

**MEMORANDUM OF UNDERSTANDING  
(MOU)**

**BETWEEN**

**EVENING CREST SDN BHD (ECSB)  
(Company No. 1296186-U)**

**AND**

**ABC Company SDN BHD (ABC Company)  
(Company No: XXXXXX-X)**

**1<sup>st</sup> December 2023**

# SAMPLE

## MEMORANDUM OF UNDERSTANDING (MoU)

The Organisation for Co-operation entered this day 1<sup>st</sup> December 2023 between:

**EVENING CREST SDN BHD** (Company No. 1296186-U), a company incorporated in Malaysia and having its business address at C-03A-01, COLONIAL TOWER EMPIRE CITY DAMANSARA, DAMANASARA PERDANA, JALAN PJU 8, 47820 PETALING JAYA, SELANGOR, MALAYSIA and having registered business activities as a capital investment company, and contractors (hereinafter referred to as “**ECSB**”) of one part;

and

**ABC COMPANY SDN BHD** (Company No. XXXXXXXX-X), a company incorporated in Malaysia and having its business address at \_\_\_\_\_ and having registered with Construction Industrial Development Board (CIDB) as a Class A (Grade G7) contractor (hereinafter referred to as “**ABC Company**”) of the other part;

Having regard to:

- A) Meeting objective to collaboratively participate with other pre-agreed participants, to engage in the pre-bid, bid and post-bid of any proposed construction projects (tender) in response to market opportunity, mutually and co-operatively
- B) Creating working platform to share and execute viable project intelligence with participation from **ABC Company** that mandates producing compliant tender,

have concluded this Memorandum of Understanding **NOW IT IS HEREBY AGREED** as follows:

### 1.0 SCOPE AND OBJECTIVES

- 1.1 This Memorandum of Understanding (hereinafter referred to as **MOU**) concerns the cooperation between ECSB and **ABC Company** on working collaboratively to participate in the tender and, on proviso winning the tender, in return awards **ABC Company** pre-agreed scope of work of the tender.
- 1.2 Collaboration in the context of this MOU is a continuation of **ECSB-ABC Company** collaboration works during delivery of the tender, that construe into delivery contract, up to as agreed of construction cost and/or to a value of project value whichever is higher to KJSB, and is focused on the following work scope:
  - a) Support in capacity of project management of contract delivery, and
  - b) Civil, mechanical, electrical and communication system related works whichever deemed meeting tender requirements.
- 1.3 The **ECSB-ABC Company** Executive Group (hereinafter referred to as **Executive Group**) established to continue its activities in the frame of this MOU, Executive Group members

to be pre-agreed collectively with clearly depicted mandate over period of contract delivery.

1.4 Scope of works and responsibility of each party shall be described as follows:

(a) **ECSB:**

(i) to engage in the pre-bid, bid and post-bid of any proposed construction projects (tendering process) in response to market opportunity, mutually and co-operatively under the name of joint venture (JV) partnership/collaboration.

(ii) Acting as a representative on behalf of the associate partner (JV partner) to secure any designated project and shall be responsible to focus on planning and executing and monitoring the implementation of the project until completion.

(iii) ECSB shall be entitled to be paid for the amount of \_\_\_\_ **percentage** (\_\_\_\_%) from the total contract value/amount to be awarded to the Joint Venture (JV) partnership/collaboration.

(b) **ABC Company:**

(i) **ABC Company** will be responsible for the implementation of the whole construction activities and processes related to the project until completion.

(ii) To assist and provide the related technical expertise as well as to provide a financial support to ECSB in the process of securing any related or designated project which to be agreed upon by both parties, ECSB and **ABC Company** to be secured or executed under the name of a joint venture (JV) partnership.

(iii) **ABC Company** be entitled to be paid for the amount of \_\_\_\_ **percentage** (\_\_\_\_%) from the total contract value/amount to be awarded to the Joint Venture (JV) partnership/collaboration.

## 2.0 FINAL PROVISIONS

1.3 This MOU is concluded in plain English language.

1.4 Any dispute about the interpretation or implementation of this MOU will be exclusively resolved through consultations between the Parties.

1.5 This MOU can be modified and/or amended by the written consent of the Parties.

1.6 This MOU can be terminated at the request of any of the Parties, with a prior written notice of 3 (three) months to the other Party.

## 3.0 DEFINITIONS

In this MoU the following expressions shall have the following meanings:

3.1 "Confidential Information" shall mean:

any and all confidential information, including without limitation any and all technical, financial, commercial or other information or trade secrets, know-how (howsoever recorded, preserved or disclosed) disclosed directly or indirectly by one Party to the other Party or by a third party on behalf of a Party, in either case in connection with the

Purpose from whatever source, and either identified by a suitable legend or other marking as being confidential (or a similar designation) in a suitably prominent position, or, if disclosed orally or visually, is reduced to writing within thirty (30) days following disclosure; and any and all information which would reasonably be considered to be confidential having regard to all the circumstances.

3.2 "Disclosing Party" shall mean a Party who discloses Confidential Information pursuant to this MoU.

3.3 "Representatives" shall mean, in relation to any Party, a related corporation and its affiliates' directors, officers, partners, employees and professional advisers from time to time who are directly concerned with the Recipient's appraisal of and/or representing the Recipient in relation to the Purpose and whom the Recipient have made aware of the confidential nature of the information and the terms of this MoU the Recipient procure as if he, she or it were a party hereto.

3.4 Confidential Information falling into any of the following categories shall be excluded from the provisions of clause 3.1 above:

a) Information which is or becomes generally available in public domain after it has come into the public domain and only where it becomes so available otherwise than as a result of a breach of this MoU; or

b) Information that becomes lawfully available to the Recipient from a third party free from any confidentiality restriction; or

c) Information known to or in the possession of the Recipient prior to disclosure under this MoU; or

d) Information developed by the Recipient independently of disclosure made under this MoU and in circumstances that do not amount to a breach of the provisions of this MoU; or

e) Information disclosed by the Recipient pursuant to an order of a court of competent jurisdiction or in compliance with the provisions of any law or regulation in force from time to time provided that in such circumstances the Recipient shall, so far as it is permitted to do so, advise the Disclosing Party before disclosure with as much notice as is reasonably practicable and take whatever reasonable and practicable steps the Disclosing Party deems necessary to protect its interests in this regard and provided further that the Recipient will disclose only that portion of the information which it is legally required to disclose; or

f) Information disclosed to a third party pursuant to the prior written authorisation of the Disclosing Party.

3.5 "Recipient" shall mean the Party receiving Confidential Information pursuant to this MoU.

#### **4.0 HANDLING OF CONFIDENTIAL INFORMATION**

4.1 In consideration of the disclosure of Confidential Information the Recipient undertakes in relation to Confidential Information it receives to and to procure that all its Representatives shall:

- a) use the same only for the Purpose and not to use or exploit the Confidential Information for any other Purpose unless the Disclosing Party consents in writing;
- b) treat all Confidential Information as private and confidential and safeguard it accordingly;
- c) not without the prior written consent of the Disclosing Party disclose the same to any persons, nor use the same for any purpose, other than to the Recipient's Representatives on the need-to-know basis for the Purpose;
- d) To only make such copies of, reduce to writing or otherwise record the Confidential Information as shall be necessary in order to carry out the Purpose; at the Disclosing Party's request or on termination of this MoU
  - (i) return all Confidential Information disclosed to it, including all copies and other reductions to writing; or
  - (ii) use its reasonable efforts to destroy all Confidential Information disclosed to it, including all copies and other reductions to writing and delete it from its computer systems provided in either case that the Recipient may retain:
    - A. one copy of Confidential Information and any document created by the Recipient containing Confidential Information for records purposes only and as required by law or regulation; and
    - B. electronic back-up copies of Confidential Information retained on servers that would be impractical to delete, provided, that any such retained Confidential Information shall remain confidential and shall continue to be subject to all restrictions, obligations, and other terms of this MoU for as long as this MoU is in effect; and
- e) apply thereto no lesser security measures and degree of care than those which the Recipient applies to its own confidential information and which the Recipient confirms as providing adequate protection of such information from unauthorised disclosure, copying or use.

## **5.0 CONSEQUENCE OF A BREACH OF THE MOU**

5.1 The Parties acknowledge that any breach or threatened breach of this MoU could cause injury to the Disclosing Party and that monetary damages may not be an adequate remedy. In the event of a breach or threatened breach by the Recipient, the Disclosing Party will be entitled to seek injunctive relief, specific performance, or other equitable remedy in any court of competent jurisdiction.

## **6.0 LIABILITY**

6.1 Neither party shall have any liability for any loss of revenue, profit, use, data, production, business, loss of any contract or any anticipated saving or for any financing cost or increase in operating cost or for any economic loss or punitive and/or exemplary damages or indirect or consequential loss or damage which may be suffered by the other party.

6.2 Neither Party makes any warranties or representations of any kind, express or implied, concerning its Confidential Information or the accuracy or completeness of its confidential information.

6.3 Nothing in this MoU shall exclude, restrict, or limit either Party's liability for death or personal injury resulting from negligence.

## 7.0 **DISCLAIMER**

7.1 The Disclosing Party reserves all rights in the Confidential Information and no rights or obligations other than those expressly recited in this MoU are granted or to be implied by licence or otherwise from the MoU. No licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other industrial property right now or in the future held, made, obtained or licensable by the Disclosing Party, or any copyright, trademark or trade secret rights.

## 8.0 **DURATION**

8.1 This MoU shall have effect from the date stated at the beginning of it (the "Effective Date") and shall continue for a period of 5 years from the date hereof, unless otherwise agreed in writing between the Parties. Subject to clause 6.2, the obligations contained herein shall terminate 2 years after termination of this MoU.

8.2 Notwithstanding clause 6.1, the provisions of this MoU shall continue to apply to any Confidential Information retained by a Recipient after termination or request for return or destruction pursuant to clause 2.1. Such provisions shall expire 5 years from the date of termination or request for return or destruction.

## 9.0 **NON-ASSIGNMENT**

9.1 This MoU is personal to the Parties and the rights and obligations hereunder shall not be assigned or otherwise transferred in whole or in part by either Party without the prior written consent of the other Party (such consent not to be unreasonably withheld).

## 10. **NOTICES**

10.1 Any notice required or authorised to be given by a Party under this MoU shall be delivered by hand, or sent by prepaid post to the other Party at the address stated and for the attention of the person set out below, or to such other address or for the attention of such other person as may be specified by the relevant Party by notice from time to time.

ECSB: for the attention of:

Name: AZMAN MAT NOOR

NRIC: 014-7538281

Email: eveningcrest@gmail.com

ABC Company: for the attention of:

Name

NRIC

Email:

- 10.2 A notice delivered by hand shall be deemed duly received when left at the address and for the attention of the person referred to in this clause. A notice sent by prepaid post shall be deemed to have been duly received three business days after the posting.

### **11.0 MISCELLANEOUS**

- 11.1 This MoU constitutes the entire MoU and understanding between the Parties in respect of the subject matter of this MoU and in respect or connection thereof supersedes all previous representations, negotiations, commitments, MoUs, understandings, undertakings, or communications.
- 11.2 No amendment or variation of this MoU or any provision of this MoU shall be effective except if it is in writing and signed by each of the Parties' respective representatives.
- 11.3 No forbearance or failure by either party to exercise or assert or claim any right or entitlement under this MoU shall be construed as a waiver of that right or entitlement or any other right or remedy.
- 11.4 If any provision of this MoU shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity, and enforceability of the remainder of this MoU shall not be affected.

### **12.0 GOVERNING LAW AND JURISDICTION**

- 12.1 This MoU and any dispute or claim arising out of it or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Malaysia. The Parties submit to the exclusive jurisdiction of the courts of Malaysia.

### **13.0 COUNTERPARTS**

- 13.1 This MoU may be executed in counterparts which together shall form one and the same MoU. Each executed copy shall count as an original and this MoU shall be deemed fully executed when one or more counterparts have been signed by each Party and delivered to the other party.

**AS WITNESS** this MoU has been signed on behalf of each party by its duly authorised representative the day and year indicated below.

Signed for )  
and on behalf of )  
**EVENING CREST SDN BHD (1296186-U)** ) .....

**Name:**  
**Position:**  
NRIC:  
Date

in the presence of: ) .....

**Director**  
I/C  
Date

Signed for )  
and on behalf of )  
**ABC Comoany SDN BHD (287328-W)** ) .....

**Name:**  
**Position:**  
NRIC:  
Date:

in the presence of: ) .....

**Name:**  
**Position**  
NRIC:  
Date:

