

MEMORANDUM OF UNDERSTANDING

Between [First

Member] And

[Second Member]

(For Providing DESIGN, BUILD 60 MLD CAPACITY DESALINATION PLANT BASED ON SEA WATER REVERSE OSMOSIS AT KOONIMEDU IN VILLUPURAM DISTRICT, TAMIL NADU AND OPERATE AND MAINTAIN FOR 20 YEARS)

THIS MEMORANDUM OF UNDERSTANDING (hereinafter called "MOU") made and entered into this day of the month of 2021, by and among:

- [Name & complete address of First/Lead Member] (hereinafter called "[short name/acronym]"), which expression shall include its successors, legal representatives and permitted assigns;
- [Name and complete address of Second Member] (hereinafter called the "[short name/acronym]"), which expression shall include its successors, legal representatives and permitted assigns;

(Both of the above for the purpose of this MOU shall hereinafter individually called the "Member" and collectively called the "Members")

WHEREAS,

- (a) **Tamilnadu Water supply and Drainage Board, 8, 1st East Main Road** represented by **the Chief Engineer, Tamilnadu Water supply and Drainage Board, 8, 1st East Main Road, Gandhinagar, Vellore – 632006** (hereinafter called the "Client") has invited Tenders for Design, build 60 MLD capacity desalination plant based on seawater reverse osmosis at Koonimedu in Villupuram district, Tamilnadu and operate and maintain for 20 years" published in daily *[Insert name of news paper]* dated *[Insert date]* and through website ***** to submit bids for providing Design, construction and operation & maintenance for 60 MLD Desalination plant at Koonimedu, Villupuram, Tamil Nadu (hereinafter called the "Services") for **DESIGN, BUILD 60 MLD CAPACITY DESALINATION PLANT BASED ON SEAWATER REVERSE OSMOSIS AT KOONIMEDU IN VILLUPURAM DISTRICT, TAMIL NADU AND OPERATE AND MAINTAIN FOR 20 YEARS** (hereinafter called the "Project");
- (b) the Members hereby intend to join hands to form an unincorporated association for the sole purpose of, preparation and submission of joint Bid as required to be submitted to the Client for carrying out the Services for the Project. In case of acceptance of Bid by the Client, the members shall perform the Services as shall be agreed through Joint Venture/Consortium *[Use which is appropriate]*

Agreement and the contract to be entered between the Client and the Joint Venture/Consortium.

NOW, THEREFORE, the Members confirm their understanding (hereinafter called the "Association") as follows:

1. DEFINITIONS AND INTERPRETATION

1.2 Definitions

The following words and expressions shall have the meanings assigned to them, except where the context otherwise requires:

- 1.1.1 "Association" means the understanding formed between the Members in accordance with this MOU;
- 1.1.2 "Client" means the person, firm, company or body named as client in the Joint Venture/Consortium Agreement and none other, except its legal successors and permitted assigns;
- 1.1.3 "Contract" means the Contract between the Client and the Joint Venture/Consortium for the provisions of professional services for the Project;
- 1.1.4 "Country" means India where the Project is located;
- 1.1.5 "Invitation" means the invitation of the Client to submit a Bid for the provision of particular engineering services for the Project;
- 1.1.6 "Joint Venture" means the joint venture to be formed between the Members for the Project;
- 1.1.7 "Joint Venture Agreement" means the formal agreement to be entered between the Joint Venture Members, upon acceptance of Bid for the Project;

In case of Consortium Agreement

- 1.1.6 "Consortium" means the consortium to be formed between the Members for the Project;

- 1.1.7 "Consortium Agreement" means the formal agreement to be entered between the Consortium Members, upon acceptance of Bid for the Project;
- 1.1.8 "Bid" means the Bid to be prepared and submitted by the Members in response to the Invitation, by the Client;
- 1.1.9 "Services" means all the services to be performed by the Members in accordance with the Bid or Contract, as the case may be;
- 1.1.10 "Representative" means the person nominated by the Members(s) of the Joint Venture/Consortium through Power of Attorney to sign the Bid and the Contract on behalf of and in the name of that Member. The signature of Representative shall bind each Member in respect of all obligations and liabilities it assumes under the Joint Venture/ Consortium Agreement.
- 1.1.11 "Lead Member" means the Member which will take the lead in the management of the Association's affairs under this MOU and which will provide the Association's Representative for liaison with the Client and, unless otherwise agreed by the Members, the Services Manager for direction of the conduct of the Services;
- 1.1.12 "Day" means the period between any one midnight and the next, and "month" means a period of one month according to the Gregorian calendar commencing with any day in the month; and
- 1.1.13 "Document" means written, drawn, typed, printed, magnetized or photographic material which is capable of being copied.

1.2 Interpretation

- 1.2.1 Words importing the singular also include the plural and the masculine includes the feminine and vice-versa where the context requires.
- 1.2.2 The headings in this MOU shall not be taken into consideration in its interpretation.
- 1.2.3 Unless otherwise stated, all references to clauses/sub-clauses are references to clauses/sub-clauses numbered in the Conditions and Terms of this MOU and not to those in any other document attached or incorporated by them.

2. ASSOCIATION/UNDERSTANDING

- 2.1 The Members hereby intend to join hands to form an unincorporated association for the purpose of:
- preparing and submitting the Bid to the Client;
 - providing any further information, the Client may require or negotiating with the Client on any matters requiring negotiation in connection with the Bid;
 - Entering into a formal Joint Venture/Consortium Agreement, stipulating in detail the relations between the Members on the basis of this MOU and in accordance with the Services Agreement with the Client, if the Bid is accepted; the Services shall be rendered jointly by the Members in accordance with a Joint Venture/Consortium Agreement to be signed by the Members. The Joint Venture/Consortium Agreement shall be signed prior to commencing the Services and shall be based upon the terms of the Contract signed between the Joint Venture/Consortium and the Client; and
 - performing all the Services to be undertaken for the project by the Joint Venture/Consortium under the Services Agreement.
- 2.2 The Members hereby appoint the Lead Member and, pursuant to Clause 3.6, the representative of the Association.
- 2.3 Unless otherwise agreed in writing by the Members, this MOU shall not terminate if a Member changes its name or is taken over by, or merged with, another company or partnership provided that such successor name, company or partnership is an independent professional firm acceptable to the Client.

3. BID SUBMISSION

- 3.1 The Members shall make all reasonable endeavors to obtain from the Client the award of the Services Agreement in accordance with the conditions of the Invitation.
- 3.2 The preparation and submission of the Bid shall be undertaken jointly by the Members. The Members shall be required to provide their respective information and document on the required format to the Lead Member. The Lead Member shall co-ordinate and finalize the preparation of the Bid and its submission to the Client. The Members shall cooperate with the Lead Member. The Members shall perform with all reasonable skill, care and diligence their respective functions, as agreed between the Members,
- 3.3 Once the Bid has been submitted to the Client, no changes may be made or additional information or explanations given without the consent of all the Members until the Service Agreement is signed and have become effective.
- 3.4 The Members shall enter into a formal Joint Venture/Consortium Agreement, stipulating in detail the relations between the Members on the basis of this MOU and enter into the Contract, if it is awarded in accordance with the Bid, or the Bid as amended, subsequent to its submission, by agreement between the Client and the Joint Venture/Consortium.

- 3.5 Upon the execution of this MOU, each of the Members shall grant a Power of Attorney in favour of a person nominated by it as its Representative. Under the Power of Attorney granted to him, the Representative of a Member shall thereby have authority to sign the Bid and the Services Agreement on behalf of and in the name of that Member. The signature of its Representative shall bind each Member in respect of all obligations and liabilities it assumes under this MOU.
- 3.6 The Representative of the Lead Member shall be the representative of the Association for the purpose of correspondence and discussion with the Client on matters involving the interpretation of the Bid and alterations to it and to the Services to be performed.

4. PERFORMANCE OF THE SERVICES

- 4.1 The Services shall be carried out by each Member in accordance with the terms and conditions as set out in the MOU and the Service Agreement. In the event of any inconsistency between the terms of this MOU and the Service Agreement regarding performance of the Services, the terms of Service Agreement shall prevail.
- 4.2 Each Member shall be responsible for fulfilling the obligations in accordance with the terms of Service Agreement.
- 4.3 The apportionment between the Members of MOU shall be recorded and amended in the Joint Venture/Consortium Agreement.
- 4.4 Any alterations or additions to be carried out under the Service Agreement shall be made only with the instruction or consent of the Client. Responsibilities for carrying out additional obligations shall be agreed between the Members, subject to the consent of the Client, if required by the Service Agreement.

5. LANGUAGE AND LAW

- 5.1 This MOU shall be written and interpreted in English Language and the law which is to be applied to this MOU shall be the laws of Govt of India.

6. EXCLUSIVITY

- 6.1 Unless otherwise agreed by the Members, no Member shall engage in any activity related to the Services, unless otherwise agreed by the Members, other than as a Member of this Understanding and in accordance with the terms and conditions of this MOU. Each Member warrants that its subsidiaries and other firms or individuals over which it has control will comply with this requirement.

7. EXECUTIVE AUTHORITY

- 7.1 No Member shall have authority to bind or to make any commitment on behalf of any other Member unless such authority is expressed in writing by the Members jointly, or by a Member individually in regard to the (other) Member.
- 7.2 From the date of this MOU until the award of the Services Agreement or until this MOU shall terminate in accordance with its terms, whichever is the earlier, the following matters shall require the unanimous consent of the Members:
- (a) for the purpose of submitting the Bid, the respective responsibilities and obligations to be undertaken by the Members, subject to the conditions of the Tender/Bid ;
 - (b) for the purpose of submitting the Bid, the prices and terms and conditions of payment comprised in the Bid as applicable to the Members, subject to the conditions of the Tender; and
 - (c) any communication to, or response to communication from, the Client either written or oral and any commitment of any kind to the Client or any other party in connection with the Bid.

8. DOCUMENTS

- 8.1 All documents and/or information forwarded by either Member to the other for the preparation of Bid shall remain sole and exclusive property of the Member which provided the same including the intellectual property rights.
- 8.2 Upon expiration/termination of MOU, each Member shall:
- (a) return to the other, all such documents and/or materials including computer soft copy and all hard copies thereof that are jointly prepared by the MOU Members; and
 - (b) certify that all such documents and information and all copies have been returned to such receiving Member.

9. PERSONNEL

- 9.1 Each Member shall be obliged to depute as much of their personnel as are needed in timely accomplishment of the Bid for a specific project and subsequently carrying out of the project. Unless specifically agreed otherwise, under the arrangement of MOU, no employee shall be considered on its strength.

10. ASSIGNMENT AND THIRD PARTY

- 10.1 No Member shall assign, sell, transfer or in any way encumber its interest under this MOU, or its interests in any sums payable by the Client, without first obtaining the consent in writing of other Member.

11. SEVERABILITY

- 11.1 If any part of the provisions of this MOU is found in any way to be void or not applicable, such part of the provisions shall be deemed to be deleted and remainder provisions of MOU shall continue in force and effect.

12. MEMBER IN DEFAULT

- 12.1 In the event of insolvency of a Member, the other Member hereby irrevocably constituted and appointed attorney-in-fact for such insolvent Member to act for it in all matters affecting performance of the Service Agreement to be entered with the Client.

13. DURATION OF THE UNDERSTANDING

- 13.1 This MOU shall come into force and effect on the date of signing of this MOU by the Members.
- 13.2 Unless otherwise terminated earlier, this MOU shall expire on the date when;
- (a) the Bid is not accepted by the Client; or
 - (b) the Members entered into Joint Venture/Consortium Agreement, following acceptance of Bid by the Client.

14. LIABILITY

- 14.1 Each of the Members warrants that it will indemnify and keep indemnified the other Member against all legal liabilities arising out of or in connection with the performance, or otherwise, of its obligations under this MOU.
- 14.2 In the event of it being alleged by one Member in writing that any legal liability is attributable to the other Member or to the Members, the Members shall use reasonable endeavors to reach agreement on the liabilities to be borne by each of the Members, and in the event of the Members failing to so agree, a proper apportionment shall be determined by resolution in accordance with Clause 19.

15. PROMOTIONAL AND PROJECT COSTS, PROFITS/ LOSSES AND REMUNERATION

- 15.1 Each Member shall bear and pay all of its costs and expenses incurred in connection with this MOU and all other activities concerning job acquirement prior to the signing of Joint Venture/Consortium Agreement except as otherwise agreed upon in writing.

16. FINANCIAL ADMINISTRATION AND ACCOUNTING

16.1 Each Member shall be responsible for keeping its own account in respect of payments due to it and for its own financial affairs generally. Each Member shall be responsible for dealing with its own income tax affairs, and its own social security affair: where relevant, and for accounting accordingly to the relevant authorities.

17. DISPUTE RESOLUTION

17.1 Any dispute arising in connection with this MOU which cannot be resolved by the Parties in accordance with the terms of this MOU shall be settled amicably through negotiations, failing which the matter shall be referred to an adjudicator and if either member is dissatisfied with the Adjudicator/ Adjudicators' decision, then the matter shall be referred to arbitration in accordance with Arbitration and Reconciliation act 1996.

18. NOTICES

19.1 Notices under the MOU shall be in writing and will take effect from receipt at the address stated of the each of Member. Delivery can be by hand or e-mail against a written confirmation of receipt or by registered letter or courier.

19. SOLE AGREEMENT AND VARIATION

20.1 This MOU is the sole understanding between the Members and supersedes any previous understandings between them relating to the matters referred to herein. Variations and addenda may be made to this MOU, including the admission of new Member (s) to the Association, by written instrument which shall be effective upon being signed by all Members (or on their behalf by their Representatives), provided that if a Member is considered by the other Member to be in default pursuant to Clause 12 of this agreement and signature is not required.

IN WITNESS WHEREOF the Members hereto have executed this MOU in [*State name of place*] on the day, month and year first above written.

1. Signed for and on behalf of
[*Name of the Lead Member*]

Signature _____

Name: _____

Designation: _____

Date: _____

Seal

2. Signed for and on behalf of
[Name of the Member]

Signature _____

Name: _____

Designation: _____

Date: _____

Declaration (Letter) of Association

*[On letter head of the member of the proposed Joint
Venture/Consortium]*

....., 2010

To:

*[Name of the Lead Member of JV/Consortium]
[Address]
[City]*

Attn: *[Name of the Authorised representative of the Lead member]*

**Declaration of Association for “DESIGN, BUILD 60 MLD CAPACITY
DESALINATION PLANT BASED ON SEAWATER REVERSE OSMOSIS AT
KOONIMEDU IN VILLUPURAM DISTRICT, TAMIL NADU AND OPERATE AND
MAINTAIN FOR 20 YEARS”**

[Name of the Project for which Bid is to be submitted]

Dear Sir,

We, *[Name of the Partner/ Member]*, the Partner to Joint Venture/Consortium *[use whichever is applicable]* are pleased to confirm our association with lead firm M/s *[Name of the Lead Member]*, for providing works/services for the captioned project.

We look forward to work together for the successful completion of the project in case we are awarded the subject assignment.

For and on behalf of *[Name of the Partner]*

[Name and Designation of the signatory of the Partner]