

## **MEMORANDUM OF UNDERSTANDING**

**(To be signed on Rs. 100/- Non judicial stamp paper)**

This Memorandum of Understanding (hereinafter referred to as the "MOU") is made and entered at ..... into this day of .....

### **BY AND BETWEEN**

AB, a company within the meaning of the Companies Act, 1956 having its registered office at ...../a Partnership firm having its offices at...../a Proprietorship concern having its office at .....Represented by its Managing Directors/Partner/Proprietor which expression shall unless excluded by or repugnant to the context be deemed to mean and include its successors and assigns (hereinafter referred as AB) of the **FIRST PART**.

### **AND**

CD, a company within the meaning of the Companies Act, 1956 having its registered office at...../a Partnership firm having its offices at ...../a Proprietorship concern having its office at.....Represented by its Managing Directors/Partner/Proprietor which expression shall unless excluded by or repugnant to the context be deemed to mean and include its successors and assigns (hereinafter referred as CD) of the **SECOND PART**.

### **AND**

EF, a company within the meaning of the Companies Act, 1956 having its registered office at...../a Partnership firm having its offices at...../a Proprietorship concern having its office at .....Represented by its Managing Directors/Partner/Proprietor which expression shall unless excluded by or repugnant to the context be deemed to mean and include its successors and assigns (hereinafter referred as EF) of the **THIRD PART**.

The First Part, Second Part and Third Part hereinabove together are hereinafter referred to as "The parties".

WHEREAS the parties hereto have agreed to enter into a Joint venture for the purpose of participation of Bid in respect of the Tender No..... for (hereinafter referred to as the said Tender) invited by the Dy. Chief Project Manager(Gatishakti Unit), Engg., Sealdah, Eastern Railway (here inafterreferred to as "Employer")

AND WHEREAS in the event of the joint venture being successful in its bid, the parties have agreed to perform the contract in accordance with the agreed terms and conditions thereof and in the spirit of mutual Co- operation to achieve the objective of this joint venture to the full satisfaction of the Employer.

NOW, therefore, for and in consideration of the foregoing premises and other considerations and covenants hereinafter set forth, the parties hereby agree as follows

## **ARTICLE 1 Form of Agreement**

That a Joint Venture is formed herein by the said (1) AB (2) CD.....AND (3) EF ..... and to be carried out in the name and style of \_\_\_\_\_(JV).

The Parties shall jointly prepare and submit tender documents for the said Contract and shall jointly perform the said Contract if any contract is awarded to the Joint Venture and shall be jointly and severally liable to the Employer for the contract.

The Principal place of the office of the joint venture shall be situated at the office of..... And for the purpose of all correspondence the address is as follows.....

## **ARTICLE 2 Lead Partner**

The parties have agreed to appoint AB/CD/EF as the lead partner of the Joint Venture for the performance of the said contract who are herein nominated by the parties to the Joint Venture as authorized representative for and on behalf of the Joint Venture during the qualification and bidding periods and in the event the Project is awarded to Joint Venture during the contract execution AB/ CD/ EF in the capacity of lead Partner are authorized to incur liabilities and receive instructions for and on behalf of any all the parties to Joint Venture or its constituents.

In connection with the contract, if necessary, the parties shall take decisions by mutual consent.

## **ARTICLE 3 Participation of Share**

3.1 The Parties agree that their respective participation/ share in the Joint Venture (hereinafter called "Participation share" shall be

..... for AB

..... for CD

..... for EF

## **ARTICLE 4**

4.0 On issue of L.O.A. if awarded the contract an agreement among the members of JV firm will be executed on this basis of the terms and conditions mentioned herein and the said agreement has to be registered before this Registrar of companies under companies Act before this Registrar/ Sub-Registrar under this Registration Act, 1908.

## **ARTICLE 5 Responsibility for Execution of Contracts**

The Parties hereto shall, if awarded the contract for the Project, be jointly and severally liable to Employer for Execution of the project in accordance with General & Special Conditions of the Contract. The parties hereto also undertake to be liable jointly and severally for the loss, damages caused to the Employer in course of execution or due to non-execution of the contractor part thereof or arising out of the contract.

The parties shall be jointly and severally legally liable to the Employer for all obligations arising from and in connection with the bidding process and execution of the said Contract in accordance with the terms and conditions as shall be agreed with the employer.

AB/ CD/ EF shall act as most experienced partner. All the parties shall be responsible for providing key personnel in the discipline of site management general planning and plant operation during the whole period of contract execution, in addition to execution of the work and performance of the contract in accordance with the contract agreement.

As agreed between themselves, each party shall be fully responsible for the fulfillment of all obligations of its scope of the work for the said Contract to be executed subject to the Agreement between the parties and shall hold harmless and indemnified against any damage arising from its default or non- fulfillment of such obligations.

If any party fails to perform its obligations during the execution of the said contract and to cure such breach within the period designated by the non-defaulting party, then the other parties shall have the right to take up the work, the right and responsibilities of the defaulting party at the cost and risk of the defaulting party.

#### **ARTICLE 6 Duration of the Joint Venture Agreement**

This MOU shall come into effect from the date it is executed and remain valid till all the matters in connection with the said contract for which this agreement is executed are over and settled and shall not be terminated unless and until this work awarded under this contract is completed in all respect and also till the maintenance period is over or till all this contractual liabilities are discharged completely.

This MOU shall be automatically terminated in case the L.O.A. is not AWARDED TO THE joint venture.

#### **ARTICLE 7 Governing laws**

7.0 This agreement shall be governed and constructed in accordance with the laws of the Republic of India.

#### **ARTICLE 8 Authorised Member**

All the joint ventures partners i.e. AB, CD and EF nominate, constitute, authorize and appoint..... Director/ Partner/ Proprietor of ..... 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 the said tender/ contract.

All the correspondences with respect to the contract would be sent only to Sri..... authorized member of ..... JV by Sri ..... authorized member of the JV. In case of any dispute/ deference arises with the Railway Administration then Sri..... Authorized member of the JV firm will be authorized to refer the claim to the authorized on behalf of (JV) in terms of General Conditions of Contract and Special condition of Contract of the Railway and any proceedings will be dealt by..... Only, before the Arbitration during the Arbitration proceedings and before any Courts of Law in the country.

#### **ARTICLE 9 Assignability**

9.0 No party to the Joint Venture has the 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 Employer in respect of the said tender/ contract.

## **ARTICLE 10 Use of Machinery, Instruments, Labour Force etc.**

10.0 The parties hereto undertake that whatever the machinery, instruments, labour force, (including unskilled, skilled, inspectors, engineers etc.) they possess as 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 said machinery, instruments, 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 purpose of execution of the contract without any hindrance and obstacle.

## **ARTICLE 11 Bank Account**

11.0 One or more Joint Venture account shall be opened in the name of the Joint Venture with such Bank or Banks and shall be operated by both the parties jointly. Payment should be made by the Railways in that particular Joint Venture Bank account only, which will be intimated by the parties jointly to the Railways after opening the said Joint Venture Bank Account.

## **ARTICLE 12 Tender/Estimation Work**

12.1 Preparation for the tender/ bid will be co-ordinated by as agreed from time to time.

12.1 All the parties shall co-operate on the estimation work for the project.

12.3 Any expenses and costs incurred by any party for and in connection with the preparation, submission negotiation etc. up to and for bidding process shall be borne individually by the party incurring the same except when all the parties agree otherwise.

## **ARTICLE 13 Arbitration**

All disputes or differences which may arise out of in relation to or in connection with this agreement shall be settled amicably between the parties hereto.

However, in case any dispute or difference is not settled each party shall have the right for arbitration and Conciliation Act 1996 and rules framed there under. Arbitration should be held within the jurisdiction of Kolkata.

None of the parties shall be entitled to suspend the performance of the agreement merely by reason of the reference of a dispute to arbitration and the parties shall continue with the execution of the Project irrespective of the Arbitration proceedings.

We the partners of JV firm shall have no objection if Earnest Money Deposit/Performance Guarantee is forfeited by Railway due to non-compliance, non-observance and/or any deviation from stipulated terms and conditions as indicated in clause 31.9 of Instruction for submitting the Tenders as Joint Venture Firms.

## **DECLARATION:**

"All the members of the certify that we are not black listed or debarred by Railways or any other Ministry/Department/PSU (Public Sector Undertaking) of the Govt. of India/State Govt. from participation in Tenders/Contract on the date of opening of bids either in their individual capacity or as a member of the ..... (JV) firm in which they were /are members".

**IN WITNESS WHEREOF** the authorized representatives of the parties hereto have executed this agreement on the day, month and year first above written.

**WITNESS:**

1.

2.

**FIRST PART**

**SECOND PARTY**

**THIRD PARTY**