

Conciliation Procedure

1. No Legal action till Dispute Settlement Procedure is exhausted.

Any and all Disputes shall be settled in accordance with the provisions of Dispute Resolution Clause. No action at law concerning or arising out of any Dispute shall be commenced unless and until all applicable Dispute Resolution Procedures shall have been finally exhausted in relation to that Dispute or any Dispute out of which that Dispute shall have arisen with which it may be or may have been connected.

2. Notice of Dispute

For the purpose of this Sub-Clause, a Dispute shall be deemed to arise when one party serves on the other party a notice in writing (hereinafter called a "Notice of Dispute") stating the nature of the Dispute provided that no such notice shall be served later than 30 days after the date of completion of Contract.

3. Two Stages for Dispute Resolution

Disputes shall be settled through two stages:

- a) Conciliation procedures as established by "The Arbitration and Conciliation Act-1996" by the Arbitration & Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof and in accordance with this clause. In the event this procedure fails to resolve the Dispute then;
- b) Arbitration procedures undertaken as provided by "The Arbitration and Conciliation Act-1996" & by the Arbitration & Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof and in accordance with this clause.

4. Conciliation

Within 60 days of receipt of Notice of Dispute, either party shall refer the matter in dispute to conciliation. Conciliation proceedings shall be initiated within 30 days of one party inviting the other in writing to Conciliation. Conciliation shall commence when the other party accepts in writing this invitation. If the invitation is not accepted, then Conciliation shall not take place. If the party initiating conciliation does not receive a reply within 30 days from the date on which he sends the invitation, he may elect to treat this as a rejection of the invitation to conciliate and inform the other party accordingly.

The Conciliation shall be undertaken by one Conciliator selected from a panel of Conciliators maintained by the Employer. The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner.

5. Conciliation procedure

The Employer shall maintain a panel of Conciliators, who shall be from serving or retired Engineers of Government Departments, or of Public Sector Undertakings. Out of this panel, a list of three Conciliators shall be sent to the Contractor who shall choose one of them to act as Conciliator and conduct conciliation proceedings in accordance with "The Arbitration and Conciliation Act, 1996" of India & by the Arbitration & Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof. There will be no objection if conciliator so nominated is a serving employee of the Employer who would be Deputy HOD level officer and above. The Employer and the Contractor shall in good faith co-operate with the Conciliator and, in particular, shall endeavour to comply with requests by the Conciliator to submit written materials, provide evidence and attend meetings. Each party may, on his own initiative or at the invitation of the Conciliator, submit to the Conciliator suggestions for the settlement of the dispute. When it appears to the Conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of possible settlement and submit them to the parties for their observations.

After receiving the observations of the parties, the Conciliator may reformulate the terms of a possible settlement in the light of such observations.

If the parties reach agreement on a settlement of the dispute, then may draw up and sign a written settlement agreement. If requested by the parties, the Conciliator may draw up, or assist the parties in drawing up, the settlement agreement. When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. The Conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties. As far as possible, the conciliation proceedings should be completed within 60 days of the receipts of notice by the Conciliator.

The parties shall not initiate, during the conciliator proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.

6. **Termination of Conciliation proceedings**

The conciliation proceedings shall be terminated:

- a) By the signing of the settlement agreement by the parties on the date of agreement; or
- b) By written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of such declaration; or
- c) By a written declaration of the parties to the conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration; or
- d) By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of declaration.

Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties. The costs shall be borne equally by the parties unless settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

7. **Arbitration**

If the efforts to resolve all or any of the disputes through conciliation fails, then such disputes or differences, whatsoever arising between the parties, arising out of or relating to construction/ manufacture, measuring operation or effect of the License Agreement or the breach thereof shall be referred to Arbitration in accordance with the following provisions:

- a) Only such dispute(s) or difference(s) in respect of which notice has been made but could not be settled through Conciliation, together with counter claims or set off, given by the employer, shall be referred to arbitration. Other matters shall not be included in the reference.
- b) The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by Managing Director, Bengaluru Integrated Rail Infrastructure Development Enterprises Limited, Bangalore (MD/Bi-RIDE).
- c) The disputes so referred to arbitration shall be settled in accordance with the Indian Arbitration & Conciliation Act, 1996 & by the Arbitration & Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof.

Further, it is agreed between the parties as under:

8. **Number of Arbitrations: The Arbitral Tribunal shall consist of:**

- i) Sole Arbitrator in cases where the total value of all claims in question added together does not exceed ` INR 15.00 crores;

- ii) 3 (Three) Arbitrators in all other cases.

9. **Procedure for Appointment of Arbitrators: The Arbitrators shall be appointed as per following procedure:**

- i) In case of Sole Arbitrator: Within 60 days from the day when a written and valid demand for arbitration is received by MD/ BI-RIDE, the Employer will forward a panel of 03 names to the Contractor. The Contractor shall have to choose one Arbitrator from the panel of three, to be appointed as Sole Arbitrator within 30 days of dispatch of the request by the Employer. In case the Contractor fails to choose one Arbitrator within 30 days of dispatch of panel of arbitrators by BI-RIDE then MD/BI-RIDE shall appoint anyone Arbitrator from the panel of 03 Arbitrator as Sole Arbitrator.
- ii) In case of 03 Arbitrators:
 - a) Within 60 days from the day when a written and valid demand for Arbitration is received by MD/BI-RIDE, the Employer will forward a panel of 5 names to the Contractor. The Contractor will then give his consent for any name out of the panel to be appointed as one of the Arbitrators within 30 days of dispatch of the request by the Employer.
 - b) Employer will decide the second Arbitrator. MD/BI-RIDE shall appoint the two Arbitrators, including the name of one Arbitrator for whom consent was given by the Contractor, within 30 days from the receipt of the consent for one name of the Arbitrator from the Contractor. In case the Contractor fails to give his consent within 30 days of dispatch of the request of the Employer then MD/BI-RIDE shall nominate both the Arbitrators from the panel.
 - c) The third Arbitrator shall be chosen by the two Arbitrators so appointed by the parties out of the panel of 05 Arbitrators provided to Contractor of from the larger panel of Arbitrators to be provided to them by Employer at the request of two appointed Arbitrators (if so desired by them) and who shall act as Presiding Arbitrator. In case of failure of the two appointed Arbitrators to reach upon consensus within a period of 30 days from their appointment, then upon the request of either or both parties, the Presiding Arbitrator shall be appointed by the Managing Director/BI-RIDE, Bangalore.
 - d) If one or more of the Arbitrators appointed as above refuses to act as Arbitrator, withdraws from his office as Arbitrator, or vacates his / their office/ offices or is / are unable or unwilling to perform his functions as Arbitrator for any reason whatsoever or dies or in the opinion of the MD/BI-RIDE fails to act without undue delay, the MD/BI-RIDE shall appoint new Arbitrator/ Arbitrators to act in his/ their place except in case of new Presiding Arbitrator who shall be chosen following the same procedure as mentioned in para (ii) (c) above. 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).
 - e) The Employer at the time of offering the panel of Arbitrator (s) to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrators nominated in the panel along with their professional experience, phone nos. and addresses to the Contractor.

Qualification and Experience of Arbitrators (to be appointed as per sub-clause above): The Arbitrators to be appointed shall have minimum qualification and experience as under:

Arbitrator shall be; a Working/ Retired Officer (not below E-7 grade in a PSU with which the Employer has no business relationship) of any discipline of Engineering or Accounts/ Finance Department, having experience in Contract Management;

Or

A Retired Officer (retired not below the SAG level in Railways) of any Engineering Services of Indian Railways or Indian Railway Accounts Service, having experience in Contract Management; or a Retired Officer who should have retired more than 3 years previously from the date of appointment as Arbitrator (retired not below E-8 grade in BI-RIDE or a PSU with which the Employer has a business relationship) of any Engineering discipline or Accounts/ Finance Department, having experience in Contract Management or Retired Judge of any High Court or Supreme Court of India or reputed Chartered Accountant & should be member of ICAI, New Delhi. No person other than the persons appointed as per the above procedure and having above qualification and experience shall act as Arbitrator.

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.

Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before the Conciliator for the purpose of obtaining his decision. No decision given by the Conciliator 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. Neither party shall be limited in the proceedings before such arbitrators to the evidence.

It is agreed by both the Parties that in the cases where Arbitral Tribunal is consist of sole Arbitrator, their disputes shall be resolved by fast-track procedure specified in sub-section (3) of 29B of the Arbitration and Conciliation (Amendment) Act, 2015 or as and when amended up to date.

If the Contractor (s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Employer/ Conciliator that the final demand is ready, he / they will be deemed to have waived his/their claim(s) and the Employer shall be discharged and released of all liabilities under the License Agreement in respect of these claims.

Arbitration proceedings shall be held at Bangalore, India and the language of the arbitration proceedings and that of all documents and communications between the parties shall be in English.

The Arbitral Tribunal should record day to day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements. All Arbitration awards shall be in writing and shall state item wise, the sum and detailed reasons upon which it is based. A model time scheduled for conduct of Arbitration proceedings in a period of 180 days/365 days will be made available to Arbitral Tribunal for their guidance (180 days is for fast track Arbitration and 365 days for other Arbitrations). Both the parties should endeavor to adhere to time scheduled for early finalization of Award.

The Award of the sole Arbitrator or the award by majority of three Arbitrators as the case may be shall be binding on all parties. 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.

A party may apply for correction 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 specific point of award to tribunal within 60 days of the receipt of award 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.

10. **Interest on Arbitration Award**

Where the arbitral award is for the payment of money, interest as per latest guidelines/amendments of arbitration or conciliation act shall be payable on whole or any part of the money for the period it is accrued, till the date on which the award is made.

11. **Cost of Conciliation/ Arbitration**

The fees and other charges of the Conciliator/ Arbitrators shall be as per the scales fixed by the Employer from time to time irrespective of the fact whether the Arbitrator(s) is / are appointed by the Employer or by the Court of law unless specifically directed by Hon'ble Court otherwise on the matter and shall be shared equally by the Employer and the Contractor. However, the expenses incurred by each party in connection with the preparation of presentation will be borne by itself. The latest scale of fee & other charges shall be fixed by BI-RIDE.

12. **Jurisdiction of Courts**

Where recourse to a Court is to be made in respect of any matter, the Court at Bangalore shall have the exclusive jurisdiction to try all disputes between the parties.