

FORM OF JOINT DEED OF UNDERTAKING**(TO BE EXECUTED ON NON-JUDICIAL STAMP PAPER OF Rs. 50/-)**

This DEED of UNDERTAKING executed this..... day ofTwo thousand..... by M/sa Company incorporated under having its Registered Office at (herein after called the “Collaborator”/”Associate”, which expression shall include its successors, administrators, executors and permitted assigns) and M/s..... a company registered under the having its registered office at (hereinafter called the Bidder, which expression shall include its successors, administrators, executors and permitted assigns) in favour of Industrial Systems Group, one of the Units of M/s. Bharat Heavy Electricals, having its office at Prof. CNR Rao Circle, Opp. Indian Institute of Science, Malleswaram, Bangalore-560 012, A Government of India Undertaking (hereinafter called the “Employer”, which expression shall include its successors, administrators, executors and permitted assigns).

Whereas the Employer proposes to issue / issued a Notice Inviting Tender (hereinafter referred to as NIT), inviting bids from the individual bidders for undertaking the work of “.....(Package name) for(Project name) at(site location) (hereinafter referred to as the “Project”) being set up by M/s. (hereinafter referred to as the “ Owner”).

And whereas WHEREAS M/s (Bidder) is submitting its proposal in response to the aforesaid NIT by the Employer for “.....(Package name), against the Employer’s NIT including design, engineering, manufacture, supply, transportation to site, supervision of installation, testing and commissioning (including trial operation and Performance & Guarantee tests) of the Ash Handling System consisting mainly of:-

- (a) a wet ash handling system for ash collected in the boiler furnaces, economiser, and air preheaters including treatment system for bottom ash overflow water/dry ash handling system for the ash collected in work boiler furnace& economizer ash handling system for the ash collected air-preheaters.
- (b) a dry fly ash handling system for the ash collected in electrostatic precipitators collection hoppers.
- (c) a dry fly transportation and storage system including dry fly ash storage silos for loading trucks and dry fly ash silos for HCSD system.
- (d) High concentration slurry disposal system for fly ash and lean slurry disposal system for bottom ash, economizer ash, and air-preheater ash.
- (e) Ash water supply system.

AND WHEREAS, the said NIT enables submission of a bid by a Party subject to fulfilment of the stipulations pre-qualification criteria specified in the said NIT.

AND WHEREAS the bid documents stipulate that bidding is open to a bidder who meets the requirements of Clause No. 1 pre-qualification criteria specified in the NIT provided they collaborate(s)/associate(s) with a party(ies) who meets either the total requirement or the balance part under Clause No. 1.1 of pre-qualification criteria specified in the NIT, which the Bidder himself is not able to meet.

AND WHEREAS M/s..... (Bidder) itself meet the requirements specified in Clause No. 1.2 and clause no..... "*" of Item No. 1.1 of pre-qualification criteria specified in the NIT and desire to associate/collaborate with M/s..... [hereinafter referred to as Collaborator/Associate] who meets the qualifying requirement as specified in Clause No..... "*" of Item No.1 pre-qualification criteria specified in the NIT referred to above AND WHEREAS as a precondition for submitting the bid in item of clause 1.2 of pre-qualification criteria specified in the NIT, the Bidder and the Collaborator/Associate are required to jointly execute and furnish along with the bid an irrevocable Deed of Joint Undertaking and be jointly responsible and bound unto the Employer for successful performance of the aforesaid relevant system(s) of Ash Handling System for which the Collaboration/Association has been entered into (hereinafter called "Relevant System(s) of Ash Handling System), fully meeting the parameters guaranteed for the Relevant System(s) as per the bid specifications, in the event the Bid is accepted by the Employer, resulting in a Contract (hereinafter called the "Contract").

NOW THEREFORE, THIS UNDERTAKING WITNESSTH AS UNDER :

1. That in consideration of the Award of the Contract by the Employer to the Bidder, we the aforesaid Associate/Collaborator, Bidder, do hereby declare and undertake that we shall be jointly and severally responsible to the Employer for the successful performance of the Relevant System(s) of Ash Handling System such that it fully meets the guaranteed parameters required as per the Contract specification.
2. In case of any breach of the Contract committed by the Bidder, we the Associate/Collaborator do hereby undertake, declare and confirm that we shall be fully responsible for the successful performance of the Relevant System(s) of Ash Handling System and undertake in order to discharge the Bidder's obligations and responsibilities stipulated in the contract. Further if the Employer sustains any loss or damage on account of any breach of the Contract, we the Collaborator/Associate jointly and severally undertake to promptly indemnify, and pay such loss/damages caused to the Employer on its written demand without any demur, reservation, contest or protest in any manner whatsoever.

"" Please fill up Clause No. 1.1(a) and/or 1.1(b) and/or 1.1(c) and/or 1.1.(d) whichever is/are applicable.*

This is without prejudice to any rights of the Employer against the Contractor under the Contract and/or guarantees. It shall not be necessary or obligatory for the Employer to first proceed against the Associate(s)/Collaborator(s), nor any extension of time would prejudice any rights of the Employer under this Deed of Joint Undertaking to proceed against the Associate/Collaborator.

3. Without prejudice to the generality of the undertaking in paragraph 1 above, the manner of achieving the objectives set forth in paragraph 1 above shall be as follows :
 - (a) The Associate/Collaborator will be fully responsible for design, engineering, supply, installation, putting in to satisfactory operation and carrying out the guarantee tests for Relevant System(s) of Ash Handling System to the satisfaction of the Employer.

Further, the Associate/Collaborator shall depute their technical experts from time to time to the Bidder's works/Employer's project site as required by Employer and agreed to the

Associate/Collaborator to facilitate the successful performance of the Relevant System(s) of Ash Handling System as stipulated in the aforesaid Contract.

Further the Associate/Collaborator shall ensure proper design, manufacture, installation testing and successful performance of the Relevant System(s) of Ash Handling System in accordance with the Contract specifications and if necessary the Collaborator/Associate shall advise the Bidder suitable modifications of design and implement necessary corrective measures to discharge the obligations under the contract.

(b) In the event the Associate/Collaborator and Contractor fail to demonstrate successful performance of the Relevant System(s) of Ash Handling System as set forth in paragraph 1 above, the Associate/Collaborator and the Bidder shall promptly carry out all the measures at their own expense and shall promptly provide corrected designs to the Employer.

(c) Implementation of the corrected designs and all other necessary repairs, replacements, rectifications or modifications to the Relevant System(s) of Ash Handling System and payments of financial liabilities, penalties and any other obligations as provided under the Contract shall be the joint and several responsibilities of the Bidder and Associate(s)/Collaborator(s).

4. We, the Bidder and Associate/Collaborator do hereby undertake and confirm that the Undertaking shall be irrevocable and shall not be revoked till the expiry of defect liability period of the plant under the Contract and further stipulate that the Undertaking herein contained shall terminate upon satisfactory completion of such defect liability period. We further agree that this undertaking shall be without any prejudice to the various liabilities of the Bidder, including the Contract Performance Guarantees as well as other obligations of the Bidder in the terms of the Contract.
5. The Bidder and Associate/Collaborator will be fully responsible for the quality of all equipment/main assemblies/components manufactured at their works or at their Vendor's works or constructed at site, and their repairs or replacement if necessary for incorporation in the relevant system(s) of Ash Handling System equipment and timely delivery thereof to meet the completion schedule under the Contract.
6. In addition to the Contractor's Performance Bank Guarantee, the Associate/Collaborator shall furnish "as Security" the Performance Bank Guarantees, from any reputed commercial Bank in favor of the Employer in a form acceptable to Employer. The value of such Bank Guarantees shall be as per Clause 1.2 of pre-qualification criteria specified in the NIT and it shall be towards guaranteeing the faithful performance/compliance of this Deed of Undertaking in accordance with the terms and conditions specified herein. The Bank Guarantee shall be unconditional, irrevocable and valid for entire period of contract, i.e. till ninety (90) days beyond the end of the Defect Liability period of the package. The Bank Guarantee amount shall be promptly paid to the Employer on demand without any demur, reservation, protest or contest.
7. This Deed of Undertaking shall be construed and interpreted in accordance with the Laws of India and the Courts of Delhi shall have exclusive jurisdiction.
8. We, the Associate/Collaborator and Bidder agree that this Undertaking shall be irrevocable and shall form an integral part of the Contract. We further agree that this Undertaking shall continue to be enforceable till the successful completion of Contract and till the Employer discharge it.

9. That this Deed shall be operative from the effective date of the Contract.
10. Bidder and the Associates hereby agree that in case of any dispute arising in and out of this consortium agreement shall be dealt in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the place of Arbitration will be at India and the language of Arbitration will be English.

IN WITNESS WHEREOF, the Associate/Collaborator and Bidder through their authorized representatives, have executed these present and affixed common seals of their respective companies on the Day, Month and Year first mentioned above.

For M/s
(Associate/Collaborator)

Witness :

1.

(Name in Block Letters)

(Signature of the authorized representative)

Name :

(Official Address)

Designation:.....

Common Seal of the Company

For M/s

(Associate/Collaborator)

2.

(Name in Block Letters)

(Signature of the authorized representative)

Name :

(Official Address)

Designation:.....

Common Seal of the Company

Note: 1. Separate Joint Deed of Undertaking(s) for each Collaborator/Associate shall be submitted by the Bidder along with the bid.

Signature of authorized signatory:...