

भारत सरकार / GOVERNMENT OF INDIA
रेल मंत्रालय / MINISTRY OF RAILWAYS
(रेलवे बोर्ड / RAILWAY BOARD)

No.2022/LML-I/25/5-(Pt-2)

New Delhi, Dt: 06.12.2022

The General Managers,
All Zonal Railways.

Sub: Model/Standard of agreement for granting of way leave facility rights for crossing railway land.

Master Circular on long term leasing of Railway Land for implementing PM Gati Shakti framework (Cargo related activities, Public utilities and Railway's exclusive use) has been issued vide Railway Board's letter No. 2021/LML/25/5 dated 04.10.2022.

As per the para 7.2 of the policy Model/Standard way leave agreement is to be issued. Accordingly, model agreement to be executed between the Railway and the party for granting way leave facility rights for crossing railway land has been approved by the competent authority and the same is enclosed as Annexeru-I.

Following conditions may be ensured before finalizing the Model Agreement:-

- 1). It may be ensured that whosoever executes the present draft agreement for and on behalf of the parties are authorized to do so and their name and designation are correctly mentioned in the opening Para as well as in the Signature Clause at the time of actual execution of the same. In addition to this, the name and full address of the witnesses representing the parties should also be mentioned in the Signature Clause at the time of actual execution of the same.
- 2). It may be ensured that blank spaced in the draft, if any, should be filled with appropriate/proper wordings according to their requirements before actual execution of the same.
- 3). It may be ensured that draft format of agreement under reference is in tune with the conditions and guidelines prescribed in the department's policy and rules, if any, applicable on the subject. The administrative Department/Ministry may further satisfy themselves regarding appropriateness of the terms and conditions contained in the aforesaid draft and fulfillment of their purpose/requirement.
- 4). It may be ensured that in the cases of Telecom Cable crossing below the railway track, the depth of the top of casing pipe should be 2 meters from the ground level. A typical drawing for crossing of telecom cables below railway track in station area and in block section are enclosed for reference with this letter.

DA: As above

(Pameer Arora)
Director/Land & Amenities
Room No.477, Rail Bhawan
Railway Board
Tele: 011 - 2338 4480

MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT FOR GRANTING WAY LEAVE FACILITY RIGHTS FOR CROSSING RAILWAY LAND

(on stamp paper of charges as applicable in terms of Stamp Act)

Agreement No. /

Dated:

This Memorandum of Agreement(MOA) is made and entered into on this _____ day of _____, 202_ at _____(Place) by and between the President of India acting, through the (Senior) Divisional Engineer _____, [] Division, _____ [] Railway, (hereinafter called the 'Grantor' or 'Railway Administration' which expression shall, unless the context does not so admit includes his successors and assigns) of the one part and _____ R/o _____(hereinafter called the 'Grantee' or ' _____ ' which expression shall, unless the context does not so admit, includes his successors and assigns) of the other part.

Whereas the Grantee is desirous of providing/laying _____[name of work] across/ through the Railway land belonging to[] Division of [] Railway and has approached Railway Administration for permission to cross Railway land upon the terms and condition hereinafter contained.

Now this Memorandum of Agreement of terms witnessed as follows:

1. That the Grantee at his own risks and expenses, shall provide/lay _____[name of work] at Km _____ Section _____ across/ through railway land for a length of _____ meters _____ vide Railway Plan No _____(to be suitably modified if the work is done by railway).
2. That the permission for crossing Railway land at the aforesaid railway land is granted for a period of -----years from the date of signing this agreement to the Grantee on the terms and conditions contained herein which have also been distinctly and clearly understood by the Grantee before entering into this agreement.
3. That subject to otherwise provided in this agreement for way leave facility, any action including giving notices will be taken by Grantor (Railway Administration) on behalf of President of India.

4. That no work shall commence or proceed without previous sanction in writing and supervision of the concerned railway officer not below the rank of Divisional Engineer or any officer so deputed by him. The Grantee shall be bound all the times, at his own costs /expenses, to observe and carry out all rules and regulations etc. which are already in force or which may thereafter be prescribed from time to time in future by the Govt./ Grantor.
5. The Grantee shall always obey all such directions or orders or restrictions as may, from time to time, be given by Grantor or his deputies duly authorized by him in relation to the construction, shifting, stoppage, abandonment, alteration, repair, removal or with regard to the time and manner of the work for which permission for crossing Railway land has been obtained and also other things and matters related thereto.
6. That Grantee distinctly and clearly understood that all the relevant codes, manuals and instructions etc. are strictly followed for the purpose of durability, safety and soundness of structures thereof.
7. That it is distinctly and clearly understood by the Grantee that the Grantor shall retain the full legal title, ownership, right of access, pass through and inspection, without any notice to Grantee, and have full control over the use and disposal of Railway land for which a permission is given to the Grantee only for the occasional/ limited purpose of laying ofat Km _____on section_____ across the railway land without conferring upon the party any right of possession or occupation of the land and without, in any way, affecting the railway's right, title, interest, possession, control, use of the land, any right to enter upon etc.. The Grantee has clearly understood that all air/space rights shall remain with the Grantor.
8. That the Railway Administration shall prepare an estimate before commencement of work and Grantee shall pay all codal charges as per railway rules including the expenditure incurred within Railway premises/Railway land.
9. That the Grantee shall pay, in advance, one time fee or annual charges or entire payable amount for full way leave term on present value basis with discounting of future cash flows at rate of 7%(seven percent) per annum, as applicable, for way leave facility for crossing Railway land before the permission is granted by the Grantor. As such, the Grantee has to deposit an amount of Rs. _____

amount in words and figures (Rs. _____ only). In case of annual payment option, a security deposit (refundable after tenure) of two-year annual payment shall be deposited by the party. Also, the annual charges shall be deposited in advance on or before 10th April of every year (next working day in case of holiday on 10th April). No monthly payment shall be accepted. In case of delay, an interest @12% per annum shall be payable on the outstanding dues for the delayed period. In case of delay for more than 24 months, the security deposit shall be forfeited and further necessary action shall be taken in terms of this agreement. The annual charges shall increase every year by 6 %.

10. On expiry of way leave agreement, further renewal can be done based on mutual agreement between Grantor and Grantee. Market value of the railway land prevalent at the time of renewal shall be considered for deciding the way leave charges. New agreement shall be signed between Grantor and Grantee.
11. That the Grantee shall pay all the costs and expenses on account of stamp duty charges, documentation, registration of agreements, GST, property taxes etc. The Grantee shall ensure registration of agreement in terms of applicable laws.
12. That the Grantee shall not erect/raise any additional construction, other than approved plan, whether permanent or temporary on the Railway land. If any such construction comes up subsequently, the same shall be removed immediately as soon as noticed at the costs of the Grantee and the permission for way leave shall be discontinued with immediate effect.
13. That, if any time, the way leave facilities for crossing Railway land becomes, in the opinion of Railway Administration, a menace to the safety of the Railway operation or Railway property, the Grantee shall, at once take steps to remedy such dangerous defects to the satisfaction of the Railway Administration failing which the Railway Administration shall have the rights to take all necessary remedial steps at the costs of the Grantee, necessary for the protection of the Railway's interests, without being held responsible for any loss, suffered by the Grantee, due to such action of the Railways Administration. In case of any loss to the Railway due to such action, in case of menace, the Grantee shall be held liable to compensate the Railway in all cases, what so ever it may be.

14. That the Railway shall not in any case be responsible for any damage/loss to the work of the Grantee, caused by the running/operation of the trains, derailments or accidents to the train or by any other cause, whatsoever it may be.
15. That the Grantee shall keep, all the times, Railway Administration indemnified against and reimburse the Railway administration for all claims, suites, demands, compensation, losses, damages, costs, expenses, penalty, etc., whatsoever, which the Railway Administration may sustain or incur by any reason or in consequence of any injury to any person or loss of life or to Railway property resulting directly or indirectly or incidentally from any act or omission on the part of the Grantee or his employees or servants or any other person, agent etc. other than Railway servants on any account related to said permission, on duty in carrying out the purpose of the Grantee.
16. That any notice hereunder shall be deemed duly served on the Grantee if delivered or sent by post/mail to his above mentioned address.
17. In case shifting of alignment of way leave facility is required on party/ Railway account, the entire cost of shifting of way leave facility shall be borne by the Grantee.
18. In the event of the way leave facility being discontinued with by the Grantee or Grantor, the Grantor/Railway Administration shall not be liable to pay any compensation or reimburse any amount to the Grantee, nor to provide any alternative arrangement for access, etc. In such a case, any installations like underground pipelines, etc. put up by the party are liable to be removed/ shifted by the Grantee at its own cost.
19. Grantee will be responsible for maintenance of assets crossing Railway land including, periodic cleaning of jungle/ vegetation grounds, periodical de-silting of all open drain/ storm water carrying drains, which do not carry any sludge, as applicable.
20. Grantee shall not transfer or sublet the way leave facility/ right granted by the Grantor further to any party.
21. Grantee agrees that provisions of Railway Act./Manuals/Codes, instruction and terms & condition of contract with Railways will supersede any conflicting provision of Petroleum act or provisions of Ministry of petroleum & Natural Gas or any other act.

22. (Retain if applicable) In case of inflammable substances pipe line crossings, shutoff valves should be provided on either side beyond 500 m from Railway Boundary but not beyond 1500 m. The inter-se distance between two shut off valves should not exceed 2000m. Vent pipe should be provided on either side beyond 500m from Railway boundary but not beyond 750m.

Or

In case of optical fibre cable, grantee have got requisite license from Department of Telecommunication, Government of India for laying of optical fibre cable in the area.

Or

In case of construction of ROB/RUB across Railway track through NREGA, MPLADS, PMGSY, MMGSY etc, way leave charges have been waived off in terms of Railway Board letter no, 2006/ CE-IV/BRO/82/MPLADS (Policy) dated 16.07.2012.

23. Dispute Resolution: In case of any dispute or difference arising out in any way touching or concerning the Agreement whatsoever, a standing committee of three JAS/SG officers of Engineering, Finance and user department of concerned railway division shall examine all the issues and submit recommendations to the DRM whose decision shall be final and binding on all the parties.

24. Termination of Agreement: In the event of any serious irregularity, grave breach of the terms & conditions of the agreement, any default, violation of the Railway Act, 1989, commission of any unlawful act which is not in line with good industry practices, railway administration may terminate the agreement with the Grantee without being held responsible to pay any compensation and/or reimburse any amount to the Grantee and not liable to provide any alternative arrangement for access, etc.. On receipt of such notice, the Grantee shall immediately remove its structures at its own cost and expenses and also made good for any damage, thereby occasioned to the surface or underground of Railway land.

25. That the agreement shall be effective w.e.f. _____

In witness whereof, the parties to this agreement have set their respective hands and seals of their offices to these presents on the date, month & year mentioned against each.

For and on behalf of
PRESIDENT OF INDIA (Grantor)
SIGNED, SEALED AND DELIVERED by
Name:
Designation:
Address:
(Authorized Signatory)

For and on behalf of
.....(Grantee)
SIGNED, SEALED AND DELIVERED by
Name/Designation/Address:
(Authorized Signatory)

In the presence of Witnesses:

1. Signature _____
 Name _____ S/o Sh. _____
 Designation _____
 Office Address _____

2. Signature _____
 Name _____ S/o Sh. _____
 Designation _____
 Address _____
