture Company: The consortium will establish a Joint Venture Company to execute the commercialization of the ORIGIN results.

ORIGIN	WP 7 - Community Energy Business Models and Commercialization; D7.6 - Joint Venture Company
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ORIGIN	WP7 Community Energy Business Models and Commercialization
Deliverable	D7.6 Joint Venture Company

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Summary

This deliverable aims to establish a plan to create a Joint Venture Company to execute the commercialization of the ORIGIN results. During the field test phase the commercialization plan will be refined according to the field test results. Negotiations for establishing the Joint Venture will take place in parallel. The goal is to have the Joint Venture Company in place before the project ends.

1. Introduction

A Joint Venture, also known as JV or JVC is a strategic alliance where two or more parties (businesses) form a partnership to share markets, intellectual property, assets, knowledge, and profits. There is no transfer of ownership in the deal however resources, risks and losses are shared.

This specific partnership happens between big companies, small and medium-sized communities, and universities. It may also be created between two small businesses to help them successfully compete with their bigger competitors. A joint venture may be also created by companies with different profiles to receive a different product or service and take a competitive advantage from it or it might simply consist of companies with identical products who wish to penetrate new markets, be more competitive or grow.

Particular parties of partnership should sell products/services/technologies but the joint venture should sell completed solutions based on the JVC or partnership which should be bigger than the sum of each part. The venture might be created for one specific project only and it may be referred to consortium or a longer business relationship. The consortium of joint venture happens where one party looks for technological expertise or technical service, rental or brand use arrangements, or management contracts or franchise. In a consortium, there is no legal entity and there are no assets. One of the participating entities takes the lead and is the contact for the execution of the contract. All parties of the consortium agree that they are "jointly and separately" responsible for the execution of the contract which means that if something goes wrong it can be addressed with one of them or all of them. If it is necessary to bring them to court, then usually all parties are brought to court.

A consortium is formed by contract which delineates the rights and obligations of each member. Joint venture partnership is temporary and does not require any agreement as a written document, but if so, it needs to be comprehensive and include some specifics such as ownership percentages, shares of profits and losses, partner investment, administrative responsibilities and business asset sharing and transfers. Profits need to be included in parties' federal adjusted gross income for individuals or taxable income for other taxpayers; however a partnership may still be required to file a tax return. It also needs information such as how long the venture is to last, how the venture may be terminated, and how disputes should be resolved. Parties need to cooperate actively with each other, continuously develop the joint venture and create principles and rules and all parties are obliged to operate in good faith and play fair.

Principals of international joint venture agreement:

- **Management-** it is extremely important to choose senior management with clear authority from the beginning
- **Governance-** a structure of the board with an odd number of directors
- **Relative contributions of partners-** the agreement should be described with as much detail as possible and contain specificity of values for the respective contributions of the parties if necessary
- **Allocation of risks and rewards-** it is important to describe which party gets what, where, when, why and how
- **Alternative dispute resolution provisions and deadlock provisions-** they should be agreed in advance to avoid future problems
- **Regulatory issues-** mostly dedicated to export and import controls, foreign corrupt practices act compliance, companies' acts and competition law compliance
- **Governing law-** it is possible to choose a law from a neutral jurisdiction, even when a JV is located in a fixed location
- **Ownership transfer-** it is also important to set it forth and the parties might agree to transfer agreements, such as rights of first offer, refusal, etc.
- **Termination provisions-** they should be equal for all parties and clearly set out with details of any conditions and rules required to terminate a JV
- **Governing language-** agreement and whole JV might be provided in one language (English as dominant) or in several languages to suit the needs of the entities of joint venture company
- **Non-competition, non-disclosure, non-disparagement and non-solicitation provisions-** it is important to have some security when one party wants to purchase the interests of another

- **Intellectual property provisions**- might be a separate document which clearly determines all intellectual right (e.g. IP, technology, software, know-how)

If the joint venture is international which will be the case for ORIGIN the agreement should cover many other issues such as foreign currency conversion, government regulations, import policies and meet international business standards and take consideration of cultural differences between the parties.

1.1. Pros and cons of joint venture

Advantages	Disadvantages
Different skills sets	Legal disputes
Cooperation	Cultural differences
Access to new markets, new technology, vendors and supply chain	Unequal contribution and communication
Sharing risks and costs	Shared profits
New capacities and expertise	Not fully clear
Greater resources	Differing objectives and results
Flexibility	Tax interests may occur
Low risks for the business of the parties	Potential financial losses
Reducing political friction and improve local/national acceptability	Imbalance in expertise, investment and assets
Creating unique value	Slower decision making
Growing international importance	Potential for disagreement

Table 1 – Pros and Cons of Joint Venture

1.2. State of the art

In this section some JVC approaches are described which could provide fruitful input for establishing the ORIGIN joint venture.

Sony- Ericsson

Sony-Ericsson is a joint venture created in 2001 from Japanese consumer electronics company Sony Corporation and the Swedish telecommunications company Ericsson to make mobile phones and is one of the most famous joint ventures. This joint venture was terminated in 2012 when Sony acquired Ericsson.

Siemens AG and Nokia Corp

Siemens AG of Germany and Nokia Corp of Finland joint venture was created in 2007 with headquarters in Helsinki, Finland. In 2013, Nokia acquired 100% of the company.

Verizon and Vodafone's JV Endeavors

Joint venture with idea created in 2001 by combining Verizon's cellular, PCS, and paging assets with Vodafone's wireless communications technology and marketing, and now they are the most reliable and largest wireless network in the USA.

Mazda and Ford Motor Company (Auto Alliance International)

This joint venture was created in 1992, because of the success of Mazda with its MX/6 model and Ford's Probe model to make a partnership and cooperate. Since that time they have both produced some of the world's top automobile models together, for example Ford Cougar, Ford Mustang or Mazda 6.

AMEC Samsung Oil & Gas, LLC.

Samsung Heavy Industries and Samsung Engineering created a joint venture with AMEC in 2012. This partnership, under the name of AMEC Samsung Oil & Gas, LLC has provided design and project management services to big oil companies including, Shell, BP, Petrobras, and ConocoPhillips.

To sum up, joint venture is a good idea if particular entities feel strong enough within the market to maintain their position and to grow, but also for small parties which want to grow together and look for new opportunities. In both cases we may distinguish some pros and cons but often the advantages outweigh the disadvantages. International joint venture gives even more opportunities because entities may search unique markets and create a unique know-how which might be more extended than a local/national one.

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A new project/company should give profits to all parties in the interests of fairness and the benefit and motivation of all. . Joint venture gives many opportunities but it is important to choose partners carefully and prepare a clear and fair agreement. An agreement seems to be necessary when there are many parties within the proposed joint venture and when particular entities are situated far away from each other and when a project includes many diverse opportunities . From the examples above it is apparent that even big JV entities can be taken over by others parties to the joint venture, but some thrive for extended periods of time.

2. Business Model for the ORIGIN CEMS

Within D7.5 a comprehensive analysis of business model opportunities for the ORIGIN CEMS and the Joint Venture was performed. This led to the consortium taking the decision to concentrate on two complementary business models . The first one is an informational demand response system by including the opportunity to extend it to an actuated demand response system as soon as dynamic tariffs become more attractive for end customers. The second business model is the prediction of renewable energy generation. Hence, the ORIGIN Joint Venture will be established to commercialize these two business models. Details of the business models are explained in D7.5.

3. Joint Venture Company Approach

Ownership structure

The project team agreed on the ownership structure of the Joint Venture as a “Heads of Term”. The ownership shares will be distributed according to their overall budget share in the project (Table 2).

Partner	Share
HWU	12
ISA	6
UoS	9
FISE	4
ITI	3
FF	3
TAM	3
DAM	3

Table 2 – Ownership structure.

IP from different partners will be considered differently. Accordingly details will not be determined until February 2015.

The project team favors a contractual JV instead of an equity based JV agreement. As long as the ORIGIN system is not evaluated the risk of establishing an equity based JV is quiet high since the efforts to shape the ORIGIN CEMS for real market applications are still unknown.

However, at the current stage and without knowing the evaluation results of the field test it is still too early to justify the creation of a Joint Venture Company.

Moreover, the project team already suggests two proposals for setting up a model for commercializing the ORIGIN CEMS.

First Model based on Business JVC

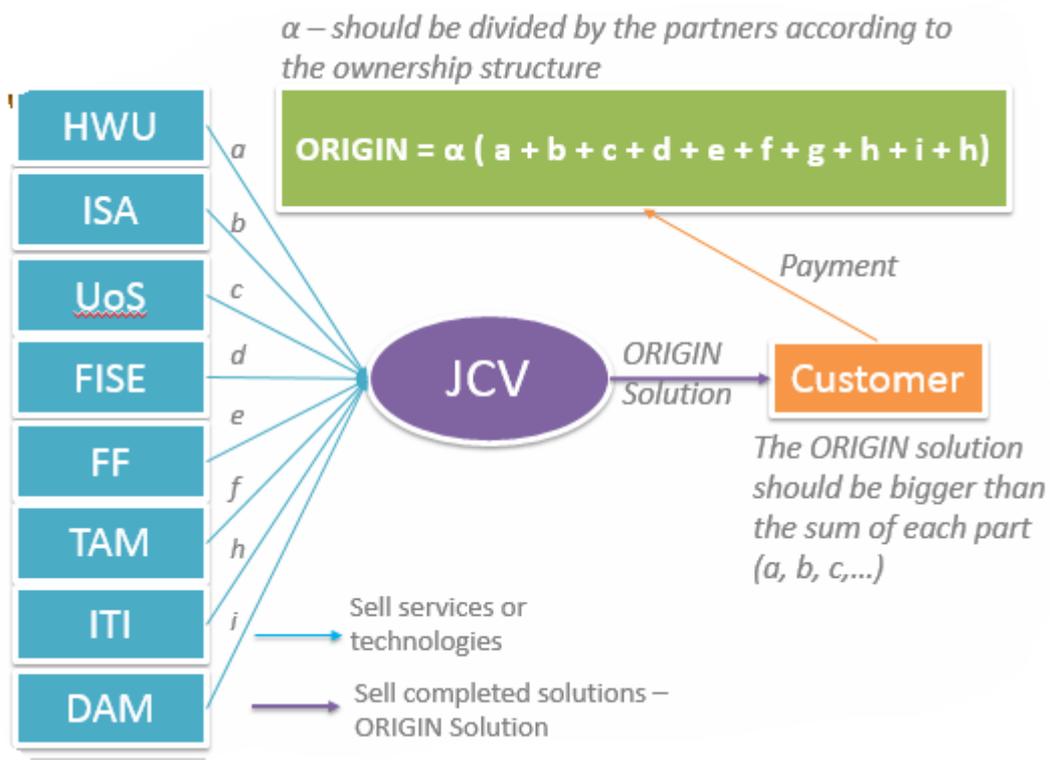


Figure 1 – ORIGIN Business Model based on JVC

ORIGIN = $\alpha (a + b + c + d + e + f + g + h + i + h)$, where α – should be divided by the partners according to the ownership structure. It simply means that as a Joint Venture all parties will sell the

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ORIGIN CEMS being an informational demand response system. The ORIGIN solution should be bigger than the sum of each part (a, b, c, ...).

In practice it needs to be considered that a major part of the consortium consists of research and applied research organisations. These institutions will not act as real sales actors. As a matter of fact the goal will be to compile a small, flexible and powerful team with members coming from the shareholders of the ORIGIN Joint Venture. The team should include a managing director being responsible for business development, acquisition of risk capital, marketing and sales. It also in the beginning should include at least one or two technical experts (one engineer, one software specialist) being responsible to further develop and refine the ORIGIN CEMS for real market applications. The Joint Venture team will perform a close collaboration with the research institutions in order to ensure that the ORIGIN CEMS will include the latest state of IP developments and to guarantee a fruitful innovation transfer process. Of course, the Joint Venture Company will be placed in the close vicinity of one of the research organisations and use laboratory environments and technical equipment to shape the ORIGIN CEMS for real market applications. Accordingly details will not be determined and fixed until September 2015.

Second Model based on Business JVC- Partner

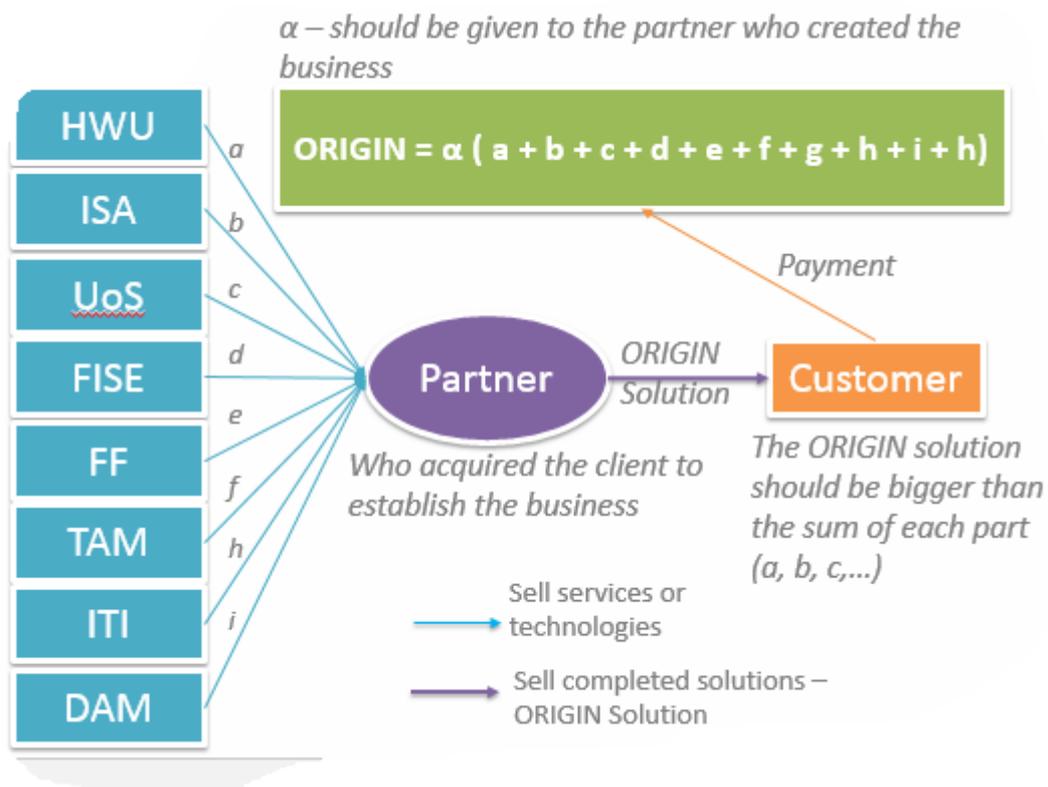


Figure 2 – ORIGIN Business Model based on JVC Partnership

ORIGIN = α (a + b + c + d + e + f + g + h + i + h), where α – should be given to the partner who created the business. It simply means that all Parties will sell services and technologies to create a partner, who acquired the client to establish the business. A new created partner should sell the ORIGIN demand response solution and the renewable energy prediction service. This will go to the customer and is bigger than the sum of each part.

Within the next few months the project team will keep the second model in mind as an alternative option. Currently, the team favors the first JVC model.

4. Attachment: Joint venture agreement for ORIGIN

This Joint Venture Agreement (the "Agreement"), is made and entered into as of this (...) day of (...), 201..., by and between: Heriot-Watt University, with registered offices at UK EH14 4AS, Edinburgh, Scotland, United Kingdom, with tax identification nºSC000278? –charity number, represented by Edward Owens and David Corne, hereinafter referred to as "Project Coordinator/ Project Leader/ Consortium Leader/ Chef de File/ Party/ Member/ HWU",

And

ISA- Intelligent Sensing Anywhere, with registered offices at Instituto Pedro Nunes Rua Pedro Nunes- Edifício D 3030-199 Coimbra, Portugal, with tax identification nº. 502448911, represented by Jorge Landeck, Paulo Santos and Edmundo Monteiro, hereinafter referred to as "Party/ Member/ ISA",

And

University of Strathclyde, with registered offices at 16 Richmond Street, Glasgow G1 1XQ Scotland, United Kingdom, with tax identification nº. GB261339762, represented by Stuart Galloway, Paul G. Tuohy, Joseph A. Clarke and Bruce Stephen, hereinafter referred to as "Party/ Member/ UoS",

And

Instituto Tecnológico de Informática, with registered offices at Camino de Vera, s/n - 46022 Valencia, Spain, with tax identification nº. G96278734, represented by Stefan Beyer, Víctor Miguel Sempere Payá and Juan Carlos Garcia Ortiz, hereinafter referred to as "Party/ Member/ ITI",

And

Fraunhofer Gesellschaft for its Institute for Solar Energy Systems ISE, with registered offices at Heidenhofstr. 2, 79110 Freiburg Germany, with tax identification nº. DE129515865, represented by Thies Stillahn and Thomas Erge, hereinafter referred to as "Party/ Member/ FISE",

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And

The Findhorn Foundation, with registered offices at The Park, Findhorn, IV36 3TZ Moray, Scotland, with tax identification nº. SC007233? -charity number, represented by Kosha Joubert, Michael Shaw and Alex Walter, hereinafter referred to as “Party/ Member/ FF”,

And

ILOS- Peace Research Centre LDA, with registered offices at Monte Serro, 7630-392 Relíquias, Portugal with tax identification nº. 503436445, represented by Douglas Baillie and Martin Schindele, hereinafter referred to as “Party/ Member/ TAM”,

And

Solera SV, with registered offices at **Via Baldissero, 21 - 10080 Vidracco, Italy**, with tax identification nº. **08853420019 ?**, represented by **Valter Marengo and Iginio Memé**, hereinafter referred to as “**Party/ Member**”.

And collectively referred to as “the Parties”

WHEREAS:

(...);

(...);

The Parties recognize each other as highly valued partners, capable of creating and optimizing synergies arising from their activities and experience, intending to join forces, combining their skills, know-how and resources;

In order to achieve the proposed objective, the parties establish in this Agreement, the fundamental principles of the relation created between the parties.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

First Clause

(Objective)

The objective of the Joint Venture shall be as follows:

The ORIGIN Joint Venture Company will be established to commercialize the ORIGIN central energy management system (CEMS) through a business model which covers two value propositions: The first one is to provide an informational demand response system to end customers such as communities, private customers and small to medium industries. The service will also consider actuation modes for prospective features. The second one is to offer a service for predicting renewable energy generation. The ORIGIN Joint Venture will be responsible for business development, establish management structures to further develop and introduce the services to the

market, to increase collaboration between the owners of the company and to finally commercialize the services.

Second Clause
(General Definitions)

The following comprise the general definitions of terms utilized in this Agreement:

Affiliate. An Affiliate of an entity is a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control of such entity.

Capital Contribution(s). The capital contribution to the Joint Venture actually made by the parties, including property, cash and any additional capital contributions made.

Profits and Losses. Any income or loss of the Partnership for federal income tax purposes determined by the Partnership's fiscal year, including, without limitation, each item of Partnership income, gain, loss or deduction.

Consortium. Means the Parties collectively.

Members. Individuals or firms which have agreed to form a consortium in connection with the project.

Lead Member/ Project Coordinator/ Project Leader/ Consortium Leader/ Chef de File. Member which will take the lead in the management of the joint venture's affairs.

Effective Day. The date when all Parties have signed this Agreement.

Business Day. Any day other than a Saturday or Sunday or a public or bank holiday in the United Kingdom, Portugal, Spain and Italy.

Intellectual Property Rights. They are patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

Confidential Information. All information that is marked as Confidential and that is disclosed by one Party to the others for the purpose of conducting the Project, including, without prejudice to the generality of the foregoing, any ideas.

Third Clause
(Assignment)

The Parties undertake to cooperate actively with each other to develop the Joint Venture, based on the principles and rules set forth in this Agreement.

It is expressly agreed that the assignment of either party's position in this Agreement on behalf of any entity shall be subject to prior written consent of the other Party. In any case, the assignment by either Party shall also be subject to the prior written unconditional accession of the party to whom the assignment is made, to this Agreement as well as any other contracts concluded by the Parties after signing of this Agreement, under the penalty of rendering the assignment void.

Fourth Clause
(Obligations of the Parties)

The Joint Venture shall keep adequate books and records at its place of business, setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Joint Venture.

(...) is responsible for all operations and decisions of the Joint Venture and will be compensated for providing various services.

Each Party shall use all best efforts to ensure the accuracy of any information or materials it supplies hereunder and promptly to correct any error therein of which it is notified.

Each Party agrees not to issue any press releases or other such publicity materials relating to the work of the Joint Venture without obtaining prior approval from the other Parties.

(...)

Fifth Clause
(Capital and Allocations)

The Capital Contribution to the Joint Venture shall be made by the Parties in accordance with the following:

(Describe capital contribution)

Total budget of the Joint Venture (ORIGIN) in whole duration of the project is 2,609,642.00 EUR.

These estimated costs are divided into Parties; which commit to provide the following shares:

Heriot-Watt University: 906,356.00 EUR (35%);

University of Strathclyde: 603,671.00 EUR (23%);

Fraunhofer Gesellschaft for its Institute for Solar Energy Systems ISE: 265,188.00 EUR (10%);

ISA- Intelligent Sensing anywhere: 230,922.00 EUR (9%);

Instituto Tecnológico de Informática 200,888.00 EUR (8%);

The Findhorn Foundation 132,799.00 EUR (5%);

ILOS- Peace Research Centre LDA: 145,025.00 EUR (5%);

Solera SV: 124,793.00 EUR (5%).

Commencing on the date hereof and ending on the termination of the business of the Joint Venture, all profits, losses and other allocations to the Joint Venture shall be allocated as follows at the conclusion of each fiscal year:

Sixth Clause

(Rights and Duties of the Parties)

(...) shall have full, exclusive and complete authority and discretion in the management and control of the business of the Joint Venture for the purposes herein stated and shall make all decisions affecting the business of the Joint Venture. At such, any action taken shall constitute the act of, and serve to bind, the Joint Venture.

(...) shall manage and control the affairs of the Joint Venture to the best of its ability and shall use its best efforts to carry out the business of the Joint Venture.

(...) shall not participate in or have any control over the Joint Venture business nor shall it have any authority or right to act for or bind the Joint Venture.

Seventh Clause

(Agreements with Third Parties and with Affiliates of the Parties)

Affiliates of the parties to this Agreement may be engaged to perform services for the Joint Venture. The validity of any transaction, agreement or payment involving the Joint Venture and any Affiliates of the parties to this Agreement otherwise permitted by the terms of this Agreement shall not be affected by reason of the relationship between them and such Affiliates or the approval of said transactions, agreement or payment.

The parties to this Agreement and their respective Affiliates may have interests in businesses other than the Joint Venture business. The Joint Venture shall not have the right to the income or proceeds derived from such other business interests and, even if they are competitive with the Partnership business, such business interests shall not be deemed wrongful or improper.

Eighth Clause

(Payment of Expenses)

All expenses of the Joint Venture shall be paid by (...) and shall be reimbursed by the Joint Venture.

Ninth Clause**(Indemnification of the Parties)**

The Parties to this Agreement shall have no liability to the other for any loss suffered which arises out of any action or inaction if, in good faith, it is determined that such course of conduct was in the best interests of the Joint Venture and such course of conduct did not constitute negligence or misconduct.

The Parties shall each be indemnified by the other against losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by it in connection with the Joint Venture.

Tenth Clause**(Term)**

This Agreement shall be in effect indefinitely, however either Party may terminate the present Agreement by giving (...) (...) days'/months' notice in writing to the other Party.

Any Party may terminate this Agreement forthwith in writing to the other Party in the event of default or breach of any of the terms or conditions of this Agreement and such default or breach (if capable of remedy) shall continue for 30 (thirty) days after such notice, specifying the default or breach and requiring the same to be remedied and indicating the non-defaulting Party's intention to exercise this right of termination, has been given.

The termination due to the breach of the terms of this Agreement or default of the Parties will be deemed effective upon signature of the acknowledgment of receipt by the defaulting party.

In addition, the Parties may terminate the Agreement upon the occurrence of any of the following events:

Either Party shall be dissolved or liquidated due to adverse financial conditions, be declared bankrupt or insolvent, or becomes a party for more than ninety (90) days to proceedings or arrangements involving liquidation, receivership, reorganization or the settlement of its debts;

The sale or other disposition, not including an exchange of all, or substantially all, of the Joint Venture assets;

Mutual agreement of the parties.

Eleventh Clause**(Communication between the Parties)**

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For the purposes of formal resolution and notification in the ambit of this Agreement, the addresses as indicated by both parties at the beginning of this Agreement are valid when sent by registered mail with acknowledgment of receipt.

Amendments to the addresses above will only become effective upon receipt by the parties of their written communication.

All orders, instructions or information given orally should be confirmed in writing, pursuant to the preceding paragraphs within 48 (forty eight) hours.

Twelfth Clause
(General Provisions)

This Agreement constitutes the entire understanding and agreement among the parties hereto with respect to the subject matter hereof, and there are no agreements, understandings, restrictions or warranties among the parties other than those set forth herein provided for.

If any court or authority declares, for any reason, void, invalid or unenforceable any provision, part of a clause or clauses, the remaining provisions or parts of clauses of this Memorandum of Understanding shall remain in force and the Parties must negotiate replacement of that provision by another that restores the initial balance of this Agreement.

The headings, titles and subtitles used in this Agreement are for ease of reference only and shall not control or affect the meaning or construction of any provision hereof.

The parties hereto covenant and agree that they will execute each such other and further instruments and documents as are or may become reasonably necessary or convenient to effectuate and carry out the purposes of this Agreement.

This Agreement shall be governed by _____ Law.

For the resolution of any dispute between the parties which result from differences in interpretation, validity or performance of this Agreement which cannot be amicably resolved by the parties, or that they have not decided to resolve by use of an arbitral tribunal, it is stipulated as the competent court, the Judicial District of Coimbra, with express waiver of any other.

Thirteenth Clause
(Confidentiality)

Each Party hereby undertakes to the other Parties that it shall procure that its employees, agents and sub-contractors shall:

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All information have a confidential nature (whether written or oral) concerning this Agreement and the business affairs of another Party that it shall have obtained or received as a result of the. Not without the prior written consent of the relevant other Party disclose the Information either in whole or in part to any other person save those of its employees, agents and sub-contractors involved in the implementation or evaluation of the joint venture who have a need to know the same for the performance of their duties;

Use the Information solely in connection with the implementation of the Joint Venture and not otherwise for its own benefit or the benefit of any third party.

IN WITNESS HEREOF, the Parties have executed this Agreement in two original counterparts containing 4 (four) pages, to be sent to the addresses above.

city, (...) of (...) 201....

(...)

(...)