

# CESA WEBINARS

## Forms of Agreement

**Joint Venture Agreement Nov 2021**

**Pre-Bid Agreement Nov 2016**

20 July 2022



# Purpose

The Joint Venture Agreement is intended for use to formalise agreements between professional services providers who intend jointly securing appointments for and performing professional services related to construction projects.

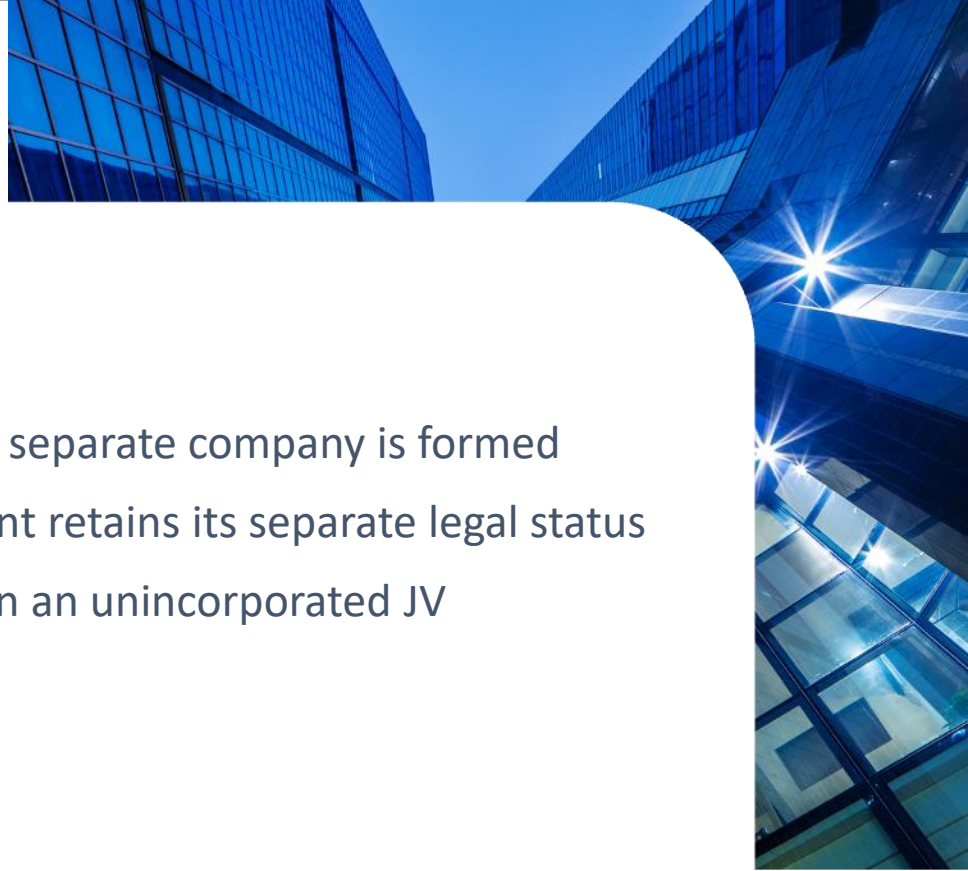
The Pre-bid Agreement is a very useful document enabling heads-of-agreement to be agreed at RFP stage between members intending to form a joint venture for the particular project



## Clause 1 Definitions and Interpretation

- ❑ **“Joint Venture”** means the entity formed by formal agreement by the Members for the sole purpose of securing an appointment by the Client and to perform the services set out in the PS Agreement and any further services which may be agreed to by the Members.
- ❑ **“Joint Venture Agreement”** means the agreement between the members of the Joint Venture to form an unincorporated joint venture
- ❑ **“Specified Proportions”** means the respective financial interest of each Member in the Joint Venture as stated in the Specific Provisions.

# Incorporated vs Unincorporated Joint Ventures



- ❑ An incorporated Joint Venture means a separate company is formed
- ❑ In an unincorporated JV, each participant retains its separate legal status
- ❑ A consortium is generally taken to mean an unincorporated JV



## Clause 3 Exclusivity

- ❑ Clause 3 of the JV Agreement covers exclusivity of the members during the performance of the services.
- ❑ Clause 11 of the Pre-Bid Agreement covers exclusivity at RFP Stage

## Clause 5: Profits and Losses

- ❑ The profits and losses, costs, liabilities and assets of the Joint Venture shall be borne by the Members in accordance with the **Specified Proportions** as described in the Specific Provisions
- ❑ In Clause 3 of the Pre-bid Agreement the nominal equity share of the parties can be defined, to be finalised at agreement stage

## Clause 6: Pre-Award Costs

- ❑ All costs incurred by the Members prior to the date of commencement of the PS Agreement shall be for their own account except where otherwise provided for in the Specific Provisions.
- ❑ **Clause 2 of the Pre-bid Agreement: Each party shall carry their own costs incurred in supporting the RFP submission**

## Clause 7: Management Committee of the JV (Manco)

- One representative from each member, with the authority to bind the member within the terms of the JV Agreement in all JV matters
- Chairperson rotates on a 6-monthly basis
- Decisions to be unanimous.
- If not unanimous, the matter is adjourned for 48 hours. If in the reconvened meeting the decision is still not unanimous, the decision is taken by a majority vote, in which the chairperson has a casting vote.
- The dissenting member may refer the matter for dispute.



## Clause 8: Operation of the MANCO

- ❑ MANCO appoints the Project Leader (PL), and dictates overall policy to the PL regarding general day to day management of the JV, representing the JV, coordinating the activities of the JV etc.
- ❑ MANCO
  - ❑ Approves the proposal to be submitted for the services
  - ❑ Approves the accounts of the JV
  - ❑ Determines the nature and extent of additional duties and functions to be performed by JV members
  - ❑ Determine the term and conditions of employment of staff and remuneration of persons seconded by the members
  - ❑ Determine the requirements for and procure all other resources required, e.g., premises, furniture and office equipment, etc
  - ❑ Determines and approves any working capital requirements, borrowings, guarantees etc, insurance to be taken out by the JV, claims management, distribution of surpluses,
  - ❑ Approves subconsultants

## Clause 9: Staffing of the JV

- The JV does not have any employees
- Any persons appointed to staff the JV, including the PL and finance and admin manager should be employed by one of the member firms and seconded to the JV

## Clause 10: ACCOUNTS

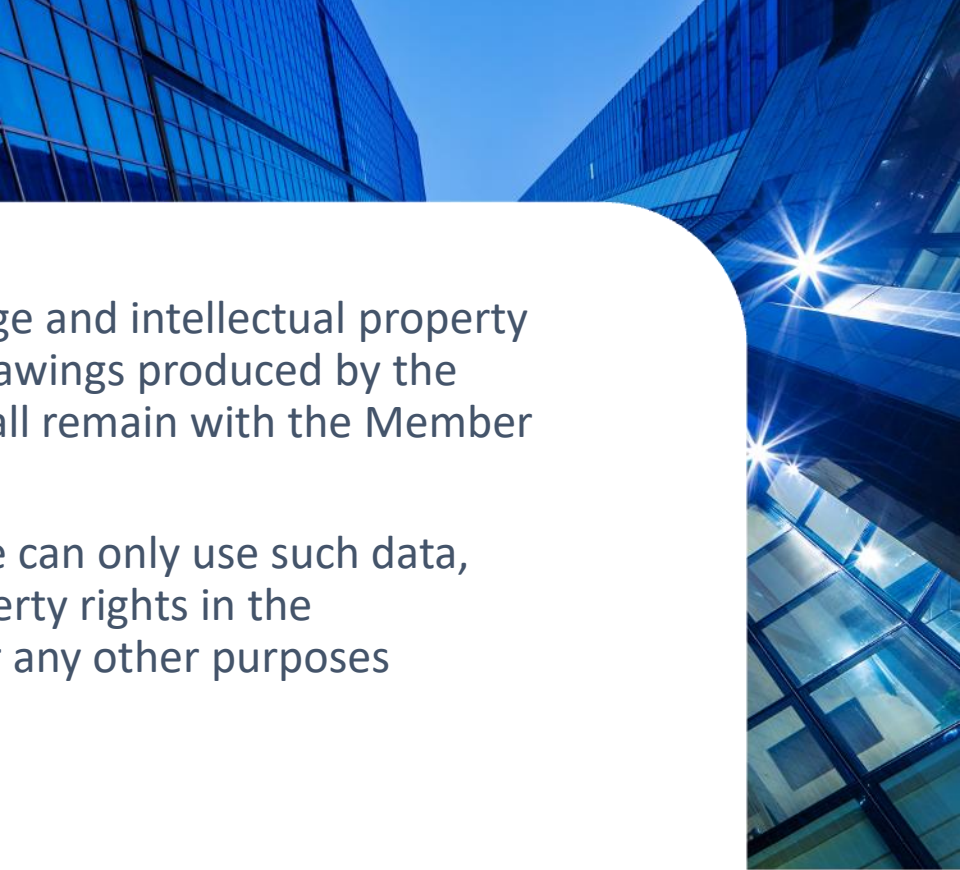
- ❑ JV shall cause proper books of account and complete records according to good accounting practice.
- ❑ PL assisted by the finance and admin manager shall prepare quarterly management reports for approval by MANCO.
- ❑ Final accounts shall be prepared and audited on completion of the services, from which the final profit and loss sustained by the JV shall be ascertained and distributed.

## Clause 15: LIABILITY

- ❑ In most cases, JV will be held jointly and severally liable to the client
- ❑ Each member then indemnifies other members against all legal liabilities arising out of the performance or otherwise of its obligations under the JV agreement
- ❑ If a claim arises against the JV not arising from the default of any member, but directed at a member under the joint and several liability provision, the other members undertake to compensate the member



# IP Rights



- ❑ The ownership of data, design knowledge and intellectual property rights in the designs, documents and drawings produced by the Members in performing the services shall remain with the Member concerned
- ❑ The other members of the Joint Venture can only use such data, design knowledge and intellectual property rights in the performance of the Services and not for any other purposes whatsoever.



## Clause 19 Adjudication

- The CESA JV Agreement makes provision for Adjudication of disputes where the amicable settlement process set out in Clause 18 has failed
- Clause 19 allows the members to agree the adjudication rules at this time , or where agreement cannot be reached, as directed by the President of CESA. However it is recommended tha the rules be set out in the specific provisions

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