

RailTel Corporation of India Ltd
(A Government of India Enterprise)

6th Floor III rd Block,
Delhi Technology Park, Shastri Park, Delhi-110053
Work: 011-22185933,34
Fax: 011- 22185978

Website: www.railtelindia.com

No: RailTel/Tender/OT/NR/SDH/2020-21/04/Corrigendum 1 Dated: 15.04.2021

CORRIGENDUM-I

**Sub: “Supply of STM-1/STM-4/STM-16/STM-64 and other associated items
for the OFC based Communication System of RailTel”.**

Ref: RailTel/Tender/OT/NR/SDH/2020-21/04 Dated 22.03.2021.

In reference to above tender, the following amendments are issued:

1. New Clause added, Clause no. 3.16 in Chapter 3 in the tender document as under:

3.16 Long Term Maintenance Support (AMC for 5 years)

- 3.16.1 The Tenderer shall provide maintenance support after successful completion of the warranty obligations for a minimum period of 5 years against PO issued. The long term maintenance support shall be comprehensive and include all hardware and software of equipment, NMS etc. supplied against this contract. RailTel should be extended the benefits of software update/up-grades made by OEM on the system from time to time to improve performance. During this period the scope of work as mentioned in the clause 3.11 of tender document & its sub clauses, will be applicable.
- 3.16.2 The Tenderer shall be paid @ 3.5% of supply cost per annum towards Long Term Maintenance Support after completion of warranty period, to undertake repairs/replacements of all type of module/ card/assembly/ subassembly and update/upgrade of software released during this period and /or which may fail in the network after the warranty. AMC value (@3.5%) will be calculated on the Ex-factory prices. Taxes would be actual as per actual at the time of execution of AMC.
- 3.16.3 Separate agreement for AMC after warranty period shall be entered with Tenderer by RailTel. A fresh Bank Guarantee for a value of 3% of the value of the AMC contract's annual value valid for a period of 64 months (4 months beyond the AMC period of 5 years) from the date of issue of LOA shall be required to be submitted by Tenderer for due fulfillment of long term maintenance support obligation.
- 3.16.4 Quarterly payment for AMC Charges would be made by RailTel after successful completion of AMC Services of that quarter and on the

certificate furnished by concerned RailTel representative of the Executive Director of the Region.

Note: The acceptance of the above clause is mandatory and specific acceptance from OEM is required to be enclosed as per Form no.4. Any deviation / non acceptance will lead to rejection of the bid summarily.

3.16.5 Detailed standard conditions applicable for the annual maintenance contract between RailTel and the Contractor are given in Annex-III.

2. Bid submission timelines as mentioned in tender notice may be read as under:

Submission of Bid	22.04.2021 at 15:00Hrs
Opening of Bid	22.04.2021 at 15:30Hrs

All other terms and conditions will remain unchanged.

DA: Form no.4 and Annex-III.

(Ruchira Chatterjee)
General Manager/Admin/NR
(For and behalf of RailTel Corporation of India Ltd.)

**PROFORMA FOR THE LONG TERM MAINTENANCE SUPPORT
(To be signed by the OEM)**

To,
General Manager,
Northern Region,
RailTel Corporation of India Limited

I/We hereby confirm and accept that against RailTel's Tender No., the requirement of Long Term Maintenance Support as per Clause 3.16 of Chapter-3 shall be met by us directly or through our subsidiary in India as per rates quoted in the Price Bid. I / We have gone through the requirement mentioned in the Tender document and shall provide services as per terms and conditions pertaining to Long Term Maintenance Support of tender document.

(Signature of Firm's Authorized officer)
Seal

Signature of witness:

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**Detailed standard conditions applicable for the Annual Maintenance Contract
(Clause 3.16, Chapter-3 of Tender Document)**

1.0 Introduction

This document contains the standard conditions applicable for the Annual Maintenance Contract between RailTel and the Contractor. Contractor is defined as the company whose products/equipments have been deployed over the RailTel telecommunication network and the warranty of these equipments has expired or going to be expire shortly. All the equipments/ cards/ modules given in SOR will be covered under this contract. This Annual Maintenance Contract will cover up the provision of remote services to be provided by the contractor for proper working of Network created through the contractor's equipments. This document will also cover up the Repair and Return services for the rectification of defective modules/cards/parts etc which are the key tools in use for uninterrupted traffic. It also includes the Key performance parameter which will decide the outcome of the contractor within reasonable time frame along with the provision of penalties. This Annual Maintenance Contract will cover the following services:

- **Technical Support service.**
- **Repair and Return Service.**
- **Software Updates.**

2.0 Basic Definitions and terminology Used:-

RailTel: RailTel Corporation of India Limited having its registered office at 6th floor, 3rd Block, Delhi Technology Park, Shastri Park , New Delhi-110053 and Corporate Office at Plot No. 143, Institutional Area, Opposite-Gold Souk, Sector-44, Gurgaon-122003.

Contractor: Contractor means firm/company whom equipments are deployed over the Telecommunication Network of RailTel.

TSC: Technical Support Center created by the Contractor for 2nd level support.

TEC: Telecom Excellence Center created by the contractor for 3rd level support.

WC: Welcome Center of contractor through which the RailTel may interact with contractor.

AR: Assistance Request created by WC of contractor for a specific request of RailTel which will be used for all references until its closure and also for future correspondence.

Maintained Products: Details of equipments with location wise deployment and serial identification numbers to be incorporated in a statement jointly signed by RailTel and Contractor, which will be covered under AMC contract.

Severity Levels:

Severity Levels are defined as the condition of the system when RailTel submits an Assistance Request (AR). There are three severity levels for reported problems. Severity levels are defined as follows:

“Critical” (also known as Severity Level 1, SL1): The system is inoperative and RailTel's inability to use the product has a critical effect on RailTel's operations. This condition is

generally characterized by complete system failure and requires immediate correction.

“Major” (also known as Severity Level 2, SL2): The system is partially inoperative but still usable by RailTel. The inoperative portion of the product severely restricts RailTel’s operations, but has a less critical effect than a severity level 1 condition.

“Minor” (also known as Severity Level 3, SL3): The system is usable by RailTel, with little or limited impact to the function of the system. This condition is not critical and does not severely restrict overall RailTel operations.

RailTel shall inform the severity based on above definitions, at the time of opening of AR with Contractor’s TSC. If TSC feels to disagree on the severity, may discuss with RailTel on correction of severity. Where parties disagree on the classification of a particular reported problem, RailTel and Contractor’s technical contacts will discuss the classification in good faith to reach a mutually acceptable classification. In the event, the parties are unable to reach agreement on the classification, the reported problem shall be classified at the discretion of RailTel.

Key Performance Indicators (KPIs):

The key performance indicators (KPI) established by contractor and RailTel, are dependent on the severity level of the request as reported by RailTel to the TSC through telephone. Contractor’s KPIs extend to Maintained Products running on a currently supported software version release only. These are KPIs which will decide the penalties to be imposed on contractor if he fails to achieve the fixed parameter for both remote services and Repair & Return services.

“Response Time” (also known as Specialist Call-back) means the time period from when RailTel first notifies the Contractor’s welcome center of a reported problem to when an contractor’s expert attempts to contact RailTel via telephone or preferred contact method as defined when submitting the request.

“Restore Time” (also known as Remote Neutralization) means a measure of the length of time from when contractor is contacted and an event is determined to be loss of service and/or functionality affecting, to the time when contractor provides the means to return a system to operational status. This will be applicable only for services impacting cases. Travel time of field’s engineers or TSC engineers and spare arrangement times will be excluded in this.

Resolve Time (Also known as Final Resolution Time) means a measure of the length of time from when RailTel first notifies the contractor’s welcome center to the time when a solution to address the issue is made available to RailTel. This may or may not occur simultaneously with Restore Time.

Patch Releases/Maintenance Releases:-

“Patch Release” means a software release that contains minor modifications to address a specific problem and help restore a system. A Patch Release may also be known as “Craft Release”.

“Maintenance Release” means a software release that contains modifications intended to resolve problems that prevent products from performing up to the manufacturer’s technical specification. Typically they are comprised of a collection of Patch Releases. Maintenance Release may also be known as an “Update Release” or a “Point Release”.

3.0 Technical Support Service:-

During this AMC period, whenever needed, RailTel may contact the Contractor's Support center (WC) through a dedicated phone no. or e-mail address or Web for every issue or request. The Welcome Center of the Contractor (WC) will be available 24 hours a day and 365 days of the year. Welcome Centre creates the Assistance Request (AR) in the database and this AR will be used for all future correspondence /references and it will route to either for Repair or Return services or to Technical support center (TSCs) for remote assistance. These level 2 services provided through Technical support center may escalate to Technical Experts centre or to OEM dedicated technical support centers (for OEM support for hardware and /or software portion of the products).

The Welcome centre of contractor (WC) keeps track of the assistance request (AR) or part request until closure.

3.1 Contractor's responsibilities:

Contractor shall login RailTel Network in support of product related questions troubleshooting assistance, diagnostic procedures, and Patch & Maintenance Releases, as are made available, to restore and resolve network troubles. The following services will be provided:

- 3.1.1 Troubleshoot network problems via phone, virtual private network, or modem connection down to Maintained product component level, or sufficiently to the maintained products as the root cause.
- 3.1.2 Provide technical advice and guidance via telephone or email by Contractor's product specialists located in their Technical Support Centers (TSC). Upon request from RailTel, RailTel will receive information, advice and assistance for the Maintained Products.
- 3.1.3 Provide Patch & Maintenance Releases for Maintained Products, as provided in accordance with the applicable product software support policy. For selected products noted on Maintained Products Contractor will remotely install software fixes, patches, and updates that may be made available.
- 3.1.4 For Severity Level Critical (Severity 1) and Major (Severity 2) will restore Maintained Products to operational status by identifying defective hardware components or providing software and/or procedural workarounds, where feasible. All software workarounds will be licensed subject to the same terms, restrictions, and limitations as contained in the licenses under which the software was acquired.
- 3.1.5 The Incharge of SDH equipments shall fill up the history sheet containing the statistics about the health of SDH equipments installed at the concerned site and send a report to the NOC, where the contractors engineer is posted, on monthly basis. Based on this history sheet the supplier shall analyze the health report of each site and if something alarming or unusual is noticed, shall advise the field staff of RCIL to take necessary actions for preventive maintenance of such equipments. The Proforma for checking the status/history sheet shall be jointly decided by the contractor and RCIL.

3.1.6 Software Update:

RailTel will be extended the benefits of software updates made by OEM on the installed systems on existing release from time to time to improve performance. If required to restore or rectification of severe problems all the software up-gradation, re-installation will be done by contractor during the period of AMC.

3.2 RailTel Responsibility:-

When reporting an AR, RailTel shall include Severity Level of problem and output of any diagnostic, printed logs, already performed to help reproduce the conditions under which the trouble occurred. Identify site ID or contact number, submitter name & location, callback telephone number and/or email address, system name and location, processor location, type and serial number, and alternate contact.

- 3.2.1 RailTel will notify contractor in writing immediately of any change in the employment or authorization status of any personnel having authorized access to the Web site.
- 3.2.2 RailTel will provide remote access to Contractor's TSC to access their network, either through VPN, ISDN or Team viewer.
- 3.2.3 RailTel will perform first level diagnostics before handing over the ticket to the Contractor. RailTel will share all network layouts, link details etc which may be needed by Contractor to help troubleshooting the issue.
- 3.2.4 RailTel will provide all necessary documents for repair of cards.
- 3.2.5 RailTel will provide all necessary technical field support in the form of field technical staff equipped with necessary equipments etc. to give remote access to Contractor.

4.0 Repair and Return Services

4.1 Repair

4.1.1 Contractor's Responsibility:-

- The Contractor will take- over the defective cards/SFPs from each of the RailTel NOC and hand-over the repaired card at the same location. The following activities will be performed by the contractor:
- After receiving a defective part request through Welcome Centre (dedicated phone line or e-mail), the defective part will be taken over by the contractor from each of the RailTel NOC. All the documentation including identification number (Serial number) will be provided by RailTel.
- There will be initial one time activity of all existing faulty cards being repaired by Contractor before commencement of the AMC. AMC will cover only equipments which are in working condition.
- **Delivery Period:** The received defective part will be got repaired by the contractor within 30 days from the date of receiving and will be handed over to RailTel authorized representative at NOC. The contractor will also give probable reason for repeated failure of cards/ modules.

Uninterrupted Network: For smooth and uninterrupted traffic during the repair being carried out by the contractor.

1. RailTel will use its own spare card in the first instance.
2. If contractor fails to return the repaired card within stipulated time of 30 days from the date of receipt then the OK (good conditioned) cards/SFPs/parts etc will be provided by the contractor for the subsequent in this period free of cost till replacement with the repaired card.
3. All transportation, freight and insurance charges will be borne by the contractor.
4. Contractor will keep the record of repair on each defective part/cards/SFP with serial numbers (unique identification) particulars.

4.1.2 RailTel's Responsibility

RailTel will hand over the defective card/SFP/Parts/etc. to the contractor's authorized representative at each of the RailTel NOC along with the following relevant information & documentation.

- Identification/serial number and location of use.
- Fault report document duly filled-in in a format as per requirements of Contractor.
- All relevant documentation including failure description, diagnostic tests results.
- Adequate packing material to protect against reasonable risk of damages.
- Provide all necessary government authorization and documentation necessary to facilitate custom clearance processing.
- Perform a physical check test on the repaired parts.

4.2 Return

If any part goes beyond repair due to Contractor at the time of repair being carried out, this is to be communicated to RailTel and after agreed upon, it will be labeled as "unworkable". If it will be required to deploy a new part on that location that will be provided by the contractor to RailTel free of cost. To achieve this, contractor is required to always keep adequate spares with it during the period of AMC. However this excludes damaged, spoiled, rusted or misused parts. Any such parts will be not-repairable and no replacements shall be provided by contractor. RailTel will have to purchase fresh spares in case the cards are non repairable due to these reasons.

5.0 Services Level Agreement Values (SLA):

As described above, if the contractor fails to provide the Technical Support Services and Repair services within the reasonable time, the following KPIs will be used.

5.1 Technical Support Services KPIs & SLA:

Severity Levels/KPIS	Critical	Major	Minor
Respond	1Hr	3Hr	5Hr
Restore	6 Hr	BE	BE

***BE-Best Effort**

5.2 Repair and Return Services

If the contractor fails to return the card with 30 days, the following penalties will be imposed:

Equipment	Duration of repair	Deduction/Penalties
All Modules and accessories	More than 30 days and upto 40 days (from the date of receipt)	10% of the cost of affected part/module
All Modules and accessories	More than 40 days and upto 50 days (from the date of receipt)	25% of the cost of affected part/module
All Modules and accessories	More than 50 days and upto 60 days (from the date of receipt)	75% of the cost of affected part/module
All Modules and accessories	More than 60 days (from the date of receipt)	Full cost of affected part/module

6.0 Dedicated NOC Support

Deleted

7.0 General Conditions:

7.1 Period of AMC

This Annual Maintenance Contract will be valid for a period of 5 years from the date of issue of LOA for AMC. This period (i.e. 5 years) may be extended further with mutual consent of RailTel and Contractor.

RailTel at its discretion is free to change the location of the equipments installed during the currency of AMC and the contractor shall carry out the AMC with same commercial terms.

7.2 Performance Bank Guarantee:-

The contractor is required to submit a Performance Bank Guarantee (PBG) within 15 days from the date of issue of LOA for AMC @ 3% of the value of the AMC contract's annual value valid for a period of 64 months (4 months beyond the AMC period of 5 years) from the date of issue of LOA. The Proforma for PBG is given in Tender Document of tender document. If the AMC period got extended, the PBG will also be extended accordingly.

The performance Bank Guarantee will bear no interest.

Extension of time for submission of PBG beyond 30(thirty) days and up to 60 days from the date of issue of LOA/SPO may be given with the approval of contract signing authority. However, a penal interest of 15% per annum shall be charged for the delay beyond 30 (thirty) days, i.e. 31st day after the date of issue of LOA/SPO. In case the contractor fails to submit the requisite PBG even after 60 days from the date of issue of LOA/SPO, the contract shall be terminated duly forfeiting EMD and other dues, if any payable against that contract. The failed contractor shall be debarred from participating in re-tender of the work.

- (i) "A separate advice of the BG will invariably be sent by the BG issuing bank to the RailTel's bank through SFMS (Structured Financial Messaging System) and only after this the BG will become acceptable to RailTel. It is therefore in own interest of bidder to obtain RailTel's bank IFSC code, its branch and address and advise these particulars to the BG issuing bank and request them to send advise of BG through SFMS to the RailTel's bank."

NOTE: If performance guarantee works to be less than Rs. 5.0 lacs, same need to be submitted in the form of DD/Bankers Cheque only.

7.3 Prices and Taxes:-

- The prices for the services shall be in INR which will be the currency of account invoicing and payment.
- If in respect of the provision of services, Contractor has to pay the additional admissible taxes, the same will be get reimbursed after receiving the documentary proof by RailTel.
- Price will not include the cost of any financing (if any).

7.4 Payment Terms:-

AMC charges shall be paid on quarterly basis by the respective Executive Director of the concerned Region after successful completion of maintenance within 30 days from the date of invoicing accompanied with Invoice, Monthly trouble ticket report, Monthly repair report subject to any deductions or recovery (which the RailTel may be entitled to make under contract) through RTGS. Monthly reports will be shared with RailTel regularly. Format will mutually decided by RailTel and Contractor.

7.5 Execution of contract

The executive Directors of respective regions or his nominated representatives will be responsible for the execution of the contract under their respective jurisdiction. Certificate regarding proper execution of the AMC along with proposed deductions/penalties with reasons thereof shall be prepared for every billing cycle (quarterly) for arranging payment to the contractor.

7.6 Not Used

7.7 Not Used

7.8 Tenderers Address

Tenderer shall state in the tender his postal address fully and clearly. Any communication sent to the Tenderers by post at his said address shall be deemed to have reached the tenderer duly & timely, notwithstanding the fact the communication could not reach the tenderer at all or in time for whatever reason. Important documents shall be sent by Registered post.

7.9 Not Used

7.10 Law governing the contract.

The contract shall be governed by the law for the time being in force in the Republic of India. Compliance to regulations and bye-laws-The contractor shall conform to the provision of any statute relating to the works and regulations and bye-laws of any local authority and of any water and lighting companies or undertakings, with whose system the work is proposed to be connected and shall before making any variation from the drawings or the specifications that may be necessitated by so confirming give to the Engineer notice specifying the variation proposed to be made and the reason for making the variation and shall not carry out such variation until he has received instructions from the Engineer in respect thereof. The Contractor shall be bound to give all notices required by statute, regulation or bye-laws as aforesaid and to

pay all fees and taxes payable to any authority in respect thereof.

7.11 Force Majeure clause:-

If at any time, during the continuance of this contract, the performance, in whole or part, by either party, of any obligation under this contract shall be prevented or delayed by reason of any war, hostility, act of the public enemy, Civil Commotion, Sabotage, Fires, Floods, Earth quakes, explosions, strikes, epidemics, quarantine restrictions, lockouts, any statute, statutory rules/regulation, order of requisitions issued by any Government Department of Competent Authority or acts of God (here-in-after referred to as event) then provided notice of the happening of any such event is given by either party to the other within twenty one days from the date of occurrence thereof, neither party shall, by reason of such event, be entitled to terminate this contract nor shall either party have any claim for damage against the other in respect of such non-performance or delay in performance, and the obligations under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist, Provided further that if the performance in whole or part of any obligation under this contract of prevented or delayed by reason of any such event beyond a period as mutually agreed to by the RailTel and the Contractor after any event or 60 days in the absence of such an agreement whichever is more, either party may at its option to terminate the contract provided also that if the contract is so terminated under this clause the RailTel may at the time of such termination take over from the Contractor at prices as provided for in the contract, all works executed or works under execution.

7.12 Illegal Gratification

Any bribe, commission, gift or advantage given, promised or offered by or on behalf to the contractor or his partner, agent or servant or anyone on his behalf to any officer or employees of the RailTel, or to any person on his behalf in relation to obtaining or the execution of this or any other contract with the RailTel shall, in addition or any criminal liability which he may incur, subject the contractor to the rescission of the contract and all other contracts with the RailTel and to the payment of any loss or damage resulting from such decision and the RailTel shall be entitled to deduct the amounts so payable from any moneys due to the Contractor (s) under this contract or any other contracts with the RailTel.

The contractor shall not lend or borrow from or have or enter into any monetary dealings or transactions either directly or indirectly with any employee of the RailTel and if he shall do so, the RailTel shall be entitled forthwith to rescind the contract and all other contracts with the RailTel. Any question or dispute as to the commission or any shall offence or compensation payable to the RailTel under this clause shall be settled by the Regional General Manager of RailTel, in such a manner as shall consider fit and sufficient and his decision shall be final and conclusive. In the event of rescission of the contract under this clause, the contractor will not be paid any compensation whatsoever except payment for the work done up to date of rescission.

7.13 LABOUR

Wages to Labour- The contractor shall be responsible to ensure compliance with the provisions 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 him on road construction or in building operations or in stone breaking or stone crushing for the purpose of carrying out this contract. If in compliance with the terms of the contract, the contractor supplied any labour to be used wholly or partly under the direct orders and control of the RailTel whether in connection with any work being executed by the contractor or otherwise for the purpose of the RailTel such labour shall, for the purpose of the clause, still be deemed to be persons employed by the contractor. If any moneys shall as a result of any claim or application made under the said Act be directed to be paid by the RailTel, such moneys shall be deemed to be moneys payable to the RailTel by the Contractor and on failure by the

contractor to repay any moneys paid by it as aforesaid with seven days after the same shall have been demanded, the RailTel shall be entitled to recover the same from any moneys due or accruing to the contractor under this or any other contract with the RailTel.

7.13.1 Apprentices Act

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 through petty contractors or sub-contractors employed by him for purpose of carrying out the contract. If the Contractor directly or through petty contractor or sub-contractors fails to do so, his failure will be breach of the contract and the RailTel 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.

7.13.2 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 him in the 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 Engineer whether in connection with the works to be executed hereunder or otherwise for the purpose of the Engineer 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 Engineers shall be deemed to be moneys payable by the Engineer on moneys due to the contractor in terms of the contract (whether under this contract or any other contract all moneys paid or payable by the RailTel by way of compensation of aforesaid or for costs of expenses in connection with any claim thereto and the decision of the Engineer upon any question arising out of the effect or force of this clause shall be final and binding upon the contractor.

7.13.3 Provision of Contract Labour (Regulation and Abolition) Act 1970

1. The contractor shall comply with the provision of the Contract Labour (Regulation and Abolition) Act 1970 and the Contract Labour (Regulation and Abolition) Act, Central Rules 1971 as modified from time to time, whenever applicable and shall also indemnify the RailTel from and against any claims under the aforesaid Act and the Rules.
2. The contractor shall obtain a valid license under the aforesaid Act as modified from time to time before the commencement of the work and continue to have a valid license until the completion of the work. Any failure to fulfill this requirement shall attract the penal provision of the Contract arising out of the resultant non-execution of the work.
3. The contractor shall pay to the labour employed by him directly or through sub-contractors the wages as per provisions 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 work including any engaged by his sub contractors in connection with the said work, as if the labour had been immediately employed by him.

4. 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 the Rules wherever applicable.
5. In every case in which, by virtue of the provisions of the aforesaid Act or the Rules, the RailTel is obliged to pay any amount of wages to a workmen employed by the contractor or his sub-contractor in execution of the work or to incur any expenditure in providing welfare and health amenities required to be provided under the aforesaid Act and the Rules or to incur any expenditure in providing welfare and health amenities required to be provided under the aforesaid Act the Rules or to incur any expenditure on account of the contingent liability of the RailTel due to contractor's failure to fulfill his statutory obligations under the aforesaid Act or the Rules the RailTel 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 RailTel under section 20, sub section (2) and section 2 sub-section (4) of the aforesaid Act, the RailTel shall be at liberty to recover such amount or part thereof by deducting it from the security deposit and/or from any sum due by the RailTel to the contractor whether under the contract or otherwise. The RailTel 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 his giving to the RailTel full security for all costs for which the RailTel might become liable in contesting such claim. The decision of the RailTel regarding the amount actually recoverable from the contractor as stated above shall be final and binding on the contractor.

7.13.4 Reporting of Accidents to Labor

The contractor shall be responsible for the safety of all employees directly or through petty contractors or sub-contractors employed by him on the works and shall report serious accidents to any of them however and wherever occurring on the works to the Engineer or the Engineer's representative and shall make every arrangement to render all possible assistance.

7.13.5 Provisions of Workmen's Compensation Act

In every case, in which by virtue of the provision of section 12 sub section (1) of the Workmen's Compensation Act, 1923, RailTel is obliged to pay compensation to workman directly or through the petty contractor employed by the contractor or sub-contractor, in executing the work, RailTel will recover from the contractor the amount of the compensation so paid, and without prejudice to the right of RailTel under section 12 sub section (2) of the said Act. RailTel shall be at liberty to recover such amount or any part thereof by deducting it from the security deposit or from any sum due by RailTel to the Contractor whether under these conditions or otherwise, RailTel shall not be bound to contest any claim made against it under Section 12, Sub Section (1) of the said Act except on the written request of the contractor and upon his giving to RailTel full security for the all costs for which RailTel might become liable in consequence of contesting such claim.

7.14 Determination of Contract

Right of RailTel to determine the contract: The RailTel shall be entitled to determine and terminate the contract at any time, should in the RailTel's opinion, the cessation of the 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 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 RailTel of such determination and the reasons thereof shall be conclusive evidence thereof.

Payment on determination of contract: Should the contract be determined under sub clause (1) of this clause and the Contractor claims payment for expenditure incurred by him in the expectation of completing the whole of the work, the RailTel shall admit and consider such claims as are deemed reasonable and are supported by vouchers to the satisfactions of the Engineer. The RailTel's decision on the necessity and property of such expenditure shall be final and conclusive.

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

7.15 TERMINATION OF CONTRACT OWING TO DEFAULT OF CONTRACTOR:

As mentioned in the tender document.

7.16 RIGHT OF RAILTEL AFTER TERMINATION OF CONTRACT OWING TO DEFAULT OF CONTRACTOR :

- a) The contractor shall have no claim to compensation for any loss sustained by him by reason of his having purchased or procured any materials or entered into any commitments or made any advances on account of or with a view to the execution of the works or the performance of the contract and contractor shall not be entitled to recover or be paid any sum for any works thereto not actually performed under the contract, unless or until the Engineer shall have certified the performance of such work and the value payable in respect thereof and the Contractor shall only be entitled to be paid the value so certified.
- b) The Engineer or Engineer's Representative shall be entitled to take possession of any materials, tools, implements, machinery or buildings on the works or on the property on which these are being or ought to have been executed, and to retain the employ the same in further execution of the works without the contractor being entitled to any compensation for the use and employment thereof or for wear and tear or destruction thereof.
- c) The Engineer shall, as soon as may be practicable after removal of the contractor fix and determine expert or by or after reference to the parties or after such investigation or enquiries as he may consider fit to make or institute and shall certify what amount (if any) has at the time of termination of the contract been reasonably earned by or would reasonably accrue to the Contractor in respect of the work then actually done by him under the contract what was the value of any unused or partially use materials, any constructional plants and any temporary works upon the site. The legitimate amount due to the contractor after making necessary deductions and certified by the Engineer should be released expeditiously.

7.17 SETTLEMENT OF DISPUTE AND ARBITRATION:-

- Any dispute or difference whatsoever arising between the parties out of relating to the construction, meaning, scope, operation or effect of this contract or the validity or the

breach thereof shall be settled by a sole arbitrator in accordance with provisions contained in Arbitration and Conciliation Act, 1996 as amended and the award made in pursuance thereof shall be binding on the parties. The venue of such arbitration or proceedings thereof shall be New Delhi.

- All arbitration proceedings shall be conducted in English. Resources against any Arbitral award so rendered may be entered into court having jurisdiction or application may be made to such court for the order of enforcement as the case may be.
- The arbitral tribunal shall consist of the sole Arbitrator if the value of claim is upto Rs. 10 lakhs. The arbitrator will be appointed by the Managing Director of RailTel Corporation of India Ltd. If the value of claim or amount under dispute is more than Rs. 10 lakhs, the matter shall be referred to the adjudication of arbitral council. Managing Director/RailTel shall furnish a panel of three names to the contractor, out of which the contractor will recommend one name to be his nominee and then Managing Director/RailTel shall appoint out the panel, one name as RailTel's nominee and these two arbitrators with mutual consent appoint a third arbitrator who shall act as deciding. The award of sole arbitrator or Arbitral council, as the case may be, shall be final and binding on both the parties, i.e. contractor and RailTel Corporation of India Ltd.
- Each of the parties agree that notwithstanding that the matter may be referred to Arbitrator as provided therein, the parties shall nevertheless pending the resolution of the controversy or disagreement continue to fulfill their obligation under this agreement so far as they are reasonably able to do so.
