

ANNEXURE-**MEMORANDUM OF UNDERSTANDING FORMAT FOR J.V. FIRMS****(Applicable for a tender value costing more than Rs. 10 .00 Crs. only)**

(To be executed on non-judicial stamp paper of appropriate value in accordance with relevant stamp Act. The stamp paper is to be issued in the name of the Joint Venture Firm)

This MOU is made and executed on this _____ day of _____ 20...

Between

1. M/s. _____ represented by its _____ Sri _____ S/o. _____ aged about _____ years, Occupation _____ R/o. _____ hereinafter called the, Lead Member, which term shall means and includes his heirs, successors, Legal representatives, assignees, etc.
2. Sri _____ S/o. _____ aged about _____ years, Occupation _____ R/o. _____ hereinafter called the second member, which term shall means and includes his heirs, successors, Legal representatives, assignees, etc.
3. Sri _____ S/o. _____ aged about _____ years, Occupation _____ R/o. _____ hereinafter called the third member which term shall means and includes his heirs, successors Legal representatives, assignees, etc.
4. Sri _____ S/o. _____ aged about _____ years, Occupation _____ R/o. _____ hereinafter called the fourth member, which term shall means and includes his heirs, successors Legal representatives, assignees, etc.

AND

5. Sri _____ S/o. _____ aged about _____ years, Occupation _____ R/o. _____ hereinafter called the fifth member, which term shall means and includes his heirs, successors Legal representatives, assignees, etc.

WHEREAS, the South Central Railway, through its Chief Administrative Officer (Construction)/ Chief Engineer (Construction)/ Dy. Chief Engineer (Construction), South Central Railway has invited tenders for the work of _____ vide their Tender Notice No. _____ dated _____.

WHEREAS, the members herein formed a Joint Venture in order to join their expertise to obtain best results from the combination of their individual resources of technical, financial, management and equipments for the benefit of project and in order to submit a joint tender (herein after referred to as "Tender") for the work of _____ as notified by Chief Administrative Officer (Construction), South Central Railway _____ (herein after referred to as "Employer") under Tender Notice No. _____ dated _____.

NOW the members hereto have come to an understanding and agreed to execute the project/ work on the following terms and conditions:

1.0 FORMATION AND TERMINATION OF THE JOINT VENTURE FIRM:

- 1.1 The members herein, under this MOU, have formed a Joint Venture Firm to submit the tender for the above project and execute the contract with the Employer for the project if qualified and contract is awarded.
- 1.2 The members herein expressly agreed that any member of this Joint Venture Firm shall not participate either in individual capacity or as a member of another Joint Venture Firm to participate in this tender.
- 1.3 The name and style of the Joint Venture shall be _____ (with full address of office) hereinafter called the "Joint Venture" all communication regarding the project will be made in the name of the joint venture at the above address with Telephone No. _____.

2.0 SHARE OF PROFIT AND LOSS

- 2.1(indicate the name of the Lead Member) shall be the “**Lead member**” of the JV Firm, for all intents and purposes having majority share (i.e 51% or more) in Joint Venture Firm.
- 2.2 The ‘Members’ resolve that the distribution of share of Financial, Technical, and other responsibilities of the constituent members of JV Firm is as under:
- a) (Indicate name & Address of Lead Member) Share%
Lead Member
 - b) (Indicate name & Address of Constituent Member) Share%
Constituent Member
 - c) (Indicate name & Address of Other Constituent Member) Share%
Other Constituent Member
- 2.3 It is agreed that the Lead Member has to be an Indian firm/company with a minimum share of 51%, 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),
- 2.4 It is agreed that each other member of JV shall have technical and financial capacity of minimum 10% of the cost of work.
- 2.5 It is agreed that Lead Member and other members should fulfill technical, financial eligibility criteria and Bid capacity as per clause no. 17.15 of IRSGCC.
- 2.6 The members of the Joint Venture hereby undertake not to modify the share percentage till the work under the tender is completed to the satisfaction of the Tendering Authority, if the tender submitted by the Joint Venture Firm is accepted.
- 2.7 It is agreed that Earnest Money Deposit (EMD) shall be deposited by JV or authorized person of JV through e-payment gateway.
- 2.8 It is agreed that a copy of the Memorandum of Understanding executed by the JV members shall be submitted by the JV Firm along with the tender.
- 2.9 It is agreed that once tender is submitted by the Joint Venture Firm, the MOU shall not be modified/ altered/ terminated during the validity of the tender. If the JV fails to observe/ comply with this stipulation, the full Earnest Money Deposit (EMD) shall be forfeited. It is also agreed that the constitution of the JV Firm shall not be modified after submission of the tender bid by the JV Firm, except when modification becomes inevitable due to succession laws etc and in any case the minimum eligibility criteria should not get vitiated. Approval for change of constitution of JV Firm shall be at the sole discretion of the Employer (Railways). However, the Lead Member shall continue to be the Lead Member of the JV Firm. Failure to observe this requirement would render the offer invalid.
- 2.10 It is also agreed that on award of contract to this JV Firm, a single Performance Guarantee will be submitted by the Joint Venture Firm as per tender conditions. All the guarantees like Performance Guarantee, Bank Guarantee for Mobilization Advance, Machinery Advance etc., will be submitted only in the name of Joint Venture Firm. Splitting of guarantees amongst the members of the Joint Venture Firm shall not be permitted.
- ## 3.0 Working capital
- 3.1 It is agreed that each member shall contribute working capital for equipment, manpower and material or any expenses to be incurred for execution of the project/work or any other investment required in connection with the execution of the project/work in proportionate to the share capital participation ratio.
- 3.2 It is agreed that each member shall be responsible for the due fulfilment of all conditions, stipulations, obligations expressly included and provided in the submitted tender work as

clarified by the agreement between the members and shall hold harmless and indemnified against any damage arising from its default or non-fulfilment of such obligations etc.

- 3.3 It is agreed that if any member fails to perform its obligations described in the agreement during the execution of the project and to cure such breach within the stipulated period the other member shall have the right to take up the work, interest and responsibility of the defaulting member at the cost of the defaulting member.
- 4.0 **LIABILITY OF JOINT VENTURE MEMBERS:** It is agreed that the members of this Joint Venture Firm are jointly and severally liable to the Railway for execution of the project/work in accordance with General and Special conditions of Contract. The Joint Venture members shall also be liable jointly and severally for the loss, damages caused to the Railways during the course of execution of the contract or due to non execution of the contract or part thereof.
- 5.0 **AUTHORIZED MEMBER:** We, authorize (Indicate lead member or any one of the constituent member of JV Firm nominated as authorized member), as **Authorized Member** represented by their authorized signatory Shri.(indicate the name) to act on behalf of the Joint Venture Firm to deal with the tender, sign the agreement or enter into contract in respect of the said tender/contract, 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.

AND

We do hereby specifically mention that the acts, deeds and things done or got to be done by the authorized member be construed as acts, deeds and things done by the JV firm.

All notices/correspondences with respect to the tender/contract would be sent by Employer (Railways) **only to the authorized signatory of Authorized Member at the address of JV Firm.** All such notices/correspondences sent by Employer shall be legally binding on all the members of the JV Firm.

- 6.0 **Technical and Financial Experience:**
- 6.1 It is agreed that Technical, Financial eligibility and Bid capacity of the JV shall be satisfied by either the 'JV in its own name & style' or 'lead member of the JV' and each other member of JV as laid down in the clause no. 17.15 of IRSGCC.
- 7.0 **Miscellaneous:**
- 7.1 Separate bank account or accounts shall be opened in the name of the Joint Venture in a scheduled or Nationalized Bank of India as decided by the members herein with mutual consent and shall be operated by the authorized member as agreed by the members herein.
- 7.2 It is agreed that all payments and receipts of the Joint Venture shall be in the name of the Joint Venture.
- 7.3 It is certified that all the members of the Joint Venture Firm collectively assert that the Firms/members are not black listed or debarred by any other Ministry / Department of Government of India / Public Sector Undertakings / State Government from participation in tenders/contracts on the date of tender opening of bids either in their individual capacity or Partnership Firm or JV Firm in which they were /are members/partners.
- 7.4 This Joint Venture Agreement shall in all respect be governed and interpreted in accordance with Indian Laws.
- 7.5 **Duration of the Joint Venture Agreement:** It shall be valid during the entire currency of the contract including the period of extension if any and the maintenance period after the work is completed.

- 8.0 This Joint Venture agreement shall not be modified/altered/ terminated during the validity of the tender / contract period. In case the Joint Venture firm fails to observe/comply with this stipulation, the full Earnest Money Deposit shall be forfeited.
- 9.0 It is agreed that constitution of the Joint Venture Firm will not be altered during the currency of the contract except when modifications become inevitable due to succession laws etc., and in any case the minimum eligibility criteria would not be affected. Failure to observe this stipulation will be deemed to be breach of contract and liable for all consequential penal action by the Railways against the Joint Venture Firm as per contract conditions.
- 10.0 It is agreed that on receipt of L.O.A, the members of Joint Venture Firm shall submit to Railways before signing of the contract, a copy of the JV agreement duly registered before the Registrar of the Companies under Companies Act or before the Registrar/ Sub-Registrar under the Registration Act, 1908 (in case of Partnership Firm)/ 'The Companies Act -2013' (in case of Company)/ 'The LLP Act 2008' (in case of LLP). In case this firm fails to observe/comply with this stipulation, the Railways will have a right to forfeit the Earnest Money Deposit besides taking the penal action against the members of the Joint Venture and the Joint Venture Firm.
- 11.0 No member of Joint Venture Firm will assign or transfer the interest, right or liability in the contract without the written consent of the other members and that of the South Central Railway in respect of this tender / contract.

Lead member.

Member -2

Member-3.

Member-4.

Member-5.

WITNESS:

(Name & Address)

1.

2.

NOTARY
