

AMENDED CLAUSES FOR "SETTLEMENT OF DISPUTES" FOR VSP-TTK/DTK-01

Existing clauses under 34.0- SETTLEMENT OF DISPUTES - Deleted

AMENDED CLAUSE NO. AND TEXT
<p>34.0 SETTLEMENT OF DISPUTES:-</p> <p>a) If any dispute of any kind whatsoever shall arise between the Parties (i.e., the Employer and the Contractor) in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination or the execution of the Work—whether during the progress of the Work or after their completion and whether before or after the termination, abandonment or breach of the Contract—the Parties shall seek to resolve any such dispute or difference by Mutual consultation, failing which, through Conciliation, and if the Conciliation fails then through Arbitration / Commercial Courts as mentioned below.</p> <p>b) Parties further agree that following matters shall not be referred to Conciliation or Arbitration / Commercial courts:</p> <p>i) Any claim, difference or dispute relating to, connected with or arising out of Employer's decision to initiate any proceedings for suspension or banning, or decision to suspend or to ban business dealings with the Bidder / Contractor and/or with any other person involved or connected or dealing with bid / contract / bidder / contractor.</p> <p>ii) Any claim, difference or dispute relating to, connected with or arising out of Employer's decision under the provisions of Integrity Pact executed between Employer and the Bidder / Contractor.</p> <p>c) During the pendency of Mutual Consultation, Conciliation or Arbitration / Commercial courts proceedings, both the parties shall continue to perform their Contractual obligations in so far as practicable.</p>
<p>34.1 <u>MUTUAL CONSULTATION</u>:- The Mutual Consultation shall be conducted in the following manner.</p> <p>(a) The Engineer and the Contractor shall settle the dispute amicably within 15 working days from the date, the dispute has been brought to the notice of the Engineer in writing by the Contractor.</p> <p>(b) If the dispute is not resolved or partially resolved within the aforesaid 15 working days, then the un-resolved disputes shall be brought to the notice of Dispute Settlement Cell (DSC) of RINL by either of the parties in writing within 7 working days of the lapse of aforesaid 15 working days. DSC will put up the un-resolved disputes to Claims Committee (CC) of RINL. Claims Committee consisting of independent members will look in to the disputes in a fair and transparent manner and give their recommendation with reason based on the documents submitted by the Engineer and the Contractor. The Claims Committee is a neutral body empowered to look in to the issues beyond the contractual provisions. The process of dispute resolution by Claims Committee is as follows.</p> <p>(c) DSC will put up the un-resolved disputes to Claims Committee within 7 working days</p>

from the date of receipt of the same .

(d) The Contractor and the Engineer shall file all the documents sought for by the Claims Committee within the period as intimated by Claims Committee. The Contractor and the Engineer also may be required to be present within 10 days after filing of their documents to explain their case in the Claims Committee. Claims Committee will give its recommendations to both the parties recommending possible terms of settlement within 60 days, from the date the dispute has been brought to the notice of the DSC. If the disputes could not be resolved as per the recommendations of CC or partially resolved within the aforesaid period, the balance un-resolved disputes shall be brought to the notice of DSC by either of the parties in writing.

e) All efforts by either party within the above period of Mutual settlement shall be kept confidential by both the parties. Parties shall not rely upon any views expressed or suggestions made by the other party, admissions made by the other party or the fact that the other party had indicated his willingness to enter into a settlement, as evidence in any Forum / arbitration or Court proceeding.

f) The timelines mentioned in the above guidelines are with an objective to achieve expeditious conclusion of Claims Committee proceedings, However, it does not mean that any action beyond the timelines will be invalid. However, the party concerned will make all efforts to complete the actions within the stipulated time.

g) In exceptional cases if Claims Committee requests for the extension of time with valid reasons, Competent authority of RINL may extend the time for Claims Committee.

(h) The recommendations of Claims Committee are non-binding and the parties may decide to accept or not to accept the same. Parties are at liberty to accept the Claims Committee recommendation with any modification they may deem fit.

(i) The Contractor and the Engineer shall give their response to DSC within 7 working days from the receipt of Claims Committee Recommendation.

(j) If the Recommendations are acceptable to the Contractor partly or fully, RINL will consider and take a decision on Claims Committee recommendations. DSC shall communicate the decision of RINL to the Contractor within 30 working days from the date of receipt of Contractor's acceptance. If the response of the Contractor is acceptable to RINL, then a settlement agreement will be signed within 10 working days of RINL's acceptance along with the recommendation of Claims Committee .

34.2 CONCILIATION:-

1. Conciliation through Outside Expert Committee (OEC) will be resorted to in cases as per the following details, where Mutual consultation has failed.

2. Claimant shall give notice for Conciliation. In cases where the Contractor is claimant then the notice shall be given to the DSC as per the contract, clearly bringing out the points of dispute and the amount claimed with documents in support of the claim and the party concerned shall not raise any new issue thereafter.

34.2.1.Constitution of OEC:- DSC shall process the request for Conciliation.

1. RINL will have the sole discretion to constitute OEC. OEC will be formed from the panel of experts maintained by RINL and will normally comprise three members, one

member from each category i.e. Technical; Finance/Commercial; and Legal. However, there will be a single member OEC for disputes involving a claim and Counter Claims (if any) taken together upto Rs 1 crore. RINL will have authority to reconstitute an OEC to fill any vacancy or if any OEC member is not available to attend the OEC Meetings.

2. Upon constitution of the OEC, DSC/RINL will issue the appointment letters to OEC members and the parties concerned.

3. The OEC members shall give a declaration of independence and impartiality (as per Appendix-1) to both the parties before the commencement of the OEC proceedings.

34.2.2. Proceedings before OEC:-

1. The Claimant shall submit its Statement of Claims to OEC members, and copy to the Respondent (i.e., to DSC in case RINL is the Respondent) within 30 days of the issue of the appointment letter (kindly refer Appendix-2 regarding submission of Claim/Counter Claims etc.).

2. The Respondent shall file its reply and Counter Claims (if any) within 30 days of the receipt of the Statement of Claims.

3. Parties may file their rejoinder/additional documents if any in support of their claim/Counter Claims within next 15 days. No documents shall be allowed thereafter, except with the permission of OEC

4. OEC will commence its meetings only after completion of the pleadings and in any case not beyond 90 days from its appointment.

5. In case of 3 members OEC, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. If necessary video conferencing may be arranged. However, OEC Recommendations will be signed by all Members. Further, efforts must be made for unanimous recommendations.

6. The parties shall be represented by their in-house employees / executives. No party shall bring any advocate or external consultant / advisor / agent etc. Ex-officers of (i) RINL as well as (ii) Consultant, who are involved in the subject contract, in any capacity are not allowed to attend and present the case before OEC on behalf of Contractor. However, ex-employees of parties may represent their respective organizations.

7. Solicitation or any attempt to bring influence of any kind on either OEC Members or RINL is completely prohibited in Conciliation proceedings and RINL reserves the absolute right to close the Conciliation proceedings at its sole discretion if it apprehends any kind of such attempt made by the Contractor or its representatives.

8. Parties agree to rely only upon documentary evidence in support of their claims and not to bring any oral evidence in the OEC proceedings.

9. OEC will give full opportunity of hearing to the parties before giving its recommendations.

10. OEC will conclude its proceedings in maximum 5 meetings, and give its recommendations within 60 days of its first meeting. OEC will give its recommendations

to both the parties recommending possible terms of settlement. Competent Authority of RINL may extend the time / number of meetings, in exceptional cases, if OEC requests for the same with sufficient reasons.

11. OEC members will be paid fees and provided facilities (as detailed under para-1 of clause 34.2.4 hereinafter), subject to revision by RINL from time to time and subject to Government guidelines on austerity measures, if any.

12. Depending upon the location of the OEC members and the parties, the venue of the OEC meeting shall be either Visakhapatnam or any other place, whichever is most economical from the point of view of travel and stay etc.

13. Parties shall not claim any interest on claims/counterclaims from the date of notice invoking Conciliation till execution of settlement agreement, if so arrived at. In case, parties are unable to reach a settlement, no interest shall be claimed by either party for the period from the date of notice invoking Conciliation till the date of OEC recommendations and 30 days thereafter in any further proceeding.

14. Parties are under no obligation to refer a dispute to Conciliation or continue with Conciliation proceedings. Parties are free to terminate the Conciliation proceedings at any stage as provided under section 76(C) or 76 (d) of the Arbitration and Conciliation Act, 1996.

34.2.3.Actions after OEC Recommendations:-

1. The recommendations of OEC are non-binding and the parties may decide to accept or not to accept the same. Parties are at liberty to accept the OEC recommendation with any modification they may deem fit.

2. Either of the parties shall give its response to DSC within 7 working days of receipt of OEC Recommendation.

3. If the Recommendations are acceptable to the Contractor partly or fully, RINL will consider and take a decision on OEC recommendations. DSC shall communicate the decision of RINL to the Contractor within 30 working days from the date of receipt of Contractor's acceptance. If the response of Contractor is acceptable to RINL, a settlement agreement under Section 73 of the Arbitration and Conciliation Act, 1996 as amended and applicable from time to time will be signed within 15 working days of RINL's acceptance and the same shall be authenticated by all the OEC Members.

4. The timelines mentioned in the above guidelines are with an objective to achieve expeditious conclusion of OEC proceedings, However, it does not mean that any action beyond the timelines will be invalid. However, the party concerned will make all efforts to complete the actions within the stipulated time.

5. The parties shall keep confidential

(i) all matters relating to the Conciliation proceedings including minutes of OEC meeting and Recommendations of OEC,

(ii) and shall not rely upon them as evidence in any Forum / arbitration / court proceeding, whether or not such proceedings relate to the dispute that is the subject of the Conciliation proceedings,

(iii) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute

- (iv) admissions made by the other party in the course of the OEC proceedings;
(v) proposals made by the OEC;
(vi) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the OEC.

6. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement. This stipulation will not apply to disclosure made by RINL to Govt, of India or its authorities, if required.

7. Subject to terms and conditions contained in the above paras, the provisions of the Part III of Arbitration and Conciliation Act, 1996 as amended and applicable from time to time shall be applicable to the Conciliation proceedings and the parties and the OEC members shall be bound by the same.

34.2.4.Fees and facility to the OEC Members:-

1. Each of the OEC members shall be entitled for the following fees and facilities:
All the expenditure incurred in the OEC proceedings shall be shared by the parties in equal proportion. The parties shall maintain account of expenditure and present to the other for the purpose of sharing on conclusion of the OEC proceedings. Each party shall bear their own expenses for attending the OEC meetings including any incidental expenses towards boarding / lodging, travel etc.

Sl. No.	Entitlement Fees/ Facility	To be paid by
i	Fees -Rs. 20,000 per meeting subject to maximum of Rs. 2,00,000 for the whole case. In addition, one OEC member chosen by OEC shall be paid an additional amount of Rs. 10,000 towards secretarial expenses in writing minutes / OEC Recommendations	Contractor
ii	Fee for attending meeting to authenticate the settlement agreement -Rs. 10,000	Contractor
iii	Transportation in the city of the meeting by A/c Car as per entitlement or Rs. 2,000 per day	Contractor
iv	Venue for meeting:- RINL conference rooms / UKKU HOUSE / Hotels	RINL
v	Facilities to be provided to the out-stationed member:-	
a	Travel from the city of residence to the city of meeting. Economy class air tickets/ first class train tickets/ Luxury car/ reimbursement of actual fare. However, entitlement of air travel by Economy class shall be subject to austerity measures, if any, ordered by Govt of India.	Contractor
b	Transport to and fro airport / railway station in the city of residence by A/c Car as per entitlement or Rs. 3,000/-	Contractor
c	Stay for out stationed members – 4 or 5 Star Hotel	RINL
d	Transport in the city of meeting by A/c Car as per entitlement or Rs. 2000 per day	Contractor

2. The final expenses will be shared equally by both the parties.

34.3 ARBITRATION:-

1. If either the Employer or the Contractor is dissatisfied with the OEC's decision, or if the OEC fails to give a decision within reasonable time i.e., within 90 days from the date of its first meeting, then either the Employer or the Contractor may give notice to the other party, with a copy for information to the OEC of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. For all purposes of Arbitration, The Contractor when issue notices to Employer, shall give notice to Dispute Settlement Cell (DSC) of the Employer.

2. The party wishing to refer a Dispute to Arbitration shall give notice to the other party specifying all the points of Disputes with details of the amount or claim to be referred to arbitration ("Invocation Notice"). If the claim is in foreign currency, the claimant shall indicate its value in Indian Rupee also. The closing market rate in an exchange declared by SBI on the date prior to the date of notice should be adopted for conversion of foreign currency in Indian Rupees.

3. There shall be no Arbitration for disputes involving claims more than Rs.1 crore in case of Domestic Contractor and more than Rs.10 crore in case of foreign contractor or in Consortium contracts where foreign contractor is a member. Disputes more than Rs.1 Crore and Rs.10Crore as above shall be adjudicated under the Provision of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 as amended and applicable from time to time.

4. For a dispute involving claims upto Rs 1 crore in case of Domestic Contractor, in case other party is Claimant, RINL will forward a list containing names of Three persons to the other party for selecting, one from the list, who will be appointed as Sole Arbitrator. In case RINL itself is the Claimant, it shall follow the above procedure and appoint the Sole Arbitrator. Such dispute shall be resolved by fast track procedure specified in Section 29B of the Arbitration and Conciliation Act, 1996 as amended and applicable from time to time.

5. For the purpose of Section 21, the Arbitration Proceeding shall commence only from the date of receipt of request for that dispute to be referred to arbitration is received (Invocation Notice) by the Respondent, complete in all respects as mentioned at para-2 above.

6. The parties agree that they shall appoint only that person as arbitrator who conveys his acceptance to the conditions of this arbitration clause.

7. Parties agree that neither party shall make claim for interest on the disputed claims. Parties further agree that Claim if any made for any such interest shall not be considered and shall be void.

8. The fee payable to the Sole Arbitrator shall be as per rules framed by the Hon'ble High Court in whose territorial jurisdiction the seat of arbitration is situated. In case no rules have been framed, the fee payable may be as per Fourth Schedule of the Arbitration and Conciliation Act, 1996 as amended and applicable from time to time. Arbitrator may fix his/her fee keeping the aforesaid schedule as guiding factor within the limits prescribed therein.

9. If after commencement of the Arbitration proceedings, the parties agree to settle the dispute mutually or refer the dispute to Conciliation, the arbitrator shall put the

proceedings in abeyance until such period as requested by the parties. Where the proceedings are put in abeyance or terminated on account of mutual settlement of dispute by the parties, the fees payable to the arbitrators shall be determined as under:

- (i) 20% of the fees if the claimant has not submitted statement of claim.
- (ii) 40% of the fees if the pleadings are complete.
- (iii) 60% of the fees if the hearing has commenced.
- (iv) 80% of the fees if the hearing is concluded but the award is yet to be passed.

10. For Sole arbitrator, RINL shall make all necessary arrangements for his travel/ stay and the expenses incurred shall be shared equally by the parties.

11. The seat of the arbitration shall be Visakhapatnam. The Court/s at Visakhapatnam, Andhra Pradesh, India shall have exclusive jurisdiction over all matters of disputes. For the sake of convenience, Parties may agree to hold the proceedings at any other venue. The arbitration shall be conducted in the English language.

12. Parties agree that neither party shall amend or supplement its claims during the course of arbitral proceedings except for withdrawal of the claims made earlier.

13. The parties may, after invocation of dispute, agree for sharing the cost of Arbitration equally on 50:50 basis, subject to final decision of the Tribunal on Costs if any in the Award.

14. Subject to the above, the provisions of the Arbitration and Conciliation Act, 1996 as amended and applicable from time to time shall apply to the arbitration proceedings under this Contract.

15. Wherever the sum of the disputed claim/s made by the Claimant (foreign contractor or in Consortium contracts where foreign contractor is a member) is up to Rs.10Cr, Arbitration proceedings shall be governed by the Rules of International Commercial Arbitration of Indian Council of Arbitration (ICA), New Delhi and shall be by appointment of a Sole Arbitrator from the panel. The venue of the arbitral proceedings shall be either in New Delhi, Mumbai, Chennai, Kolkata, Hyderabad or Visakhapatnam, India and the seat of Arbitration shall be Visakhapatnam, India, for the purpose of jurisdiction of the Court.

16. The arbitral tribunal shall give reasoned Award. The tribunal shall apportion the cost of arbitration between the parties as at para 13 above.

17. The Award rendered in any arbitration hereunder shall be final and binding upon the parties.

18. The parties agree that neither party shall have any right to commence or maintain any suit or legal proceeding concerning any dispute under this agreement until the dispute has been determined in accordance with the arbitration proceedings provided for herein and then only to enforce or facilitate the execution of an Award rendered in such arbitration.

34.4. Disputes between CPSEs inter se and Government Departments etc.:- In the event of any dispute or difference relating to the interpretation and application of the provisions of contract between Central Public Sector Enterprises (CPSEs)/Port Trusts inter se and also between CPSEs and Government Departments/Organizations other than disputes related to taxation, such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No.4(1)/2013-

DPE(GM)/FTS-1835 dated.22.5.2018 and any other instructions/guidelines issued from time to time.

However, parties agree that before going for the AMRCD mechanism, parties shall seek to resolve any such dispute or difference through aforesaid Mutual consultation and Conciliation process mentioned under 34.1 & 34.2 above.

34.5. Disputes with MSME:- In the event of any dispute or difference relating to the interpretation and application of the provisions of contract between RINL and any Contractor who is a micro enterprise or small enterprise as per the Micro, Small and Medium Enterprises Development Act 2006 as amended and applicable from time to time, such dispute or difference shall be taken up by the Contractor for resolution through Micro and Small Enterprises Facilitation Council as per the Micro, Small and Medium Enterprises Development Act 2006 as amended and applicable from time to time, in case RINL is the Respondent. However, parties agree that before going for the Micro and Small Enterprises Facilitation Council, parties shall seek to resolve any such dispute or difference through aforesaid Mutual Consultation and Conciliation process mentioned under 34.1 & 34.2 above.

In case RINL is the Claimant, such dispute or difference shall be resolved through clause no.34.0, 34.1, 34.2, 34.3 and 34.4 above..

Further, In the event of any dispute or difference relating to the interpretation and application of the provisions of contract between RINL and any Contractor who is a Medium enterprise as per the Micro, Small and Medium Enterprises Development Act 2006 as amended and applicable from time to time, such dispute or difference shall be resolved through clause no. 34.0, 34.1, 34.2, 34.3 and 34.4 above.

APPENDIX-1

Declaration of independence and impartiality by OEC Member

To,

1. RINL

2. Contractor

Subject: Declaration of independence and impartiality by OEC Member in the dispute between RINL and.....under Contract No.....

I, the undersigned, hereby accept to act as Member of the Expert Committee and conciliate in the disputes under reference between the parties above named.

I confirm that I am aware of the requirements of law particularly of the Arbitration and Conciliation Act, 1996, to act as a conciliator. I am able to act as conciliator and am available to act as Member of the Expert Committee.

I hereby declare that I am independent of each of the parties and have no ownership interest in any part of the contract under reference or any financial interest in the said contract. I have no interest in the outcome of the dispute or its settlement.

I hereby affirm that I shall act with honesty, integrity, diligence, and will remain independent and impartial while discharging my duties as conciliator/OEC Member. I will disclose any interest or relationship with the parties or the subject matter which might compromise in any manner my ability or capacity to remain impartial and independent in the matter.

The fees and other facilities offered to me and the terms and conditions contained in the appointment letter and guidelines issued by RINL are acceptable to me. I will not demand for enhancement of the same.

(Signature)

Name:

Address:

Phone:

Email:

Date:

APPENDIX-2

STATEMENT OF CLAIM(S)/COUNTER CLAIM(S)

1. Chronology of the dispute
2. Brief of the contract
3. Brief history of the dispute:
4. Issues:
5. Details of Claim(s)/Counter Claim(s)

Sl no	Description of claim(s)/Counter Claim	Amount (in INR)	Relevant contract Clause
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6. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

Statement of Claims may kindly be restricted to maximum limit of 20 pages. Relevant documents may be compiled and submitted along with the statement of claims. The statement of claims is to be submitted to all OEC members, to other party and to the office of DSC/RINL, by post as well as the editable soft copy vide mail.