



# भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

## National Highways Authority of India

(Ministry of Road Transport and Highways)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली-110075

G-5 & 6, Sector-10, Dwarka, New Delhi-110075

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No.11041/217/2007-Admn.

08.05.2013

### POLICY MATTERS – ADMINISTRATION / FINANCE (114/2013)

(Decision taken on File No. NHAI/DR&A/ARB(Misc)/2011)

**Sub.: Entering into Supplementary Agreement on schedule of fee and other expenses of Arbitrators – Amendment to Policy Circular No. Admn/Fin/109/2013 dated 01.04.2013**

In continuation to policy circular (Admn/Fin) No.109/2013 dated 01.04.2013 issued for entering into supplementary agreement on schedule of fee and other expenses of Arbitrators along with copies of Specimen of supplementary agreement to be entered between NHAI and the Contractor (for EPC Contract); and NHAI & the Concessionaire (for BOT Contracts), it is informed that due to some inadvertent errors crept in the earlier specimen supplementary agreements, it has been now decided to issue the revised specimen supplementary agreements for BOT projects and EPC contracts, after necessary corrections.

2. Specimen of amended / revised supplementary agreements are enclosed and marked as Annex-A & B.
3. This issues with approval of the Chairman.

  
(V.K. Sharma)

Chief General Manager (Coord.)

To,

All officers and employees of HQ/ROs/PIUs/CMUs/Site Offices

**SUPPLEMENTARY AGREEMENT**

This supplementary Agreement is made on this \_\_\_\_ day of \_\_\_\_ 20 \_\_\_\_ between the National Highways Authority of India, G-5&6, Sector-10, Dwarka, New Delhi-110075 (hereinafter referred to as "NHAI") and \_\_\_\_\_

Whereas NHAI has entered into an agreement dated \_\_\_\_ with the Contractor \_\_\_\_\_ on EPC basis.

Whereas the Contract Agreement provides for Arbitration under Clause 26.3.

Whereas the Contractor and NHAI are desirous of amending the provisions of Clause 26.3.1 and 26.3.2 of Contract Agreement.

NOW THEREFORE, the parties have mutually agreed as follow:

1. That the Clause 26.3.1 and 26.3.2 of the Contract Agreement are hereby amended to read as below:

"Any Dispute, which is not resolved amicably as provided in Clause 26.1 & 26.2 shall be finally settled by arbitration as set forth below:

- (i) The Dispute shall be finally settled by arbitration in accordance with the Arbitration & Conciliation Act, 1996, or any statutory amendment thereof. The Arbitral tribunal shall consist of 3 Arbitrators, one each to be appointed by NHAI and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding Arbitrator. In case of failure of the two Arbitrators, appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Chairman of the Executive Committee of the Indian Roads Congress.
- (ii) Neither party shall be limited in the proceedings before such Tribunal to the evidence or arguments before the other party / Independent consultant.
- (iii) Arbitration may be commenced during or after the Contract Period, provided that the obligations of NHAI and the Contractor shall not be altered by reason of the arbitration being conducted during the Contract Period.
- (iv) If one of the parties fails to appoint its Arbitrator in pursuance of Sub-Clause (i) above, within 30 days after receipt of the notice of the appointment of its Arbitrator by the other party, then the Chairman of the Executive Committee of the Indian Roads Congress, shall appoint the Arbitrator. A certified copy of the order of the Chairman of the Executive Committee of the Indian Roads Congress making such an appointment shall be furnished to each of the parties.
- (v) Arbitration proceedings shall be held at Delhi, India, and the language of the Arbitration Proceedings and that of all documents and communications between the parties shall be English.



- (vi) The expenses incurred by each party in connection with the preparation, presentation, etc., of its proceedings shall be borne by each party itself.
- (vii) The fees and expenses payable to the Arbitrators shall be as per the schedule of remuneration and expenses for Arbitrators notified by NHA vide letter no. 11041/217/2007-Admin. Dt. 13<sup>th</sup> January 2010 reproduced herein below, or any amendment thereof:

S. No.	Particulars	Schedule Amount payable per Arbitrator/per case
1	Arbitrator fee	Rs. 15,000/- per day subject to a maximum of Rs. 4 lacs per case Or Rs. 2.5 lacs (lump sum) subject to publishing the Award within 12 months. 12 months will be reckoned from the date of first hearing.
2	Reading Charges	Rs. 15,000/-
3	Secretarial Assistance and incidental charges (telephone, fax, postage etc.)	Rs. 20,000/-
4	Charges for publishing / declaration of the Award	Maximum of Rs. 20,000/-
5	Other expenses (actuals against bills subject to the prescribed ceiling) – applicable for the days of hearing only.	
	Travelling Expenses and Lodging and Boarding	Economy class by air, first class AC by train, AC car by road (i) Upto Rs. 15,000/- per day (metro cities) (ii) Upto Rs. 7,000/- per day (other cities) (iii) Rs. 3,000/- per day (own arrangement)
6	Local Travel	Rs. 1,500/- per day
7	Extra charges for days other than hearing/ meeting days (maximum for 2 days)	Rs. 3,500/- per day
Note	<p>1. Lodging, boarding and traveling expenses shall be allowed only for those members who are residing 100 kms away from place of meeting.</p> <p>2. Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad shall be considered as Metro cities.</p>	



IN WITNESS WHEREOF the parties have signed this Supplementary Agreement on the date above mentioned in the presence of the witnesses.

For and on behalf of NHA  
Contractor

For and on behalf of the

Signature

Signature

Witnesses:

Witnesses:

A handwritten mark or signature, possibly initials, located on the left side of the page.

## SUPPLEMENTARY AGREEMENT

This supplementary Agreement is made on this \_\_\_\_ day of \_\_\_\_ 20 \_\_\_\_ between the National Highways Authority of India, G-5&6, Sector-10, Dwarka, New Delhi-110075 (hereinafter referred to as "NHA") and \_\_\_\_\_

Whereas NHA has entered into the **Concession Agreement** dated \_\_\_\_ with the Concessionaire \_\_\_\_\_ on BOT basis.

Whereas the Concession Agreement provides for Arbitration under Clause 44.3.

Whereas the Concessionaire and NHA are desirous of amending the provisions of Clause 44.3.1 and 44.3.2 of Concession Agreement.

NOW THEREFORE, the parties have mutually agreed as follow:

1. That the Clause 44.3.1 and 44.3.2 of the Concession Agreement is hereby amended to read as below:

"Any Dispute, which is not resolved amicably as provided in Clause 44.2 shall be finally settled by arbitration as set forth below:

- (i) The Dispute shall be finally settled by arbitration in accordance with the Arbitration & Conciliation Act, 1996, or any statutory amendment thereof. The Arbitral tribunal shall consist of 3 Arbitrators, one each to be appointed by NHA and the Concessionaire. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding Arbitrator. In case of failure of the two Arbitrators, appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Chairman of the Executive Committee of the Indian Roads Congress.
- (ii) Neither party shall be limited in the proceedings before such Tribunal to the evidence or arguments before the other party / Independent consultant.
- (iii) Arbitration may be commenced during or after the Concession Period, provided that the obligations of NHA and the Concessionaire shall not be altered by reason of the arbitration being conducted during the Concession Period.
- (iv) If one of the parties fails to appoint its Arbitrator in pursuance of Sub-Clause (i) above, within 30 days after receipt of the notice of the appointment of its Arbitrator by the other party, then the Chairman of the Executive Committee of the Indian Roads Congress, shall appoint the Arbitrator. A certified copy of the order of the Chairman of the Executive Committee of the Indian Roads Congress making such an appointment shall be furnished to each of the parties.
- (v) Arbitration proceedings shall be held at Delhi, India, and the language of the Arbitration Proceedings and that of all documents and communications between the parties shall be English.



(vi) The expenses incurred by each party in connection with the preparation, presentation, etc., of its proceedings shall be borne by each party itself.

(vii) The fees and expenses payable to the Arbitrators shall be as per the schedule of remuneration and expenses for Arbitrators notified by NHA vide letter no. 11041/217/2007-Admin. Dt. 13<sup>th</sup> January 2010 reproduced herein below, or any amendment thereof:

S.No.	Particulars	Schedule Amount payable per Arbitrator/per case
1	Arbitrator fee	Rs. 15,000/- per day subject to a maximum of Rs. 4 lacs per case Or Rs. 2.5 lacs (lump sum) subject to publishing the Award within 12 months. 12 months will be reckoned from the date of first hearing.
2	Reading Charges	Rs.15,000/-
3	Secretarial Assistance and incidental charges (telephone, fax, postage etc.)	Rs. 20,000/-
4	Charges for publishing / declaration of the Award	Maximum of Rs. 20,000/-
5	Other expenses (actuals against bills subject to the prescribed ceiling) – applicable for the days of hearing only.	
	Travelling Expenses and Lodging and Boarding	Economy class by air, first class AC by train, AC car by road  (i) Upto Rs. 15,000/- per day (metro cities) (ii) Upto Rs. 7,000/- per day (other cities) (iii) Rs. 3,000/- per day (own arrangement)
6	Local Travel	Rs. 1,500/- per day
7	Extra charges for days other than hearing/ meeting days (maximum for 2 days)	Rs. 3,500/- per day
Note	<p>1 Lodging, boarding and traveling expenses shall be allowed only for those members who are residing 100 kms away from place of meeting.</p> <p>2 Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad shall be considered as Metro cities.</p>	

IN WITNESS WHEREOF the parties have signed this Supplementary Agreement on the date above mentioned in the presence of the witnesses.

For and on behalf of NHA

For and on behalf of the Concessionaire

Signature

Signature

Witnesses:

Witnesses:

A handwritten signature in black ink, consisting of a stylized, cursive letter 'B' followed by a checkmark-like flourish.