

**MEMORANDUM OF UNDERTAKING**

This **MOU** made at New Delhi on ....., between the .....  
(hereinafter called the 'Client') and the terms ' **CLIENT**' shall mean and include its administrator, executors and assignee on ONE PART.

AND

**Delhi State Industrial and Infrastructure Development Corporation Ltd (DSIIDC)** having its Head Qtr at N-36, Bombay Life building, Connaught place New Delhi-1 (hereinafter called 'The Executing Agency') and the terms 'The Executing Agency' shall mean and include its administrator, executor and assignee on the OTHER PART.

WHEREAS, the client has agreed to entrust the work/ project relating to project planning, designing and Construction of ..... (name of work) at ..... hereinafter referred to as "**Project**" on the terms and condition set forth hereinafter and where as the **Executing Agency** has agreed to undertake and complete the work/ project accordingly.

**NOW, IT IS HEREBY AGREED BETWEEN THE PARTIES AS UNDER:-**

**1.0 DEFINITIONS**

- **'Approval'** means written approval from the designated officer of the Client.
- **'Project'** means (Name of work/project).....
- **'Projects Architect or Architects'** means the Architect employed by the Executing Agency or the Client for the Architectural services of the projects.
- **The Executing Agency** means the DSIIDC.
- **Pre Construction Activity-** means approval of 'Project Architect' through laid down GOI procedures as per para 2.5 of this MOU and its preliminary estimate, obtaining approval of the design and budget from the 'Client' and local bodies etc.
- **'CONTRACTOR'** means the contractor or contractors or suppliers or agencies employed by the Executing Agency for the work/project or any connected work/ project, including the Executing Agency itself in case of any work/project is done directly by the Executing Agency.

**2.0 GENERAL**

2.1 The **DSIIDC** as Executing Agency for the above work/ project shall carry out the entire planning and construction of ..... as a '**Deposit Work complete**

**in all respect.** i.e ready for immediate utilization and its project management, supervision and related services. The Executing Agency shall be paid the actual cost of work/project which include direct, indirect, contingencies and cost of ancillary work plus the DSIIDC departmental charges @ .....% (..... percent only) on the actual cost of project as defined at para 2.3 of this MOU.

2.2 Further the consultancy charges for the Consultancy obtained from outside agency by the Executing Agency for comprehensive planning and designing or deemed required by the Executive Agency for the proposed work/project/ project of the client, will be charged extra as per actual basis (consultancy charges shall be charged separately and shall not be included in Agency Departmental Charges of Executing Agency).

2.3 The expression '**actual cost of works/ projects**' shall include the following:

2.3.1 All the final payments made to the contractor(s), suppliers, agencies as agreed upon in the tender (if the work/project is being tendered), or agreed with the DSIIDC (if the work/project is not being tendered) for the construction of all the buildings, services, related facilities. These shall include the VAT on work, contract tax, service tax, and Labour Welfare cess or any other tax/cess/charges/duties/levies which may come in force during execution of work/projects.

2.3.2 All costs of material and equipment acquired for the projects and used on the work/project, either directly or through the contractor(s) including storage charges, carriage, handling and any other incidental charges connected with such materials but excluding the material not incorporated or not handed over to the DSIIDC.

2.3.3 The actual cost of site survey, soil testing charges, laboratory charges for testing of any material, manufacturing or built items including the cost of cartage of samples to and from the laboratory including cost of field laboratory equipments and consumables of the field laboratory set up by DSIIDC including contingent charges related to the Projects.

2.3.4 All liabilities of the Executing Agency payable to the contractors/Piece Rate Work/project, suppliers, Constructor(s) and other agencies to the extent these falls within definition of actual cost as may be left outstanding at the time of payment of final bills provided they have been accepted by the Executing Agency as balance payment against final bill of these agencies.

2.3.5 Other overhead expenditures such as advertisement incurred by DSIIDC which are debited to the project on prorata basis as decided by the project Incharge.

2.3.6 Any cost escalated due to change in whole sale price index and payable to the contractor in terms of contractual obligation on the part of DSIIDC.

2.4 The actual cost shall not include:

- a) Cost of land provided by the Client.
- b) Rent and taxes paid by DSIIDC for its office premises used for any purpose connected to monitor the projects/ storage of equipment.

2.5 The Executing Agency shall endeavor to engage one of the best available Architect consultancy firm for comprehensive planning and designing for the proposed building of the Client through the laid down Govt. of India procedures for procurement of services. The Executing Agency shall form an evaluation/screening committee comprising concerned Executive Engineer/ Superintending Engineer/ Chief Engineer and CAO (Works)/ CAO(HQ) of DSIIDC and also officers from the Client and/or its authorized nominee(s) as mutually decided for the process and finalization of eligible bidder's engagement of Architect Consultants/ Consultants/ contractors.

2.6 The Executing Agency shall endeavor to engage one of the best available Construction agency/contractor for execution of the proposed .....work/ project of the Client though the laid down CPWD guidelines for procurement of services. The Executing Agency shall form an evaluation/screening committee comprising of the concerned Chief Engineer and CAO (Works)/ CAO(HQ) of DSIIDC and also officers from the Client as mutually decided for the process and finalization of pre-qualification of construction agency. However, financial bids shall be decided by the Executing Agency as per the financial powers as delegated to DSIIDC officers.

2.7 On the completion of the project the Executing Agency shall inform the Client Deptt. to take over the possession of the building within the period of 30 days and it would be responsibility of the Client Deptt. to bear the cost of the security deployed on the project period starting with date of intimation to Client Deptt. in respect of the completion of the project till taking of possession. The DSIIDC would be at liberty to adjust the cost of security from the available fund including initial deposit.

### **3.0 RESPONSIBILITIES OF THE EXECUTING AGENCY:**

3.1a The planning, designing and post tendering planning of the project shall be done by the Executing Agency based on the requirements and specifications of the client through the Architect appointed by the Executing Agency. The Executing Agency shall also get the work/ project executed as per the drawings and other details agreed by the Client. The Architect employed by the Executing Agency shall be responsible for getting all the

local body approvals that are necessary to be obtained for start of the work as per statutory obligation.

- 3.1b The work shall be executed by the Executive Agency as per laid down system and procedure and specification issued by the CPWD through its manual and amendments applicable at the time of signing the MOUs and any subsequent amendment from time to time.
- 3.1c The associated cost to be incurred on the project for any changes in the approved project during the execution of the work will have prior approval of the Client Deptt. And shall be borne by them
- 3.2 Subsequent to signing of the MOU, the Executing Agency shall take possession of the site from the Client and shall nominate a responsible Engineer for execution of the projects under intimation to the Client.
- 3.3 Executing Agency shall prepare preliminary cost estimates for the various items of work/ project as required by Client on CPWD plinth area rates (where ever applicable) enhanced by the cost index of the area and on market rate basis for items which are not available in CPWD, PAR. The Preliminary Estimates shall be based on the architectural drawings prepared on the basis of the projected requirement of ..... (Client) and approved by the client.
- 3.4 Executing Agency shall execute the works/ projects on preliminary cost estimates inclusive of the Executing Agency departmental charges for project management consultancy services etc. in addition, consultancy charges for Architectural, structural, service design etc. will be charged as per actual basis. If at the detailed design/execution stage, there is any increase due to technical/administrative justification, the same has to be borne by the Client.
- 3.5 The Executing Agency shall prepare the tender documents comprising the technical specifications, Bill of Quantities, General Terms and Conditions, Special Conditions etc. for inviting and acceptance of tenders as defined in CPWD Works Manual.
- 3.6 The Executing Agency shall be responsible for the timely completion, the quality and structural safety of the structures.
- 3.7 The Client may, through their authorized representative, review the progress and construction work/ project from time to time to see that the work/ project is being executed as per drawings & specifications, provided by the Client. In the case of any noticeable defects or variations over the approved drawings/specifications, the same shall be rectified within 30 (thirty) days from its reporting.

- 3.8 During the various stages of execution, the Executing Agency shall submit quarterly progress reports along with site photographs to the Client
- 3.9 The Executing Agency shall be responsible for the proper structure, specifications and workmanship of the constructed building/work. Liability for all defects on the work/project by the Executing Agency shall rest with them for a period of twelve months from the date of its completion reported to the Client. The Executing Agency shall be responsible for satisfactory rectification of defects during this liability period. Any defects discovered and brought to the notice of the Executing Agency during the aforesaid period shall be rectified by the Executing Agency forthwith. In the event of the failure on the part of the Executing Agency to rectify the defects, the same may without prejudice to any other right available to it in law, be rectified by the Client for and on behalf of the Executing Agency and at the cost of the Executing Agency, after due notice to the Executing Agency. The Client shall have the right to deduct or set off the expenses incurred by it in rectifying the defects as aforesaid from or against any amount due and payable or becoming, due and payable by the Client to the Executing Agency under this agreements or any other whatsoever.
- 3.10 The Executing Agency shall be fully responsible to defend any suits or arbitration cases arising out of the project in connection with the work/ project between the Executing Agency and its Contractor(s)/consultants. Also refer related para/clause 6.4 of this MOU.
- 3.11 The Executing Agency shall indemnify the client in respect of all claims, proceedings, costs, damages, charges and expenses what so ever arising out of or in relation to any such matter only in so far Executing Agency is responsible for the Project.
- 3.12 The Executing Agency shall be fully responsible to defend any suits or arbitration cases arising out of the project in connection with the work/ project between the Executing Agency and its Contractor(s)/consultants. Also refer related para/clause 6.4 of this MOU.

#### **4.0 RESPONSIBILITY OF THE CLIENT**

- 4.1 The Client shall demarcate and hand over the site for the project free of all encumbrances or charges.
- 4.2 The Executing Agency through its Architect shall, wherever required obtain in writing approval of the local bodies or other statutory bodies for the planning and construction as contemplated in the MOU. However, the Client shall help the Executing Agency and its Architect to the extent of writing letters to the local bodies or any other assistance felt necessary for getting such approvals. The delay in approval/ clearances from local bodies, DPCC, Statutory Authorities etc shall not be attributable to the Executing

Agency. The Client shall provide ownership and land use documents required for getting approvals from Local bodies.

- 4.3 In case of cost escalation, Executing Agency will provide the reasonable justification for same and client will accord the revised expenditure sanction.

## **5.0 Effective date & Administration**

This MOU shall become effective upon signature by the parties and will continue in effect till terminated or till Project Completion.

- 5.1 It (MOU) may be modified or amended by a written agreement between both parties and such amendment shall become part of and shall be attached to this MOU.

- 5.2 This MOU may be terminated by either party on six months written notice to the other party or by written mutual consent. Neither party shall withdraw unilaterally during subsistence of this MOU.

- 5.3 This MOU shall be terminated at the \_\_\_\_\_end of years from the date of signature unless reversed or extended at that time by a written agreement of the parties.

- 5.4 Each party undertakes and agrees that it shall not divulge throughout the validity of the MOU/ Contract any trade, commercial or technical secrets or confidential matters reports, documents, data or information of any other to any third party save and except for the purpose of implementing the understanding reached in this MOU. However, any sharing of information between the parties shall be subject to their respective parties on the disclosure of the information.

- 5.5 The Executing Agency shall not be liable for any default in performing activities hereunder beyond its control including, but not limited to, acts of God, war, riots, Civil disturbances, acts of terrorism or any other cause beyond the reasonable control of the Executing Agency.

- 5.6 Failure to accomplish the assignment as prescribed within stipulated period for reasons of Force Majeure conditions or conditions beyond the control of Executing Agency, shall not entitle the other party for any damages whatsoever and the time period shall accordingly be extended without levy of damages/compensation.

## **6.0 COMPLETION OF THE PROJECT**

- 6.1 After approval of Preliminary estimate and deposit of funds by the Client, the work/ project will be taken up by the Executing Agency. During the pre-construction activities, the client including the Client's consultant and sub consultants shall be closely associated with the Executing Agency. The pre-construction activity is likely to take about 6 (six) months. However this may vary in some projects where change of land use is required.

During this period, complete planning of work/ project, the tender documents etc. shall be framed. Period of actual execution of the work/ project is likely to take about ..... months after approval of the building plans and EIA approval, if required of the projects from the local bodies.

- 6.2 Executing Agency shall be required to complete the construction of projects within the period stipulated as above. In case of delay which may occur due to the reasons beyond the control of Executing Agency. The Executing Agency would approach the Client with full details for extension in time limit for completion of the works/ projects and the completion time shall be extended with the mutual consent.
- 6.3 Any compensation levied by the Executing Agency due to non-fulfillments of any clause of the contract by the contractor or any such recovery from the contractor for bad work/ project or any other reasons whatsoever shall be transferred to the Client.
- 6.4 The cost of any arbitration award or the cost as a result of any direction of any court/tribunal etc. in respect of the work/ project done or to be done shall be borne and paid by the Client.
- 6.5 The Executing Agency shall be fully responsible for observance of all labour and other laws applicable in the matter and shall indemnify and keep indemnified the Client against effect of non-observance of any such laws.
- 6.6 The Executing Agency shall send completion report along with built drawings and maintenance schedules for all the services to the office of the Client in writing within 1 month of completion of work/ project. The accounts will be reconciled within one month of sending the completion report.

The Completion Certificate shall be given by Executing Agency and the project shall deem to have been completed/ handed over on the date of receipt of completion report by the Client.

- 6.7 ..... (Client) will not be liable directly to the contractors/ suppliers of the items required for execution of contract.

**7.0 ASSIGNMENT OF THE M.O.U**

- 7.1 The executing Agency shall not assign or transfer or part with any of the rights, duties of obligation, wholly or in part, under this M.O.U without the prior consent in writing of the Client.

## 8.0 PAYMENT SCHEDULE

- 8.1 The Client shall deposit Rs. .... Crore as token amount in advance for processing the work/ project on priority, till the formal approval is received. No interest shall be payable on said amount to the Client.
- 8.2 The Client shall give 33.33% (thirty three point three three percent) deposit of the sanctioned amount of the project as initial deposit (including the initial token amount of Rs. .... Crore), thereafter; expenditure incurred shall be released in full on monthly basis after submission of statement of expenditure by DSIIDC as per CPWD format for deposit works/ projects. The initial deposit, however would be retained for adjustment against the last bill of the estimated expenditure. On completion of work/ project, the accounts of the work/ project shall be closed and a final statement shall be submitted for settlement along with refund of excess deposit received, if any.
- 8.3 The Executing Agency on completion of the project shall provide the utilization certificate in compliance of its obligation to the Client Deptt. for actual cost on project comprising of expenditure on civil, electrical, development and other overhead expenditure incurred on the project duly certified by the Executive Engineer.

## 9.0 DISPUTE REDRESSAL

If a dispute arise between the parties to this MOU with respect to any of its clause or on the aspects where the Articles of this MOU are silent or for cases relating to deviation from these articles, efforts would be made to resolve the issues through mutual dialogues and consultation between DSIIDC (Delhi State Industrial and Infrastructural Development Corporation Ltd) and client, unresolved disputes and differences shall be referred to the Managing Director, DSIIDC. The decision of the Managing Director, DSIIDC will be final and binding on both the parties i.e. DSIIDC and .....(Client).

- 9.1 Any dispute between the parties pertaining to this MOU if undecided by mutual consultation shall be referred to the Managing Director, DSIIDC, who shall be the sole arbitrator & who may appoint his assignee to be the sole arbitrator between the parties. The place of Arbitration between the parties shall be at Delhi and applicable law shall be the Arbitration and Conciliation Act 1996 or any amendment to the said law thereafter.

The Cost of arbitration shall be borne equally by both the parties.

- 9.2 If any provision or any part of this MOU is held invalid or contrary to laws of India, the remaining provisions shall remain valid and unaffected.

## 10.0 DEPOSIT WORK/ PROJECT BASIS

In respect of above conditions, the Appendix 3 of the CPWD Work Manual 2014 which gives in detail the terms and conditions for taking up the deposit work/ projects with up



to date correction slips will stand modified to the extent of issues covered in this MOU and shall form part of this MOU.

11.0 This MOU shall commence from the date of its signature. It shall remain valid up to the period of Contract/ Project agreement/ Completion whichever is earlier, unless otherwise agreed between parties in writing.

**IN WITNESS WHEREOF**, the parties hereto acting through their duly authorized representatives have herewith signed and put seals on the date above written at Delhi.

For and on behalf of  
DSIIDC  
Executing Agency,

For and on behalf of  
.....  
Client

Authorized Signatory

Authorized Signatory

**Witness:**

1. \_\_\_\_\_

2. \_\_\_\_\_

S/o \_\_\_\_\_

S/o \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

