

FORMAT OF
MEMORANDUM OF UNDERSTANDING
FOR
JOINT VENTURE AGREEMENT

This Memorandum of understanding is made at (name of place) on this _____ day of _____ between/among

(i) M/s (Name of Company) _____, a company registered under the Companies Act 1956 having its registered office at _____ represented through its Authorized Managing Director/Director/Managers of the company Sri _____ (hereinafter referred to as _____ which expression shall unless repugnant to the context thereof includes its successors) of the FIRST PART

OR

(i) M/s (name of partnership firm), a partnership firm registered under the Indian Partnership Act 1932, having its registered office at _____ represented through its one of the authorized partner Shri _____ (hereinafter referred to as _____ which expression shall unless repugnant to the context thereof includes its successors) of the FIRST PART

OR

(i) M/s (name of proprietorship firm) having its registered office at _____ represented through its proprietor Sri _____ (hereinafter referred to as _____ which expression shall unless repugnant to the context thereof includes its successors) of the FIRST PART

AND

(ii) M/s (Name of Company) _____, a company registered under the Companies Act 1956 having its registered office at _____ represented through its Authorized Managing Director/Director/Managers of the company Sri _____ (hereinafter referred to as _____ which expression shall unless repugnant to the context thereof includes its successors) of the SECOND PART

OR

(ii) M/s (name of partnership firm), a partnership firm registered under the Indian Partnership Act 1932, having its registered office at _____ represented through its one of the authorized partner Shri _____ (hereinafter referred to as _____ which expression shall unless repugnant to the context thereof includes its successors) of the SECOND PART

OR

(ii) M/s (name of proprietorship firm) having its registered office at _____ represented through its proprietor Sri _____ (hereinafter referred to as _____ which expression shall unless repugnant to the context thereof includes its successors) of the SECOND PART

AND

(iii) M/s (Name of Company) _____, a company registered under the Companies Act 1956 having its registered office at _____ represented through its Authorized Managing Director/Director/Managers of the company Sri _____ (hereinafter referred to as _____ which expression shall unless repugnant to the context thereof includes its successors) of the THIRD PART

OR

(iii) M/s (name of partnership firm), a partnership firm registered under the Indian Partnership Act 1932, having its registered office at _____ represented through its one of the authorized partner Shri _____ (hereinafter referred to as _____ which expression shall unless repugnant to the context thereof includes its successors) of the THIRD PART

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OR

(iii) M/s (name of proprietorship firm) having its registered office at _____ represented through its proprietor Sri _____ (hereinafter referred to as _____) which expression shall unless repugnant to the context thereof includes its successors) of the THIRD PART

Whereas, East Central Railway has invited Tender Nos. _____ hereinafter referred to as the ECR Tender for the work of _____ hereinafter referred to as the said work.

Whereas, the member of the first part i.e. M/s. _____ (details to be supplied of the expertise in their field).

Whereas, the member of the second part, M/s _____ (details to be supplied of the expertise in their field).

Whereas, the member of the third part, M/s _____ (details to be supplied of the expertise in their field).

AND whereas members 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 Tender no. _____ dt _____ E.C.Railway.

Now, therefore, in consideration of the premises and mutual promises and of the undertaking contained herein, the constituent members are hereby agreed as follows: -

1. The purpose of MOU: -

M/s. _____ and _____ agree to co-operate with each other for the purpose of joint participation in Tender no. _____ dt _____ of E.C.Rly. 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 forth below:-

2. The name of the Joint venture firm shall be _____
3. The constituent members, hereto, represent that: they are in possession of all approvals and valid authorization for the purpose of execution of this MOU.
4. That each of the members of the 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 _____ %

5. Lead Member:

In respect of tender no. _____ dt _____ of E.C.Railway M/S _____ shall be a lead member who has a majority (at least 51%) share of interest in the JV firm.

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6. The constituent members to this MOU undertake:

- a) That after submission of the tender, the MOU shall not be modified/alterd/terminated during the validity of the tender except when modification becomes inevitable due to succession laws etc., but in no case the minimum eligibility criteria would be vitiated. The members to this MOU further agree that the Lead Member will continue to be the Lead Member of J.V. Firm.
- b) That after the contract is awarded the constitution of the J.V. Firm shall not be 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.
- c) No any member of J.V. firm shall participate in this tender either in individual capacity or as a member of another JV. Firm.

7. **Joint and several liabilities:**

In respect of tender no. _____ dt _____ of E.C.Railway, all terms shall be complied by constituent members on back-to-back basis as per specifications of the Tender no. _____ dt _____ of E.C.Rly or any other mutually agreed terms with the E.C Railway. The members 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 members 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 thereof or arising out of the contract.

8. **Authorized member:**

Shri _____ shall be authorized member on behalf of the Joint Venture to deal with tender, to sign the agreement or enter into 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 of tender no. _____ dt _____ of E.C.Railway. All notices/correspondence with respect to this contract shall be sent only to this authorized member of the J.V. Firm on the address stated herein below:-

M/s. _____

Such communications or notices shall be deemed to have been duly served/given to all constituent members/JV firm when so delivered/received.

9. The constituent members agree that with respect of tender no. _____ dt _____ of E.C.Railway neither members, nor any subsidiary company of either member, nor any joint venture company or any other entity, in which the member /members, or are in any way interested, shall compete together with or through any third party, nor shall the members advise, consult, for engage in or otherwise assist in any way any person or entity or any affiliate thereof in respect of any order or contracts related to tender no. _____ dt _____ of E.C.Railway.

10. **Responsibility**

Each member 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 its Scope of Work, an independent partner contracting individually with the E.C.Railway. In the event of any defect and damage or any claim arising from the E.C.Railway 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.

11. **Assignability**

No member 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 members and that of the E.C.Railway.

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12. Machinery, Instruments, Labour Force etc.

The members hereto undertake that whatever the machinery, instruments, Labour force (including unskilled, skilled, inspectors, Engineers etc.) they possess at the time of entering into Joint Venture Agreement or which subsequently shall come in their possession, the member/members having the control over the said machinery, instrument, labour force etc will have no objection when these are utilized by the JV firm for the purpose of execution of the contract without any hindrance and obstacle.

13. 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.

14. Applicable Law:

This 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 PATNA.

15. Settlement of Disputes:

In the even of disputes arising from this MOU, the constituent members to the MOU undertakes to endeavor to settle the said disputes amongst them amicably. However, if the members fail to resolve the disputes amongst them amicably, the said disputes arising out of or in connection with the present MOU shall be resolved through Arbitration as per the provisions enshrined under the Arbitration and Conciliation Act, 1996 or/and amendments thereof.

16. Each member 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 on any of its employees or personnel or any of its sub-contractor's employees or personnel)

17. The members to this MOU declares and certifies that they have not been black listed or debarred by Railways or any other Ministry/Department of the Govt. of India/State Govt. from participation in tenders/contract in the past either in their individual capacity or the JV firm or partnership firm in which they were member/partners.

In witness whereof, the constituent members have caused this MOU to be executed by their respective authorized representatives on the date and year mentioned here in above.

Signature: -

Shri _____ of

M/s. _____

Signature:-

Shri _____ of

M/s. _____

Signature: -

Shri _____ of

M/s. _____

Witnesses: -

1) Signature:

Name: -

Address:-

1] Signature:

Name

Address:

1] Signature:

Name

Address:

2) Signature::

Name:

Address:-

2] Signature:

Name: -

Address:

2] Signature:

Name::

Address:

(Note: This Performa is not exhaustive and can be changed/amended at the discretion of the Railway.)