



**Western Railway HQ
Churchgate,
Mumbai-400 020**

No. WR-HQ0ENGG(WWTC)/34/2021

Dated:29.06.2021

**CAO(C),
DRM BCT,BRC,ADI,RTM,RJT,BVP
CWM-SBI, CE-CPOH,CWM-PL/MX/PRTN/DHD/BVP**

Sub: Proforma for "Memorandum of understanding" for Joint Venture firms.

For Joint Venture firms a "Memorandum of Understanding" is essentially required to be included in the tender documents and has legal implications. Different proformas are being used by all the field units and need was felt to have standard and uniform proforma for memorandum of understanding for Joint ventures to be included in the tender documents, to avoid legal complications.

Please find enclosed along the letter a standard proforma for Memorandum of understanding which has been legally vetted ,to be included in tender documents for Joint Venture firms for information and necessary action please.

(Manoj R Goyal)

Deputy Chief Engineer(Works)

ANNEXURE.....

PROFORMA

MEMORANDUM OF UNDERSTANDING FOR JOINT VENTURE AGREEMENT

In case of joint venture firms, the "Memorandum of Understanding for Joint Venture Agreement" as per proforma below on non-judicial stamp of Rs. (Cost as per the rules of the state in which work is to be executed) should be uploaded.

- This memorandum of understanding executed thisday of.....20..... between (Name of Co.) a company registered under The Companies Act 1956 / The Companies act 2013 having its registered office at.....having GST No.....and PAN No..... represented through its Director/ Authorized Representative..... (hereinafter referred to aswhich 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..... having GST No.....and PAN No.....represented through its Partner Shri.....Authorized Representative Shri(hereinafter referred to aswhich expression shall unless repugnant to the context thereof includes its successors of the FIRST PART/SECOND PART.

AND/OR

M/s.....a proprietary concern having its registered office athaving GST No.....and PAN No.....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/SECOND PART/THIRD 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 M/s.....details to be supplied of the expertise in their field.

Whereas, the party of the Third partM/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 Tender No..... of Western Railway 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:

The purpose of MOU

M/s, and agree to co-operate with each other for the purpose of joint participation in the Tender No. of Western Railway of Indian Railways 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:

.....

- (1) The name of the Joint Venture firm shall be
- (2) The parties, hereto, represent agree and undertake 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 Tender No..... of Western Railway of Indian Railways.
 - (c) 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:

SN	Name of constitution of	Share of interest in
1		
2		
3		

- (d) "That M/s shall be the lead member of JV firm who shall have a majority (at least 51%) share of interest in the JV firm. The other members shall have a share of not less than 20% each in case of JV with upto three members and not less than 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

- (e) 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.
- (3) The parties to this MOU undertake:

 - (a) That after submission of the tender, the MOU shall not be
 - (b) modified/alterd/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.
 - (c) 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". Further failure to observe this stipulation shall be deemed to be breach of contract with all consequential penal action as per contract conditions.
 - (d) 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 interest, 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.
 - (e) That none of the members of joint ventures is black listed and/or debarred by the Railways or any other ministry or department of Govt. of India/State Govt. from participation in contract/under in the past either in individual capacity or the JV Firm or partnership firm in which they were/are members/partners.
- (4) Joint & Several Liability: In respect of the WR Tender, all commercial terms shall comply each part on back-to basis 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 thereof arising out of the contract.

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- (5) Shri Shall be authorized partner/person 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 in the name of JV, to witness joint measurement of work done, to sign measurement books, and similar such action in respect of WR tender/Contract. All notices/ correspondence with respect to the contracts would be sent only to this authorized partner/person of the JV Firm. (All the above actions shall be in the name and on behalf of JV).
- (6) Notwithstanding anything herein, in respect of the WR Tender, with 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.
- (7) It is agreed by the parties to this JV that all the relevant extant policy guidelines shall be followed by the Joint Venture.
- (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 individually 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) Assignability: No party to the Joint Venture has right to assign or transfer the interest, right or liability in the contract without the prior 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, Engineers etc.) they possess at the time of entering into 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 force 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 obstacle.
- (11) Duration of MOU: It shall be valid during entire currency of the 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) It is agreed by the parties to the JV that they shall always indemnify Rly administrations against all actions, suits, claims demands and proceedings or any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Joint Venture in connection with the performance of it's obligation under this MOU or agreement with the Rly administration during or on the cessation of the said agreement or MOU.

(13) 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.

(14) Settlement of Disputes: In the event of disputes arising from this MOU, the Parties to the MOU undertakes to endeavour to settle the said disputes between/amongst them amicably. However, if the parties 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/ any statutory modifications made thereafter.

(15) 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 notices 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.

(16) 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.

(17) 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:

Shri.....of

M/s

Witness: -

Name:

Address:

Signature:

Shri.....of

M/s

Witness: -

Name:

Address:

Signature:

Shri.....of

M/s

Witness: -

Name:

Address: