

No. NH-24031/07/2014-P&P (Vol-V) [e-DFA/4079307]  
 Government of India  
 Ministry of Road Transport & Highways  
 (Highways Section)  
 Transport Bhawan, 1, Parliament Street, New Delhi-110001

Dated: 3<sup>rd</sup> February, 2022

To

The Chairperson,  
 National Highways Authority of India,  
 G-5 & 6, Sector-10,  
 Dwarka, New Delhi-110075

[Kind attention: Shri B. M Rao, CGM (Finance), NHAI]

Subject: Changes in the Model Concession Agreement of TOT - reg.

Madam,

I am directed to refer to NHAI letter No. NHAI/13013/ToT/MCA/E-102750/01 dated 18.01.2022 on the above subject and to convey the approval for the proposed changes in the following clauses/provisions of Model Concession Agreement of TOT:

| Sl.No. | Clause/Provision |
|--------|------------------|
| 1      | Recital A        |
| 2      | 14.1.1           |
| 3      | 14.1.2           |
| 4      | 14.1.3           |
| 5      | 14.1.4           |
| 6      | 14.1.5           |
| 7      | 14.2.3           |
| 8      | 14.3             |
| 9      | Article 41       |
| 10     | 23.5.1           |
| 11     | 23.5.2           |
| 12     | 23.7             |
| 13     | 19.3.2           |
| 14     | 5.8              |

- Aforesaid changes have been concurred by the Inter Ministerial Committee in its meeting held on 02.10.2021.
- A statement indicating the existing clause vis-à-vis revised clause of the aforesaid provisions is attached (Annexure).
- This has the approval of the Competent Authority.

Encls: As above

Yours faithfully,



(Sushant Sudan)

Deputy Secretary to the Government of India

Copy to:

- (i) Secretary, Department of Economic Affairs
- (ii) Secretary, Department of Financial Services
- (iii) Secretary, Department of Legal Affairs
- (iv) CEO, NITI Aayog

Copy for information to:

- (i) Sr. PPS to Secretary (RT&H)
- (ii) Sr. PPS to AS (H)
- (iii) Sr. Technical Director (NIC) - With the request to upload on the MoRTH website

## Statement of changes in the Model Concession Agreement of TOT Model

| No. | Clause/<br>Section of<br>MCA | Existing Clause/Existing Provision as<br>per Model Document  | Revised Clause/Provision  |
|-----|------------------------------|--|---|
| 1   | Recital A                    | The Government had entrusted to the Authority the development, operation, maintenance and management of National Highway No.____[.] including the section from km____ to km____ (approximately ____[.] km) of NH____   | The Government had entrusted to the Authority the development, operation, maintenance and management of National Highway/ <b>[Expressway]</b> No.____ [.] including the section from km____ to km____ (approximately ____[.] km) of NH/ <b>[NE]</b> ____  |
| 2   | 14.1.1                       | <p>The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the capacity augmentation of the Project Highway in case the average daily traffic of PCUs in any Accounting Year shall exceed the designed capacity of *** PCU <sup>18</sup> ("Target Traffic") <sup>19</sup> for Project Highway and shall continue to exceed the designed capacity for 3 (three) consecutive Accounting Years following thereafter ("Capacity Augmentation"). Any such Capacity Augmentation shall be made in accordance with the provisions of this Article 14.</p> <p>The Authority shall bear the costs towards required land acquisition, shifting of utilities/facilities as would be necessary for undertaking the Capacity Augmentation.</p> <p>Footnote 18: Target Traffic to be determined as per latest IRC norms</p> <p>Footnote 19: Currently, for two lane Highway- 17,250 PCUs for augmentation to 4 lane. (IRC Norms- LOS B) Four lane Highway – 40,000 PCUs for augmentation to 6 lane (IRC Norms – LOS B) and 60,000 PCU for augmentation to 6 lane (IRC Norms- LOS C)</p> | <p>The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the Capacity Augmentation <b>[for any homogeneous/tollable section(s)]</b> <sup>18</sup> of the Project Highway in case the average daily traffic of PCUs <b>[for that homogeneous/tollable section(s),]</b> in any Accounting Year shall exceed the designed capacity of *** PCU <sup>19</sup> ("Target Traffic") for Project Highway and shall continue to exceed the designed capacity for 3 (three) consecutive Accounting Years following thereafter. Any such Capacity Augmentation shall be made in accordance with the provisions of this Article 14.</p> <p>The Authority shall bear the costs towards required land acquisition, shifting of utilities/facilities as would be necessary for undertaking the Capacity Augmentation.</p> <p><b>Footnote 18: Currently the homogeneous sections are as provided in Schedule A.</b></p> <p><b>Over time the homogeneous sections might change which shall be determined based on annual traffic survey and as per the provisions of IRC Code - IRC 108:2015 or any amendments thereof and the traffic data collected through electronic toll collection, whichever is higher.</b></p> <p><b>Footnote 19: Target Traffic to be determined for [LOS B]:</b><br/> <b>For Expressway: as per IRC Code - IRC: SP:99-2013 or any amendments thereof</b><br/> <b>For Four lane to Six Lane National Highways: as per IRC: SP:84-2019 or any amendments thereof</b></p> |
| 3   | 14.1.2                       | In the event at any time during the Concession Period the average daily traffic increases the Target Traffic in the aforesaid manner, the Authority may,   | In the event at any time during the Concession Period the average daily traffic increases <b>beyond</b> the Target Traffic, the Authority may, decide to cause preparation of a Detailed Project  |

| No. | Clause/<br>Section of<br>MCA | Existing Clause/Existing Provision as<br>per Model Document  | Revised Clause/Provision  |
|-----|------------------------------|--|---|
|     |                              | decide to cause preparation of a Detailed Project Report (DPR). The said DPR, inter-alia will assess the cost as may have to be incurred for augmenting the capacity of the Project Highway in accordance with the provisions of the Indian Roads Congress publication or any substitute thereof.  | Report (DPR). The said DPR, inter-alia will assess the cost as may have to be incurred for augmenting the capacity of the <b>[homogeneous/tollable section(s) of the ]</b> Project Highway in accordance with the provisions of the Indian Roads Congress publication or any substitute thereof.  |
| 4   | 14.1.3                       | In case the Authority determines that Capacity Augmentation is reasonably required by reason of the then current traffic reaching the Target Traffic as aforesaid, then the Authority may undertake the required Capacity Augmentation, at its own cost and expense by engaging a EPC Contractor selected through competitive bidding process; provided however the Concessionaire shall have the option of matching the first ranked bid and thereupon securing the award of EPC works contract, and the Concessionaire shall be eligible to exercise such right/option, if Concessionaire participates in the said bidding process and fulfils the eligibility criteria to undertake such work without compromising with its overall liability. For avoidance of doubt, it is clarified that if the Concessionaire decides to participate in the competitive bidding it shall be required to demonstrate technical capability as set forth in the bidding documents either as a single entity or by forming a consortium with an EPC contractor; provided that in such a case, the technical capability of such EPC contractor shall only be considered for the purpose of evaluation. | In case the Authority determines that Capacity Augmentation is reasonably required by reason of the then current traffic reaching the Target Traffic as aforesaid, then the Authority may undertake the required Capacity Augmentation, at its own cost and expense by engaging a EPC Contractor selected through competitive bidding process; provided however the Concessionaire shall have the option of matching the first ranked bid, <b>subject to the Concessionaire's bid being within 10% of the first rank bid</b> , and thereupon securing the award of EPC works contract, and the Concessionaire shall be eligible to exercise such right/option, if Concessionaire participates in the said bidding process and fulfils the eligibility criteria to undertake such work without compromising with its overall liability. For avoidance of doubt, it is clarified that if the Concessionaire decides to participate in the competitive bidding it shall be required to demonstrate technical capability as set forth in the bidding documents either as a single entity or by forming a consortium with an EPC contractor; provided that in such a case, the technical capability of such EPC contractor shall only be considered for the purpose of evaluation. |
| 5   | 14.1.4                       | In case of augmentation by third party, the Concessionaire shall promptly render all support and assistance as would be required by the Authority <i>inter alia</i> including making suitable arrangements for ensuring efficient diversion of the Traffic.<br><br>In either case the operation and maintenance of the augmented stretch shall be undertaken by Concessionaire, as if the augmented stretch were part of the Project Highway, and the Concessionaire   | In case of augmentation by third party, the Concessionaire shall promptly render all support and assistance as would be required by the Authority <i>inter alia</i> including making suitable arrangements for ensuring efficient diversion of the Traffic.<br><br><b>During the period wherein EPC Contractor is responsible for all defects and deficiencies, including undertaking maintenance on account of regular wear and tear arising in the augmented stretch, as defined in Clause 14.1.5, the Concessionaire shall be entitled to operate the</b>  |

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|-----|------------------------------|---|--|
|     |                              | shall be entitled to collect and appropriate the additional revenues from the augmented stretch. In this regard, the Concessionaire clearly understands and agrees that such entitlement is being vested in the Concessionaire on account of good faith bonafide representation by the Concessionaire that it has factored the same in its bid quote.   | stretch and collect the additional revenues from the augmented stretch. In this regard, the Concessionaire clearly understands and agrees that such entitlement is being vested in the Concessionaire on account of good faith bonafide representation by the Concessionaire that it has factored the same in its bid quote. <b>Upon completion of the period of the EPC Contractor's liability mentioned herein above, or in case the Capacity Augmentation is undertaken by the Concessionaire, the operation and maintenance of the augmented stretch shall be undertaken by Concessionaire, as if the augmented stretch were part of the Project Highway .</b>   |
| 6   | 14.1.5                       | The EPC Contractor shall be responsible for all defects and deficiencies arising in the augmented stretch, for a period of 1460 (one thousand four hundred and sixty) days after such augmentation, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer during the aforesaid period. For the avoidance of doubt, it is hereby agreed by and between the Parties that the Independent Engineer shall act as the Authority Engineer for the purpose of the EPC Contract executed for such Capacity Augmentation. In the event that the EPC Contractor fails to repair or rectify such defect or deficiency within a period of 60(sixty) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at its cost so as to make the Project Highway conform to all requirements. All costs incurred by the Authority hereunder shall be reimbursed by the EPC Contractor to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover damages at the rate of 1% (one per cent) of the cost of the EPC Contract. For avoidance of doubt, the right to levy user fee for the entire project highway during the defect liability period of the EPC Contractor appointed for Capacity Augmentation, if any, shall continue to be with the Concessionaire. | The EPC Contractor shall be responsible for all defects and deficiencies, <b>including undertaking maintenance on account of regular wear and tear</b> arising in the augmented stretch, for a period of <b>[5 (five) years]^</b> after such augmentation, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer during the aforesaid period. For the avoidance of doubt, it is hereby agreed by and between the Parties that the Independent Engineer shall act as the Authority Engineer for the purpose of the EPC Contract executed for such Capacity Augmentation. In the event that the EPC Contractor fails to repair or rectify such defect or deficiency within a period of 60(sixty) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at its cost so as to make the Project Highway conform to all requirements. All costs incurred by the Authority hereunder shall be reimbursed by the EPC Contractor to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover damages at the rate of 1% (one per cent) of the cost of the EPC Contract. For avoidance of doubt, the right to levy user fee for the entire project highway during the defect liability period of the EPC Contractor appointed for Capacity Augmentation, if any, shall continue to be with the Concessionaire.<br><br><b>Footnote ^: The figure may be updated based on the following:</b> |



| No. | Clause/<br>Section of<br>MCA | Existing Clause/Existing Provision as<br>per Model Document | Revised Clause/Provision  |
|-----|------------------------------|---|---|
|     |                              |   | <p>(a) 5 (five) years from the date of completion in case of a road being constructed with flexible pavement.</p> <p>(b) 10 (ten) years from the date of completion in case of road being constructed with rigid pavement.</p> <p>(c) 10 (ten) years from the date of completion in case of road being constructed with flexible pavement using perpetual design</p> <p>(d) 10 (ten) years from the date of completion in case of all stand-alone structures, e.g. Major Bridges/ and Tunnels</p> <p>(e) 10 (ten) years from the date of completion for the stretches where new technology/ material has been/ is proposed to be used.</p> <p>The categorization whether the augmented stretch is constructed with flexible pavement or rigid pavement shall depend on the basis of the majority of the length of the augmented stretch to be covered with that type of pavement.</p>   |
| 7   | 14.2.3                       | New Insertion   | <p>Notwithstanding to anything contrary present in the Agreement, during the period of Capacity Augmentation, if the Concessionaire incurs any financial loss due to modification in toll rates for the Project Highway, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no reduction in toll rates due to Capacity Augmentation. The Authority shall pay the amount specified therein to the Concessionaire on a quarterly basis. For the avoidance of doubt, it is clarified that compensation will be limited to reduction in toll rates and shall not include any loss due to reduction in traffic. The amount of compensation shall be calculated using the following formula:</p> <p>A*(B-C) where</p> <p>A= Traffic calculated as per Article 19</p> <p>B= Existing toll rate before the beginning of Capacity Augmentation</p> |

| No. | Clause/<br>Section of<br>MCA | Existing Clause/Existing Provision as<br>per Model Document            | Revised Clause/Provision   |
|-----|------------------------------|--|--|
|     |                              |  | C= Reduced toll rate at the time of Capacity Augmentation  |
| 8   | 14.3                         | New Insertion  | <p>14.3 Financial gains or loss due to Capacity Augmentation</p> <p>Notwithstanding to anything contrary present in the Agreement, during the period of Capacity Augmentation or thereafter;</p> <ul style="list-style-type: none"> <li>i. if the Equivalent Tollable Length of the Project Highway increases, the increased revenue realised by the Concessionaire shall be paid to the Authority on a quarterly basis. For avoidance of doubt, increase in revenue refers to increase in revenue due to increase in Equivalent Tollable Length of the Project Highway;</li> <li>ii. if the Equivalent Tollable Length of the Project Highway decreases, the loss in revenue to the Concessionaire due to such reduction in length shall be compensated by the Authority to the Concessionaire on quarterly basis. For avoidance of doubt, loss in revenue shall only include the loss due to reduction in the Equivalent Tollable Length of the Project Highway;</li> </ul> <p>The amount of payment shall be calculated using the following formula:</p> <p><math> A*(B-C) </math> where</p> <p>A= Traffic calculated as per Article 19<br/> B= Toll rate based on the existing Equivalent Tollable Length of the Project Highway<br/> C= Revised toll rate based on revised Equivalent Tollable Length of the Project Highway</p> <p>provided that any dispute arising from clause 14.3 shall be settled in accordance with Dispute Resolution Procedure</p> |
| 9   | Article 41                   | "Capacity Augmentation" shall have the meaning set forth in Clause 14; | "Capacity Augmentation" shall have the meaning set forth in Article 14 and/or it may include any other improvement work, such as construction, renovation, refurbishing, augmentation, upgradation, etc., of any road, structure, etc., and other activities incidental thereto, being undertaken by the Authority at its own cost. The Authority may undertake these  |

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|-----|------------------------------|---|--|
|     |                              |   | improvement works at a periodic interval of [5 years] % starting from the Appointed Date;<br><br>Footnote %: The value may not exceed 5 years.   |
| 10  | Article 41                   | "Scope of Augmentation "means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Capacity Augmentation of the Project Highway as set forth in Schedule-C and any modifications thereof, or additions thereto as expressly approved by, the Authority;  | "Scope of Augmentation "means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Capacity Augmentation of the <b>[homogenous/ tollable section(s) of the]</b> Project Highway as set forth in Schedule-C and any modifications thereof, or additions thereto as expressly approved by, the Authority;   |
| 11  | Article 41                   | New Insertion   | <b>"Equivalent Tollable Length" shall be calculated as per the mechanism provided in Schedule M.</b>   |
| 12  | 23.5.1                       | The Concessionaire shall, upon request from any person, issue a return pass on payment of a sum equal to 150% (one hundred and fifty per cent) of the Fee payable for the respective vehicle if it were to undertake a single one-way trip on the Project Highway. Such return pass shall entitle the specified vehicle to undertake a return journey within 24 (twenty four) hours from the time of payment of Fee.                                | The Concessionaire shall, upon request from any person, issue a return pass on payment of a sum equal to 150% (one hundred and fifty per cent) of the Fee payable for the respective vehicle if it were to undertake a single one-way trip on the Project Highway. Such return pass shall entitle the specified vehicle to undertake a return <b>journey [between the entry and exit Toll Plazas as mentioned on the pass,]*</b> within 24 (twenty four) hours from the time of payment of Fee.<br><br>Footnote *: May be retained if closed tolling is taking place on the Project Highway, else may be deleted.        |
| 13  | 23.5.2                       | The Concessionaire shall, upon request from any person for issue of 50 (fifty) or more one-way toll tickets, issue such tickets at a discounted rate equivalent to two- thirds of the Fee payable for the respective vehicle. Such discounted tickets shall entitle the specified vehicle to commute on the Project Highway by using one ticket for a single one-way trip at any time during a period of one month from the date of payment of Fee. | The Concessionaire shall, upon request from any person for issue of 50 (fifty) or more one-way toll tickets, issue such tickets at a discounted rate equivalent to two- thirds of the Fee payable for the respective vehicle. Such discounted tickets shall entitle the specified vehicle to commute on the Project Highway <b>[between the entry and exit Toll Plazas]**</b> by using one ticket for a single one-way trip at any time during a period of one month from the date of payment of Fee.<br><br>Footnote **: May be retained if closed tolling is taking place on the Project Highway, else may be deleted. |
| 14  | 23.7                         | Fee shall ordinarily be collected at the Toll Plazas from vehicles crossing the Toll Plazas and using the whole or part of the Project Highway; provided that for preventing evasion of Fee by any vehicle circumventing one or both of the Toll Plazas and using the whole or part of the Project Highway located between such   | Fee shall ordinarily be collected at the Toll Plazas from vehicles crossing the Toll Plazas and using the whole or part of the Project Highway; provided that for preventing evasion of Fee by any vehicle circumventing one or both of the Toll Plazas and using the whole or part of the Project Highway located between such Toll Plazas, the Concessionaire shall be entitled to set up at its own   |



| No. | Clause/<br>Section of<br>MCA                   | Existing Clause/Existing Provision as<br>per Model Document  | Revised Clause/Provision   |
|-----|--|--|--|
|     |  | <p>Toll Plazas, the Concessionaire shall be entitled to set up at its own risk and cost, and in consultation with the Independent Engineer, its temporary or permanent Fee collection booths, as may reasonably be necessary for preventing such evasion. For the avoidance of doubt, the Concessionaire hereby acknowledges and agrees that it shall not determine or collect Fee from Users who do not use any part of the Project Highway which is situated between the two Toll Plazas OR only use part of the Project Highway situated on any one side of the Toll Plaza. It is further acknowledged and agreed that the restrictions hereunder shall not extend beyond a distance of 10 (ten) kilometre from the Toll Plazas and the provisions of this Clause 23.7 shall be so enforced as to minimize inconvenience to Users who are not liable to payment of Fee.</p> | <p>risk and cost, and in consultation with the Independent Engineer, its temporary or permanent Fee collection booths, as may reasonably be necessary for preventing such evasion. For the avoidance of doubt, the Concessionaire hereby acknowledges and agrees that it shall not determine or collect Fee from Users who do not use any part of the Project Highway which is situated between the two Toll Plazas OR only use part of the Project Highway situated on any one side of the Toll Plaza. It is further acknowledged and agreed that the restrictions hereunder shall not extend beyond a distance of 10 (ten) kilometres from the Toll Plazas and the provisions of this Clause 23.7 shall be so enforced as to minimize inconvenience to Users who are not liable to payment of Fee.]<sup>&amp;1</sup><b>[The Concessionaire shall be entitled to charge Fee from the Users of the Project Highway on the basis of the distance travelled. For the purpose of implementation of User Fee collection, a closed tolling system would be adopted. Fee shall ordinarily be collected at the Toll Plaza[s] from vehicles crossing the Toll Plaza[s] and using the whole or part of the Project Highway; provided that for preventing evasion of Fee by any vehicle circumventing one or both of the Toll Plaza[s] and using the whole or part of the Project Highway located between such Toll Plazas], the Concessionaire shall be entitled to set up at its own risk and cost, and in consultation with the Independent Engineer, its temporary or permanent Fee collection booths, as may reasonably be necessary for preventing such evasion.]</b><sup>&amp;2</sup></p> <p>Footnote &amp;1: In case of open tolling, this clause may be retained.</p> <p>Footnote &amp;2: In case of closed tolling, this clause may be retained.</p> |
| 15  | Article<br>41 –<br>Definition of<br>Toll Plaza | <p>"Toll Plaza" means the structures and barriers erected near each of the two ends of the Project Highway for the purpose of regulating the entry and exit of vehicles in accordance with the provisions of this Agreement and shall include all land, buildings, equipment, and other facilities required in accordance with or incidental to the provisions of this Agreement; provided that such Toll Plaza(s) shall not ordinarily be located within a distance of 10 (ten) kilometres</p>  | <p>"Toll Plaza" means the structures and barriers erected [near each of the two ends/ <b>on each entry and exit</b>] of the Project Highway for the purpose of regulating the entry and exit of vehicles in accordance with the provisions of this Agreement and shall include all land, buildings, equipment, and other facilities required in accordance with or incidental to the provisions of this Agreement; provided that such Toll Plaza(s) shall not ordinarily be located within a distance of 10 (ten) kilometres from the limits of the municipal or local area of the nearest city or town respectively, as applicable on</p>   |

| No. | Clause/<br>Section of<br>MCA | Existing Clause/Existing Provision as<br>per Model Document   | Revised Clause/Provision  |
|-----|------------------------------|---|---|
|     |                              | from the limits of the municipal or local area of the nearest city or town respectively, as applicable on the date of this Agreement, and shall be situated at location(s) specified in the Bid or within a distance of 1 (one) kilometre thereof;  | the date of this Agreement, and shall be situated at location(s) specified in the <b>Agreement (Schedule B and C)</b> or within a distance of 1 (one) kilometre thereof;  |
| 16  | 19.3.2                       | If the traffic sampling pursuant to this Clause 19.3 demonstrates that the actual traffic is more than the traffic reported by the Concessionaire, the traffic determined by the traffic sampling shall be deemed to be the traffic for purposes of this Agreement and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, Realisable Fee for any comparable period shall be calculated with reference to the traffic determined hereunder. | <b>If the higher of the traffic estimated through electronic/ computerized traffic counters at each of the Toll Plazas and traffic sampling pursuant to this Clause 19.3 is more than the traffic reported by the Concessionaire, the traffic determined as per the aforesaid methodology</b> shall be deemed to be the traffic for purposes of this Agreement and in the event of any Dispute relating to <b>this clause 19.3.2</b> , the Dispute Resolution Procedure shall apply. For the avoidance of doubt, Realisable Fee for any comparable period shall be calculated with reference to the traffic determined hereunder. |
| 17  | 5.8                          | New Insertion   | <b>5.8. Obligations relating to Local Content</b><br><br><b>5.8.1. The Concessionaire [Class I Local Supplier/ Class II Local Supplier/ Non Local Supplier] undertakes to ensure minimum Local Content in the Project Highway of at least [50%/20%] duly complying with the provisions of Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India Order No. P-45021/2/2017-PP (BE- II) dated September 16, 2020, as amended or modified till Bid Due Date and the provisions under Rule 144(xi) of GFR, 2017.</b>   |