

9.2 Operation of the Contract

The contractor shall not be entitled to make any claim whatsoever against the NHSRCL under or by virtue of or arising out of this contract, nor shall the NHSRCL entertain or consider any such claim if made by the contractor, after he shall sign a "NO CLAIM CERTIFICATE" in favour of the NHSRCL, in such a form as shall be required by the NHSRCL, 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 reference to Arbitration in respect thereof.

10.0 Settlement of Disputes

10.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof.

10.2 Dispute Settlement

Any dispute between the Parties as to matters arising pursuant to this contract which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either party for settlement through Arbitration.

10.2.1 Demand of Arbitration

The demand for arbitration shall specify the matters, which are in question, or subject of the dispute/s or differences/s as also amount of claim item wise. Only such dispute/s or difference/s in respect of which demand has been made by the party/parties shall be referred to Arbitration. And other matters shall not be included in reference.

10.2.2 Nomination of Sole Arbitrator

Matters to be arbitrated upon shall be referred to a sole Arbitrator. The Contractor shall have to choose the sole Arbitrator from the panel of three arbitrators. The Arbitrator(s) shall be appointed within a period of 30 days from the date of receipt of written notice/demand of appointment of Arbitrator from either party. Neither party shall be limited in the proceedings before such arbitrator to the evidence nor did arguments put before the Engineer for the purpose of obtaining his decision.

No decision given by the Client in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. The arbitration proceedings shall be held in **New Delhi only**. The language of proceedings of documents and communication shall be English.

This is a condition of contract agreement /Arbitration that Arbitrator so nominated shall be professional Expert.

This is also a condition of contract that in case above procedure for nomination of arbitrator cannot be adopted due to whatsoever reason may be, then it will be deemed that no arbitration clause exist in contract agreement and normal law of land shall prevail to settle the disputes.

10.2.3 No Suspension of Work.

The reference to arbitration shall proceed notwithstanding that works shall not then be or be alleged to be complete, provided always that the obligations of the Client, and the Contractor shall not be altered by reasons of arbitration being conducted during the progress of Works. Neither party shall be entitled to suspend the work to which the dispute relates on account of arbitration and payments to the Contractor shall continue to be made in terms of the Contract.

10.2.4 Award to be binding on All Parties.

The award of the sole arbitrator or a bench of three arbitrators shall be binding on all parties.

10.2.5 Rules Governing the Arbitration Proceedings.

The arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act 1996, as amended from time to time including provisions in force at the time the reference is made.

10.2.6 Substitute Arbitrators:

If for any reason an Arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator.

10.2.7 Interest on Awarded Amount

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

10.2.8 Fee to Arbitrator

The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include the fees of the Arbitrator as per the rates fixed by the NHSRCL from time to time.

11.0 Indemnity by the Contractor

11.1 The Contractor shall hold and save harmless and indemnify the Client/Employer/ and their employees, from all actions, suits, proceedings, loss, costs, damages, charges, claims and demands of every nature and description brought against or recovered from the Client/Employer/ and their employees by reason of any act or omission of the Contractor and/or his representative and/or his Employees and/or his Contractor in the execution of the works or in the guarding of the same.



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All the sums payable by Client /Employer/ by way of compensation under any of these conditions shall be recovered from the dues of the Contractor, without reference to the actual loss or damage sustained, and whether or not any damage shall have been sustained.

12.0 Termination

12.1 If the Contractor abandons the contract, or persistently disregards instructions of the Employer or contravenes any provisions of the contract, or fails to adhere to the agreed program of work or fails to complete the works or part of the works within the stipulated or extended period of completion, or is unlikely to complete the whole work or part thereof within time because of poor record of progress; as per the terms & conditions of contract, then the contract for the execution of the work shall be subject to termination without prejudice.

13.0 Settlement through Court

13.1 It is a term of this contract that the Contractor shall not approach any Court of Law for settlement of such disputes, where such dispute is subject to Arbitration.

14.0 Jurisdiction of Courts

14.1 The Courts at Delhi shall be exclusive jurisdiction to hear and determine all actions and proceedings arising from the contract.

15.0 Secrecy/Non-disclosure

15.1 The Contractor shall ensure that all the information is kept totally confidential in connection with this bid and the Contractor shall not disclose or divulge the same to any unauthorized person failing which Employer reserve the right to cancel the contract or cease further dealing with the Contractor. The bidder should submit affidavit towards Non-Disclosure Agreement (NDA) in the prescribed format & submit it along with bid.



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16.0 Representations and Warranties:

- a) The Contractor warrants that each of the individuals engaged in the performance of the Services shall be adequately experienced and trained by the Contractor before the individual is assigned to perform the Services.
- b) The Contractor represents and warrants that it has all requisite power and authorization to enter into and perform this Contract and that nothing contained herein or required in the performance hereof conflict or will conflict with or give rise to a breach or default under, or permit any person or entity to terminate, any contract or instrument to which the party is bound.
- c) Except for the warranties expressly mentioned hereunder, the Contractor excludes and disclaims all warranties, conditions or statements, whether express, implied or statutory, including, without limitation, the implied warranties of merchantability and fitness for purpose.
- d) Service level warranty: The Contractor warrants the Employer that it will be able to deploy the requisite resources for the Services without any substantial delay and that in case of failure to meet the required performance level; it shall be liable to pay damages in terms of penal provisions of the Contract

17.0 Indemnity:

The Contractor shall indemnify the Employer of all legal obligations of its service provided under this agreement to the Employer. The Contractor shall and does hereby indemnify and hold harmless the Employer from any loss, liability, damage or expense arising from or in connection with:

- (i) Any claim that the personnel provided by the Contractor for bid work, or any other assignees of the Contractor are employees of the Employer for any purpose;
- (ii) Any claim that the Contractor or its associate has failed to compensate its employees.



SECTION- VIII
CONTRACT FORMS



CON 1

FORM OF AGREEMENT

(To be executed on requisite value of stamp Papers)

AGREEMENT

THIS AGREEMENT made on _____ day of _____ (Month/year) between **National High Speed Rail Corporation Limited**, (hereinafter called “the Employer”) of the one part and _____ (name and address of the Contractor) (hereinafter called “the Contractor”) of the other part.

WHEREAS the Employer is desirous that work of “.....” should be executed by the Contractor Viz. **Contract No.** _____ (hereinafter called “the Works”, and has accepted a bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

NOW THIS AGREEMENT WITNESSETH as follows:

- 3.0 In this Agreement, words and expressions shall have the same meaning as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
- 4.0 The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - a. the Letter of Acceptance;
 - b. the Record of Meeting on Contract Negotiation, if any;
 - c. the Addenda and Corrigenda;
 - d. Financial Bid;
 - e. Appendix to Tender,
 - f. General Conditions of Contract;
 - g. Terms of Reference;
 - h. Any other documents forming part of the Contract
- 3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.



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4. The arrangement of transportation to site visits by Contractor officials (upto 3 visits for each corridor) including lodging and boarding will be done by NHSRCL.

Payment:

1. The Contractor will submit bills to Corporate Office for each corridor alignment developed and finalized as per approved rate & conditions. Payment will be made for actual route length developed and as agreed by NHSRCL.
2. The bills duly verified, certified, stamped and "Passed for Payment" indicating the amount payable as per approved rates by concerned Engineer-in-charge will then be submitted to Corporate Office, NHSRCL, New Delhi, for release of Payment.
3. Payment shall be payable within 14 days from the date of receipt of correct Invoice.
4. All payments shall be in the nature of interim payments. Interim payments shall not be construed to absolve the Contractor in respect of services for which payment is being released.
5. Statutory deductions at source, if any, shall be made from the payments.
6. GST shall be reimbursed on production of necessary documents/vouchers in support of payment. Agency will be free to avail Input Tax Credit (ITC) under provisions of GST Act.
7. Staff/Workers payment of wages, all allowances and benefits, leave entitlement, EPF Contributions, Insurance (as applicable) etc. shall be the Contractor's responsibility as per the Acts prevailing in India and Local Authority.

Signature of Contractor

Name of Authorized person

Date & Seal of Company

