

## JOINT-VENTURE AGREEMENT

### FOR THE CONSTRUCTION OF

\_\_\_\_\_ (“PROJECT”)

The undersigned parties, *[name of party 1]*, with a principal place of business located at *[address of party 1], [name of city], [name of county]*, and *[name of party 2]*, with a principal place of business located at *[address of party 2], [name of city]*, mutually agree to engage in and carry on as Joint Venture (JV), a construction contract as more fully described within.

WHEREAS the parties associate themselves as Joint Venture (JV) for the purpose of

\_\_\_\_\_  
*[title of awarding authority, “Employer”]* with respect to a construction contract pertaining to a project generally described as follows: *[description of construction project]*. A copy of the detailed contract between the contractor and the employer, in which the aforementioned project is described in particularity, is attached as **Exhibit A**.

WHEREAS the parties to this agreement desire that their interest in the services to be rendered, in work to be done under a construction contract pertaining to a project known as *[description of construction project]*.

WHEREAS the parties to this agreement desire that their interest in the services to be rendered, in the work to be done under the aforementioned construction contract and any profits derived from said work performed under said construction contract, and in any liability for losses arising out of the performance of the contract be defined by an agreement in writing.

To carry out the joint venture the parties mutually agree as follows:

## ARTICLE I.

### NAME OF JOINT VENTURE

- 1.1 The work to be performed by the joint venture shall consist of the construction contract and any change orders or supplemental agreements entered into with the Employer in connection with the project known as and located at *[description of construction project]* (hereinafter the “Project”).
- 1.2 The work performed under this agreement shall be performed by the Joint Venture (JV) operating under the name as \_\_\_\_\_ (hereinafter the “Joint Venture”) a *[type of entity e.g. corporation, LLC, partnership, etc.]* organized pursuant to the laws of the state of *[state]* with its primary address located at *[address]*.

## ARTICLE II.

### JOINT AND SEVERAL OBLIGATIONS

- 2.1 The obligations under the construction contract shall be joint and several except as otherwise expressly stated in this Agreement.

## ARTICLE III.

### MANAGEMENT

- 3.1 **General Management Decisions and Obligations.** Each party shall have an equal voice in the determination of (a) bid proposals, (b) general policy decisions (c) substantial changes or deviations in the scope or terms of the construction contract, and (d) any changes to the allocation of profits or losses to the parties. The foregoing shall only be effectuated by unanimous vote of the parties to this agreement. Each party shall have an equal voice in the determination of any matter involving the business of the joint venture until and unless any

provision of Indian Law such as Bankruptcy/Dissolution should become applicable. The parties shall make available, as far as is reasonably necessary and practicable for the performance of the construction contract the benefits of their individual experience, the utmost skill experience and knowledge of their respective organizations, and shall in all respects endeavor to share the responsibility and burden of the performance of the work. To that end each party shall furnish to the project so much of its personnel and equipment as may be required for the performance of the project as it may be able to spare without detriment to its other business.

**3.2 Selection of Designees.** In order to facilitate the handling of all matters and questions in connection with the performance of the construction contract by the parties hereto each party shall designate the following representatives or designees to act for it in all such matters with full and complete authority in its behalf in relation to any matters or things in connection with, arising out of, or relative to, this joint venture, and to act for, and bind, the respective parties appointing such designees to any and all matters or things involving this joint venture and the performance of the construction contract:

\_\_\_\_\_ appoints \_\_\_\_\_ as its designee;

\_\_\_\_\_ appoints \_\_\_\_\_ as its designee.

**3.3** Such representatives/designee may be changed at any time by notice in writing to the other party to this agreement or to the Manager as defined herein. The aforesaid designees have been designated by the parties to act for them with full authority in any matter or thing in connection with, or relating to, this joint venture and the performance of the construction contract, including, but not limited to the negotiation of contracts, the determination of working funds, materials, plant and equipment to be supplied, the manner of performance,

assignment of work between the parties, settlement of disputes with the Employer and with others, changes and modifications in the extent and scope of work, organization and personnel .

**3.4 Action of Designees.** Actions and decisions of the designees shall be by [*percentage vote required*] vote and, as to any and all matters having to do with the joint venture or the performance of the construction contract under this agreement or otherwise, or as to the interpretation of this agreement, or as to any claim or dispute thereunder, such actions shall be final, inclusive and binding on the parties with the same force and effect as if each party has specifically or affirmatively taken such action or decision. The designees shall be given such specific powers in addition to the foregoing as the parties may from time to time delegate and they shall also have the power to delegate to such person or persons as they may determine such of their powers as they deem necessary or convenient in the best interest of the parties hereto. If necessary or desirable, each of the parties hereto shall execute and deliver to their respective designees such powers of attorney as may be required to enable them to properly perform the duties entrusted to them. It is understood and agreed that none of the parties hereto nor any of the designees shall have the power to borrow moneys for, in the name of, or to pledge the credit of, the other party to this agreement or on their joint credit. Meetings of the designees for the transaction of business of the joint-venture may be called at such time and such place, subject to reasonable notice, by either party or by either designee as may be considered necessary or desirable.

**3.5 Limitation of Liability.** No designee shall be liable to the parties by reason of his acts as a representative, except in the case of his gross negligence or fraudulent or dishonest conduct.

**3.6 Project Manager.**

- 3.6.1 The parties designate *[name of individual]* as the Project Manager of the joint venture. The Project Manager shall operate under the direction, control and authority of the designees and shall be responsible for (a) the direction and management of the work in accordance with policies and procedures established by the designees, (b) coordinating the work under the contract, (c) payroll and general operations of this joint venture, (d) necessary contracts, (e) correspondence and troubleshooting with the Owner and its authorized representatives, and any others necessary to complete the work under the construction contract.
- 3.6.2 The Project Manager shall have full general supervisory control over the project and shall make all **day-to-day** decisions concerning general performance of the work, scheduling, deliveries, and purchase of necessary equipment. The Project Manager shall have the authority to incur necessary and reasonable obligations in connection with and for the benefit of the joint venture and the parties to this joint venture as well as the completion and performance of the construction contract, which obligations shall be borne by the parties in accordance with the percentages set forth herein. Such obligations shall include salaries, traveling, and other expenses paid by the project manager to those of *his/her* employees who are assigned to the performance of the project.
- 3.6.3 The Project Manager shall have the power, in the name of the parties, to execute and deliver purchase orders, rental agreements, subcontracts, and other agreements, except that where any single commitment exceeds INR/\$\_\_\_\_\_ in amount, the Project Manager shall obtain the written approval of the parties before executing any relevant agreements or incurring any such liability.

**3.7 Limitations on Project Manager.** *[list here any limitations on the Project Manager's authority]*

**ARTICLE IV.**

**CONTRIBUTIONS AND DIVISION OF PROFITS AND LOSSES**

- 4.1 Division of Profits and Losses.** The interest of the parties in and to any profits and assets derived from the performance of the construction contract, any property acquired by the joint venture in connection with the work to be performed under this agreement, and all contributions required, all moneys received, and losses incurred in the performance of the construction contract shall be according to those percentages set forth as follows:

Party	% Profits	% Losses	% Op. Expenses (Working Capital)	Initial Capital Contribution

- 4.2 Distribution of Profits, Timing.** Upon the completion of the Project, after providing for and paying
- (a) all costs disbursed or incurred in the performance of the Construction Contract;
  - (b) all other costs and charges ordinarily and usually charged as costs in the performance of such a contract;
  - (c) any and all claims not secured by insurance;
  - (d) proper reserves for any claims which shall have

either been brought against the parties or which the parties may reasonably anticipate will be brought against them; and (e) reserves for contingencies, if any, that shall be determined by the parties in their mutual discretion to be necessary; and after repaying all sums advanced by the parties for working capital, any profits remaining, resulting from the performance of the Construction Contract, shall be distributed and divided as per the previous paragraph 4.1 between the parties. Any reserves, when no longer required, or so much thereof as shall remain, shall be similarly distributed.

**4.3 Additional Capital Contributions.** The parties shall not be required to make any additional capital contributions except as expressly provided herein or as expressly agreed in writing.

**4.4 Indemnification.** Each party further agrees to indemnify the other against any loss or liability exceeding the proportions hereinabove stated for whatever reasons, including any payments required to be made in, and about, the performance of the construction contract. Each party indemnifies the other against any loss or liability exceeding the stated proportions by reason of any liability incurred or loss sustained in and about the Construction Contract, or by reason of the execution of any surety company bonds or indemnity agreements executed in connection with the Project.

**4.5 Burden of losses.**

4.5.1 If the performance of the Construction Contract results in a loss, the parties shall be obligated for such loss in accordance with their respective percentage interests (irrespective of the fact that either party may have advanced more than its respective share of working capital).

4.5.2 The liability of parties for losses shall continue with respect to any claims which at any time, either before or after the completion of the Construction Contract, shall be made against them or either of them by reason of this Joint Venture or any matter or thing in connection with it.

- 4.5.3 In the event of loss: If any funds remain, and both [Company 1] and [Company 2] have contributed their required proportions of working capital, then the remaining funds shall be paid to [Company 1] and [Company 2] in the amounts contributed by each, less their respective shares of the loss.
- 4.5.4 In the event of loss: If both [Company 1] and [Company 2] have not contributed their required proportions of working capital, but sufficient funds are available, then the funds shall be repaid to [Company 1] and [Company 2] in the amounts contributed by each, less their respective shares of the loss. If both [Company 1] and [Company 2] have not contributed their required proportions of working capital, and there are insufficient funds to accomplish the division prescribed in the preceding subdivision, and if there is a deficit in the account of one of the parties by reason of its failure to contribute its required proportion of working capital, then the defaulting party shall make up the deficit in its account. Upon its failure to do so the indemnity provisions of this Agreement shall become operative, so as to insure that the non-defaulting party shall bear no more than its proportionate share of the loss.
- 4.5.5 If both [Company 1] and [Company 2] have not contributed their required proportions of working capital, and no funds remain or some liabilities are unsatisfied, then the indemnity provision of **paragraph 4.3** of this Agreement shall become operative, so as to insure that neither party shall bear more than its proportionate share of the loss.

## **ARTICLE V.**

### **INDEMNITY AGREEMENTS; SURETY BONDS**

- 5.1 Each of the parties agrees to execute all applications and indemnity agreements required by the sureties on any bond or bonds required in connection with the bid and construction

contract.

- 5.2 All financial obligations assumed by the parties, or any of them, in connection with the performance of the construction contract, all liabilities assumed by or charged to them, or any of them, as contractors, guarantors, or indemnitors, in connection with any surety bond or other bonds which may be given or executed in connection with the construction contract, and all other obligations and liabilities of any kind or character which are assumed or undertaken by the parties to this agreement, or any of them, in connection with and for the benefit of the performance of the construction contract shall be shared by the parties in accordance with their respective interest.

## **ARTICLE VI.**

### **CONTRIBUTION OF WORKING CAPITAL**

- 6.1 **Working Capital.** All necessary working capital when and as required for performance of the joint venture shall be furnished by the parties according to the schedule annexed hereto as Schedule B.
- 6.2 **Bank Account for Working Capital.** A bank account shall be opened by the Joint Venture in such bank as the parties may mutually agree upon, in which all the funds advanced for the performance of the Construction Contract as well as the funds received on account shall be deposited. Withdrawals shall be made from the bank account in such manner and in such form as may be mutually agreed upon in writing by the parties from time to time.
- 6.3 **Initial Capital Contribution.** Within [number] days after the execution of this Agreement, the joint-venturers shall each advance and pay into the bank account the initial amounts as set forth in **paragraph 4.1.**
- 6.4 **Additional Contributions of Working Capital.** The need for working capital in addition to the aforementioned initial capital contribution required to be deposited by each party shall be

determined as follows: Within [number] days after either of the parties determines that any additional sums are required for the performance of the Construction Contract, both parties shall deposit in the bank account the total amount required (up to the sum of (INR or \$ \_\_\_\_\_), in accordance with each party's respective percentage interest.

#### **6.5 Default in Contribution of Working Capital.**

- 6.5.1 Should either party be unable or fail or neglect to advance or contribute its proportionate share of the working capital required in the performance of the Construction Contract, then the other party may but shall not be required to advance the deficiency or any part thereof.
- 6.5.2 Should the other party advance such sum, that party shall be entitled to a proportionately larger share of the profits of the Joint Venture, so that any profits shall be divided between the parties in the proportion in which they advance working capital, even though, at a later date, the party in default shall offer to make good or shall make good its default in advancing working capital.
- 6.5.3 The party failing to advance its share of working capital shall not be relieved of its obligation to share equally in any loss arising from the Joint Venture.
- 6.5.4 All working capital advanced shall be repaid to the party advancing the same prior to the distribution of any profits.

**6.6 No Right to Return of Capital.** No part of any working capital advanced to the Joint Venture shall be returned to either party and no distribution of profits shall be made prior to the completion of the Project except as may otherwise be mutually agreed upon in writing by the parties.

## **ARTICLE VII.**

### **TREATMENT OF MONEY(S)**

- 7.1 **Trust funds.** All moneys contributed by the parties to this Joint Venture and all moneys received as payments under the Construction Contract or otherwise received shall be treated and regarded as, and are declared to be, trust funds for the performance of the Construction Contract and for no other purpose until the Construction Contract shall have been fully completed and accepted by the *[insert name of entity approving Project performance]*, and until all obligations of the parties hereto shall have been paid, otherwise discharged, or provided for by adequate reserves. The reserves shall likewise be treated as trust funds until they have served the purposes for which they were created. Proper fidelity bond coverage shall be maintained on all persons who are directly connected with performance of the Construction Contract, and the cost of fidelity bond premiums shall be part of the construction cost.

## **ARTICLE VIII.**

### **BANK ACCOUNTS**

- 8.1 All funds advanced by the parties to this agreement, or borrowed for the account of the joint venture, and all progress and final payments or other revenue received as the result of the performance of the construction contract shall be deposited to the account of the joint venture in an account to be established at a bank or banks as the sponsoring joint-venturer may designate.
- 8.2 Checks may be drawn on this account or accounts by signature or signatures of certain persons

as may be designated by the sponsoring joint-venturer from time to time. Unless and until otherwise agreed, the sponsoring joint-venturer is authorized to designate the persons to be authorized to draw checks on the bank account or accounts.

- 8.3 The joint venture may also maintain payroll or other accounts at a bank, or a branch or other bank, as the sponsoring joint-venturer may designate. Checks may be drawn on these accounts by signature or signatures of persons as may be designated by the sponsoring joint venture. Without limiting the right of the sponsoring joint-venturer to change the persons authorized to sign on the various bank accounts that may be established as provided in this agreement, any one of the following persons is authorized to sign checks drawn on the designated accounts:

Account	Bank	Authorized Signer	Address of Signer

#### **ARTICLE IX. BOOKS OF ACCOUNT; AUDITS**

- 9.1 Adequate books of account shall be maintained by *[name of party, individual, or company]* at its office located at *[address]*. Such books of account may be examined by any of the joint-venturers at all reasonable times during regular business hours.
- 9.2 A periodic audit of the books may be made by an independent firm of certified public accountants or by such individuals as may be mutually agreed upon by the parties to this agreement, and a like audit may be made upon completion. With respect to any periodic audits, there shall be included, if requested by any of the parties, a periodic comparison

between the items of costs and the items set up in the estimate of the costs. The costs of any audit shall be borne by the party requesting the audit.

- 9.3 Copies of all audit reports shall be sent by the auditors directly to each venturer's home office as designated in this agreement. Reports of the financial condition of the joint venture and the progress of the work shall be made to each joint-venturer. Unless otherwise agreed by the parties, the reports shall be rendered at least monthly.

#### **ARTICLE X. LIMITATION OF JOINT VENTURE**

- 10.1 It is specifically understood and agreed between the parties that this joint-venture agreement extends only to the performance of the construction contract, together with any changes or additions to the agreement or extra work under the agreement, and in no event shall this agreement extend to, or cover, any or different work. The term "construction contract" as used in this agreement is intended to and shall include the changes, additions, or extra work mentioned in the agreement.
- 10.2 The parties constitute themselves as joint-venturers for the purpose of performing and completing the construction contract, but not for any other purposes. It is expressly understood that this agreement contemplates only the furnishing and performance of the work, labor, and materials necessary for the completion of the construction contract for the Project. The parties are not making any permanent partnership agreement or joint-venture agreement to bid for or to undertake any contracts other than the construction contract mentioned above. Nothing in this agreement is to be construed as a limitation of the powers or rights of any party to carry on its separate business for its sole benefit except, however, that the parties shall cooperate with each other according to the terms and spirit of this agreement

in the performance of the construction contract.

#### **ARTICLE XI. LEASING OF MACHINERY AND EQUIPMENT**

- 11.1 The parties shall lease to the joint venture, and the joint venture shall rent from the parties such machinery and equipment as the parties may have available for use on the project. The lease shall be for the terms respectively commencing when the joint venture shall require the machinery and equipment for use in performing the construction contract, without delay and continuing whenever and for as long as they shall be required in such performance. The lease shall be at and for the unit rental rates mutually agreed on by the representatives of the parties.
- 11.2 Schedules of the mutually agreed rental rates shall be signed by each venturer and attached to this agreement.

#### **ARTICLE XII. PURCHASE OF EQUIPMENT ON COMPLETION**

- 12.1 On completion of the construction contract, the parties will secure a bona fide bid for each item or group of items of equipment purchased by the joint venture, or held by it under a lease with option agreement, from one or more reputable equipment dealers.
- 12.1 Each of the parties shall have the right to purchase any item or group of items at the highest price bid therefor by the dealers, provided that no party shall be entitled to purchase a greater percentage of the equipment than the percentage of its interest in the joint venture.
- 12.3 If more than one party shall desire to purchase the same item or items of equipment at a price or prices so determined, and a mutually satisfactory adjustment is not effected by agreement between or among them, then the item or items of equipment, in like manner as items of

equipment not desired by the parties, shall be disposed of by sale, for the best price obtainable, to outsiders.

- 12.4 All hand tools will be purchased for the construction contract from suppliers or from members of the joint venture, provided their prices are considered equitable by the joint-venture participants. At the completion of the construction contract the tools shall be divided by value according to each party's participation.

### **ARTICLE XIII. BANKRUPTCY OR DISSOLUTION OF PARTY**

- 13.1 In the event of the bankruptcy or dissolution of any of the parties to this agreement, this joint venture shall immediately terminate. Thereafter, the successors, receivers, trustees, or other legal representatives, referred to below as representatives, of any party so affected shall cease to have any interest in the performance of the construction contract and shall cease to have any interest in and to the joint venture or the assets of the venture. In any case the remaining parties shall have the right to wind up the affairs of the joint venture and to carry out and complete the performance of the construction contract.
- 13.2 On completion, or sooner termination and receipt of payment of all amounts due under the construction contract, the remaining joint-venturers shall account to the representatives of the party or parties so affected.
- 13.3 The representative shall then be entitled to receive from the remaining joint-venturers an amount equal to the sums advanced by the party represented, plus that party's proportionate share of the profits, or less that party's proportionate share of the losses resulting from the performance of the construction contract to the date of the termination of the joint venture.
- 13.4 The profit or loss computed as of the day of the termination shall be in the same proportion to

the whole profit or loss resulting from the performance of the construction contract as the amount of work done under the contract at such time bears to all of the work which is done under the contract.

- 13.5 In the event that the share of the losses chargeable to the parties so represented exceeds the sum advanced by the party, the representative shall promptly pay to the remaining joint venturers any excess. The books of the joint venture shall be conclusive in establishing whether a profit has been realized or a loss sustained, the amount of the profit or loss, and the proportionate amount of work done as of any given time or date. Notwithstanding the foregoing, the insolvent party shall remain liable for its share of any losses, and shall be entitled to receive its share of any profits, such profits to be paid at the time and in the manner provided in this Agreement.

#### **ARTICLE XIV. DETERMINATION OF COSTS**

- 14.1 For the purpose of determining costs to the parties of the joint venture, the cost of construction shall be deemed to include the costs of all subcontracts, labor, material, plant and equipment purchased or rented, bonds, insurance, taxes on labor or material, imposts, charges, legal fees incurred, liabilities not secured by insurance, and all other expenses and obligations incurred or suffered in and about the performance of the construction contract of a nature under sound accounting practices, properly chargeable as a cost of the joint venture.
- 14.2 The costs shall not include any charges against the joint venture for expense or charges of the home offices or any of the parties to this agreement, except as provided in ARTICLES IX and XI. Neither shall the costs include any charges for the time which may be expended by any officers or principals of the parties at their respective home offices, except as those charges shall be

directly attributable to the construction contract and shall be approved by all the joint-venturers.

#### **ARTICLE XV. ASSIGNMENTS AND TRANSFERS**

- 15.1 Neither this agreement nor the interest of the parties or any of them, including its respective interest in any moneys belonging to or which may accrue to the joint venture in connection with the construction contract, may be assigned, pledged or transferred.
- 15.2 However, in the event that a party desires to obtain banking accommodations, such party may assign or pledge to the lending institution, as security for such banking accommodation, its interest in the moneys to be received by such party under this agreement when distributed to it in accordance with the terms of the agreement, if the other parties to this agreement give their written consent in advance. Any assignment without such consent shall be null and void.

#### **ARTICLE XVI. ADJUSTMENT OF ACCOUNTS**

- 16.1 On completion of the performance of the construction contract, the parties shall render a true and correct account, each to the others, of all expenses incurred on account of the performance and all moneys received as a result of that performance.
- 16.2 The parties mutually agree, on completion of the performance of the construction contract, to settle and adjust all accounts in connection with the performance of the construction contract, and to pay, each to the others, such sums as will result in each of the parties receiving that portion of all profits arising from the performance of the construction contract, or bearing that proportion of all losses arising from the performance of the construction contract in accordance with ARTICLES IV, VI, and XIII.

#### **ARTICLE XVII. BINDING EFFECT**

- 17.1 Subject to the provisions contained in this agreement, the agreement shall inure to the benefit of and be binding on the parties to this agreement, their successors and assigns but shall not inure to the benefit of any other person, firm or corporation.

#### **ARTICLE XVIII. GOVERNING LAW**

- 18.1 All questions relative to the execution, validity, interpretation, and performance of this agreement shall be governed by the laws of the Union Of India.

#### **ARTICLE XIX. ARBITRATION**

- 19.1 Should any dispute arise among the parties to this agreement concerning any matter under this agreement, the dispute shall, without prejudice to the rights of the parties to pursue their remedies in the courts of law, first be submitted to arbitration in accordance with the latest and prevailing Commercial Arbitration Rules. The parties shall resort to arbitration proceedings before any suit may be brought by one party against the other with respect to any item which shall be the subject matter of arbitration under this agreement.

#### **ARTICLE XX. INSURANCE**

20.1 All insurance that may from time to time be obtained shall be obtained through the respective brokers of each of the parties to this agreement in such manner that the brokers shall receive the benefits of brokerage commissions for placing any insurance in the proportions stated in ARTICLE IV.

Dated: *[date of agreement]*

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\_\_\_\_\_ *[List of names of parties]*

*[Acknowledgments]*