

way answerable for any loss or damage which may happen to or in respect of any such materials or plant either by the same being lost, stolen, injured or destroyed by fire, tempest or otherwise.

#### 4.34 Tools, Plant and Materials Supplied by Railways

The Contractor shall take all reasonable care of all tools, plant and materials or other property whether of a like description or not belonging to the Railway and committed to her charge for the purpose of the services and shall be responsible for all damage or loss caused by her, her agents, permitted subcontractor, or her workers or others while they are in her charge. The Contractors shall sign accountable receipts for tools, plants and materials made over to her by the Manager and on completion of the services shall hand over the unused balance of the same to the Manager in good order and repair, fair wear and tear excepted, and shall be responsible for any failure to account for the same or any damage done thereto.

#### 4.35 Hire of Railways' Plant

The Railway may hire to the Contractor such plant/ machinery as DG sets, portable engines, pumps etc. for use during execution of the services on such terms as may be specified in the special conditions or in a separate agreement for Hire of Plant.

#### 4.36 Precaution During Progress of Services

During the execution of services, unless otherwise specified, the Contractor shall at her own cost provide the materials for and execute all services as is necessary for the safety, hygiene, satisfaction, elegance, acceptance, proper handling of assets and shall ensure that no damage, injury or loss is caused or likely to be caused to any person or assets or hindrance to other works / services.

#### 4.37 Roads and Water Courses

Existing roads or water courses shall not be blocked, cut through, altered, diverted or obstructed in any way by the Contractor, except with the permission of the Manager. All compensations claimed for any unauthorized closure, cutting through, alteration, diversion or obstruction to such roads or water courses by the Contractor or her agent or her staff shall be recoverable from the Contractor by deduction from any sums which may become due to her in terms of contract, or otherwise according to law.

#### 4.38 Provision of Access to Premises

During progress of services in any street or thoroughfare, the Contractor shall make adequate provision for the passage of traffic, for securing safe access to all premises approached from such street or thoroughfare and for any drainage, water supply or means of lighting which may be interrupted by reasons of the execution of the services and shall react and maintain at her own cost barriers, lights and other safeguards as prescribed by the Manager, for the regulation of the traffic, and provide watchers necessary to prevent accidents.

### 4.39 Safety of Public

The Contractor shall be responsible to take all precautions to ensure the safety of the public whether on public or Railway property and shall post such look out, such persons as may, in the opinion of the Manager be required to comply with regulations appertaining to the service.

### 4.40 Use of Explosives

No explosives shall be used for the services rendered or on the site by the Contractor.

### 4.41 Suspension of Services

4.41.1 The Contractor shall on the order of the Manager, suspend the progress of the services or any part thereof for such time or times and in such manner as the Manager may consider necessary and shall during such suspension, properly protect and secure the work so far as is necessary in the opinion of the Manager.

If such suspension is -

- i. Provided for in the contract, or
- ii. Necessary for the proper execution of the services or by the reason of extraneous conditions or by some default on the part of the Contractor, and or
- iii. Necessary for the safety of the services or any part thereof

4.41.2 The Contractor shall not be entitled to the extra costs, if any, incurred by her during the period of suspension of the service, but in the event of any suspension ordered by the Manager for reasons other than aforementioned and when each such period of suspension exceeds 14 days, the Manager shall extend the time of service for completion of the services as the Manager may consider proper, having regard to the period or periods of such suspensions and to such compensations as the Manager may consider reasonable in respect of salaries or wages paid by the Contractor to her employees/ workers during the periods of such suspension.

4.41.3 **Suspension Lasting More Than 3 Months:** If the progress of the services or any part thereof is suspended on the order of the Manager for more than three months at a time, the Contractor may serve a written notice on the Manager requiring permission within 15 days from the receipt thereof to proceed with the service or that part thereof in regard to which progress is suspended and if such permission is not granted within that time the Contractor by further written notice so served may, but is not bound to, elect to treat the suspension where it affects part only of the service as an omission of such part or where it affects the whole of the services, as an abandonment of the contract by the Railway.

### 4.42 Rates for Items of Services

The rates, entered in the accepted Schedule of Rates of the Contract are intended to provide for services duly and properly completed in accordance with the General and Special (if any) Conditions of the Contract and the Specifications/ procedures specified in the contract document including drawings wherever applicable along with all labour, materials, tools, and plants etc.

**4.42.1 Rates for Extra Items of Services:** Any additional item of work carried out by the Contractor on the instructions of the Manager which is not included in the accepted Schedules of Rates shall be executed at the rate agreed upon between the Manager and the Contractor before the execution of such items of work.

The Contractors shall be bound to notify the Manager at least seven days before the necessity arises for the execution of such items of works that the accepted Schedule of Rates does not include rate or rates for the extra work involved.

The rates payable for such items shall be decided at the meeting to be held between the Manager and Contractor, in as short a period as possible after the need for the special item has come to the notice. In case the Contractor fails to attend the meeting after being notified to do so or in the event of no settlement being arrived at, the Railway shall be entitled to execute the extra works by other means and the Contractor shall have no claim for loss or damage that may result from such procedure.

**4.42.2** Provided that if the Contractor commences work or incurs any expenditure in regard thereto before the rates as determined and agreed upon as lastly hereuntofore-mentioned, then and in such a case the Contractor shall only be entitled to be paid in respect of the services carried out or expenditure incurred by her prior to the date of determination of the rates as aforesaid according to the rates as shall be fixed by the Manager. However, if the Contractor is not satisfied with the decision of the Manager in this respect, she may appeal to the Chief Manager within 30 days of getting the decision of the Manager, supported by analysis of the rates claimed. The Chief Manager's decision after hearing both the parties in the matter would be final and binding on the Contractor and the Railway.

#### 4.43 Clearance of Site on Completion

On completion of the services, the Contractor shall clear away and remove from the site all tools /plants and surplus materials, rubbish and temporary works of every kind and leave the whole of the site clean to the satisfaction of the Manager. No final payment in settlement of the accounts for the services shall be paid, held to be due or shall be made to the Contractor till, in addition to any other condition necessary for final payment, site clearance shall have been effected by her, and such clearance may be made by the Manager at the expense of the Contractor in the event of her failure to comply with this provision within 7 days after receiving notice to that effect.

Should it become necessary for the Manager to have the site cleared at the expenses of the Contractor, the Railway shall not be held liable for any loss or damage to such of the Contractor's property as may be on the site and due to such removal, there from which removal may be affected by means of public sales of such materials and property or in such a way as deemed fit and convenient to the Manager.

#### 4.44 Digital Contract Labour Management System

A comprehensive computerized contract labour management system for creating a database and monitoring attendance is crucial for efficient performance and for safeguarding workers' welfare. This system shall be put in place by the contractor or by Indian Railways, as decided by the Railways and as per the special conditions of contract. Use of this system shall be mandatory in labour intensive service contracts i.e.

housekeeping etc. In other service contracts, a special mention of the applicability of this clause shall be made in the special conditions of the contract.

The important features of the computerized contract labour management system shall be as follows –

- **Database** – Maintenance of certified identification and demographic details for contract workers – A detailed biodata of each contract worker shall be saved in the system with details like – personal, educational, family, hometown, police verification, medical, insurance, PF registration etc.
- **Certified identification** – Identification data issued by Government or reliable agencies like Nation ID (Aadhar Card), Voters ID, driving license, PAN card etc. to be stored in the application.
- **Identity Card generation** – An identity card with details like site, blood group, photographs can be incorporated on the card, along with a colour band based on the category of labour.
- **Biometric details** like – photograph, fingerprint, iris-map to be stored in the system for authentic identification of contract workers. Biometric authorization is a reliable method to curb **Proxy Attendance**.
- **Attendance data** – All entries and exits to be recorded in time and attendance machines – using fingerprints or proxy card. Another attendance in between the entry and final exit can also be recorded, on case by case basis, if deemed necessary.
- **Restricted Entry** – A contract worker can be denied entry on infringement of any vital requirement like expiry of medical or accident insurance, driving license, contract terms, work permit dates etc.
- **Shift Logic** – The system can be used to manage the shift logic – so that overtime, double shifts if any can be logged in the system and systemic restrictions can be placed to prevent double shifts, unless Railway supervisor approves the request digitally/otherwise.
- **Time sheet generation** – Time sheets shall be generated on a daily, weekly or monthly basis or any other frequency as specified by the Indian Railways.
- **Consumables** – Material issued to or returned by contract worker is recorded in the system, as applicable (optional).
- **Safety, Performance and Labour Law training** – The dates of safety, performance and labour law training to be stored in the system which can raise an alert when a refresher training is due.

In case of Emergency –

- **Who's where** – in case of an emergency and disaster recovery it is important and the application provides the count and location of contract workers.
- **Alerts** – Pre-defined email and SMS alerts, notifications and exception reports can be generated which can be utilized by Railways staff, supervisors etc. to manage service contracts efficiently.

#### 4.45 Environmental Requirements

The Contractor shall when working on the Premises, perform its obligations under the Contract in accordance with the Indian Railways environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

For: (Signature)

Sanjeev Kumar

(Signature)



## 4.46 Data Protection

**4.46.1** Where the Contractor is processing Personal Data, as a Data Processor for the Indian Railways, the Contractor shall

- (a) Process the Personal Data only in accordance with instructions from Indian Railways (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by Indian Railways.
- (b) Comply with all applicable laws;
- (c) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any Regulatory Body.
- (d) Implement appropriate technical and organisational measures to protect the Personal Data against unauthorized or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorized or unlawful Processing, accidental loss, destruction, or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- (e) Take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data.
- (f) Obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractor for the provision of the Services.
- (g) Not cause or permit the Personal Data to be transferred, stored, accessed, viewed or processed outside of India without the prior written consent of the Indian Railways.
- (h) Ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause.
- (i) Ensure that none of the staff and agents publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Railways.
- (j) Not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Railways or in compliance with a legal obligation imposed upon the Railways, and

**4.46.2** Notify the Indian Railways (within five Working Days) if it receives:

- a) a request from a Data Subject to have access to that person's Personal Data, or
- b) a complaint or request relating to the Indian Railways' obligations under the law.

**4.46.3** The provision of this clause 4.46 shall apply during the Contract Period and indefinitely after its expiry.

## 4.47 Intellectual Property Rights

**4.47.1** All Intellectual Property Rights in any guidance, specifications, instructions, tool kits, plans, data, drawings, databases, software, patents, patterns, models, designs or other material (the "IP Materials"):

- a) furnished to or made available to the Contractor by or on behalf of the Railways shall remain the property of the Railways; and

b) prepared by or for the Contractor on behalf of the Railways for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Railways;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

**4.47.2** The Contractor hereby assigns to the Railways, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 4.47.1 (b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

**4.47.3** The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

**4.47.4** The Contractor shall ensure that the third-party owner of any Intellectual Property Rights that are or which may be used to perform the Contract, grants to the Railways a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Railways an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Railways to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Railways.

This is particularly relevant to any digital contract management system developed for Indian Railways as per clause 4.44.

**4.47.5** The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Railways harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Railways may suffer or incur as a result of or in connection with any breach of this clause.

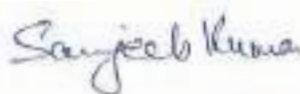
**4.47.6** The Railways shall notify the Contractor in writing of any claim or demand brought against the Railways for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

**4.47.7** The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

- (a) shall consult the Railways on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Railways; and
- (c) shall not settle or compromise any claim without the Railways' prior written consent (not to be unreasonably withheld or delayed).

**4.47.8** The Railways shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action







brought against the Railways or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Railways for all costs and expenses (including but not limited to, legal costs and disbursements) incurred in doing so.

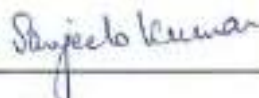
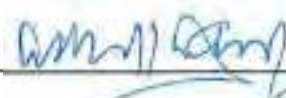
4.47.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Railways and, at its own expense and subject to the consent of the Railways (not to be unreasonably withheld or delayed), use its best endeavours to:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services or

(b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Railways.

and in the event that the Contractor is unable to comply with sub-clauses (a) or (b) above within twenty Working Days of receipt of the Contractor's notification the Railways may terminate the Contract with immediate effect by notice in writing.

4.47.10 The Contractor grants to the Railways a royalty-free, irrevocable and non-exclusive license (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Railways reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided.

## V. VARIATIONS, MEASUREMENT AND PAYMENTS

### 5.1 Extension of Time

Subject to any requirement in the contract as to completion of any portions or portions of the works before completion of the whole, the contractor shall fully and finally complete the whole of the works comprised in the contract (with such modifications as may be directed under conditions of this contract) by the date entered in the contract or extended date in terms of the following clauses. However, care may be taken to ensure that the extension in service contracts (other than Consultancy contracts) is on the ground that new contract has not been finalized.

#### 5.1.1 Extension Due to Modification

If any modifications have been ordered which in the opinion of the Manager have materially increased the magnitude of the services, then such extension of the contracted date of completion may be granted as shall appear to the Manager to be reasonable in the circumstances, provided moreover that the Contractor shall be responsible for requesting such extension of the date as may be considered necessary as soon as the cause thereof shall arise and in any case not less than one month before the expiry of the date fixed for completion of the services.

#### 5.1.2 Extension for Delay Not Due to Railways or Contractor

If in the opinion of the Manager, the progress of services has any time been delayed by any act or neglect of Railway's employees or by other contractor employed by the Railway under Clause 4.20 of these Conditions or in executing the work/service not forming part of the contract but on which contractor's performance necessarily depends or by reason of proceeding taken or threatened by or dispute with adjoining or to neighboring owners or public authority arising otherwise through the Contractor's own default etc. or by the delay authorized by the Manager pending arbitration or in consequences of the contractor not having received in due time necessary instructions from the Railway for which she shall have specially applied in writing to the Manager or her authorized representative then upon happening of any such event causing delay, the Contractor shall immediately give notice thereof in writing to the Manager within 15 days of such happening, but shall nevertheless make constantly her best endeavours to bring down or make good the services and shall do all that may be reasonably required of her to the satisfaction of the Manager to proceed with the services.

The contractor may also indicate the period for which the services is likely to be delayed and shall be bound to ask for necessary extension of time. The Manager on receipt of such request from the contractor shall consider the same and shall grant such extension of time as in her opinion is reasonable having regard to the nature and period of delay and

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the type and quantum of work affected thereby. No other compensation shall be payable for works so carried forward to the extended period of time, the same rates, terms and conditions of contract being applicable as if such extended period of time was originally provided in the original contract itself.

### 5.1.3 Extension for Delay Due to Railways

In the event of any failure or delay by the Railway, to hand over the Contractor possession of the site necessary for the execution of the services, or to give the necessary notice to commence the services, or to provide the necessary drawings or instructions or any other delay caused by the Railway due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate the contract or alter the character thereof or entitle the contractor to damages or compensation therefore, but in any such case, the Railway may grant such extension or extensions of the completion date as may be considered reasonable.

## 5.2 Extension of Time for Delay Due to Contractor

**5.2.1** The time and uninterrupted delivery of services shall be deemed to be the essence of the contract and the service must be completed not later than the date(s) as specified in the contract. If the contractor fails to complete the services within the time/manner as specified in the contract for the reasons other than the reasons specified in Clause 5.1, the Railway may, if satisfied that the service delivery can be completed by the contractor within reasonable short time thereafter, allow the contractor for further extension of time as the Manager may decide. On such extension, the Railway will be entitled without prejudice to any other right and remedy available on that behalf, to recover from the contractor as agreed damages and not by way of penalty a sum equivalent to 0.10% of the contract value of the service for each week or part of the week.

**5.2.2** For the purpose of this clause, the contract value of the services shall be taken as value as per contract agreement including any supplementary contract agreement issued. Provided also, that the total amount of liquidated damages under this condition, shall not exceed 5% In lieu, competent authority while granting extension to the currency of contract under Clause 5.2 of GCC may also consider levy of token penalty, as deemed fit based on the merit of the case of total value of the contract.

This section does not limit Indian Railways from imposing any penalties under other provisions and such penalties will be applicable concurrently.

Provided further, that if the Railway is not satisfied that the service can be completed by the Contractor and in the event of failure on the part of the contractor to complete the service within further extension of time allowed as aforesaid, the Railway shall be entitled without prejudice to any other right or remedy available in that behalf, to appropriate the contractor's Performance Guarantee and rescind the contract under Clause 7.4 of these Conditions, whether or not actual damage is caused by such default.

## 5.3 Modification to Contract to be in Writing

In the event of any of the provisions of the contract requiring to be modified after the contract documents have been signed, the modifications shall be made in writing and signed by the Railway and the Contractor and no service shall proceed under such modifications until this has been done.

Any verbal or written arrangement abandoning, modifying, extending, reducing or supplementing the contract or any of the terms thereof shall be deemed conditional and shall not be binding on the Railway unless and until the same is incorporated in a formal instrument and signed by the Railway and the Contractor, and till then the Railway shall have the right to repudiate such arrangements.

**5.3.1 Powers of Modification To Contract:** The Manager on behalf of the Railway shall be entitled by order in writing to enlarge or extend, diminish or reduce the services or make any alterations in their design, character, position, site, quantities, dimensions or in the method of their execution or in the combination and use of materials for the execution thereof or to order any additional service to be done or any services not to be done and the contractor will not be entitled, to any compensation for any increase/reduction in the quantities of work but will be paid only for the actual amount of work done and for approved materials supplied against a specific order.

**5.3.2** Unless otherwise specified in the special conditions of the contract, the accepted variation in quantity of each individual item of the contract would be upto 25% of the quantity originally contracted. The contractor shall be bound to carry out the service at the agreed rates and shall not be entitled to any claim or any compensation whatsoever upto the limit of 25% variation in quantity of individual item of services.

**5.3.3 Valuation of Variations:** The variation referred to in Sub-Clause 5.3.2 of this Clause shall in no degree affect the validity of the contract, but shall be performed by the Contractor as provided therein and be subject to the same conditions, stipulations and obligations as if they had been originally and expressively included and provided for in the Specifications and Drawings and the amounts to be paid therefore shall be calculated in accordance with the accepted Schedule of Rates. Any extra items/quantities of work falling outside the purview of the provisions of Sub-Clause 5.3.2 above shall be paid for at the rates determined under Clause – 4.42.1 of these Conditions.

#### **5.3.4 Variations in Quantities During Execution of Service Contracts**

The procedure detailed below shall be adopted for dealing with variations in quantities during execution of service contracts –

1. Individual NS items in contracts shall be operated with variation of plus or minus 25% and payment would be made as per the agreement rate. For this, no finance concurrence would be required.

2. In case an increase in quantity of an individual item by more than 25% of the agreement quantity is considered unavoidable, the same shall be got executed by floating a fresh tender. If floating a fresh tender for operating that item is considered not practicable, quantity of that item may be operated in excess of 125% of the agreement quantity subject to the following conditions.

(a) Operation of an item by more than 125% of the agreement quantity needs the approval of an officer of the rank not less than S A Grade.

(i) Quantities operated in excess of 125% but upto 140% of the agreement quantity of the concerned item, shall be paid at 98% of the rate awarded for that item in that particular tender.

(ii) Quantities operated in excess of 140% but upto 150% of the agreement quantity of the concerned item shall be paid at 98% of the rate awarded for that item in that particular tender.

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(iii) Variation in quantities of individual items beyond 150% will be prohibited and would be permitted only in exceptional unavoidable circumstances with the concurrence of associate finance and shall be paid at 96% of the rate awarded for that item in that particular tender.

(b) The variation in quantities as per the above formula will apply only to the Individual items of the contract and not on the overall contract value.

(c) Execution of quantities beyond 150% of the overall agreement value should not be permitted and, if found necessary, should be only through fresh tenders or by negotiating with existing contractor, with prior personal concurrence of FA&CAO / FA&CAO(C) and approval of General Manager.

3. In cases where decrease is involved during execution of contract –

(a) The contract signing authority can decrease the items upto 25% of individual item without finance concurrence.

(b) For decrease beyond 25% for individual items or 25% of contract agreement value, the approval of an officer not less than rank of S.A. Grade may be taken, after obtaining 'No Claim Certificate' from the contractor and with finance concurrence, giving detailed reasons for each such decrease in the quantities.

(c) It should be certified that the work proposed to be reduced will not be required in the same work.

4. The limit for varying quantities for minor value items shall be 100% (as against 25% prescribed for other items). A minor value item for this purpose is defined as an item whose original agreement value is less than 1 % of the total original agreement value.

5. As far as SOR items are concerned, the limit of 25% would apply to the value of SOR schedule as a whole and not on individual SOR items. However, in case of NS items, the limit of 25% would apply on the individual items irrespective of the manner of quoting the rate (single percentage rate or individual item rate).

6. For the tenders accepted at Zonal Railways level, variations in the quantities will be approved by the authority in whose powers revised value of the agreement lies.

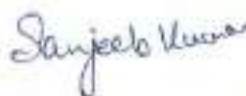
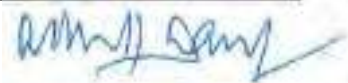
7. For tenders accepted by General Manager, variations upto 125% of the original agreement value may be accepted by General Manager.

8. The aspect of vitiation of tender with respect to variation in quantities should be checked and avoided. In case of vitiation of the tender (both for increase as well as decrease of value of contract agreement, the vitiation shall be on the contractor's account (payment shall be restricted to the lowest calculated value of all valid offers).

## 5.4 Claims

### 5.4.1 Monthly Statement of Claims

The Contractor shall prepare and furnish to the Manager once in every month an account giving full and detailed particulars of all claims for any additional expenses to which the Contractor may consider herself entitled to and of all extra or additional works ordered by the Manager which she has executed during the preceding month and no claim for payment for and such work will be considered which has not been included in such particulars.

#### 5.4.2 Signing Of "No Claim" Certificate

The Contractor shall not be entitled to make any claim whatsoever against the Railway under or by virtue of or arising out of this contract, nor shall the Railway entertain or consider any such claim, if made by the Contractor, after she shall have signed a "No Claim" Certificate in favour of the Railway in such form as shall be required by the Railway after the works are finally measured up. The Contractor shall be debarred from disputing the correctness of the items covered by "No Claim" Certificate or demanding a clearance to arbitration in respect thereof.

### 5.5 MEASUREMENTS

#### 5.5.1 Quantities in Schedule Annexed to Contract

The quantities set out in the accepted Schedule of Rates with items of works quantified are the estimated quantities of the services and they shall not be taken as the actual and correct quantities of the work to be executed by the Contractor in fulfillment of her obligations under the contract.

#### 5.5.2 Measurement of Services/ Works

(a) Measurements shall be recorded on the basis of day to day records maintained by way of check list or any other methodology provided in the Bid documents.

(b) The Contractor shall be paid for the works/services at the rates in the accepted Schedule of Rates and for extra services at rates determined under Clause 4.42.1 of these Conditions on the measurements taken by the Manager or the Manager's representative in accordance with the rules prescribed for the purpose by the Railway. The quantities for items the unit of which in the accepted Schedule of Rates is 100 or 1000 shall be calculated to the nearest whole number, any fraction below half being dropped and half and above being taken as one; for items, the unit of which in the accepted Schedule of Rates is single, the quantities shall be calculated to two places of decimals. Such measurements will be taken of the work in progress from time to time and at such intervals as in the opinion of the Manager shall be proper having regard to the progress of work. The date and time on which 'on account' or 'final' measurements are to be made shall be communicated to the Contractor who shall be present at the site and shall sign the results of the measurements (which shall also be signed by the Manager or the Manager's representative) recorded in the official measurements book as an acknowledgement of her acceptance of the accuracy of the measurements.

(c) Failing the Contractor's attendance, the service may be measured up in her absence and such measurements shall, notwithstanding such absence, be binding upon the Contractor whether or not she shall have signed the measurement books provided always that any objection made by her to measurement shall be duly investigated and considered in the manner set out as following:

It shall be open to the Contractor to take specific objection to any recorded measurements or Classification on any ground within seven days of the date of such measurements. Any re-measurement taken by the Manager or the Manager's representative in the presence of the Contractor or in her absence after due notice has been given to her in consequence of objection made by the Contractor shall be final and binding on the Contractor and no claim whatsoever shall thereafter be entertained regarding the accuracy and classification of the measurements.

*[Signature]*

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(d) If an objection raised by the Contractor is found by the Manager to be incorrect, then the Contractor shall be liable to pay the actual expenses incurred in measurements.

## 5.6 PAYMENTS

### 5.6.1 "On-Account" Payments

The Contractor shall be entitled to be paid from time to time by way of "On-Account" payment only for such works as in the opinion of the Manager she has executed in terms of the contract. All payments due on the Manager's or the Manager's Representative's certificates of measurements shall be subject to any deductions which may be made under these presents provided always that the Manager may by any certificate make any correction or modification in any previous certificate which shall have been issued by her and that the Manager may withhold any certificate, if the services or any part thereof are not being carried out to her satisfaction.

### 5.6.2 Rounding Off Amounts

The total amount due on each certificate shall be rounded off to the nearest rupee, i.e. sum less than 50 paise shall be omitted and sums of 50 paise and more upto Rs. 1 will be reckoned as Rs. 1.

### 5.6.3 On Account Payments Not Prejudicial to Final Settlement

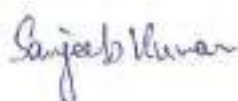
"On-Account" payments made to the Contractor shall be without prejudice to the final making up of the accounts (except where measurements are specifically noted in the Measurement Book as "Final Measurements" and as such have been signed by the Contractor) and shall in no respect be considered or used as evidence of any facts stated in or to be inferred from such accounts nor of any particular quantity of service having been executed nor of the manner of its execution being satisfactory.

**5.6.4 Manner of Payment:** The payments would be released in the manner as specified by the Railway Board time to time.

### 5.6.5. Points to be ensured while Passing the Bills

- (a) Railways shall ensure that all relevant records are to be certified by the contractor and the employee nominated by Principal Employer, before passing the bills of the contractor including but not limited to those provided in the Annexures III – XI
- (b) Railways shall ensure that Gross Minimum wages including ESI/ PF etc. is paid as per the actuals by the contractor to all workers. In case, if the Contractor fails to pay the gross minimum wages, the same shall be informed to Regional Labour Commissioner.
- (c) Railways shall ensure that all the relevant records related to statutory obligations and agreement conditions are submitted by the contractor for claiming monthly bills.
- (d) Railways shall upload the details of the contractor online on the Employees' Provident Fund Organisation (EPFO) portal. Every month, Railways may, if required, cross-verify the contractor's monthly statements regarding PF and other contributions from the EPFO's records online.

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- (e) The contractor is required to provide documentary evidence to show the coverage of all her workers or labour under the schemes mentioned in Clause 6.17 on an annual basis. Upon verification of the records by Railways, payments can be released to the contractor.

## 5.7 Price Variation Clause (PVC)

The Price Variation Clause is devised as per the composition of an individual work/ service contract can be incorporated by the tender inviting authorities based on the following general principles. The amount payable on account of Price variation shall be settled every quarter.

**5.7.1 Applicability:** Price Variation Clause (PVC) shall be applicable only for tenders of value as prescribed by the Ministry of Railways through instructions/circulars issued from time to time and for long term contracts, where delivery period extends beyond 18 months \* Materials supplied free of cost by Railway to the contractors shall fall outside the purview of Price Variation Clause. If, in any case, accepted offer includes some specific payment to be made to consultants or some materials supplied by Railway free or at fixed rate, such payments shall be excluded from the gross value of the work for the purpose of payment/recovery of price variation. (Refer to rule 225 General Financial Rules, 2017)

**5.7.2 Base Month:** The Base Month for 'Price Variation Clause' shall be taken as month of opening of bids including extensions, if any unless otherwise stated elsewhere. The quarter for applicability of PVC shall commence from the month following the month of opening of bid. The Price Variation shall be based on the average Price Index and minimum wages of the quarter under consideration.

**5.7.3 Validity:** Rates accepted by Railway Administration shall hold good till completion of service contract period and no additional individual claim shall be admissible on account of fluctuations in market rates, increase in taxes/any other levies/tolls etc. except that payment/recovery for overall market situation shall be made as per Price Variation Clause given hereunder.

**5.7.4 Adjustment for variation in prices of material, labour, fuel etc.** shall be determined in the manner prescribed.

**5.7.5 Components of various items in a contract on which variation in prices be admissible,** shall be Material, Labour and Fuel and shall be taken based on their proportions in the estimate. However, for fixed components, no price variation shall be admissible.

**5.7.6 The price escalation shall be calculated based on the following clauses i.e. 5.7.6 (a) and 5.7.6 (b) and the higher of the two shall be paid.**

- a) The percentages of labour component, material component, fuel component etc. in various types of Services shall be as under:

Authorized Signatory



Satyajit Kumar



Component	Percentage	Component	Percentage
<b>(A) Housekeeping Contracts</b>			
Labour Component	70%	Other Material Components	15%
Fuel Component	0%	Fixed Component *	15%
<b>(B) Consultancy Contracts</b>			
Labour Component	80%	Other Material Components	5%
Fuel Component	0%	Fixed Component *	15%
<b>(C) Other Contracts</b>			
Labour Component	35%	Fuel Component	15%
Material Component	35%	Fixed Component *	15%

\* It shall not be considered for any price variation


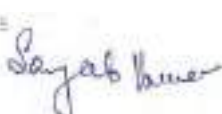
**Formulae:** The Amount of variation in prices in several components (labour material etc.) shall be worked out by the following formulae

$$(i) \quad L = \frac{W \times (L_2 - L_0)}{L_0} \times \frac{L_0}{100}$$

$$(ii) \quad M = \frac{W \times (M_2 - M_0)}{M_0} \times \frac{M_0}{100}$$

$$(iii) \quad F = \frac{W \times (F_2 - F_0)}{F_0} \times \frac{F_0}{100}$$

- Where:**
- L Amount of price variation in Labour
  - M Amount of price variation in Materials
  - F Amount of price variation in Fuel
  - L<sub>0</sub> % of Labour Component
  - M<sub>0</sub> % of Material Component
  - F<sub>0</sub> % of Fuel Component
  - W Gross value of work done (services performed) by contractor as per on-account bill(s), excluding cost of materials supplied by Railway at fixed price. This will also exclude specific payment, if any, to be made to the consultants engaged by contractors (such payment shall be indicated in the contractor's offer)
  - L<sub>2</sub> Consumer Price Index Number for Industrial Workers - All India: Published in R.B.I. Bulletin for the base period
  - L<sub>0</sub> Consumer Price Index Number for Industrial Workers - All India: Published in R.B.I. Bulletin for the average price index of the 3 months of the quarter under consideration
  - M<sub>2</sub> Index Number of Wholesale Prices - By Groups and Sub-Groups: All commodities - as published in the R.B.I. Bulletin for the base period
  - M<sub>0</sub> Index Number of Wholesale Prices - By Groups and Sub-Groups: All commodities - as published in the R.B.I. Bulletin for the average price index of the 3 months of the quarter under consideration
  - F<sub>2</sub> Index Number of Wholesale Prices - By Groups and Sub-Groups for Fuel and Power as published in the R.B.I. Bulletin for the base period
  - F<sub>0</sub> Index Number of Wholesale Prices - By Groups and Sub-Groups for Fuel and Power as published in the R.B.I. Bulletin for the average price index of the 3 months of the quarter under consideration




b) In contracts where the number of workforce is specified, any revision in the minimum wages etc. notified through government order/circulars etc. after the date of submission of bids shall be compensated by the Railway administration, on an actual basis.

**5.7.7** For material portion, the relevant RBI Bulletin (index numbers of wholesale prices in India - by Groups and Sub-groups – Averages) shall be used.

**5.7.8** The demands for escalation of cost shall be allowed on the basis of provisional indices made available by Reserve Bank of India and revision in the minimum wages. Any adjustment needed to be done based on the finally published indices shall be made as and when they become available.

## **5.8 Price Variation During Extended Period of Contract**

The price adjustment as worked out above, i.e. either increase or decrease shall be applicable upto the stipulated date of completion of work including the extended period of completion where such extension has been granted under Clause 5.1 of the Standard General Conditions of Contract. However, where extension of time has been granted due to contractor's failure under Clause 5.2, price adjustment shall be done as follows:

**5.8.1** In case the indices or minimum wages increase above the indices or minimum wages applicable to the last month of original completion period or the extended period under Clause 5.1, the price adjustment for the period of extension granted under Clause 5.2 shall be limited to the amount payable as per the Indices or minimum wages applicable to the last month of the original completion period or the extended period under Clause 5.1 of the General Conditions of Contract; as the case may be.

**5.8.2** In case the indices fall below the indices or minimum wages applicable to the last month of original/ extended period of completion under Clause 5.1, as the case may be; then the lower indices or minimum wages, as the case may be, shall be adopted for the price adjustment for the period of extension under Clause 5.2 of the Standard General Conditions of Contract.

## **5.9 Maintenance of Works contemplated in the Services**

Service contracts may have an element of work included to provide services. In such cases the content of this para shall be applicable –

The Contractor shall at all times during the progress and continuance of the service and also for the period of maintenance of Works contemplated in the Service specified, if any in the Bid Form after the date of passing of the certificate of completion by the Manager or any other earlier date subsequent to the completion of the work that may be fixed by the Manager be responsible for and effectively maintain and uphold in good substantial, sound and perfect condition all and every part of the work and shall make good from time to time and at all times as often as the Manager shall require, any damage or defect that may during the above period arise in or be discovered or be in any way connected with the work, provided that such damage or defect is not directly caused by errors in the contract documents, act of providence or insurrection or civil riot, and the Contractor shall be liable for and shall pay and make good to the Railway or other persons legally entitled thereto whenever required by the Manager so to do, all losses, damages, costs and expenses they or any of them may

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incur or be put or be liable to by reasons or in consequence of the operations of the Contractor or of her failure in any respect.

**5.9.1 Certificate of Completion of Works contemplated in Service:** As soon as in the opinion of the Manager, the work has been completed and has satisfactorily passed any final test or tests that may be prescribed, the Manager shall issue a certificate of completion duly indicating the date of completion in respect of the work and the period of maintenance of the work, if applicable, shall commence from the date of completion mentioned in such certificate. The Manager may also issue such a certificate indicating date of completion with respect to any part of the work (before the completion of the whole of work), which has been both completed to the satisfaction of the Manager and occupied or used by the Railway. When any such certificate is given in respect of part of a work, such part shall be considered as completed and the period of maintenance, if any shall commence from the date of completion mentioned in the completion certificate issued for that part of the work.


**5.9.2 Maintenance Certificate:** In case maintenance period is specified in the contract, for any part the Contract, it shall not be considered as completed until a Maintenance Certificate shall have been signed by the Manager stating that the works have been completed and maintained to her satisfaction. The maintenance Certificate shall be given by the Manager upon the expiration of the period of maintenance or as soon thereafter as any works ordered during such period pursuant to Clause 5.8.1 of these Conditions shall have been completed to the satisfaction of the Manager and full effect shall be given to this Clause notwithstanding the taking possession of or using the works/ services or any part thereof by the Railway.

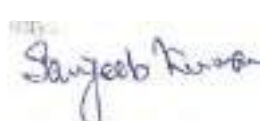
**5.9.3 Contractor Not Absolved By Completion Certificate:** The Certificate of Completion in respect of the works referred to in Sub-Clause 5.9.1 of this Clause shall not absolve the Contractor from her liability to make good any defects, imperfections, shrinkages or faults which may appear during the period of maintenance specified in the Bid arising in the opinion of the Manager from materials or quality of workers not in accordance with the drawings or specifications or instruction of the Manager, which defects, imperfections, shrinkages or faults shall upon the direction in writing of the Manager be attended and made good by the Contractor at her own cost, and in case of default on the part of Contractor, the Manager may employ labour and materials or appoint another Contractor to amend and make good such defects, imperfections, shrinkages and faults and all expenses consequent thereon and incidental thereto shall be borne by the Contractor and shall be recoverable from any moneys due to her under the contract.

**5.9.4 Approval Only by Maintenance Certificate:** No certificate other than Maintenance certificate referred to in Clause 5.9.3 of the Conditions shall be deemed to constitute approval of any work or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the contract or any part thereof or of the accuracy of any claim or demand made by the Contractor or of additional varied work having been ordered by the Manager nor shall any other certificate conclude or prejudice any of the powers of the Manager.

## 5.10 Certificate of Completion of Services:

As soon as in the opinion of the Manager, the service has been completed and has satisfactorily passed any final test or tests that may be prescribed, the Manager shall

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issue a certificate of completion duly indicating the date of completion. The Manager may also issue such a certificate indicating date of completion with respect to any part of the service (before the completion of the whole of service), which has been completed to the satisfaction of the Manager. When any such certificate is given in respect of part of a service, such part shall be considered as completed.

**5.10.1 Approval Only by Completion Certificate:** No certificate other than completion certificate referred to in Clause 5.10 of the Conditions shall be deemed to constitute approval of any service or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the contract or any part thereof or of the accuracy of any claim or demand made by the Contractor or of additional varied work having been ordered by the Manager nor shall any other certificate conclude or prejudice any of the powers of the Manager.

**5.11 Cessation of Railway's Liability:** The Railway shall not be liable to the Contractor for any matter arising out of or in connection with the contract of the execution of the works/ services unless the Contractor shall have made a claim in writing in respect thereof before the issue of the Completion Certificate for service / Maintenance Certificate for works contemplated in service, as the case may be under this clause.

**5.12 Unfulfilled Obligations:** Notwithstanding the issue of Completion Certificate for service / Maintenance Certificate for works contemplated in service as the case may be the Contractor and (subject to Clause 5.11) the Railway shall remain liable for the fulfillment of any obligation incurred under the provision of the contract prior to the issue of the Completion Certificate for service / Maintenance Certificate for works contemplated in service which remains unperformed at the time such certificate is issued and for the purposes of determining the nature and extent of any such obligations, the contract shall be deemed to remain in force between the parties thereto.

### 5.13 Final Payment

On the Manager's certificate of completion in respect of the services, adjustment shall be made and the balance of account based on the Manager or the Manager's representative's certified measurements of the total quantity of service executed by the Contractor upto the date of completion and on the accepted schedule of rates and for extra works on rates determined under Clause 4.42.1 of these Conditions shall be paid to the Contractor, subject always to any deduction which may be made under these presents, and further subject to the Contractor having delivered to the Manager either a full account in detail of all claims she may have on the Railway in respect of the works or having delivered "No Claim Certificate" and the Manager having after the receipt of such account given a certificate in writing that such claims are correct, that the whole of the works to be done under the provisions of the Contracts have been completed, that they have been inspected by her since their completion and found to be in good and substantial order, that all properties, works and things, removed, disturbed or injured in consequence of the services have been properly replaced and made good and all expenses and demands incurred by or made upon the Railway for or in the respect of damage or loss by from or in consequence of the services, have been satisfied agreeably and in conformity with the contract.

**5.13.1 Post Payment Audit:** It is an agreed term of contract that the Railway reserves to itself the right to carry out a post-payment audit and / or technical examination of the works / services and the final bill including all supporting vouchers,

For and on behalf of the Ministry of Railway

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*Sanjeeb Kumar*

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abstracts etc. and to make a claim on the contractor for the refund of any excess amount paid to her, if as a result of such examination any over-payment to her is discovered to have been made in respect of any services done or alleged to have been done by her under the contract.

**5.13.2 Production of Vouchers etc. by the Contractor:** For a contract of more than Rs 2 crore, the contractor shall, whenever required, produce or cause to be produced for examination by the Manager any quotation, invoice, cost or other account, book of accounts, voucher, receipt, letter, memorandum, paper of writing or any copy of or extract from any such document and also furnish information and returns verified in such manner as may be required in any way relating to the execution of this contract or relevant for verifying or ascertaining cost of execution of this contract (the decision of the Manager on the question of relevancy of any documents, information or return being final and binding on the parties). The contractor shall similarly produce vouchers etc., if required to prove to the Manager, that materials supplied by her, are in accordance with the specifications laid down in the contract.

**5.13.3** If any portion of the service in a contract of value more than Rs 2 crore be carried out by a sub-contractor or any subsidiary or allied firm or company (as per Clause 4.5 of the General Conditions of Contract), the Manager shall have power to secure the books of such sub-contract or any subsidiary or allied firm or company, through the contractor, and such books shall be open to her inspection.

**5.13.4** The obligations imposed by Sub Clause 5.13.2 & 5.13.2 is without prejudice to the obligations of the contractor under any statute, rules or orders binding on the contractor.

**5.13.5 Signature on Receipts for Amounts:** Every receipt for money which may become payable or for any security which may become transferable to the Contractors under these presents, shall, if signed in the partnership name by any one of the partners of a Contractor's firm be a good and sufficient discharge to the Railway in respect of the moneys or security purported to be acknowledged thereby and in the event of death of any of the Contractor, partners during the pendency of the contract, it is hereby expressly agreed that every receipt by anyone of the surviving Contractor partners shall if so signed as aforesaid be good and sufficient discharge as aforesaid provided that nothing in this Clause contained shall be deemed to prejudice or effect any claim which the Railway may hereafter have against the legal representative of any contractor partner so dying for or in respect to any breach of any of the conditions of the contract, provided also that nothing in this clause contained shall be deemed to prejudice or effect the respective rights or obligations of the Contractor partners and of the legal representatives of any deceased Contractor partners inter se.

## VI. LABOUR LAWS AND RELATED OBLIGATIONS

### 6.1 Independent Contractor

6.1.1 The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State or any agency, division or department of the State simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the Railways or the Govt. of India/ State simply by virtue of work performed pursuant to this Contract.

6.1.2 To ensure compliance of labour laws in a service contract the bidder shall be disqualified for consideration of award of the bid if she/they have been levied with a penalty for violation of labour laws for three times in the last two years (from the date of opening of tender) by the appropriate enforcing agency like the Labour Commissioner etc.

The declaration to this effect shall be furnished by the bidder as a part of his bid document. A format in this regard shall be made a part of the bid document. In case this declaration is found to be false, process for 'banning of business' against the bidder/contractor shall be initiated as per extant rules.

6.1.3 Indian Railways may also undertake measures, as decided by competent authority, to ensure labour welfare for contract workers, as deemed fit, such as:

- a) Helpline for complaints from labour regarding payment of wages, work site facilities, sexual harassment etc.
- b) Provision for recording anonymous complaints from workers, citizens etc. regarding violation of labour laws by Contractor.

6.1.4 The Railways shall ensure that the contractor shall pay the wages to their workers not below the rate of minimum wages, as notified by the State Government or Central Government, whichever is higher, through the bank transfer. The contractor will be required to submit every month documentary evidence in the form of Bank Statement of having transferred the gross minimum wages to each of the workers. Failure to do so will entail in Indian Railways taking up any measure to ensure the payment of wages including, but not limited to, withholding contractor's on-account bills.

For Secy, 2710, Ministry of

*(Signature)*

*Sanjeev Kumar*

*(Signature)*



## 6.2 Legal Obligations

The contractor shall be responsible for carrying out all legal obligations as may be required by the law. Broadly they are as under:

- Contractor Labour (Regulation and Abolition) Act, 1970
- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- The Workman's Compensation Act, 1923
- Provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952
- Employees' State Insurance Act, 1948
- Employees' Pension Scheme, 1995
- Factories Act, 1948
- Enforcement of Employment of Manual Scavengers and construction of Dry Latrines (Prohibition) Act, 1993
- Child Labour Act, 1986
- Apprentices Act, 1951
- Equal Remuneration Act, 1976
- Safe Karamchans Act, 1993
- Industrial Disputes Act, 1947
- Maternity Benefit Act, 1961
- Trade Unions Act, 1926
- Payment of Bonus Act, 1965
- Payment of Gratuity Act, 1972
- Industrial Employment (Standing Orders) Act, 1946
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

## 6.3 Labour Law Awareness

**6.3.1** The contractor has to mandatorily provide a comprehensive day long training carried out by a certified Third Party agency for the awareness of labour laws, grievance redressal mechanism and other provisions applicable to her staff, workers, labour employed by her directly or indirectly in service of the Railways. The contractor must submit relevant documentary proof to Railways of having conducted such a training to all workers.

**6.3.2** The contractor must provide a comprehensive booklet (that is approved by Indian Railways) containing all the relevant updated labour legislations, rules and other applicable provisions, to every worker at the outset of the contract in the local vernacular language.

While all the laws mentioned in **Clause 6.2** are applicable to labour, some of the statutory provisions of the key legislations are provided as follows –

## 6.4 Provisions of Contract Labour (Regulation and Abolition) Act, 1970/ Rules 1950

**6.4.1** The Contractor shall comply with the provision of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules, 1971 as modified from time to time, wherever applicable and shall also

For use, 2019/2020

*(Signature)*

*Rajesh Kumar*

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indemnify the Railway from and against any claims under the aforesaid Act and the Rules.

**6.4.2** The registration of the principal employer and the establishment shall be ensured before the commencement of the contract.

**6.4.3** Contractors employing more than 20 workers shall obtain License from the Asst. Labour Commissioner before the commencement of the work and continue to have a valid license until the completion of the work. Any failure to fulfill the requirement shall attract the penal provision of the Contract arising out of the resultant non-execution of the work.

**6.4.4** The Contractor shall send half yearly return in **Form XXIV** (in duplicate), provided in **Annexure VIII** to Indian Railways and to the Licensing Officer, so as to reach the Railways and Licensing Officer concerned not later than 30 days from the close of the half year. (Half year for the purpose of this rule means "a period of 6 months commencing from 1st January and 1st July of every year).

**6.4.5** The Contractor shall pay to the labour employed by her directly or through subcontractors the wages as per provision of the aforesaid Act and the Rules wherever applicable. The Contractor shall, notwithstanding the provisions of the contract to the contrary, cause to be paid the wages to labour indirectly engaged on the works including any engaged by sub-contractors in connection with the said work, as if the labour had been immediately employed by her.

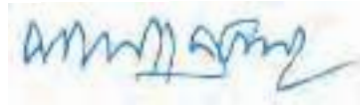
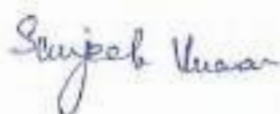
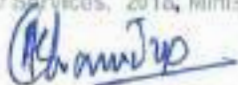
**6.4.6** In respect of all labour directly or indirectly employed in the work for performance of the contractor's part of the contract, the Contractor shall comply with or cause to be complied with the provisions of the aforesaid Act and Rules wherever applicable.

**6.4.7** In every case in which, by virtue of the provisions of the aforesaid Act or the Rules, the Railway is obliged to pay any amount of wages to a worker employed by the Contractor or her sub-contractor in execution of the work or to incur any expenditure on account of the contingent liability of the Railway, due to the contractor's failure to fulfill her statutory obligations under the aforesaid Act or the rules, the Railway will recover from the Contractor, the amount of wages so paid or the amount of expenditure so incurred and without prejudice to the rights of the Railway under the Section 20, Sub-Section (2) and Section 2, Sub-Section (4) of the aforesaid Act.

The Railway shall be at liberty to recover such amount or part thereof by deducting it from any sum due by the Railway to the contractor whether under the contract or otherwise.

The Railway shall not be bound to contest any claim made against it under Sub-Section (1) of Section 20 and Sub-Section (4) of Section 21 of the aforesaid Act except on the written request of the Contractor and upon her giving to the Railway full security for all costs for which the Railway might become liable in contesting such claim. The decision of the Railway regarding the amount actually recoverable from the contractor as stated above shall be final and binding on the Contractor.

**6.4.8** The actual area of working i.e. Station/Colony shall be registered with the regional, central labour commission office.



### 6.4.9 Principal Employer & Duties

#### 6.4.9.1 Principal Employer is

- (a) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf.
- (b) in any other establishment, any person responsible for the supervision and control of the establishment

**6.4.9.2 Duties of Principal Employer:** It is the duty of the Principal Employer to ensure the amenities as described below under Sections 17, 18, 19 of the Act, shall be provided by the Contractor within the prescribed time limit. Otherwise, such amenities shall be provided by the Principal Employer and the necessary deductions shall be made to the extent facilities provided. (Section 23).

**6.4.10 Contractor's Responsibilities:** The following provisions shall be made by the contractor under the law-

- (a) **Canteen** – The necessary refreshment stalls shall be provided for the workers where the workforce is more than 100 by the Contractor (section 16)
- (b) **Rest Rooms** – Provision of rest rooms is essential wherein the labour is required to halt at night in connection with the work (section 17)
- (c) **Drinking Water & Sanitation** – Provision of wholesome drinking water/ urinals/ washrooms/washing facilities/supply of dungaree cloth, soap solution, coconut oil etc shall be ensured to the contract labour (Section 18)

Contractor shall permit inspection of all drinking water and sanitation arrangements at all times by the Manager, the Manager's Representative or the Medical Staff of the Railway

Should the contractor fail to make the adequate sanitary arrangements, these will be provided by the Railway and the cost therefore recovered from the Contractor.

- (d) **First Aid Facilities** – Provision of First Aid facility shall be provided and maintained by the contractor during all working hours. The first aid box shall be equipped with prescribed contents as provided in Annexure XVI at the working place (Section 19). First aid boxes shall be provided and maintained so as to be readily assessable during all working hours at the rate of not less than 1 box for 150 contract labour or part thereof ordinarily employed

#### 6.4.11 Payment of Wages:

- (a) The responsibility for payment of wages lies with the contractor (Section 21) who shall be responsible for payment of wages to each worker employed by her as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(b) Every Principal Employer shall nominate a representative duly authorized by her to be present at the time of Disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed

(c) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the Principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor.

(d) The Minimum Rate of Wages for all Workers as notified by Regional Labour Commissioner shall be paid through Nationalized Banks

(e) The Contractor shall ensure the Bank remittance of salaries for all her employees and necessary documents in this connection shall be furnished to the Railways for claiming monthly bills

(f) In case of revision of rates of minimum wages, the contractor must also submit documents regarding revision notifications of Minimum wages (Wages and VDA) and proof of payment to the labour with revised rates

(g) Date of payment of wages to workers by the Contractor must be as follows-

Employees less than one thousand (1000)	Employees more than one thousand (1000)
Before expiry of the seventh (7) day after the last day of wage period	Before the expiry of tenth (10) day after the last day of wage period

(h) Any worker terminated by the contractor, the wages earned by the worker shall be paid before expiry of second working day from the day on which their employment is terminated

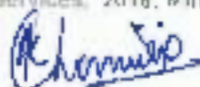
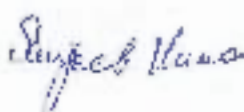
(i) All payments of wages shall be made on a working day at the work place and during the working hours. Final payment shall be made within 48 hours of the last working day

(j) Deductions: Wages shall be paid without any deductions of any kind except those specified by the state government and permissible under the payment of wages act 1936

## 6.5 Minimum Wages Act, 1948/ Rules 1950

The Contractor shall be responsible for ensuring compliance with the provision of the *Minimum Wages Act, 1948* (hereinafter referred to as the "said Act") and the Rules made there under in respect of any employees directly or through petty contractors or sub- contractors employed by her/them.

Following are the salient features of the Minimum Wages Act, 1948 for which the contractor shall produce a certificate of compliance which shall be verified by the railway manager and placed on record.




### 6.5.1 Wages to Labour:

(a) The Contractor shall display of Notices in English and Hindi/Local vernacular language in the workplace and other wise make all workers aware regarding the minimum rates of wages fixed, hours of work, wage period, abstract of laws & rules made there under, date & place of payment, Name, address & contact details of the Labour Enforcement Officer.

(b) The contractor shall maintain the Register of Muster Roll, Register of Wages (Form XVII as provided in the Annexure V.), Register of Fines, Register of deductions for damages/loss, Register of Overtime at the workplace in the prescribed formats under the law.

(c) The contractor shall issue monthly wage slips as per Form XIX provided in Annexure VII to all workers showing the details of the gross wages, deductions if any and the net wages.

(d) The Contractor shall submit Annual Return in the prescribed form to the concerned Labour Enforcement Officer (Central).

**6.5.2 Proof of Payment of Wages.** Bank remittance of salaries of all the Contractor's workers and to produce the documents to the effect to Railways for claiming monthly bills.

**6.5.3 Weekly Rest:** The contractor shall also provide weekly rest on staggered basis to all workers and comply with all other provisions of the law.

### 6.6 Provisions of Payments of Wages Act

The Contractor shall comply with the provisions of the Payment of Wages Act, 1936 and the rules made there-under in respect of all employees directly or through petty contractors or sub-contractors employed by her in the services/works. If in compliance with the terms of the contract, the Contractor directly or through petty contractors or sub-contractors shall supply any labour to be used wholly or partly under the direct orders and control of the Manager whether in connection with the works to be executed hereunder or otherwise for the purpose of the Manager, such labour shall nevertheless be deemed to comprise persons employed by the contractor and any moneys which may be ordered to be paid by the Manager shall be deemed to be moneys payable by the Manager on behalf of the Contractor and the Manager may on failure of the Contractor to repay such money to the Railways deduct the same from any moneys due to the Contractor in terms of the contract. The Railway shall be entitled to deduct from any moneys due to the contractor (whether under this contract or any other contract) all moneys paid or payable by the Railway by way of compensation of aforesaid or for costs of expenses in connection with any claim thereto and the decision of the Manager upon any question arising out of the effect or force of this Clause shall be final and binding upon the Contractor.

### 6.7 Provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952

The Contractor shall comply with the provisions of Para 30 & 36-B of the Employees Provident Fund Scheme, 1952; Paras 3 & 4 of Employees' Pension Scheme, 1995.

Sd/- (Signature)  
Shamir

Sd/- (Signature)  
Sajid Hussain

Sd/- (Signature)  
Amir Aslam

and Para 7 & 8 of Employees Deposit Linked Insurance Scheme, 1976; as modified from time to time through enactment of "Employees Provident Fund & Miscellaneous Provisions Act, 1952", wherever applicable and shall also indemnify the Railway from and against any claims under the aforesaid Act and the Rules.

### 6.7.1 Employees' Provident Fund Scheme, 1952

#### 6.7.1.1 Payment of Contributions

(a) The employer shall, in the first instance, pay both the contribution payable by herself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by her directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(b) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

(c) It shall be the responsibility of the principal employer to pay both the contribution payable by herself in respect of the employees by or through a contractor and also administrative charges.

**Explanation:** For the purposes of this paragraph, the expression "administrative charges" means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which Provident Fund Contribution are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses fix.}

### 6.7.2 Employees' Pension Scheme, 1995

Para 3 (1): From and out of the contributions payable by the employer in each month under Section 6 of the "Act" or under the rules of the Provident Fund of the establishment which is exempted either under clauses (a) and (b) of sub-section (i) of Section 17 of the Act or whose employees are exempted under either paragraph 27 or paragraph 27-A of the Employees' Provident Fund Scheme, 1952, a part of contribution representing 8.33 per cent of the Employee's pay shall be remitted by the employer to the Employees' Pension fund within 15 days of the close of every month by a separate bank draft or cheque on account of the Employees' Pension Fund contribution in such manner as may be specified in this behalf by the Commissioner. The cost of the remittance, if any, shall be borne by the employer.

Para 3(2): The Central Government shall also contribute at the rate of 1.16 per cent of the pay of the members of the Employees' Pension Scheme and credit the contribution to the Employees' Pension Fund:

#### **Para 4: Payment of Contribution:**

(a) The employer shall pay the contribution payable to the Employees' Pension Fund in respect of each member employed by her directly or by or through a contractor.

(b) It shall be the responsibility of the Principal employer to pay the contributions payable to the Employees' Pension Fund by herself in respect of the employees directly employed by her and also in respect of the employees employed by or through a contractor.

### 6.7.3 Employees' Deposit Linked Insurance Scheme, 1976

#### 6.7.3.1 Contribution (Para 7 & 8):

(a) The contribution payable by the employer and the Central Government under sub-section (2) and sub-section (3) of Section 6-c of the Act, shall be calculated on the basis of the basic of the basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance, if any, actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis.

Provided that where the monthly pay of an employee exceeds fifteen thousand rupees, the contribution payable in respect of her by the employer and the Central Government shall be limited to the amounts payable on a monthly pay of fifteen thousand rupees including dearness allowance, retaining allowance (if any) and cash value of food concession.

(b) The contribution by the employer shall be remitted by her together with administrative charges at such rate as the Central Government may fix from time to time under sub-section 4 of Section 6-c of the Act, to the Insurance Fund within fifteen days of the close of every month by a separate bank draft or cheque or by remittance in cash in such manner as may be specified in this behalf by the Commissioner. The cost of remittance, if any, shall be borne by the employer.

(c) It shall be the responsibility of the employer to pay the contribution payable by herself in respect of the employees directly employed by her and also in respect of the employees employed by or through a contractor.

**6.7.3.2 Reporting of Accidents to Labour:** The Contractor shall be responsible for the safety of all employees directly or through petty contractors or sub-contractor employed by her on the works and shall report serious accidents to any of them however and wherever occurring on the works to the Manager or the Manager's Representative and shall make every arrangement to render all possible assistance.

**6.7.3.3 Duties of Contractors :** With reference to the provisions of Clause 6.7 above, it shall be the primary duty of the employer (contractor) to ensure compliance with the provisions of the said Acts. Every contractor shall, within seven days of the close of every month (or any other period specified by the Railways), submit to the principal employer a documentary proof of having complied with the aforementioned Acts (as applicable) which shall be mandatory before the on account bills are cleared.

The Contractor(s) shall conform to all laws, bye-laws rules and regulations for the time being in force pertaining to the employment of local or imported labour and shall take all necessary precautions to ensure and preserve the health and safety of all staff employed directly or through petty Contractors or Sub – Contractors on the works/ services.

#### 6.7.3.4 Duties of Indian Railways

Indian Railways shall upload the details of all the contractors under their employ on the EPFO portal online in order to ensure compliance of the contractor with the labour laws and rules implemented by the Employees' Provident Fund Organisation

### 6.8 Provisions of Workmen's Compensation Act

**6.8.1** This Act facilitates to provide for the payment by certain classes of employers to their workers of compensation for injury by accident

**6.8.2** It is the Employer's liability to pay the compensation to a worker for death or personal injury resulting into total or partial disablement or occupation disease caused to a worker arising out of and during the course of employment (Section 3). The amount of compensation is as per the Section 4 of the Act

**6.8.3** The contractor shall accept liability for compensation in accordance with the provisions of the Workmen's Compensation Act, 1923 or any statutory modification thereof for the time being in force in respect of the persons employed by her/him

**6.8.4** In every case in which by virtue of the provisions of Section 12 Sub-Section (1) of the *Workmen's Compensation Act 1923*, Railway is obliged to pay compensation to a worker directly or through petty contractor or subcontractor employed by the Contractor in executing the work. Railway will recover from the Contractor the amount of the compensation so paid, and, without prejudice to the rights of Railway under Section 12 Sub-section (2) of the said Act, Railway shall be at liberty to recover such amount or any part thereof by deducting it from any sum due by Railway to the Contractor

### 6.9 The Maternity Benefit Act, 1961

The Maternity Benefit Act 1961 will be applicable to the contractor's staff, workers, labour employed directly or indirectly through sub-contractors or petty contractors. While the entire act is applicable, the following provisions must be given special regard.

**6.9.1 Employment of, or work by, women prohibited during certain periods (Section 4)**

(a) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section (4) any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

(b) The period referred to in sub-section (3) shall be –

- i the period of one month immediately preceding the period of six weeks before the date of her expected delivery,
- ii any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.



**6.9.2 Right to payment of maternity benefits (Section 5) –**

(a) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

(b) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty six weeks of which not more than eight weeks shall precede the date of her expected delivery.

**6.9.3 Dismissal during absence of pregnancy (Section 12)**

(a) The contractor shall not dismiss or discharge a woman on the account of being pregnant any time during the contract period.

(b) When a pregnant woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence or to vary to her disadvantage any of the conditions of her service.

(c) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus.

**6.10 The Sexual Harassment of Women at the Workplace (Prevention and Redressal) Act, 2013**

**6.10.1** The contractor must set up an internal complaints committee in accordance to the Act for the redressal of sexual harassment at the workplace for all the workers under her employ. The contractor's staff, workers, labour employed directly or indirectly through sub-contractors or petty contractors will also be able to approach the Railways' Internal Complaints Committee set up under the Act to file a complaint of sexual harassment. In the absence of such a committee already in place, the person responsible for the management, supervision and control of the workplace at Railways will be required to constitute a committee according to the Act.

**6.11 Safai Karmachari Act, 1993**

**6.11.1** The National Commission for the Safai Karamacharis was constituted Under this Act to promote and safeguard the interests/rights of Safai Karamacharis.

**6.11.2** The guidelines and instructions issued by National Commission for Safai Karmachari Govt. of India shall be complied with by the contractor. The National Commission under this Act have the Constitutional Provisions/Rights to investigate any specific grievances of Safai Karmacharis. Hence, it is the duty of the Contractor to comply the provisions under this Act.

## 6.12 Child Labour (Prohibition and Regulation) Act, 1986

Provisions of Child Labour (Prohibition and Regulation) Act, 1986 along with its latest amendments would be binding on the contractor.

**6.12.1 Non-Employment of Labour below the Age of 18:** The Contractor shall not employ anyone below the age of 18 as labour directly or through petty contractors or sub-contractors for the execution of work.

## 6.13 Apprentices Act, 1961

**6.13.1** The Contractor shall be responsible to ensure compliance with the provisions of the Apprentices Act, 1961 and the Rules and Orders issued thereunder from time to time in respect of apprentices directly or through petty contractors or sub-contractors employed by her for the purpose of carrying out the Contract.

**6.13.2** If the contractor directly or through petty contractors or sub-contractors fails to do so, their failure will be a breach of the contract and the Railway may, in its discretion, rescind the contract. The contractor shall also be liable for any pecuniary liability arising on account of any violation of the provisions of the Act.

Note: The contractors are required to engage apprentices when the works undertaken by them last for a period of one year or more and/or the cost of works is rupees one lakh or more.

## 6.14 Miscellaneous Provisions

### 6.14.1 Railway Not to Provide Quarters for Contractors

(a) No quarters shall normally be provided by the Railway for the accommodation of the Contractor or any of their staff employed on the work.

(b) In exceptional cases where accommodation is provided to the Contractor at the Railway's discretion, recoveries shall be made at such rates as may be fixed by the Railway for the full rent of the buildings and equipment therein as well as charges for electricity, water supply and conservancy.

### 6.14.2 Labour Camps and Provisions for Workers

(a) The Contractor shall at her own expense make adequate arrangements for the housing, supply of drinking water and provision of clean sanitation including urinals etc. for her staff and workers directly or through the petty contractors or sub-contractors.

(b) The Contractor shall also make provision for temporary creche (Gal-mandir) where 50 or more workers are employed at a time.

(c) Suitable sites on Railway land, if available, may be allotted to the Contractor for the erection of labour camps either free of charge or on such terms and conditions that may be prescribed by the Railway.

(d) All camp sites shall be maintained in clean and sanitary conditions by the Contractor at her own cost.

### 6.14.3 Preservation of Peace

(a) The Contractor shall take requisite precautions and use their best endeavours to prevent any riotous or unlawful behaviour by or amongst their workers and others, employed directly or through the petty contractors or sub contractors for services, and for the preservation of peace and protection of the inhabitants and security of property in the neighbourhood of the site of work/services.

(b) In the event of the Railway requiring the maintenance of a special Police Force at or in the vicinity of the site during the tenure of service contract the expenses thereof shall be borne by the Contractor and if paid by the Railway shall be recoverable from the Contractor.

### 6.14.4 Treatment of Contractor's Staff in Railway Hospitals

(a) In times of emergency or due to lack of availability of medical care, the Contractor's labour and their families will be granted free treatment in Railway Hospitals and dispensaries.

(b) However, the cost incurred for such treatment of the Contractor or her labour including the cost of medicines, dressing and diet money according to the normal scale and additional charges for special examinations such as pathological and bacteriological examination, X-Ray, etc. and for surgical operation etc. may be recoverable from the Contractor in such cases.

(c) In all other circumstances, the Contractor and their staff, their labour and their families requiring medical aid from the Railway Hospital and dispensaries will be treated as private patients and charged accordingly.

### 6.14.5 Medical Facilities at Site

The Contractor shall provide medical facilities at the site as may be prescribed by the Manager on the advice of the Railway Medical Authority in relation to the strength of the Contractor's resident staff and workers.

### 6.14.6 Railway Schools for Contractor's Staff

During the contract period, the contractor, her staff/employees, workers or any labour employed through sub-contractor or petty sub-contractors, can approach the Railway School in the vicinity of the site of work, for admission of their wards, which will be granted at the sole discretion of the Railways.

### 6.14.7 Use of Intoxicants

The contractor or her staff or any labour employed through sub-contractors or petty contractors, shall be prohibited from the use of any intoxicating substances including, but not limited to, intoxicating beverages during the service period or on site or near the site or in any of the trains, stations, buildings, encampments or townships owned, occupied by or within the control of the Contractor or any of her/his employees. The Contractor shall exercise influence and authority to the utmost extent to secure strict compliance with this condition.

### 6.14.8 Restrictions on the Employment of Retired Managers of Railway Services within One Year of their Retirement

The Contractor shall not, if she is a retired Government Manager of Gazetted rank, herself engage in or employ or associate a retired Government Manager of Gazetted rank, who has not completed one year from the date of retirement, in connection with this

contract in any manner whatsoever without obtaining prior permission of the President and if the Contractor is found to have contravened this provision it will constitute a breach of contract and administration will be entitled to terminate the contract at the risk and cost of the contractor and forfeit earnest money deposit (EMD) and performance guarantee (PG) of the contract.

### 6.15 Medical Certificate of Fitness for Labour

The contractor shall not employ a person below 18 years of age. For the purpose of execution of work/ services under the contract, unless a medical certificate of fitness in the prescribed form (Proforma at Annexure-VIII) granted to each worker by a certifying surgeon certifying that she is fit to work as an adult is obtained and kept in the custody of the contractor or a person nominated by her in this behalf and the person carries with her, while at work, a token giving a reference to such certificate.

**6.15.1 Period of Validity of Medical Fitness Certificate:** A certificate of fitness granted or renewed for the above said purposes shall be valid only for a period of one year at a time. The certifying surgeon shall revoke a certificate granted or renewed if in her opinion the holder of it is, no longer fit for work in the capacity stated therein. Where a certifying surgeon refuses to grant or renew a certificate or revoke a certificate, she shall, if so required by the person concerned, state her reasons in writing for doing so.

**6.15.2 Medical Re-Examination of Labour:** Where any official appointed in this behalf by the Ministry of Labour is of the opinion that any person employed in connection with the execution of any work under this contract in the age group 18 to 35 years is without a certificate of fitness or is having a certificate of fitness but no longer fit to work in the capacity stated in the certificate, she may serve on the Contractor or on the person nominated by her/him in this regard, a notice requiring that such persons shall be examined by a certifying surgeon and such person shall not if the concerned official so directs, be employed or permitted to do any work under this contract unless she has been medically examined and certified that she has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be.

#### EXPLANATIONS:

(1) Only Qualified Medical Practitioners can be appointed as "Certifying Surgeons" and the term "Qualified Medical Practitioners" means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (VII of 1916) or in the Schedule to the Indian Medical Council Act, 1933 (XXVII) of 1933.

(2) The Certifying surgeon must be a medical officer in the service of State or Municipal Corporation.

### 6.16 Police Verification of Labour employed by Contractor

The contractor is required to submit Police Verification certificates for all contractual staff that she/he will be hiring for delivery of services for Indian Railways. The format for the same is provided in the Annexure XI.



## 6.17 Mandatory Compliance of Government Schemes

The contractor must ensure and provide documentary evidence for the following –

**6.17.1** All the workers or labour employed directly or indirectly by the contractor must be enrolled under the Pradhan Mantri Jan Dhan Yojana (PMJDY) a scheme that aims to provide all the citizens of India a bank account, credit facility, insurance cover and debit card

**6.17.2** All the workers or labour employed directly or indirectly by the contractor between the ages 18 – 70 years must be enrolled under the Pradhan Mantri Suraksha Bima Yojana (PM-SBY), an accident insurance scheme which will be a one year cover renewable from year to year, offering accidental death and disability cover for death or disability on account of an accident. The contractor will be responsible to pay the premium per annum per member for all her workers during the contract period

**6.17.3** All the workers or labour employed directly or indirectly by the contractor between the ages 18 – 50 years must be enrolled under the Pradhan Mantri Jeevan Jyoti Bima Yojana, an insurance scheme which will be a one year cover, renewable from year to year, offering life insurance cover for death due to any reason. The contractor will be responsible to pay the premium per annum per member for all her workers during the contract period

**6.17.4** The contractor must submit documentary evidence to show the coverage of all her workers or labour under the above mentioned schemes at all times during the contract period on an annual basis

## VII. DETERMINATION OF CONTRACT

### 7.1 Right of Railway to Determine the Contract

The Railway shall be entitled to determine and terminate the contract at any time should, in the Railway's opinion, the cessation of work becomes necessary owing to paucity of funds or from any other cause whatever, in which case the value of approved materials at site and/ or of work done to date by the Contractor will be paid for in full at the rate specified in the contract. Notice in writing from the Railway of such determination and the reasons therefore shall be conclusive evidence thereof.

### 7.2 Payment on Determination of Contract

Should the contract be determined under clause 7.1 and the Contractor claims payment for expenditure incurred by her in the expectation of completing the whole of the work, the Railways shall admit and consider such claims as are deemed reasonable and are supported by vouchers to the satisfaction of the Manager. The Railway's decision on the necessity and propriety of such expenditure shall be final and conclusive.

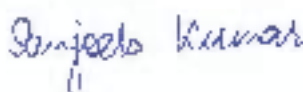
### 7.3 No Claim on Compensation

The Contractor shall have no claim to any payment of compensation or otherwise howsoever on account of any profit or advantage which she might have derived from the execution of the work in full but which she did not derive in consequence of determination of contract.

### 7.4 Determination of Contract Owing to Default of Contractor

If the Contractor should –

- (a) Become bankrupt or insolvent, or
- (b) Make an arrangement with or assignment in favour of her creditors, or agree to carry out the contract under a Committee of Inspection of her creditors, or
- (c) Being a Company or Corporation, go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or
- (d) Have an execution levied on her goods or property on the services, or
- (e) Assign the contract or any part thereof otherwise than as provided in Clause 4.5 of these Conditions, or
- (f) Abandon the contract, or
- (g) Persistently disregard the instructions of the Manager, or contravene any provisions of the contract, or
- (h) Fail to adhere to the agreed programme of work by a margin of 10% of the stipulated period, or
- (i) Have been imposed with maximum cumulative penalty as per Clause 4.17.1, or

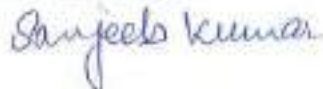
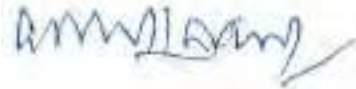




- (j) Fail to remove materials from the site or to pull down and rectify service wherever applicable after receiving from the Manager notice to the effect that the said materials or
- (k) Have been condemned or rejected under Clause 4.25, 4.27 and 4.28 of these Conditions, or
- (l) Fail to take steps to employ competent or additional staff and labour as required under Clause 4.26 of the Conditions, or
- (m) Fail to afford the Manager or Manager's representative proper facilities for inspecting the services or any part thereof as required under Clause 4.29 of the Conditions, or
- (n) Promise, offer or give any bribe, commission, gift or advantage either herself or through her partner, agent or servant to any officer or employee of the Railway or to any person on her or on their behalf in relation to the execution of this or any other contract with this Railway.
- (o) At any time after the Bid relating to the contract, has been signed and submitted by the Contractor, being a partnership firm admits as one of its partners or employees under it, or being an incorporated company elect or nominate or allow to act as one of its directors or employee under it in any capacity whatsoever, any retired officer of the Gazetted rank or any other retired Gazetted officer working before her retirement, whether in the executive or administrative capacity, or whether holding any pensionable post or not, in the Railways for the time being owned and administered by the President of India before the expiry of one year from the date of retirement from the said service of such officer, unless such officer has obtained permission from the President of India or any officer duly authorised by her in this behalf, to become a partner or a director or to take employment under the contract as the case may be, or
- (p) Fail to give at the time of submitting the said bid:
  - (i) The correct information as to the date of retirement of such retired officer from the said service, or as to whether any such retired officer was under the employment of the Contractor at the time of submitting the said Bid, or
  - (ii) The correct information as to such officers obtaining permission to take employment under the Contractor, or
  - (iii) Being a partnership firm, the correct information as to, whether any of its partners was such a retired officer, or
  - (iv) Being in incorporated company, correct information as to whether any of its directors was such a retired officer, or
  - (v) Being such a retired officer suppress and not disclose at the time of submitting the said Bid the fact of her being such a retired officer or make at the time of submitting the said Bid a wrong statement in relation to her obtaining permission to take the contract or if the Contractor be a partnership firm or an incorporated company to be a partner or director of such firm or company as the case may be or to seek employment under the Contractor.

Then and in any of the said clause, the manager on behalf of the Railway may serve the Contractor with notices stipulated in the clauses 7.4.1, 7.4.2 & 7.4.3.

#### **7.4.1. Performance Notice**

- (a) In the event of the above and in any of the said clauses, the Manager on behalf of the Railway may serve the Contractor with a Performance notice as per **Annexure-XII**

in writing to the effect to make good the default as well as initiation of bidding process for the balance service

- (b) Railways reserves the right to float a new tender and invite bids for the delivery of services to replace the contractor put on notice, from the date on which this notice is served. The existing contractor shall not be allowed to participate in any bid which includes delivery of balance services of subject contract. However in case the existing contractor's performance has improved to the satisfaction of the Manager, then Railways may terminate the bid proceedings, at any stage of the bid process.
- (c) Notwithstanding Railway's initiation of the bidding process, the financial bids shall be opened only after the termination of the subject contract.
- (d) After the issue of this notice, the performance of contractor shall be assessed on a weekly basis by the manager. Manager, if satisfied with the improvement in the performance of contractor, may issue a letter of revocation of the performance notice as per Annexure-XIII. If the performance is found unsatisfactory after the first week or thereafter, then Railways will be at liberty to issue the 7-day notice, which will be governed by Section 7.4.2

#### 7.4.2. Seven Days' Notice

After delivery of the performance notice to the contractor, if she does not proceed to make good her default and carry on the services or comply with such directions as aforesaid, to the entire satisfaction of the Manager, the Railway shall be entitled to serve 7 days' notice as per Annexure-XIV, further in writing to either commence the service or improve quality of services to the prescribed standard. The failure to do so shall entail a termination notice being served under the hand of the Manager, to rescind the contract as a whole or in part or parts (as may be specified in such notice)

#### 7.4.3. Termination Notice

If no action to commence the service or improve the quality thereof is taken by the contractor within the 7 days notice period then a final termination notice as per Annexure – XV shall be issued

### 7.5 Right Of Railway After Rescission Of Contract Owing To Default Of Contractor

In the event of any or several of the courses referred to in clause 7.4.3, being adopted,

7.5.1. The Contractor shall have no claim to compensation for any loss sustained by her by reason of her having purchased or procured any materials or entered into any commitments or made any advances on account of or with a view to the delivery of the services wherever applicable or the performance of the contract and Contractor shall not be entitled to recover or be paid any sum for the services wherever applicable thereto actually performed under the contract unless and until the Manager shall have certified the performance of such services wherever applicable and the value payable in respect thereof and the Contractor shall only be entitled to be paid the value so certified.



**7.5.2.** The Manager or the Manager's Representative shall be entitled to take possession of any materials, tools, implements, machinery and buildings on the services wherever applicable or on the property on which these are being or ought to have been executed, and to retain and employ the same in the further execution of the services wherever applicable or any part thereof until the completion of the services without the Contractor being entitled to any compensation for the use and employment thereof or for wear and tear or destruction thereof.

**7.5.3.** The Manager shall as soon as may be practicable after removal of the Contractor fix and determine *ex parte* or by or after reference to the parties or after such investigation or enquiries as she may consider fit to make or institute and shall certify what amount (if any) had at the time of rescission of the contract been reasonably earned by or would reasonably accrue to the Contractor in respect of the services then actually done by her under the contract and what was the value of any unused, or partially used materials, any tools and plants and any temporary works upon the site. The legitimate amount due to the contractor after making necessary deductions and certified by the Manager should be released expeditiously.

Chandip

Sanjeeb Kumar

Amrit Singh

## VIII. SETTLEMENT OF DISPUTES – INDIAN RAILWAY ARBITRATION RULES

### 8.1 Matters Finally Determined by the Railways

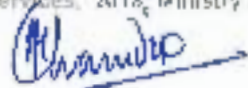
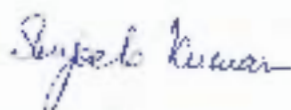
All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the GM and the GM shall, within 120 days after receipt of the contractor's representation, make and notify decisions on all matters referred to by the contractor in writing provided that matters for which provision has been made in Clauses 3.5, 4.13, 4.22.4, 4.41.1, 5.4.2, 5.5.2, (c), 6.5, 6.6, 6.7, 6.8, 7.1, 7.2, and 7.4 and sub clauses thereof of General Conditions of Contract for Services or in any Clause of the Special Conditions of the Contract shall be deemed as 'excepted matters' (matters not arbitrable); and decisions of the Railway authority, thereon shall be final and binding on the contractor; provided further that 'excepted matters' shall stand specifically excluded from the purview of the Arbitration Clause.

### 8.2 Demand for Arbitration

**8.2.1** In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the "excepted matters" referred to in Clause 63 of these Conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

**8.2.1.1** (a) The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.

(b) The parties may waive off the applicability of sub-section 12(5) of Arbitration and Conciliation (Amendment) Act 2015, if they agree for such waiver, in writing, after dispute having arisen between them, in the format given under Annexure XII of these conditions.


**8.2.2** (a) The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.

(b) The claimant shall submit his claim stating the facts supporting the claims alongwith all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

(c) The Railway shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by Tribunal.

(d) Place of Arbitration : The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.

**8.2.3** No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

**8.2.4** If the contractor(s) does/do not prefer her/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Railways that the final bill is ready for payment, She/they will be deemed to have waived her/their claim(s) and the Railway shall be discharged and released of all liabilities under the contract in respect of these claims.

### **8.3 Obligation During Pendency Of Arbitration**

**8.3.1** Work under the contract shall, unless otherwise directed by the Engineer, continue during the arbitration proceedings, and no payment due or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not such work should continue during arbitration proceedings.

### **8.4 Appointment of Arbitrator :**

**8.4.1** Appointment of Arbitrator where applicability of section 12 (5) of Arbitration and Conciliation Act has been waived off.

(a) In cases where the total value of all claims in question added together does not exceed Rs. 1,00,00,000/- (Rupees One Crore only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM.

(b) In cases not covered by the Clause 8.4.1 (a), the Arbitral Tribunal shall consist of a Panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM. Contractor will be asked to suggest to

General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator.

**8.4.2** Appointment of Arbitrator where applicability of section 12 (5) of A&C Act has not been waived off : The Arbitral Tribunal shall consist of a Panel of three (3) retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement date to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM. Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them has served in the Accounts Department.

**8.4.3 (a)** : If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates her/their office/offices or is/are unable or unwilling to perform her functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in her/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

**8.4.3.1 (a)** The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The proceedings shall normally be conducted on the basis of documents and written statements.

**(b)** Before proceeding into the merits of any dispute, the Arbitral Tribunal shall first decide and pass its orders over any plea submitted/objections raised by any party, if any, regarding appointment of Arbitral Tribunal, validity of arbitration agreement, jurisdiction and scope of the Tribunal to deal with the dispute (s) submitted to arbitration, applicability of time 'limitation' to any dispute, any violation of agreed procedure regarding conduct of the arbitral proceedings or plea for interim measures of protection and record its orders in day to day proceedings. A copy of the proceedings duly signed by all the members of tribunal should be provided to both the parties.

Chandip

Sandeep Kumar

Arbitrator



(c) Qualification of Arbitrator(s): (a) Serving Gazetted Railway Officers of not below JA Grade level. (b) Retired Railway Officers not below SA Grade level, three years after his date of retirement. (c) Age of arbitrator at the time of appointment shall be below 70 years. (i) An arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed in the past. (ii) While appointing arbitrator(s) under Sub-Clause 8.4.1 (a), 8.4.1 (b) and 8.4.2 above, due care shall be taken that she/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of her/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. The proceedings of the Arbitral Tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of her/their duties expressed views on all or any of the matters under dispute.

(d) (i) The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred therefrom. (ii) A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award. (iii) A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

**8.4.4** In case of the Tribunal, comprising of three Members, any ruling on award shall be made by a majority of Members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.

**8.4.5** Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.

**8.4.6** (a) The cost of arbitration shall be borne by the respective parties. The cost shall interalia include fee of the arbitrator(s), as per the rates fixed by Railway Board from time to time and the fee shall be borne equally by both the parties, provided parties sign an agreement in the prescribed format after/ while referring these disputes to Arbitration. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble court otherwise on the matter.

(b) (i) Sole Arbitrator shall be entitled for 25% extra fee over the fee prescribed by Railway Board from time to time. (ii) Arbitrator tribunal shall be entitled to 50% extra fee if Award is decided within six months.

**8.4.7** Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules thereunder and relevant para of General Conditions of Contract (GCC) and any statutory modifications thereof shall apply to the appointment of arbitrators and arbitration proceedings under this Clause.