

**GOVERNMENT OF JAMMU AND KASHMIR
DEPARTMENT OF LAW, JUSTICE & PARLIAMENT AFFAIRS
CIVIL SECRETARIAT, J&K**

Subject: Clause on Arbitration in all the Tender Documents.

**Circular No.16- JK (LD) of 2023
Dated: 28-12-2023**

Arbitration serves as an alternative dispute resolution mechanism, offering parties an avenue to resolve disputes without engaging in protracted court proceedings. In India, the Arbitration and Conciliation Act, 1996, governs this process, defining various aspects of arbitration, including the appointment of arbitrators and the process itself. The Arbitration and Conciliation Act 1996, however, provides parties involved in a contract with the flexibility to establish predetermined norms to deal with bilateral disputes, including guidelines on the Arbitrator's fees, which would need to be outlined in the tender documents.

Hence, to ensure a transparent and efficient arbitration process, all the departments and their agencies/autonomous bodies are hereby enjoined upon to incorporate a specific clause in the Tender/RFP, as also in the Contract Agreement on Arbitration as per **Appendix - I**. This would help deal with the potential disputes in a transparent, expeditious and less costly manner regarding arbitrator's compensation.

In cases of existing contracts too and where there is no existing dispute, the Departments and their agencies/autonomous bodies may try to agree, on a mutual agreement basis, for a separate bilateral agreement with the Supplier/ Contractor/ Service Provider, as per **Appendix - I**.

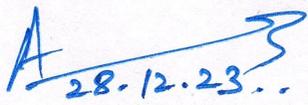
Sd/-
(Achal Sethi)
Secretary to Government

No. LAW-Arb/47/2022-10-Law

Dated: 28-12-2023

Copy to:-

1. All Administrative Secretaries.
2. All HODs.
3. All Heads Government Agencies/ Autonomous Bodies.
4. Private Secretary to Hon'ble Lieutenant Governor, J&K.
5. Private Secretary to the Chief Secretary.


28.12.23.
(Aayat Ullah),
Assistant Legal Remembrancer.



Appendix – I

Clause XX [of the Contract Agreement]: Dispute Resolution

[incorporate as a separate Clause in the Tender/RFP and Contract Agreement]

The parties agree that any mutual dispute with regard to the terms of this Contract shall be handled through Arbitration, as per the following terms, between them:

(I) THAT, the parties agree that any dispute or difference whatsoever arising between them out of/under or in connection with or relating to the existence, meaning, scope, validity, termination, breach, or any other effect flowing from the Contract shall be referred to a Sole Arbitrator, as appointed under clause (IV) hereinbelow;

(II) AND THAT, the parties agree that in respect of those matters, as are not defined in the terms and conditions of this Dispute Resolution Clause, or anywhere else in the Contract, the same shall be decided and settled by the Sole Arbitrator, in accordance with the Arbitration and Conciliation Act, 1996 and the amendments thereof as in operation on the date of execution of the Contract;

(III) AND THAT, the parties agree that the place of Arbitration shall be either Jammu or Srinagar, as per the convenience of the Arbitrator, in the Union Territory of J&K;

(IV) AND THAT, whenever the parties decide to resort to Arbitration for dispute resolution, the Law Secretary to the Government of J&K shall be the authority to appoint the Sole Arbitrator, from amongst a panel of Arbitrators maintained by the Government of J&K or other competent people, and such appointment shall be binding on both the parties:

Provided that before approaching the authorities for appointment of Sole Arbitrator, the parties shall make a sincere attempt to resolve their dispute, within a time period of 3 months, through mutual conciliation, and if so felt necessary by the parties under the supervisory guidance of the Administrative Secretary,, Government of J&K;

(V) AND THAT, all costs relating to the Arbitration proceedings shall be borne equally by both parties;

(VI) AND THAT, the parties agree that the language for making all submissions and evidence will be presented in ENGLISH during the proceedings;



(VII) AND THAT, it is agreed between the parties that they shall extend their fullest support and co-operation to the Sole Arbitrator and not seek adjournment of the Arbitration proceedings, without explaining the reasons therefor, in writing, in advance, for seeking of such adjournment, and further that there shall not be more than two such adjournments granted, even when there exists a valid reason for seeking such adjournment. And, it is further agreed that the parties should cooperate in completing the arbitration process and the broader dispute resolution within 6 months or at most with an extension, on mutual consent, of another 6 months;

(VIII) AND THAT, it is agreed by the parties hereto that, in so far as there is an arbitral award for payment of money, the Sole Arbitrator may include in the sum for which the award is made, interest at the RBI repo rate, as on the date on which the cause of action arose, on the whole, or any part of the money, for the whole or any part of the period, between the date on which the cause of action arose and the date on which the award is made:

Provided that, on the sum so directed to be paid by an arbitral award, there shall be no interest payable for three months commencing from the date of award, but thereafter, interest shall be payable at RBI repo rate plus 2% for such period of delay, till the date of payment;

(IX) The Arbitrator shall record, in writing, the arguments of the two parties on each of the points of dispute and pass a reasoned and speaking Award thereon, within the Terms and Conditions of the Contract Agreement.

(X) The fees payable to the Sole Arbitrator as agreed upon by the Parties to the Contract shall be as prescribed in the Annexure appended to this Contract, which forms part and parcel of this Contract.

(XI) If any difference remains after an Arbitral award, and an appeal could be raised under the Arbitration and Conciliation Act, 1996, the appropriate Court within the UT of J&K shall deal with the matter.

ANNEXURE

	Sum in Dispute	Fee fixed for Sole Arbitrator
1	Upto ₹ 5,00,000	₹ 45,000
2	Above ₹ 5,00,000 and upto ₹ 20,00,000	₹ 45,000 plus 3.5% of the claim amount over and above ₹ 5,00,000
3	Above ₹ 20,00,000 and upto ₹ 1,00,00,000	₹ 97,500 plus 3% of the claim amount over and above ₹ 20,00,000
4	Above ₹ 1,00,00,000 and above	₹ 3,37,500 plus 1% of the claim amount over and above ₹ 1,00,00,000

Provided that the fee shall not exceed ₹ 10 lakhs under any circumstances.

I/325919/2023

Note: The "Sum in dispute" shall refer to the aggregate of all the disputed amounts, both the claim(s) amount plus the counterclaim(s) amount.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a horizontal line and a small flourish.