

F.No.H-25011/02/2014-P&P (Pt.III)
Government of India
Ministry of Road Transport and Highways

130.116

Parivahan Bhawan, 1, Sansad Marg,
New Delhi dated the 9th November, 2015.

ORDER

In continuation of this Ministry's Order of even number dated 8th September, 2015 it is further clarified that the following clauses approved earlier for change is applicable in BOT (Toll) 4 laning and BOT (Toll) 6 laning in the provisions of Model Concession Agreement (MCA):-

Clause Reference	BOT (Toll) MCA- 4 lane	BOT (Toll) MCA- 6 lane	BOT (Annuity) MCA 4 lane
4.1.2 (Performance Security to the Authority in accordance with Article 9)	Applicable	Applicable	Applicable
4.1.3 (f) (Financial Package and Financial Model)	Applicable	Applicable	Applicable
4.3 (Damages for delay by the Concessionaire)	Applicable	Applicable	Applicable
4.4* (Commencement of Concession Period)	Applicable	Applicable	Applicable
5.2.2 (Submission of all drafts of Project Agreements, amendments by the Concessionaire to the Authority)	Applicable	Applicable	Applicable
10.3.4 (Grant of Right of Way to the Concessionaire, no later than 120 days from the date of Appointment)	Applicable	Applicable	Applicable
10.3.7 (Procurement of site)	Applicable	Applicable	Applicable
13.1 (Monthly progress report)	Applicable	Applicable	Applicable
14.5.1 (Report of Independent Engineer if found that the Project Highway does not conform to the provisions of the Agreement)	Applicable	Applicable	Applicable
16.1.2 (Change of scope for improved services to the user)	Applicable	Applicable	Applicable
16.3.1 (Authority shall make an advance payment to the Concessionaire within 30 days of issuing a change of scope)	Applicable	Applicable	Applicable
17.8.1 (Damages for Breach of maintenance Obligations)	Applicable	Applicable	No change in the current provision

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17.9.2 (Authority's rights to take remedial measures)	Applicable	Applicable	Applicable
23.2.3 (Duties and functions of IE)	Applicable	Applicable	Applicable
25.2.2 (Equity support)	Applicable	No change in the current provision	Not Applicable
25.2.3 (Equity support)	Applicable	<ul style="list-style-type: none"> • Applicable • Change related to clauses 25.3.1 and 25.3.2 not applicable The same pertains to disbursement of O&M support which is not applicable for BOT (Toll) 6 lane projects	Not Applicable
27.11.3 (Display of Fee Rates)	Applicable	Applicable	Not Applicable
27.12 (Fee collection through electronic devices)	Applicable	Applicable	Not Applicable
27.13 (Real time data for toll collection)	Applicable	Applicable	Not Applicable
28.1.3 (Disbursement of Revenue Shortfall Loan by the Authority)	Applicable	Applicable	Not Applicable
33.1.1 (Maintenance of records by the Concessionaire)	Applicable	Applicable	Applicable
31.3.1 (g) (All payments and damages to debited to O&M expenses)	Applicable	Applicable to 31.3.1 (h)	No change in the current provision
31.4.1 (d) (All payments and damages to debited to O&M expenses)	Applicable	Applicable	No change in the current provision
33.2.3 (Appointment of auditors)	Applicable	Applicable	Applicable
33.2.4 (Right of Authority to appoint concurrent auditors)	Applicable	Applicable	Applicable
37.1.3 (Issue of Termination notice by the Authority)	Applicable	Applicable	Applicable
37.2.2 (Substitution Agreement)	Applicable	Applicable	Applicable
37.3.2 (Termination payment)	Applicable	Applicable	No change in the current provision
37.3.3 (Termination payment)	Applicable	Applicable	Applicable
42.3 (No settlement of claim without the approval of Indemnified Party)	Applicable	Applicable	Applicable
44.2 (Event of Dispute)	Applicable	Applicable	Applicable

between the parties)			
Schedule Q, Clause 4 Development Period	Applicable	Applicable	Applicable
44.3.1 (Disputes to be settled by Arbitration)	Applicable	Applicable	Applicable
48.1 Definition of Bank	Applicable	Applicable	Applicable
Schedule G: Project Completion Schedule Project Milestone – I Project Milestone – II Project Milestone - III	Applicable	Applicable	Applicable
Schedule –I 2.6 (Structural Test for structures)	Applicable	Applicable	Applicable
Schedule Q 3.1 (viii) and (ix)	Existing Clauses 3.2 (viii) and (ix) to be replaced and renumbered as 3.2 (x) and 3.2 (xi) respectively	Existing Clauses 3.2 (viii) and (ix) to be replaced and renumbered as 3.2 (x) and 3.2 (xi) respectively	Existing Clauses 3.2 (viii) and (ix) to be replaced and renumbered as 3.2 (x) and 3.2 (xi) respectively
Schedule Q Paragraph 12 (Assistance to Authority in review of book of accounts)	Applicable	Applicable	Not Applicable
6.4 (Obligations relating to refinancing)	Applicable	Applicable	Applicable
Back-ending of Premium 26.2	Applicable. ** Amended C1 26.2 is provided below	Applicable. ** Amended C1 26.2 is provided below	Not Applicable
Additional Eligibility of extending Revenue Shortfall Loan- 28.1.2	Applicable. ***Amended C1 28.1.2 is provided below	Applicable. ***Amended C1 28.1.2 is provided below	Not Applicable
Allowing charge on Receivables - 40.2 (b)	Applicable. ****Amended C1 40.2 (b) is provided below	Applicable. ****Amended C1 40.2 (b) is provided below	Applicable. ****Amended C1 40.2 (b) is provided below

(Base document for 4 lane BOT Toll is for year 2011, Base document for 6 lane BOT Toll is for year 2012. Base document for 4 lane BOT Annuity is for October 2010).

* In place of C1 4.5 as mentioned in the Order dated 8th September, 2015.

** Clause 26.2.1 Back ending of Premium:

26.2.1 Without prejudice to the provisions of Clause 26.1, the Concessionaire agrees to pay to the Authority immediately after the third (3rd) anniversary year of COD, a Premium in the form of an additional Concession Fee equal to Rs. _____ (in words) as due to the authority during that year, due and payable for the period remaining in that year; and for each subsequent year till the 9th anniversary of COD, the Premium shall be determined by increasing the amount of Premium in the respective year by an additional 3% (three percent) as compared to the immediately preceding year and for each subsequent year of the Concession Period, the Premium shall be determined by increasing the amount of Premium in the respective year by an additional 8% (eight percent) as compared to the immediately preceding year.

For avoidance of doubt it is clarified that the term 'Premium' as referred in para above shall be as applicable for one financial year. In accordance with and in compliance with the terms of this agreement, if payment of such 'Premium' is due and payable only for part of such financial year, then only pro-rata payments @ 1/12th of such Premium shall be payable for each month of such part financial year for which such Premium payments is due as payable. For the purpose of assessing the amount due for payment on such payment of Premium, part of a month shall be deemed to be a full month. In such circumstances the subsequent year as referred to in para above, for the purpose of 5% annual escalation, shall fall to commence on 1st of April of the immediately succeeding financial year.

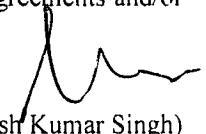
*** 28.1.2 Additional Eligibility of extending Revenue shortfall loan

28.1.2 If the half-yearly results of the Concessionaire indicate that the shortfall referred to in Clause 28.1.1 and contemplated for an Accounting Year has arisen in respect of the first 6 (six) months hereof, the Concessionaire shall be entitled to a provisional Revenue Shortfall Loan; provided that, no later than 60 (sixty) days after the close of such Accounting Year, the Concessionaire shall either repay the provisional loan with interest or adjust it against the Revenue Shortfall Loan, if any, as may be due to it under this Clause 28.1.

Provided further if the Realisable Fee in any Accounting Year shall fall short of the Subsistence Revenue as a result of a judicial pronouncement not related to the default of the concessionaire the Authority shall, upon request of the Concessionaire, provide "Revenue Shortfall Loan" at an interest rate equal to 2% (two per cent) above the Bank Rate. The entire surplus cash, after meeting the subsistence expenditure shall be used for repayment of the of such Revenue Shortfall Loan.

****40.2 (b) Allowing charge on Receivables

mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, a charge on the Escrow account arising or created in the ordinary course of business of the Project Highway and a charge on Receivables of the Concessionaires as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project Highway;



(Manish Kumar Singh)

Under Secretary to the Govt. of India
Tele.No.23714001

To

1. CEO, NITI Aayog
2. Secretary, Department of Economic Affairs
3. Secretary, Department of Expenditure
4. Secretary, Department of Financial Services
5. Secretary, Department of Legal Affairs
6. Chairman, NHAI

Copy to Shri Sheo Nath Singh, Under Secretary, Cabinet Secretariat, Rashtrapati Bhavan, New Delhi.

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