

Western Railway

MEMORANDUM OF UNDERSTANDING FOR JOINT VENTURE AGREEMENTMEMORANDUM OF UNDERSTANDING
FOR JOINT VENTURE AGREEMENT

1. This memorandum of understanding executed this ----- day of ----- 20 ----- between ----- (Name of Co.) ----- a company registered under the companies Act 2013 having its registered office at ----- represented through its Director/ Authorized Representative ----- (hereinafter referred to as ----- which expression shall unless repugnant to the context thereof includes its successors) of the FIRST PART.

AND / OR

M/s ----- a partnership firm constituted under the Indian Partnership Act 1932, having its registered office at ----- represented through its partner Shri ----- / Authorized - Representative Shri ----- (hereinafter referred to as ----- which expression shall unless repugnant to the context thereof includes its successors) of the **FIRST PART.**

AND / OR

M/s ----- a proprietary concerned having its registered office at ----- represented through its sole proprietor Shri ----- (hereinafter referred to as ----- which expression shall unless repugnant to the context thereof includes its successors) of **FIRST PART.**

Whereas, the party of the first part i.e. M/s ----- details to be supplied of the expertise in their field.

Whereas, the party of the second part i.e. M/s ----- details to be supplied of the expertise in their field.

Whereas, the party of the third part i.e. M/s ----- details to be supplied of the expertise in their field.

AND whereas, parties to this MOU, have agreed to co-operate with each other to associate jointly and to form a joint venture firm to participate in the WR Tender of Indian Railways. Now, therefore, in consideration of the promises and mutual promises and of the undertaking contained herein, it is hereby agreed between the parties of this MOU as follows :

1. The Purpose of MOU :

M/s ----- and ----- agree to co-operate with each other for the purpose of joint participation in the WR Tender and in the event, the contract is awarded, to jointly execute the contract. The broad interfaces and scope of work of each party is set for the below :

2. The name of the Joint Venture firm shall be -----
3. The parties, hereto, represent that :

(a) They are in possession of all approvals and valid authorization for the purpose of execution of this MOU.

- (b) They have not entered into any agreement / MOU of equal or similar nature with any third party for the WR Tender.

That each of the parties of JV, agrees and undertake to place at the disposal of the JV, benefits of its individual experience, technical knowledge and skill and shall in all respects bear its share of the responsibility, including the provision of information advice and other assistance required in connection with the works. The share and the participation of the partners in the JV shall broadly be follows :

M/s ----- %

M/s ----- %

M/s ----- %

“That M/s ----- shall be the lead member of J.V. firm Number of members in a JV shall not be more than three, if the work involves only one department (say Civil or S&T or Electrical or Mechanical) and shall not be more than five, if the work involves more than one Department. The Lead Member of the JV, shall have a majority (at least 51%) share of interest in the JV. The other members shall have a share of for a minimum of 10% each in case of JV with upto three members and for a minimum of 10% each in case of JV with more than three members. In case of JV with foreign member(s), the lead member has to be an Indian firm/company with a minimum share of 51% (strikes out which is not applicable) and all right, interest, liabilities, obligations, work experience and risks (net profits or net losses) arising out of the contract shall be shared or borne by the Parties in proportionate to these shares. Each of the parties shall bound by guarantees, sureties required for the work as well as its proportionate share in working capital and other financial requirements.

4. The parties to this MOU undertake :

- (a) That after submission of the tender, the MOU shall not be modified/altered/terminated during the validity of the tender including extension and maintenance period except when modification becomes inevitable due to succession laws etc., but in no case the minimum eligibility criteria would be vitiated. In case the tenderer fails to observe/comply with this stipulation, the full Earnest Money Deposit (EMD) shall be liable to be forfeited.
- (b) That after the contract is awarded the constitution of the J.V. Firm shall not be allowed to altered during the currency of contract except when modification becomes inevitable due to Succession Law etc. “but in no case the minimum eligibility criteria would be vitiated”. Failure to observe this stipulation shall be deemed to be breach of contract with all consequential penal action as per contract conditions.
- (c) That with respect of the WR tender neither party, nor any subsidiary company of either Party, nor any joint venture company or any other entity, in which the party/parties is or are in any way interested shall complete together with or through any third Party, nor shall be parties advise, consult for, engage in or otherwise assist in any way person or entity or any affiliate thereof in respect of any orders or contracts related to this tender.
- (d) That none of the members of joints ventures in black listed and / or debarred by the Railways or and other ministry or department PSU (Public Sector Undertaking) of Govt. India/State Govt. from participation /contracts as on the date of opening of bids, either in their individual capacity or in any firm in which they were /are partners. Concealment / wrong information in regard to above shall make the contract liable for determination under Clause 62 of the General Condition of Contract.
- (e) All other documents in terms of explanatory notes in clause 10 of GCC-April 2022 or as per ACS up to date as available in documents.

5. Joint & Several Liabilities :

In respect of the WR tender, all commercial terms shall comply each part on back to basic specifications of the WR Tender or any other mutually agreed terms with the Owner / Customer.

The Parties hereto shall, if awarded the contract for the project for which the Joint Venture is formed, be jointly and severally liable to the Indian Railways for execution of the project in accordance with the contract. The Parties hereto also undertake to be liable jointly and severally for the loss, damages caused to the Indian Railways in course of execution or due to non execution of the contract or part there of arising out of the contract.

6. Shri ----- be authorized partner/person on behalf of the Joint Venture to deal with tender, to sign the agreement of enter in to contract in respect of the said tender, to receive payment, to witness joint measurement of work done, to sign measurement books, and similar such action in respect to WR Tender /Contract. All notices/correspondence with respect to the contracts would be sent only to this authorized partner /person of the J.V. Firm.

7. Notwithstanding anything herein, in respect of the WR Tender, regard to the internal relationship, the inter se liabilities between the parties shall be in proportion to their respective scope of work and shall be subject to the provisions of this MOU.

8. Responsibility :

Each party shall assume and accept full responsibility for its scope of work and the obligations imposed in the contract and in this MOU as if it was, with regard to this Scope of work, an independent partner contracting individual with the Customer. In the event of any defect and damage or any claim arising from the Customer under the Contract or any third party in relation to or as a consequence of any failure to meet the performance specification the Party, within whose Scope of Work the claim arises, shall be entirely responsible for the claim and shall indemnify and hold harmless the other Party from any liability, demand, claim burden cost, expense attorney's fees and costs arising from thereof.

9. Assign ability :

No party to the Joint Venture has right to assign or transfer the interest, right or liability in the contract without the written consent of the other party and that of the Railway.

10. Use of Machinery, Instruments, Labour Force, etc.

The Parties here to undertake that whatever the machinery, instruments, Labour force (including unskilled, skilled, inspectors, Engineer etc.) they possess at the time of entering in to Joint Venture Agreement or which subsequently shall come in their possession and if such machinery, instruments labour force is required for the speedy and efficient execution of the work, the Party / Parties having the control over the said machinery, instrument, labour etc. without having any regard to their share of profit and loss agreed to between the Parties in Joint Venture Agreement shall hand over the same at the disposal of the other party, who is actually executing the work for the purpose of execution of the contract without any hindrances and obstacles.

11. Duration of MOU :

It shall be valid during entire currency of contract including the period of extension, if any and also till the maintenance period is over or till all the contractual liabilities including warranty / guarantee obligations are discharged completely.

12. Applicable Law :

The MOU and any arrangement / agreements regarding the performance shall be construed and interpreted in accordance with and governed by the Laws of India and shall be subject to the exclusive jurisdiction of the courts at the place where MOU is executed / signed between the parties.

13. Settlement of Disputes :

In the event of disputes arising from this MOU, the Parties to the MOU undertake to Endeavour to settle the said disputes amongst them amicably. However, if the parties fail to resolve the disputes amongst them amicably, the said disputes arises out of or in connection with the present MOU shall be resolved THROUGH Arbitration as per the provisions enshrined under the Arbitration and Conciliation.

(Amendment Act, 2015 or/any statutory modifications made thereafter.)

14. All communications or notices provided for herein shall be in the English language and be delivered, mailed, or tele-faxed to the parties addresses as indicated below :

M/s -----

M/s -----

All correspondence and notice to the Joint Venture firm shall be addressed to the Lead Member i.e. M/s ----
-----/ Shri ----- at the address stated herein
below :

M/s -----

Such communication or notices shall be deemed to have been duly given when so delivered or, if mailed, when received at destination.

15. Each Part shall have full and sole responsibility to bear the expense of and effect the payment of any taxes, duties, special insurance, fees or assessments of any nature whatsoever (including personal income taxes levied or imposed or any of its employees or personnel or any of its sub-contractor's employees or personnel) including penalties and interest, if any levied in connection with the execution of this MOU.

In witness whereof, the Parties have caused this MOU to be executed by their respective authorized representative on the date and year mentioned herein above.

Signature:

Signature:

Signature:

Shri -----of Shri -----of Shri -----of

M/s -----M/s -----M/s -----

Witnesses:

1) Name :-

Address :-

2) Name :-

Address :-